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IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION
SECTION

CASE NO.: ______________________

CRAIG HECKER,
HRH FUNDING, LLC,
RAPID CAPITAL FUNDING, LLC,
RAPID CAPITAL FUNDING II, LLC,

Plaintiffs,
vs.

RAPID CAPITAL FINANCE, LLC
NORTH AMERICAN BANCARD LLC,
SPECIALTY FINANCE GROUP, LLC,
MARC GARDNER,

Defendants.
_____________________________________/

COMPLAINT

Plaintiffs, Craig Hecker ("Hecker"), HRH Funding, LLC ("HRH"), Rapid Capital Funding, LLC ("Rapid Funding"), and Rapid Capital Funding II, LLC ("Rapid Funding II") (HRH, Rapid Funding, and Rapid Funding II shall collectively be referred to as the "Hecker Entities" and together with Hecker, "Plaintiffs"), sue Defendants, Rapid Capital Finance, LLC, formerly known as RCF Acquisition Company, LLC ("RCF"), North American Bancard LLC ("NAB"), Specialty Finance Group, LLC ("SFG") and Marc Gardner ("Gardner") (RCF, NAB, SFG and Gardner shall collectively be referred to as "Defendants"), and allege as follows:

INTRODUCTION

Plaintiff, Craig Hecker, is a local Miami-based businessman who built a highly profitable business providing rapid capital funding for small businesses. Once Rapid Funding became a world class operation with run rates of $78 million in annual merchant receivables with a high-quality portfolio, NAB and its CEO, Marc Gardner, sought to purchase Rapid Funding from

Hecker, promising that the combined companies would expand the profits for both parties exponentially.

However, after the acquisition of Hecker's company now known as RCF, Gardner attempted to cheat Hecker out of his profit interest in RCF worth at least $25 million by effectively shutting down RCF and transferring substantially all of its assets for no or minimal consideration to SFG, a new company owned by Gardner. Having been ordered by this Court not to do so on June 30, 2017, Gardner again promised Hecker even greater rewards to dismiss the injunction, including profit interests in SFG as its CEO and exclusivity in marketing cash advances to NAB's large network of merchants.

In furtherance of their agreement, Gardner and NAB tasked Hecker and his team with devising and implementing the game plan, called "project cinnamon," to build out a "portal product" that provides cash advances to NAB's portfolio customers and all new customers obtained in acquisitions. Once Hecker's team was on the verge of completing the plan, NAB stole the work product and shut out Hecker and his team, denying them all access to NAB's portfolio customers, and seeking to exclude Hecker and RCF from the business that is well on its way to earning in excess of $15-20 million per year in net income and worth over $200 million. In particular, Gardner and NAB breached their agreements on (a) Hecker's rights to participate in up to 5% in any package of funded advances with personal capital, which alone will be over $1.8 million per year, and (b) Hecker's right to share in 35% of the value of the company once sold, which Hecker's percentage likely will be in excess of $70 million.

Moreover, NAB and Gardner's attempt to cheat Hecker is part of a practice they have of enriching themselves by cheating their top partners and executive out of their promised and earned compensation, including but not limited to (1) denying Richard Kovacs, NAB's former

Executive VP of Corporate Sales for 13 years, his incentive bonus after Gardner withdrew $175 million from the company in a recapitalization constituting a triggering event under his employment agreement, (2) wrongful termination of Rita Feldman, NAB's former VP of National Sales, after demanding repayment of bonuses paid out following a triggering event under her employment agreement, and (3) recently terminating RCF's Executive VP and Chief Credit Officer, Scott Kaplan, without proper notice and payment of bonuses under his employment agreement.

PARTIES, JURISDICTION, AND VENUE

1. This is an action for breach of contract, breach of the implied covenant of good faith and fair dealing, damages pursuant to a guaranty, declaratory judgment, tortious interference of business relationships, and for appointment of receiver relating to Defendants wrongfully shutting down RCF and transferring its assets to SFG in a non-arm's length transaction.

2. The amount in controversy, exclusive of interest, costs, and attorneys' fees, is in excess of $15,000.00.

3. Plaintiff, Hecker is an individual over the age of 18 and residing in the State of Florida.

4. Plaintiff, HRH is a Florida limited liability company authorized to do business in and having its principal place of business in Miami-Dade County, Florida.

5. Plaintiff, Rapid Funding is a Florida limited liability company authorized to do business in and having its principal place of business in Miami-Dade County, Florida.

6. Plaintiff, Rapid Funding II is a Florida limited liability company authorized to do business in and having its principal place of business in Miami-Dade County, Florida.

7. Defendant, RCF is a Florida limited liability company which, at all times material, conducted business in Miami-Dade County.

8. Defendant, NAB is a Delaware limited liability company with its principal place of business in Troy, Michigan.

9. Defendant, SFG is a Michigan limited liability company with its principal place of business in Troy, Michigan.

10. Defendant, Gardner is an individual over the age of 18 and residing in the State of Michigan.

11. This Court has personal jurisdiction over the Defendants under Fla. Stat. § 48.193 because each resides in the state of Florida or regularly conducts business in the State of Florida, and because the acts and omissions alleged herein occurred in Miami-Dade County, Florida.

12. Venue is proper in this Court pursuant to Fla. Stat. § 47.011 because the underlying contracts at issue required performance and were breached in Miami-Dade County, Florida, and all actions that support Plaintiffs' claims occurred in Miami-Dade County, Florida.

NAB ACQUIRES THE HECKER ENTITIES

13. NAB offers payment processing services to more than 350,000 merchants nationwide. Today, NAB has become the 6th largest non-bank merchant acquirer in North America. NAB is home to more than 1,200 employees and 3,000 sales partners, and processes more than $50 billion annually.

14. Gardner is the sole owner of NAB, which is the 100% owner of RCF. RCF is a direct funder that offers a variety of financing solutions, such as merchant cash advances for small businesses.

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15. NAB through its subsidiary RCF purchased the predecessor Hecker Entities from Hecker pursuant to an Asset Purchase Agreement dated December 19, 2014 (the "APA"), in a transaction that valued those companies at no less than $15,000,000. A true and correct copy of the APA is attached as **Exhibit A**.

16. The Hecker Entities were founded by Hecker and their value reflected years of his hard work and development.

17. In the APA, Hecker initially received $5,500,000 but agreed to defer the majority of RCF's remaining payment. In return, RCF provided Hecker with certain interests in the profits of the company, which were characterized as "Earn-Out Payments" and "Performance Earn-Out Payments." *See* APA, §2.8.

18. Among other things, Hecker was entitled to 50% of the Net Company Value upon the occurrence of an Earn-out Payment Event, which includes the sale of RCF or the transfer of its assets. *Id.*

19. The Company Value means the fair market value of RCF as of the date of the applicable Earn-Out Payment Event. In the case of an Earn-Out Payment Event arising from an Asset Sale, "Company Value" shall equal the price being paid by the third-party purchaser for the assets of RCF.

20. Hecker's rights under the APA were protected until such time as he received his "Earn-Out" payments. In particular, Section 2.8 (k) of the APA provides that, "So long as any Earn-Out Payment or Performance Earn-Out Payment is payable hereunder, Purchaser [RCF] **shall (i) not enter into transactions on other than an arm's length basis**, and (ii) maintain proper internal controls."

21. Pursuant to Section 8.1 of the APA, NAB guaranteed the performance of RCF. Specifically, the provision states from and after the consummation of the Closing:

> NAB hereby unconditionally, absolutely and irrevocably guarantees, undertakes, and promises to cause [RCF] to fully and promptly pay, perform and observe all of [RCF's] obligations under, with respect to, in connection with or otherwise arising after the consummation of the Closing out of or relating to this Agreement and Ancillary Agreement to which [RCF] is a party (collectively, the "NAB Obligations").

22. To date, there are no less than $25 million in "Earn-Out Payments" and $1.25 million in "Performance Earn-Out Payments" that are due and payable to Hecker, but which have not been paid.

HECKER BECOMES EMPLOYED AS CEO OF RCF

23. Hecker became CEO of the entity that is now RCF as additional consideration for selling the Hecker Entities. His compensation, rights, and responsibilities are memorialized in an Employment Agreement dated December 31, 2014 (the "Agreement"). A true and correct copy of the Agreement is attached as **Exhibit B**.

24. In that capacity, Hecker reported to Gardner and was responsible for "all of the sales and marketing activities of [RCF] and shall manage or direct, as applicable, the day-to-day operations of the business of [RCF]."

25. The Schedule of Day-to-Day Operations attached to the Agreement set forth Hecker's responsibility for "leading the development and execution of the Company's short and long term strategy with a view of creating shareholder value and achieving annual profit levels consistent with the approved financial forecasts." To do so, Hecker's leadership role as CEO also entailed being responsible for "day-to-day management decisions and for implementing the Company's long and short term plans."

26. More specifically, Hecker's duties and responsibilities as CEO included but were not limited to the following:

- hire and terminate staff as necessary to enable RCF to achieve the approved strategy;
- work with Management to identify effective internal controls and management information systems while CEO implements and maintains such controls and systems;
- develop, with Management, standardized underwriting policies and procedures that the CEO will be responsible for implementing; and
- primary authority on pricing, but only so long as underwriting guidelines and performance metrics are adhered to and default rates are under 9.0%.

27. The term of Hecker's employment under the Agreement was to continue until terminated pursuant to Section 7 upon the occurrence of any of the following events: (i) the death of Hecker; (ii) the termination of Hecker's employment by RCF due to his disability; (iii) termination by Hecker, either voluntarily or with Good Reason; (iv) the occurrence of an Earn-Out Payment Event as defined in the APA; or (v) the termination of Hecker's employment by RCF for Cause pursuant to Section 7(c).

28. For all services rendered by Hecker to RCF under the Agreement, he was paid an annual base salary of $400,000 subject to adjustments based on the performance of the company. At the time of this action, Hecker was earning an annual base salary of $415,000.

29. During his employment term, RCF was further responsible for paying Hecker a profit-sharing bonus equal to 26.7% of its Net Profit.

30. Hecker was also allowed to participate, either personally or through his entity Nearbrook Capital, LLC, a Florida limited liability company ("Nearbrook"), in up to 5% of any package of funded advances by RCF.

31. Since the purchase of the predecessor Hecker Entities, the value of RCF has more than tripled from $15,000,000 to over $50,000,000, driven mostly by Hecker's efforts, and Hecker has express contractual rights to enjoy the future fruits of his labor.

HECKER OBTAINS AN INJUNCTION AGAINST DEFENDANTS AFTER NAB PARTNERS WITH BLACKSTONE AND THREATENS TO SPIN-OFF RCF

32. Hecker was first advised of NAB's desire to spin-off RCF from Kirk Haggerty, CFO of NAB, because of the acquisition of Total Merchant Services and related financing from the Blackstone Group LP ("Blackstone").

33. Blackstone is an American multinational private equity, alternative asset management and financial services firm based in New York City. As the largest alternative investment firm in the world, Blackstone specialized in private equity, credit, and hedge fund investment strategies. In 2007, Blackstone became a public company via a $4 billion initial public offering to become one of the first major private equity firms to list shares in its management company on the public stock market. As of December 31, 2017, Blackstone had $434 billion under management.

34. Acquiring Blackstone as a partner was an impressive achievement for NAB, and as a result its power, influence, and limitless amounts of capital, Blackstone was its most valued business relationship.

35. Despite the "Earn-Out Payments" being due and payable, and notwithstanding the provision prohibiting any transactions that are not on an arms-length basis, Defendants threatened to shut down RCF and transfer all of RCF's assets, worth at least $50 million, to a newly formed company, of which NAB owner Gardner is the 100% owner, for no or minimal consideration.

36. Having previously learned of the planned non-arm's length transaction set to occur on or around July 3, 2017 and facing both his effective improper termination without cause and the imminent devaluation of his interest in RCF to nearly zero, Hecker successfully obtained a temporary injunction from this Court on June 30, 2017 (the "Order"). *See* **Exhibit C**.

37. Judge Thornton's Order found Hecker had a sufficient likelihood of success on the merits and enjoined Defendants from further violation of the APA and the Agreement by the transfer of the assets of RCF to a newly formed company, or related entity of NAB or Gardner, or otherwise causing the shutdown of RCF's ongoing business.

38. NAB was attempting to strip RCF of its assets and sell them for no or minimal consideration because a sale of RCF or a transfer of substantially all of its assets are Earn-Out Payment Events under the APA which trigger a payment to Hecker of 50% of the company's value.

39. Expecting Defendants to act in good-faith, Hecker agreed to voluntarily dismiss the injunction without prejudice as a result of the parties, by e-mail, reaching the July 3rd Agreement:

> The agreement in principle of Mr. Hecker, Rapid Capital Finance, LLC ("RCF") and Specialty Finance Group, LLC ("SFG"):
>
> (1) Mr. Hecker's profit interest and advance participation rights in SFG would remain consistent with his current employment agreement, with the only exception being that his profit interest would be reduced from 50% to 35%;
>
> (2) Mr. Hecker would have the same minority protections with respect to SFG that he has had with respect to RCF and, in addition, a management board seat;
>
> (3) SFG would have exclusive rights to NAB entities' customers, which exclusivity would be based on commitments by Mr. Hecker to market MCA products to the portfolio in a responsible manner and to achieve certain, mutually agreed financial results (to be worked out between Craig and NAB). The parties will discuss the return of Craig's profit interest to 50% in SFG in the event that NAB breaches its obligations relating to its exclusive commitment;

> (4) The parties will walk through RCF's financial performance in an effort to determine whether Craig has earned the special bonuses for 2015 and 2016. Those bonuses will be paid immediately if RCF's performance during those periods establish that they are due and owing under the current arrangement; and
>
> (5) Mr. Hecker will commit to spending at least 50% of his time in either the LA or Miami office of SFG.
>
> The parties will negotiate in good faith on the following three points:
>
> (1) Legal fee reimbursement; and
> (2) Clarification on Marc's capital commitment to SFG.
>
> Based on the above, we will immediately file a notice of voluntary dismissal without prejudice for the complaint and the injunction, and RCF/SFG agrees not to proceed to transfer the assets of RCF or shut down the business operations of RCF for a period of 30 days from the date hereof, while a formal agreement is worked out.

See **Exhibit D**.

<u>DEFENDANTS RENEGE ON THE JULY 3RD AGREEMENT, SHUT DOWN RCF, AND TRANSFER RCF'S ASSETS TO SFG</u>

40. In the days and subsequent months following July 3, 2017, based on the agreed-upon material terms in the July 3rd Agreement, the parties set out to negotiate the few remaining open issues in order to finalize the formal agreement.

41. Both parties engaged in a course of conduct as if the July 3rd Agreement was binding and fully enforceable.

42. In fact, having agreed to give Hecker exclusive rights to market cash advances through SFG, Gardner and NAB tasked Hecker and his team with devising and implementing the game plan, called "project cinnamon," to build out a "portal product" that provides cash advances to NAB's portfolio customers and all new customers obtained in acquisitions. Hecker's team met two times a week and made substantial progress in implementing logic, auto-credit decisions, and work flows for the portal product.

43. To facilitate negotiations, the parties routinely extended the 30-day deadline in the July 3rd Agreement and participated in informal mediation.

44. However, despite Hecker's best efforts to finalize a formal agreement, Defendants failed to act diligently and in good faith.

45. In or around February 2018, in an apparent attempt to exert additional leverage on Hecker once his team was on the verge of completing the portal product, NAB advised that "pencils were down" and stole the work product, shut out Hecker and his team, and denied them all access to NAB's portfolio customers until Hecker agreed to terms inconsistent with the July 3d Agreement.

46. Using the portal product, SFG was expected to generate in excess of $15-20 million per year in net income and be worth over $200 million for which Hecker was entitled to (a) participate in up to 5% in any package of funded advances with personal capital, which alone will be over $1.8 million per year, and (b) share in 35% of the value of the company once sold, which percentage likely will be in excess of $70 million.

47. There was also consensus among industry experts that RCF, with its ability to offer working capital directly to payment processing customers, was the beneficiary of NAB's acquisition of Total Merchant Services which greatly expanded its merchant network. *See* **Exhibit E**.

48. On March 14, 2018, Gardner delivered a self-serving letter to Hecker feigning compliance with the July 3rd Agreement and imposing an arbitrary deadline of April 13, 2018 to finalize a formal agreement or he would withdraw his offer to extend $35 million in working capital to SFG.

49. The parties again extended the deadline until April 27, 2018, but shortly before then Defendants insisted on holding Hecker to a default rate of 8.5%. This rate was, of course, not tied to historical benchmarks or close to the current rate of 11.5% and was therefore unattainable. Declining Hecker's request for documentation supporting Defendants' proposed "SCHEDULE OF LOSSES," Defendants ceased communications altogether.

50. Having received the capital backing of Blackstone and recognizing the potential for SFG to be one of NAB's most lucrative ventures, Defendants reneged on the July 3rd Agreement out of greed to maximize their economics, shut down RCF, and transferred substantially all of its assets to SFG for no or minimal consideration attempting again to circumvent payment to Hecker for his interest in RCF.

51. Even before the deadlines in the July 3rd Agreement expired, it became clear that Defendants never had any intention to honor it and had already begun transferring RCF's assets to SFG.

52. Indeed, while RCF was still directly contracting with merchants for cash advances, SFG was utilizing substantially all of RCF's assets and brazenly paid RCF's employees with SFG's own funds, including Hecker's base salary.

53. As recently as May 8, 2018, NAB migrated RCF's phones and network to its own environment. NAB's takeover of RCF's systems included decommissioning its proprietary software called SMARTe which it uses to interface with clients, denying RCF's employees access to the live environment and effectively preventing RCF from performing basic tasks.

54. To do so, NAB migrated the SMARTe system hosted on RCF's servers in Miami to NAB's Amazon cloud account. The SMARTe system was the lifeblood of the company.

Even worse, after stripping the "keys to the kingdom" from RCF, NAB's agents physically destroyed all of RCF's servers by drilling through them and making them worthless.

55. The transfer of substantially all of RCF's assets to SFG, a new spin-off company that is also owned by Gardner, is exactly what is prohibited by Section 2.8 (k), as it is not an arm's length transaction and both the Earn-Out Payment and Performance Earn-Out Payment have still not been paid to Hecker.

56. And yet, despite the immense value that Hecker has created, the transfer of assets from RCF to SFG has deprived Hecker of his rights under the APA and Employment Agreement.

DEFENDANTS ESTABLISH A PRACTICE OF SQUEEZING OUT EXECUTIVES

57. Consistent with Defendants' practice of squeezing out high-level executives to deprive them of their profit interest, Defendants here did the same thing to Hecker attempting to re-trade Hecker's economics under the APA.

58. In fact, over the years, NAB has become notorious for improperly terminating or devaluing the interests of its executives, including but not limited to the following cases:

a. Scott Kaplan: Former Executive Vice President and Chief Credit Officer of RCF alleged that he was improperly terminated on February 10, 2018 from his Employment Agreement without cause, proper notice, payment of bonuses, or NAB consulting with Hecker. Kaplan seeks damages in excess of $500,000 and recently brought an action against RCF for breach of contract, unpaid wages, and declaratory judgment. *See Scott Kaplan v. RCF,* Case No. 2018-002938-CA-01, pending in the circuit court of the 11th Judicial Circuit, in and for Miami-Dade County, Florida.

b. Richard Kovacs: Kovacs served as the Executive Vice President of the Corporate Sales Group for more than 13 years with NAB. When he started the position, NAB had 15 full-time employees and was sub-leasing a 3,000 sq. ft. office. After running and growing NAB's Corporate Sales Group and being involved in key executive hires and corporate decisions, by the time he left, NAB had grown to 700+ employees, processing $16 billion in transactions annually for 250,000 merchant clients.

In Kovac's case, NAB engaged in recapitalization in 2012 during which Gardner withdrew $175 million from the company. Under Kovac's employment agreement, this constituted a triggering event causing his incentive bonus to be due and paid. However, Kovacs was bilked out of millions in incentive bonuses in 2012 and a percentage of regulatory fees in 2014.

c. Rita Feldman: Feldman was with NAB since 1999 and rose to the position of Vice President of National Sales in January 2010. On December 2, 2011, Feldman and NAB entered into an Employment Agreement which entitled her to commissions on funded merchant cash advances made through Capital for Merchants, a subsidiary of NAB. Despite paying those commissions for three years, and receiving assurances that they would continue, on February 3, 2016, Feldman alleged that NAB concocted a new narrative that the $58,643.75 in commissions were mistakenly paid out to Feldman in order to deprive her of a "triggering event bonus." Thereafter, on February 23, 2016, because NAB terminated Mrs. Feldman for any reason other than "cause," she brought claims for breach of contract and sex discrimination seeking severance pay in excess of $750,000. *See Feldman v. NAB*, Case No. 2016-152964-CD, pending in Oakland County, Michigan.

d. Howard Morof: Morof served as the CFO of NAB for 5 years from March 2008 to February 2013. Like Kovacs, Morof was instrumental in effectuating a dividend recapitalization for NAB through Credit Suisse in exchange for promised bonus compensation. However, having consummated the deal, Gardner reneged on paying Morof his incentives. Morof is now CFO of Altair Engineering.

e. Terri Harwood: As NAB's former COO from October 2012 to February 2018, Harwood is a senior leader and industry veteran with broad experience in the payment processing business. Similar to Hecker, NAB wrongfully squeezed Harwood out of her position and later terminated several of her direct reports.

59. All conditions precedent to the bringing of this action have occurred, been performed, been waived, or been prevented by Defendants from being performed.

60. Plaintiffs have retained the law firm of AXS Law Group, PLLC to represent them in this lawsuit and are obligated to pay that firm a reasonable fee for such services.

COUNT I
Breach of APA—NAB and RCF

61. Plaintiffs reallege, adopt, and incorporate the allegations set forth in paragraphs 1 through 60 above, as though fully set forth in Count I.

62. Plaintiffs, NAB, and RCF entered into the APA on December 19, 2014.

63. NAB and RCF breached the terms of the APA by, among other things:

a. Shutting down RCF and transferring substantially all of its assets to SFG in a non-arm's length transaction;

b. Failing to make Earn-Out Payments and Performance Earn-Out Payments that are due and payable to Plaintiffs;

c. Failing to pay Plaintiffs 50% of Net Company Value of RCF upon the occurrence of a Capital Event or Earn-Out Payment Event;

d. Failing to provide Plaintiffs with copies of RCF's financial statements;

e. Allowing Gardner to participate in merchant cash advances at less than market rates, paying a 5% participation fee while others pay at least 9%, in a non-arm's length transaction which stripped the company of revenue; and

f. Failing to Guarantee the performance of RCF.

64. As a direct and proximate result of NAB and RCF's many breaches of the APA, Plaintiffs have incurred and suffered substantial damages no less than $25 million in an amount to be determined at trial.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against NAB and RCF and award Plaintiffs (a) compensatory damages pursuant to the APA, (b) interest, (c) costs, (d) attorneys' fees pursuant to the APA, and (e) such other relief as this Court deems just, equitable and proper.

COUNT II
Breach of the Agreement—RCF

65. Plaintiffs reallege, adopt, and incorporate the allegations set forth in paragraphs 1 through 60 above, as though fully set forth in Count II.

66. Hecker and RCF entered into the Agreement on December 31, 2014.

67. RCF breached the terms of the Agreement by, among other things:

a. Effectively terminating Hecker as CEO of RCF without cause, depriving him of his Base Salary, Profit Bonus, and Participation Rights, among other things;

b. Failing to provide Hecker with copies of RCF's financial statements; and

c. Preventing him from properly performing his day-to-day operations he was responsible for as CEO, including but not limited to, implementing and maintaining RCF's management information systems, hiring and terminating staff as necessary, developing standardized underwriting policies and procedures, and having primary authority on pricing.

68. As a direct and proximate result of RCF's many breaches of the Agreement, Hecker has incurred and suffered substantial damages no less than $15 million in an amount to be determined at trial.

WHEREFORE, Hecker respectfully requests that the Court enter judgment against RCF and award Hecker (a) compensatory damages pursuant to the Agreement, (b) interest, (c) costs, (d) attorneys' fees, and (e) such other relief as this Court deems just, equitable and proper.

COUNT III
Breach of the July 3rd Agreement—Defendants

69. Plaintiffs reallege, adopt, and incorporate the allegations set forth in paragraphs 1 through 60 above, as though fully set forth in Count III.

70. Hecker and Defendants entered into the July 3rd Agreement on July 3, 2017.

71. Defendants breached the terms of the July 3rd Agreement by, among other things:

a. Failing to act diligently and negotiate in good-faith to finalize a formal agreement;

b. Transferring RCF's assets to SFG and shutting down RCF's business operations;

c. Failing to grant Hecker his participation rights and 35% profit interest in SFG consistent with the minority rights in his current Agreement;

d. Allowing Gardner to participate in merchant cash advances as a syndicated member rather than in the form of debt after Hecker agreed to reduce his profit interest to 35% in reliance on financial models based on the latter;

e. Refusing to give Hecker a management board seat in SFG;

f. Refusing to vest SFG with exclusive rights to NAB entities' customers, including the right to market directly to merchants through SFG's systems; and

g. Denying Hecker access to RCF's financial statements to determine whether any special bonuses for 2015 and 2016 were due and payable to him.

72. As a direct and proximate result of Defendants' many breaches of the July 3rd Agreement, Hecker has incurred and suffered substantial damages no less than $85 million in an amount to be determined at trial.

WHEREFORE, Hecker respectfully requests that the Court enter judgment against Defendants an award Hecker (a) specific performance to compel NAB to make its customer list exclusively available to SFG and/or RCF for solicitation of merchant cash advances, (b) compensatory damages pursuant to the July 3rd Agreement, (c) interest, (d) costs, (e) attorneys' fees, and (f) such other relief as this Court deems just, equitable and proper.

COUNT IV
Breach of Implied Covenant of Duty of Good Faith and Fair Dealing
(July 3rd Agreement)—Defendants

73. Plaintiffs reallege, adopt, and incorporate the allegations set forth in paragraphs 1 through 60 above, as though fully set forth in Count IV.

74. Desirous of memorializing a formal agreement with Defendants, and in exchange for voluntarily dismissing the Injunction, Hecker entered into the July 3rd Agreement.

75. Defendants breached the July 3rd Agreement, in addition to the multiple bases set forth above in Count III, by insisting on performance metrics and default rates RCF had never historically achieved, which Defendants knew or should have known was unattainable.

76. Florida recognizes the implied covenant of good faith and fair dealing in every contract.

77. Implicit in the July 3rd Agreement, were implied contract provision that prevented Defendants from engaging in conduct that frustrated or injured Hecker's rights to receive the benefits of the July 3rd Agreement.

78. Defendants' obligations to finalize a formal agreement was a material term of the July 3rd Agreement, however Defendants did not honor this obligation.

79. Defendants breached the implied covenant of good faith and fair dealing by insisting on performance metrics and default rates RCF had never historically achieved, which conduct did not comport with Hecker's reasonable contractual expectations.

80. As a direct, foreseeable and proximate result of Defendants' conduct, Hecker has suffered and continues to suffer damages in an amount to be proven at trial of no less than $85 million.

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WHEREFORE, Hecker respectfully requests that the Court enter judgment against Defendants and award Hecker (a) compensatory damages (b) interest, (c) costs, (d) attorneys' fees, and (e) such other relief as this Court deems just, equitable and proper.

COUNT V
Action for Damages Pursuant to Guaranty—NAB

81. Plaintiffs reallege, adopt, and incorporate the allegations set forth in paragraphs 1 through 60 and 61 through 64 above, as though fully set forth in Count V.

82. Pursuant to Section 8.1 of the APA, NAB guaranteed the performance of RCF.

83. NAB unconditionally, absolutely and irrevocably guaranteed, undertook, and promised to cause RCF to fully and promptly pay, perform and observe all of RCF's obligations under, with respect to, in connection with or otherwise arising after the consummation of the Closing out of or relating to the APA and Ancillary Agreement to which RCF is a party.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against NAB pursuant to the Guaranty contained in Section 8.1 of the APA in the amount of Plaintiff's losses, costs and damages resulting from RCF's failure to perform its obligations, as well as attorneys' fees and such other relief as this Court deems just, equitable and proper.

COUNT VI
Declaratory Judgment—Defendants

84. Plaintiffs reallege, adopt, and incorporate the allegations set forth in paragraphs 1 through 60 above, as though fully set forth in Count VI.

85. This is an action for declaratory judgment under Fla. Stat. §86.044 *et seq.*

86. In light of Defendants' dispute over whether the transfer of assets from RCF to SFG is an impermissible non-arm's length transaction, Plaintiffs are in doubt concerning

whether the transaction constitutes a breach of the APA, which doubt Plaintiffs are entitled to have removed.

87. There is a bona fide, actual, present practical need for a declaration from this Court concerning whether the transfer of assets was an impermissible non-arm's length transaction constituting a breach of the APA.

88. The relief which Plaintiffs seek in this action is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

89. Plaintiffs seek a declaration that the transfer of assets from RCF to SFG was an impermissible non-arm's length transaction, constituting a breach of the APA.

WHEREFORE, Plaintiffs respectfully requests that this Court declare the parties' rights, and in particular, to find that Defendants breached the APA as a matter of law and any other further relief as may be deemed just and proper.

COUNT VII
Tortious Interference with Business Relationship—SFG and Gardner

90. Plaintiffs reallege, adopt, and incorporate the allegations set forth in paragraphs 1 through 60 above, as though fully set forth in Count VII.

91. RCF had an existing and ongoing business relationship with Plaintiffs by virtue of the APA and Plaintiffs' profits interest in RCF.

92. Since the purchase of the predecessor Hecker Entities, the value of RCF has more than tripled from $15,000,000 to over $50,000,000, driven mostly by Hecker's efforts.

93. SFG and Gardner were fully aware of the relationship between RCF and Plaintiffs who were entitled to 50% of the Net Company Value upon the occurrence of an Earn-Out Payment Event.

94. SFG and Gardner interfered with the business relationship by surreptitiously transferring RCF's assets to SFG in a non-arm's length transaction for no or minimal consideration, and effectively devaluing Plaintiffs' profit interest in RCF.

95. SFG and Gardner caused RCF to breach its obligations to Plaintiffs by surreptitiously transferring its assets to SFG and by simply allowing SFG to use RCF's assets without consideration.

96. Plaintiffs suffered significant damages of no less than $25,000,000 through the devaluation of their profit interest in RCF as a result of the non-arm's length transaction transferring its assets to SFG without consideration.

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment against Gardner and award Plaintiffs (a) money damages of no less than $25,000,000, (b) interest, (c) costs, (d) attorneys' fees, and (e) such other relief as this Court deems just, equitable and proper.

COUNT VIII
Appointment of Receiver—RCF and SFG

97. Plaintiffs reallege, adopt, and incorporate the allegations set forth in paragraphs 1 through 60 above, as though fully set forth in Count VIII.

98. As part of RCF's business, provides financing solutions for small business, including offering merchant cash advances.

99. Despite NAB effectively shutting down RCF and stripping it of its assets, the company was still contracting in its own name with merchants when offering cash advances.

100. However, NAB paid the revenue generated from merchant cash advance agreements due to RCF to SFG.

101. A Receiver is necessary to collect the revenues, pay them to RCF, an prevent waste.

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102. It has already been established that Plaintiffs have a substantial likelihood of prevailing on the merits by virtue of Judge Thornton's Order in the injunction action. On that basis, a Receiver should be appointed to preserve RFC's assets.

103. Based on the facts alleged in this Complaint, Plaintiffs are entitled to the appointment of a Receiver to collect revenue given to SFG but due and payable to RCF, properly manage SFG and RCF, and prevent waste.

WHEREFORE, Plaintiffs respectfully request that the Court to enter an Order appointing a Receiver to take over the affairs of SFG and RCF and to have revenue including but not limited to participation fees paid to RCF and not to SFG.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

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Counsel for Plaintiffs, Craig Hecker, HRH, Rapid Funding, and Rapid Funding II

EXHIBIT A

ASSET PURCHASE AGREEMENT

by and among

HRH Funding, LLC,

Rapid Capital Funding II, LLC,

Rapid Capital Funding, LLC,

Craig Hecker

and

RCF Acquisition Company, LLC

December 19, 2014

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is made as of December 19, 2014, by and among **HRH Funding, LLC** ("HRH"), a Florida limited liability company, **Rapid Capital Funding II**, a Florida limited liability company ("Rapid II"), **Rapid Capital Funding, LLC**, a Florida limited liability company ("Rapid I"), **Craig Hecker**, an individual residing in the State of Florida ("Hecker"), **RCF Acquisition Company, LLC**, a Florida limited liability company (the "Purchaser"). HRH, Rapid II and Rapid I are sometimes hereinafter, jointly and severally, collectively referred to as the "Seller". Hecker is the sole member and sole manager of each of the entities comprising the Seller. Seller and Purchaser are sometimes referred to collectively as the "Parties" and individually as a "Party".

WHEREAS, the Seller is engaged in the business of (a) originating and providing Advances, (b) purchasing, selling and/or participating interests in such Advances, (c) servicing such Advances for itself and other parties, and (d) providing related services and products to merchants, such as bank card processing services (collectively, the "Business"); and

WHEREAS, the Seller desires to sell, assign, transfer, convey and deliver to the Purchaser, and the Purchaser desires to purchase and acquire from the Seller substantially all of the assets of the Seller, and the Purchaser has agreed to assume the Assumed Liabilities (as defined below) in accordance with the provisions of this Agreement.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual provisions set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1
DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. For the purposes of this Agreement and the Ancillary Agreements:

"Advances" mean advances to merchants through the purchase from merchants of future receivables.

"Affiliate" means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. In addition to the foregoing, if the specified Person is an individual, the term "Affiliate" also includes any corporation, limited liability company, general or limited partnership, trust, association or other business or investment entity that directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with any of the foregoing individuals. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Ancillary Agreements" means, collectively, the Bill of Sale, the Assignment and Assumption Agreement, the IP Assignments, the Employment Agreement and any and all other agreements, instruments or documents made or delivered by any of the parties in connection with the transactions contemplated hereby.

"Asset Sale" shall mean the sale of substantially all of the assets of Purchaser to an unrelated third party.

"Associations" means Visa, Inc., MasterCard Incorporated, Discover Financial Services, American Express Travel Related Services Company, Inc., NACHA – The Electronic Payments Association, and any subsidiaries or successor or similar organizations or associations providing authorization, capture, clearing and/or settlement services through which future receivables of Merchants are paid.

"Capital Event" shall mean the occurrence, prior to the occurrence of a Earn-out Payment Event, of any of the following with respect to the Purchaser: a dividend recapitalization, financing or other capital event the proceeds of which are distributed to the holders of the ownership interests in Purchaser ("Owners") on account of said ownership interests in Purchaser ("Ownership Interests").

"CFM" means Capital For Merchants, LLC, a Michigan limited liability company.

"Code" means the Internal Revenue Code of 1986.

"Company Value" shall mean the fair market value of the Purchaser as of the date of the applicable Earn-out Payment Event. In the case of an Earn-out Payment Event arising from an Asset Sale, "Company Value" shall equal the price being paid by the third party purchaser for the assets of Purchaser. In the case of a Earn-out Payment Event arising from an Equity Sale, "Company Value" shall equal the value of all of the Ownership Interests (based upon the price being paid by the third party purchaser). In the case of an Earn-out Payment Event arising from a Seller Acceleration Event or a Purchaser Acceleration Event, the fair market value of Purchaser shall be determined in accordance with the procedure described in Section 2.8(g) below.

"Confidential Information" means any information, in whatever form or medium, concerning the business or affairs of the Seller, including, without limitation, any information (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to the business, services, techniques, know-how, processes, methods, formulations, investments, finances, operations, plans, research or development of the Seller, and that is not generally known outside of the Seller. Confidential Information includes, but is not limited to: the identity and information concerning the needs and preferences of current, former, and prospective customers; performance, compensation, and other personnel data concerning employees of the Seller; business plans and strategies, including marketing and underwriting plans and strategies; plans for recruiting and hiring new personnel; trade secrets; and pricing strategies and policies. Confidential Information does not include information that is or becomes publicly available without any breach of this Agreement.

"Consent" means any approval, consent, ratification, waiver or other authorization.

"Contract" means any contract, agreement, lease, license, commitment, understanding, franchise, warranty, guaranty, mortgage, note, bond, option, warrant, right or other instrument or consensual obligation, whether written or oral.

"Earn-out Payment" is defined in Section 2.8(a).

"Earn-out Payment Event" shall mean the earliest to occur of any of the following: (i) an Asset Sale; (ii) an Equity Sale; (iii) at the election of Seller by written notice thereof given to Purchaser within sixty (60) days following a Seller Acceleration Event; or (iv) at the election of Purchaser by written notice thereof given to Purchaser within sixty (60) days following a Purchaser Acceleration Event. Time is of the essence as to the giving of notice of any election by Seller or Purchaser.

"Employment Agreement" means that certain Employment Agreement of even date herewith between the Purchaser and Hecker, as the same may be amended.

"Encumbrance" means any charge, claim, mortgage, servitude, easement, right of way, community or other marital property interest, covenant, equitable interest, license, lease or other possessory interest, lien, option, pledge, security interest, preference, priority, right of first refusal, restriction (other than any restriction on transferability imposed by federal or state securities Laws) or other encumbrance of any kind or nature whatsoever (whether absolute or contingent).

"Environmental Law" means any Law relating to the environment, natural resources, pollutants, contaminants, wastes, chemicals or public health and safety, including any Law pertaining to (a) treatment, storage, disposal, generation and transportation of toxic or hazardous substances or solid or hazardous waste, (b) air, water and noise pollution, (c) groundwater or soil contamination, (d) the release or threatened release into the environment of toxic or hazardous substances or solid or hazardous waste, including emissions, discharges, injections, spills, escapes or dumping of pollutants, contaminants or chemicals, (e) manufacture, processing, use, distribution, treatment, storage, disposal, transportation or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or oil or petroleum products or solid or hazardous waste, (f) underground and other storage tanks or vessels, abandoned, disposed or discarded barrels, containers and other closed receptacles, or (g) the protection of wildlife, marine sanctuaries and wetlands, including all endangered and threatened species.

"Equity Sale" shall mean the sale (by merger, consolidation, equity exchange or other transaction) involving the Purchaser of more than fifty (50%) of the ownership interests of all classes in the Purchaser to an unrelated third party as part of a single transaction or series of related transactions.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any other Person that, together with the Seller, would be treated as a single employer under Section 414 of the Code.

"Fundamental Representations" means the representations and warranties set forth in Sections 3.2, 3.3, 3.4, 3.11, 3.15, 3.16, 3.19, 3.28, 4.2, 4.3 and 4.5.

"GAAP" means generally accepted accounting principles for financial reporting in the United States, as in effect as of the date of this Agreement.

"Governmental Authority" means any (a) nation, region, state, county, city, town, village, district or other jurisdiction, (b) federal, state, local, municipal, foreign or other government, (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department or other entity and any court or other tribunal), (d) multinational organization or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

"Governmental Authorization" means any Consent, license, franchise, permit or registration issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

"Hazardous Material" means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under any Environmental Law, including any admixture or solution thereof, and including petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos or asbestos-containing materials in any form or condition and polychlorinated biphenyls.

"Indebtedness" means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments or debt securities and warrants or other rights to acquire any such instruments or securities and (c) all Indebtedness of others referred to in clauses (a) and (b) hereof guaranteed, directly or indirectly, in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), (iv) to grant an Encumbrance (other than a Permitted Encumbrance) on property owned or acquired by such Person, whether or not the obligation secured thereby has been assumed, or (v) otherwise to assure a creditor against loss.

"Intellectual Property" means all of the following anywhere in the world and all legal rights, title or interest in, under or in respect of the following arising under Law, whether or not filed, perfected, registered or recorded and whether now or later existing, filed, issued or acquired, including all renewals: (a) all patents and applications for patents and all related reissues, reexaminations, divisions, renewals, extensions, provisionals, continuations and

continuations in part; (b) all copyrights, copyright registrations and copyright applications, copyrightable works and all other corresponding rights; (c) all mask works, mask work registrations and mask work applications and all other corresponding rights; (d) all trade dress and trade names, logos, Internet addresses and domain names, telephone numbers, trademarks and service marks and related registrations and applications, including any intent to use applications, supplemental registrations and any renewals or extensions, all other indicia of commercial source or origin and all goodwill associated with any of the foregoing; (e) all inventions (whether patentable or unpatentable and whether or not reduced to practice), know how, technology, technical data, trade secrets, confidential business information, manufacturing and production processes and techniques, research and development information, financial, marketing and business data, pricing and cost information, business and marketing plans, advertising and promotional materials, customer, distributor, reseller and supplier lists and information, correspondence, records, and other documentation, and other proprietary information of every kind; (f) all computer software (including source and object code), firmware, development tools, algorithms, files, records, technical drawings and related documentation, data and manuals; (g) all databases and data collections; (h) all other proprietary rights; and (i) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

"Interest Rate" means a rate per annum equal to one month LIBOR Plus 2.5% during the relevant period.

"Internally Used Shrinkwrap Software" means software licensed to the Seller under generally available retail shrinkwrap or clickwrap licenses and used in the Seller's business, but not incorporated into software, products or services licensed or sold, or anticipated to be licensed or sold, by the Seller to customers or otherwise resold or distributed by the Seller.

"IRS" means the Internal Revenue Service and, to the extent relevant, the Department of Treasury.

"Judgment" means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Authority or arbitrator.

"Knowledge": (a) an individual will be considered to have "Knowledge" of a fact or matter if the individual is actually aware of the fact or matter or a prudent individual could be expected to discover or otherwise become aware of the fact or matter in the course of conducting a reasonable inquiry; (b) an entity will be considered to have "Knowledge" of a fact or matter if any individual who is serving, or who has with the preceding twelve (12) months served, as a director, manager or senior executive, officer, partner, executor or trustee of that entity (or in similar capacity) has, or at any time had, Knowledge of the fact or matter; and (c) the Seller will be considered to have "Knowledge" of a fact or matter if the Seller or Hecker has, or at any time had, Knowledge of the fact or matter. By way of example only, the Seller will be considered to have "Knowledge" of a fact or matter if Hecker or Scott Kaplan has Knowledge of same.

"Law" means any federal, state, local, municipal, foreign, international, multinational, or other constitution, law, statute, treaty, rule, regulation, ordinance, code, binding case law or

principle of common law, as amended from time to time, or any corresponding rules or regulations implemented in furtherance thereof, including the Rules, laws regulating the recording of telephone calls and any of the following statutes,: (i) the Fair Credit Reporting Act, 15 U.C.C. Sections 1681, et seq. (the "FCRA"); (ii) the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Section 6101, et seq. (the "TCFAP"); (iii) the Telephone Consumer Protection Act, 47 U.S.C. Section 227, et seq. (the "TCPA"); (iv) the CAN-SPAM Act, 15 U.S.C. Section 7701, et seq (the "CAN-SPAM Act"); or (v) any applicable Federal Law prohibiting unfair, deceptive and/or abusive acts or practices.

"Liability" includes liabilities, debts or other obligations of any nature, whether known or unknown, absolute, accrued, contingent, liquidated, unliquidated or otherwise, due or to become due or otherwise, and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP.

"Loss" means any loss, Proceeding, Judgment, damage, fine, penalty, expense (including reasonable attorneys' or other professional fees and expenses and court costs), injury, diminution of value, Liability, Tax, Encumbrance or other cost, expense or adverse effect whatsoever, whether or not involving the claim of another Person.

"Material Adverse Effect" means any event, change, circumstance, effect or other matter that has, or could reasonably be expected to have, either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse effect on (a) the business, assets, Liabilities, properties, condition (financial or otherwise), operating results, operations of the Seller taken as a whole or (b) the ability of the Seller or Hecker to perform its obligations under this Agreement or to consummate timely the transactions contemplated by this Agreement.

"Merchant" shall mean any merchant or other third party with respect to which the Seller and/or, after the Closing, the Purchaser, directly or indirectly, (i) originated or provided Advances, (ii) purchased, sold and/or participated in any Advances, (iii) serviced any Advances, whether for itself and other third parties, and/or (iv) provided any related services and products to merchants, such as bank card processing services.

"Merchant Agreement" shall mean an agreement between a Merchant, on the one hand, and the Seller or any of the Seller's Vendors and/or, after the Closing, the Purchaser or any such Vendor, on behalf of itself or any third party, on the other hand, pursuant to which the Seller or any of the Seller's Vendors and/or, after the Closing, the Purchaser or any such Vendor (i) originated or provided Advances, including any receivables purchase agreement, (ii) purchased, sold and/or participated in any Advances, (iii) serviced any Advances, whether for itself and other third parties, (iv) provided any related services and products to merchants, such as bank card processing services, and/or (v) has the right to receive any fees, residuals or other compensation of any kind.

"NAB" means North American Bancard, LLC.

"<u>Net Capital Event Proceeds</u>" shall mean the aggregate pre-tax, net proceeds (e.g., after repayment of debt and payment of closing expenses) that the Owners receive on account of their Ownership Interests in connection with the applicable Capital Event.

"<u>Net Company Value</u>" shall mean (i) in the case of an Earn-out Payment Event arising from an Asset Sale, Seller Acceleration Event or a Purchaser Acceleration Event, the aggregate pre-tax, net proceeds (e.g., after repayments of debt, payment of bonuses or other compensation to employees or independent contractors and payments of closing expenses) that the Owners would receive on account of their Ownership Interests in connection with a liquidation of the Purchaser following a sale (or securitization) of all of the assets of the Purchaser for an amount equal to the applicable Company Value, and (ii) in the case of an Earn-out Payment Event arising from an Equity Sale, the aggregate pre-tax, net proceeds (e.g., after repayments of debt, payment of bonuses or other compensation to employees or independent contractors and payments of closing expenses) that the Owners would receive on account of their Ownership Interests in connection with a sale of all of the ownership interests in Purchaser for an amount equal to the applicable Company Value. For the avoidance doubt, Net Company Value shall take into account all receivables on the balance sheet of the Purchaser and all Indebtedness the Purchaser.

"<u>Net Profit</u>" means the net profit from the normal operations of Purchaser, as determined in accordance with generally accepted accounting principles in the manner applied by Purchaser's Company's independent certified public accountants in preparing the Purchaser's financial statements. For purposes of clarification, Net Profit shall be computed after deduction of interest expense, depreciation and amortization, but before the payment of taxes, and shall be based upon Purchaser performing (or obtaining from third parties), at Purchaser's expense, all back office functions. The determination of Net Profit shall be made by Purchaser's independent certified public accountants; provided, however, Seller can dispute any such calculations in accordance with Section 2.9 of this Agreement.

"<u>Net Working Capital</u>" means (a) all current assets of the Seller (including current prepaid assets and current (i.e., outstanding for less than ninety (90) days) accounts receivable net of allowances for doubtful accounts, and Purchased Receivables, but excluding cash and cash equivalents) arising in the ordinary course of business <u>minus</u> (b) all current Liabilities of the Seller, in each case calculated as of the Closing Date in accordance with GAAP, and reflecting the exclusion of the Excluded Assets and the Excluded Liabilities. Accounts receivable which have been outstanding for more than ninety (90) days shall not be included as part of current accounts receivable for purposes of determining Net Working Capital.

"<u>Non-Competition Period</u>" means (i) the period commencing on the date hereof and continuing for so long as the Seller is entitled to be paid any Earn-out Payment under the terms hereof, and (ii) for a period of time thereafter equal to the greater of (A) six (6) months, or (B) for so long as Hecker is entitled to receive any payments under the Employment Agreement.

"<u>Non-Solicitation Period</u>" means (i) the period commencing on the date hereof and continuing for so long as the Seller is entitled to be paid any Earn-out Payment under the terms hereof, and (ii) for a period of two (2) years thereafter.

"Occupational Safety and Health Law" means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

"Participant" shall mean any party to any Participation.

"Participations" shall mean any syndication or participation arrangement whereby any Person, other than the Seller (i) has any right, title or interest in or to any Advances originated, provided, purchased or sold by the Seller, or (ii) otherwise, directly or indirectly, funds an Advance made by the Seller in return for a right to receive a share of any Purchased Receivables arising thereafter.

"Participation Agreement" shall mean an agreement to which the Seller is a party relating to any Participation, including any syndication Agreement.

"Performance Earn-out Payment" is defined in Section 2.8(j).

"Permitted Encumbrances" means (a) statutory liens for current Taxes or other governmental charges (i) not yet due and payable, or (ii) the amount or validity of which is being contested in good faith by appropriate proceedings by Seller, and solely with respect to the immediately preceding clause (ii), for which appropriate reserves have been established in accordance with GAAP; (b) mechanics', carriers', workers', repairers' and similar statutory liens arising or incurred in the ordinary course of business; (c) zoning, entitlement, building and other land use regulations imposed by any Governmental Authority having jurisdiction over the Leased Real Property which are not violated by the current use and operation of the Leased Real Property; (d) covenants, conditions, restrictions, easements and other similar matters of record affecting title to the Leased Real Property that do not materially impair the occupancy or use of the Leased Real Property for the purposes for which it is currently used or proposed to be used in connection with the business of Seller impair its value in any material respect; (e) liens arising in the ordinary course of business to secure obligations under worker's compensation, unemployment insurance, social security, retirement and similar legislation; and (f) purchase money liens and liens securing rental payments under capital lease arrangements.

"Person" means an individual or an entity, including a corporation, limited liability company, general or limited partnership, trust, association or other business or investment entity, or any Governmental Authority.

"Plan" means any "employee benefit plan" (as defined in Section 3(3) of ERISA) for the benefit of any current or former director, officer, employee or consultant of the Seller or any ERISA Affiliate, or with respect to which the Seller or any ERISA Affiliate has or may have any Liability, including any "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) and any other written or oral plan, Contract or arrangement involving direct or indirect compensation or benefits, including insurance coverage, severance or other termination pay or benefits, change in control, retention, performance, holiday pay, vacation pay, fringe benefits,

disability benefits, pension, retirement plans, profit sharing, deferred compensation, bonuses, stock options, stock purchase, restricted stock or stock units, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation, maintained or contributed to by the Seller or any ERISA Affiliate (or that has been maintained or contributed to in the last six years by the Seller or any ERISA Affiliate) for the benefit of any current or former director, officer, employee or consultant of the Seller or any ERISA Affiliate, or with respect to which the Seller or any ERISA Affiliate has or may have any Liability.

"Proceeding" means any action, arbitration, audit, examination, investigation, hearing, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Purchased Receivable" shall mean any future receivable acquired in connection with an Advance made pursuant to a Merchant Agreement.

"Purchaser Acceleration Event" shall mean the occurrence any of the following: (i) termination by the Purchaser of Hecker's employment under the Employment Agreement for "Super Cause" (as such term in defined in the Employment Agreement) pursuant to Section 7 of the Employment Agreement; (ii) the termination of Hecker's employment under the Employment Agreement on account of his death, disability or legal incompetency; or (iii) Hecker terminates his employment with the Purchaser without Good Reason (as such term is defined in the Employment Agreement).

"RTR" shall mean the Purchaser's share of any Purchased Receivables owed in connection with Merchant Agreements entered into by the Purchaser after the Closing Date.

"Rules" shall mean all by laws, rules, operational regulations, procedures and guidelines promulgated by any of the Associations (including but not limited to Visa Operating Regulations, MasterCard International Rules and MasterCard Member Service Provider "MSP" Rules, Discover Rules or NACHA Rules), or any applicable regional or national credit or debit card association or network.

"Sales Representation Agreement" shall mean a written agreement between the Seller and/or, after the Closing, the Purchaser, and a Sales Representative which provides for (i) the referral of Business to the Seller and/or, after the Closing, to the Purchaser, by such Sales Representative and/or (ii) the payment of a commission or other compensation to such Sales Representative by the Seller and/or, after the Closing, the Purchaser.

"Sales Representative" means any Person who is (or was within the preceding twelve month period prior to the date in question) a party to an agreement with the Seller and/or, after the Closing, the Purchaser whereby such Person agreed to provide sales, referral and/or marketing services to the Seller or the Purchaser, and shall include, without limitation, any employee of any such Person.

"Seller Acceleration Event" shall mean the occurrence of either of the following: (i) the termination of Hecker's employment by the Purchaser for other than "Super Cause" or (ii)

Hecker terminates his employment with the Purchaser with Good Reason (as such terms are defined in the Employment Agreement).

"Seller Parties" shall mean Seller and Hecker.

"Target Net Working Capital" shall be an amount to be agreed upon in writing by the Seller and the Purchaser prior to Closing.

"Tax" means (a) any federal, state, local, foreign or other tax, charge, fee, duty (including customs duty), levy or assessment, including any income, gross receipts, net proceeds, alternative or add-on minimum, corporation, ad valorem, turnover, real property, personal property (tangible or intangible), sales, use, franchise, excise, value added, stamp, leasing, lease, user, transfer, fuel, excess profits, profits, occupational, premium, interest equalization, windfall profits, severance, license, registration, payroll, environmental (including taxes under Section 59A of the Code), capital stock, capital duty, disability, estimated, gains, wealth, welfare, employee's income withholding, other withholding, unemployment or social security or other tax of whatever kind (including any fee, assessment or other charges in the nature of or in lieu of any tax) that is imposed by any Governmental Authority, (b) any interest, fines, penalties or additions resulting from, attributable to, or incurred in connection with any items described in this paragraph or any related contest or dispute and (c) any items described in this paragraph that are attributable to another Person but that the Seller is liable to pay by Law, by Contract or otherwise, whether or not disputed.

"Tax Return" means any report, return, declaration, claim for refund, or information return or statement related to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Vendors" shall mean the other party or parties to any Vendor Agreements.

"Vendor Agreements" shall mean any agreements to which Seller is a party which provide for (i) the payment to the Seller, or (ii) the payment by the Seller, of fees, commissions or other compensation of any kind, including any representation, referral or agency agreement relating to merchant bankcard services.

"Veritas" means VFP Intermediate Holdings LLC, as successor to Veritas Financial Partners LLC.

Section 1.2 Construction. Any reference in this Agreement to an "Article," "Section," "Exhibit" or "Schedule" refers to the corresponding Article, Section, Exhibit or Schedule of or to this Agreement, unless the context indicates otherwise. The headings of Articles and Sections are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. All words used in this Agreement are to be construed to be of such gender or number as the circumstances require. The words "including," "includes," or "include" are to be read as listing non-exclusive examples of the matters referred to, whether or not words such as "without limitation" or "but not limited to" are used in each instance. Where this Agreement states that a party "shall," "will" or "must" perform in some manner or otherwise

act or omit to act, it means that the party is legally obligated to do so in accordance with this Agreement. Any reference to a statute is deemed also to refer to any amendments or successor legislation as in effect at the relevant time. Any reference to a Contract or other document as of a given date means the Contract or other document as amended, supplemented and modified from time to time through such date.

ARTICLE 2
THE TRANSACTION

Section 2.1 Purchase and Sale of Purchased Assets. In accordance with the provisions of this Agreement and except as set forth in Section 2.2, at the Closing (as defined below), the Seller will sell, convey, assign, transfer and deliver to the Purchaser, and the Purchaser will purchase and acquire from the Seller, free and clear of all Encumbrances (other than Permitted Encumbrances), all of the Seller's right, title and interest in and to all of the Seller's properties and assets of every kind and description, whether real, personal or mixed, tangible or intangible, and wherever located (collectively, the "Purchased Assets"), including the following:

(a) all rights of the Seller under all Merchant Agreements, including all rights with respect to Purchased Receivables, the right to receive payments on account of Advances thereunder and the relationship with the applicable Merchant thereunder (including the right to renew the Merchant);

(b) all rights of the Seller under all Participation Agreements, including the right to receive all commissions and fee revenue payable thereunder, the right to continue to service the pools of Advances which are the subject thereof and the exclusive relationship with the applicable Merchants thereunder (including the exclusive right to renew the Merchants);

(c) all rights of the Seller under all Vendor Agreements, including the right to receive all commissions and fee revenue payable thereunder;

(d) all rights of the Seller under all Sales Representation Agreements, including the right to enforce any restrictive covenants contained therein;

(e) all notes and accounts receivable, including all trade accounts receivable and other rights to payment from customers, and the full benefit of all security for such accounts or rights to payment;

(f) all inventories, wherever located, including all materials and supplies to be used in connection with the Business;

(g) all rights under all Contracts to which the Seller is a party, by which the Seller or any of the Purchased Assets is bound or affected or pursuant to which the Seller is an obligor or a beneficiary (including all outstanding offers, proposals or solicitations made by or to the Seller to enter into any such Contract);

(h) all machinery, equipment, furniture, furnishings, computer hardware, materials, vehicles, and other items of tangible personal property of every kind, including the tangible personal property listed on **Schedule 2.1(h)** attached, and the full benefit of all express or implied warranties by the manufacturers or sellers or lessors of any item or component part thereof;

(i) all rights in respect of the Leased Real Property as more particularly described in Section 3.12 below;

(j) all Intellectual Property owned, created, acquired, licensed or used by the Seller at any time prior to and through the Closing Date (collectively, the "Purchased Intellectual Property"), and all other intangible rights, including all goodwill associated with the Seller's business or the Purchased Assets, including the exclusive use of the names of the entities comprising the Seller, as well as the trade names, domain names and other items of Purchased Intellectual Property listed on **Schedule 2.1(j)**;

(k) all Governmental Authorizations and all pending applications therefor or renewals thereof, in each case to the extent transferable to the Purchaser;

(l) all books, records, files, studies, manuals, reports and other materials (in any form or medium), including all advertising materials, catalogues, price lists, mailing lists, distribution lists, client and customer lists, referral sources, Merchant, Sales Representative, supplier and vendor lists, purchase orders, sales and purchase invoices, correspondence, production data, sales and promotional materials and records, purchasing materials and records, research and development files, records, data, Intellectual Property disclosures, manufacturing and quality control records and procedures, service and warranty records, equipment logs, operating guides and manuals, financial and accounting records, litigation files, personnel and employee benefits records to the extent transferable under applicable Law, and copies of all other personnel records to the extent the Seller is legally permitted to provide copies of such records to the Purchaser; provided, however, Seller shall be entitled to copy any of the above prior to the Closing for purposes of operating Seller following the Closing;

(m) all rights and interests under all certificates for insurance, binders for insurance policies and insurance under which the Seller, the Business or any of the Purchased Assets is or has been insured to the extent such rights or interests arise from or relate to any of the Assumed Liabilities or any casualty or Liability affecting the Business or any of the Purchased Assets;

(n) all claims, rights, credits, causes of actions, defenses and rights of set-off against third parties relating to or arising from the Business or any of the Purchased Assets or Assumed Liabilities, in each case, whether accruing before or after the Closing; and

(o) all rights relating to deposits and prepaid expenses, claims for refunds and rights of offset that are not excluded under Section 2.2(f).

By way of illustration only, the Purchased Assets include Seller's rights to approximately $2.5 Million in credit and debit card receivables which were assigned by Seller to Veritas as security for the loan facility provided by Veritas.

Notwithstanding the foregoing, the transfer of the Purchased Assets pursuant to this Agreement does not include the assumption of any Liability related to the Purchased Assets unless the Purchaser expressly assumes such Liability pursuant to Section 2.3.

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary in Section 2.1 or elsewhere in this Agreement, the following assets of the Seller (collectively, the "Excluded Assets") are excluded from the Purchased Assets, and are to be retained by the Seller as of the Closing:

(a) all cash or cash equivalents of the Seller, including cash and cash equivalents held in any bank or brokerage accounts of the Seller,;

(b) original copies of all minute books, records, stock ledgers, personnel records, Tax records and other materials that the Seller is required by Law to retain;

(c) all those Contracts which Purchaser elects not to acquire (notice of such election to be given by Purchaser to Seller at or before the Closing);

(d) all claims for refund of Taxes and other governmental charges of whatever nature arising out of the Seller's operation of its business or ownership of the Purchased Assets prior to the Closing;

(e) those specific assets, properties and rights which Purchaser elects not to acquire (notice of such election to be given by Purchaser to Seller at or before the Closing);

(f) all rights of the Seller under this Agreement or any of the Ancillary Agreements to which the Seller is a party;

(g) all assets of any Seller Plan; and

(h) the cash consideration payable to the Seller hereunder.

Section 2.3 Assumed Liabilities. In accordance with the provisions of this Agreement, at the Closing, the Purchaser will assume and pay or perform when due only the following Liabilities of the Seller (collectively, the "Assumed Liabilities"):

(a) all current Liabilities of the Seller reflected on the Closing Date Balance Sheet, but only in the amount (and to the extent that) such Liabilities are included in Final Net Working Capital; and

(b) all Liabilities of the Seller arising after the Closing under those Contracts that are approved by the Purchaser and which Purchaser advises Seller in writing at or prior to the Closing that Purchaser desires to assume (the "Assumed Contracts"), except, in each case, for any Liability arising out of or relating to (i) any breach of, or failure to comply with, prior to the Closing, any covenant or obligation in any such Contract, or (ii) any event that occurred prior to the Closing which, with or without notice, lapse of time or both, would constitute such a breach or failure; and

(c) reimbursement of the Seller and/or Hecker for the following expenses (up to an aggregate cap of $200,000), subject to substantiation (to the reasonable satisfaction of the Purchaser) that such sums are only owing by reason of the transaction contemplated hereby: (i) any break-up fee owed to Palm Beach Capital or Finexus Capital Partners; (ii) any termination fees owed to Veritas, and (iii) after satisfaction of amounts owing for the sums referred to in (i) and (ii) above, any remaining balance (up to said $200,000 cap) may be used to pay fees of the Seller's counsel, DLA Piper incurred in connection with this transaction.

Notwithstanding the foregoing, the Assumed Liabilities shall not include, and Purchaser will not be responsible for, any Liabilities arising by reason of fraudulent or illegal conduct, where the Seller knew or had reason to know of such conduct as of the date of the Closing.

<u>Section 2.4</u> <u>Excluded Liabilities</u>. Notwithstanding any other provision of this Agreement or any other writing to the contrary, and regardless of any information disclosed to the Purchaser, the Purchaser does not assume and has no responsibility for any Liabilities of the Seller other than the Assumed Liabilities specifically listed in Section 2.3 (such unassumed Liabilities, the "<u>Excluded Liabilities</u>"). Without limiting the preceding sentence, the following is a non-exclusive list of Excluded Liabilities that the Purchaser does not assume and that the Seller will remain bound by and liable for, and will pay, discharge or perform when due:

(a) all Liabilities arising out of or relating to any Excluded Asset;

(b) all Liabilities under any Contract not assumed by the Purchaser under Section 2.3, including any Liability arising out of or relating to the Seller's credit facilities or other borrowings or any security interest related thereto;

(c) all Liabilities under any Contract assumed by the Purchaser pursuant to Section 2.3(b) that arise after the Closing but that arise out of or relate to (i) any breach of, or failure to comply with, prior to the Closing, any covenant or obligation in any such Contract or (ii) any event that occurred prior to the Closing which, with or without notice, lapse of time or both, would constitute such a breach or failure;

(d) all Liabilities arising out of or relating to any indemnity, warranty, infringement, misappropriation or similar claims by any Person in connection with any tangible or intangible products or services used, sold or licensed by the Seller (other than Liabilities with respect to any Contract assumed by the Purchaser pursuant to Section 2.3(b) not otherwise excluded under Section 2.4(c));

(e) all Liabilities arising out of or relating to Indebtedness incurred by the Seller, including, without limitation, any of the Seller's Indebtedness to Veritas;

(f) all Liabilities for Taxes arising as a result of the operation of the Seller's business or ownership of the Purchased Assets prior to the Closing, including any Taxes that arise as a result of the sale of the Purchased Assets pursuant to this Agreement and any deferred Taxes of any nature;

(g) all Liabilities arising from or under any Law arising out of or relating to the operation of the Seller's business, the Seller's ownership of the Purchased Assets or the Seller's leasing, ownership or operation of real property. By way of illustration only, the foregoing shall include any Liabilities arising from any violation of Laws by Seller. For the avoidance of doubt, the Excluded liabilities do not include any Liabilities arising from or under any Law arising out of or relating to the operation of the Purchaser's business, Purchaser's ownership of the Purchase Assets or the Purchaser's leasing ownership or operation of real property.

(h) all Liabilities arising under claims by employees or former employees of the Seller relating in any way to compensation, bonuses, incentive compensation, benefits (including any accumulated vacation, sick or personal days, workers' compensation and unemployment benefits), termination or continuation of their employment, or lack or delay of any notice relating to their employment by the Seller;

(i) all Liabilities arising under or in connection with any Seller Plan (including any Seller Plan that may also be a Contract), or any termination, continuation, amendment or other acts or omissions in connection with any Seller Plan;

(j) all Liabilities to indemnify, reimburse or advance amounts to any officer, director, employee or agent of the Seller;

(k) all Liabilities arising from any failure to comply with any applicable bulk sales Law or fraudulent transfer Law in connection with this Agreement (whether compliance would have been required by the Seller, the Purchaser or both, by applicable Law);

(l) all Liabilities arising out of or resulting from the Seller's compliance or non-compliance with any Law or Judgment;

(m) all professional, financial advisory, broker, finder or other fees of any kind incurred by the Seller;

(n) all Liabilities of the Seller arising out of or incurred in connection with this Agreement, the transactions contemplated by this Agreement, or any other document executed in connection with the transactions contemplated by this Agreement, including the Seller's disclosures to or negotiations with creditors of the Seller, or other legal obligations of the Seller; and

(o) all other Liabilities arising out of the operation of the Seller's business or otherwise prior to the completion of the Closing, or based upon the Seller's acts or omissions occurring after the Closing.

<u>Section 2.5</u> <u>Consideration</u>. The consideration for the Purchased Assets consists of:

(a) the payment at the Closing of Five Million Five Hundred Thousand ($5,500,000) Dollars (the "<u>Initial Purchase Price</u>"), subject to adjustment in accordance with Sections 2.6 and 2.7;

(b) the earn-out payments contemplated by Section 2.8 below (together with the Initial Purchase Price, the "Purchase Price"); and

(c) the assumption of the Assumed Liabilities.

Section 2.6 Estimated Closing Date Balance Sheet. At the Closing, the Seller will prepare and deliver to the Purchaser an unaudited balance sheet of the Seller prepared on an estimated basis as of the Closing Date (the "Estimated Closing Date Balance Sheet"). The Estimated Closing Date Balance Sheet will be prepared in accordance with GAAP. The Seller will deliver with the Estimated Closing Date Balance Sheet (i) a statement setting forth the Seller's calculation of the Net Working Capital based on the Estimated Closing Date Balance Sheet and reflecting the exclusion of the Excluded Assets and Excluded Liabilities (including, without limitation, debt) (the "Estimated Net Working Capital") and (ii) a certification executed by an officer of the Seller that the Estimated Closing Date Balance Sheet fairly presents the financial condition and results of operations of the Seller as of the Closing Date. If the Estimated Closing Net Working Capital is less than the Target Net Working Capital, then an amount equal to the sum obtained by subtracting the Estimated Closing Net Working Capital from the Target Net Working Capital shall be deducted from the payment by the Purchaser at Closing, as a reduction in the Initial Purchase Price.

Section 2.7 Post-Closing Adjustment.

(a) Within 60 days after the Closing Date, the Purchaser will prepare and deliver to the Seller written notice (the "Adjustment Notice") containing (i) an unaudited balance sheet of the Seller as of the Closing Date (the "Closing Date Balance Sheet"), (ii) the Purchaser's calculation of the Net Working Capital based on the Closing Date Balance Sheet and reflecting the exclusion of the Excluded Assets and Excluded Liabilities (the "Final Net Working Capital"), (iii) the Purchaser's calculation of the amount of any payments required pursuant to Section 2.7(e) (the "Adjustment Calculation"). The Closing Date Balance Sheet will be prepared by the Purchaser in accordance with GAAP.

(b) Within 20 days after delivery of the Adjustment Notice, the Seller will deliver to the Purchaser a written response in which the Seller will either:

(i) agree in writing with the Adjustment Calculation, in which case such calculation will be final and binding on the parties for purposes of Section 2.7(e), or

(ii) dispute the Adjustment Calculation by delivering to the Purchaser a written notice (a "Dispute Notice") setting forth in reasonable detail the basis for each such disputed item and certifying that all such disputed items are being disputed in good faith.

(c) If the Seller fails to take either of the foregoing actions within 20 days after delivery of the Adjustment Notice, then the Seller will be deemed to have irrevocably accepted

the Adjustment Calculation, in which case, the Adjustment Calculation will be final and binding on the parties for purposes of Section 2.7(e).

(d) If the Seller timely delivers a Dispute Notice to the Purchaser, then the Purchaser and the Seller will attempt in good faith, for a period of 20 days, to agree on the Adjustment Calculation for purposes of Section 2.7(e). Any resolution by the Purchaser and the Seller during such 20-day period as to any disputed items will be final and binding on the parties for purposes of Section 2.7(e). If the Purchaser and the Seller do not resolve all disputed items by the end of 20 days after the date of delivery of the Dispute Notice, then the Purchaser and the Seller will resolve the remaining items in dispute in accordance with Section 2.9 below.

(e) If the Final Net Working Capital as finally determined pursuant to this Section 2.7 is less than the Estimated Closing Net Working Capital, then the Seller will pay to the Purchaser the amount of such difference in cash. Any payment to the Purchaser pursuant Section 2.7(e) shall be effected by wire transfer of immediately available funds to an account designated by the Purchaser. All payments under Section 2.7(e) will be made within five business days following the final determination of the Final Net Working Capital in accordance with this Section 2.7.

(f) The purpose of this Section 2.7 is to determine the final Initial Purchase Price to be paid by the Purchaser under this Agreement. Accordingly, any adjustment pursuant hereto will neither be deemed to be an indemnification pursuant to Article 6, nor preclude the Purchaser from exercising any indemnification rights pursuant to Article 6 (except that the amount of any such claim for indemnification under Section 6.1(a) below based on the specific facts giving to an adjustment pursuant hereto shall be reduced by the amount of any payment made by Seller pursuant hereto). Any payment made pursuant to this Section 2.7 will be treated by the parties for all purposes as an adjustment to the Initial Purchase Price.

Section 2.8 Earn-out Provisions. The Purchaser undertakes to pay to the Seller, as additional consideration for the Purchased Assets, the amounts referred to and calculated in accordance with this Section 2.8.

(a) Upon the occurrence of an Earn-out Payment Event, Purchaser shall pay to Seller an earn-out payment equal to fifty (50%) percent of the Net Company Value from the applicable Earn-out Payment Event. Any such earn-out payment is referred to herein as an "Earn-out Payment".

(b) In the event of the occurrence of a Capital Event prior to the occurrence of a Earn-out Payment Event, Purchaser shall pay to Seller an earn-out payment equal to fifty (50%) percent of the Net Capital Event Proceeds from the applicable Capital Event. Any such earn-out payment is referred to herein as a "Capital Event Payment".

(c) The calculation of the amount of any Earn-out Payment or Capital Event Payment (each, a "Payment Calculation") shall be made, in the first instance, by Purchaser in accordance with the terms hereof and written notice thereof, together with all relevant work papers and supporting calculations, shall be delivered by Purchaser to Hecker (i) in the case of an Asset Sale, Equity Sale or Capital Event, within ten (10) business days after the occurrence thereof,

and (ii) in the case of Seller Acceleration Event or a Purchaser Acceleration Event, within thirty (30) days after the Company Value has been determined as set forth below. Notwithstanding anything contained herein to the contrary, in the case of a Purchaser Acceleration Event arising from the death of Hecker, in no event shall the Earn-out Payment be less than fifty (50%) percent of the net proceeds of the life insurance, if any, that Purchaser then carries on Hecker (prior to deduction by the Purchaser of any Losses owed to the Purchaser by Seller pursuant to this Agreement).

(d) Within twenty (20) days after the Payment Calculation has been delivered to Hecker, Hecker shall deliver to the Purchaser either (i) a written acknowledgment accepting the Payment Calculation or (ii) a written report setting forth in reasonable detail any proposed adjustments to the Payment Calculation (the "Payment Adjustment Report"). If Hecker fails to respond to the Purchaser within such 20-day period, Seller shall be deemed to have accepted and agreed to the Payment Calculation as delivered by Purchaser. Purchaser shall provide Hecker with reasonable access to the books and records of the Purchaser during normal business hours in order to verify the accuracy of any Payment Calculation.

(e) In the event that Hecker and the Purchaser fail to agree on any of Hecker's proposed adjustments set forth in the Payment Adjustment Report within thirty (30) days after the Purchaser receives the Payment Adjustment Report, Seller and Purchaser agree that any such dispute shall be resolved the manner contemplated by Section 2.9 below.

(f) No later than five business days after the date on which any Payment Calculation is finally determined pursuant to this Section 2.8, Purchaser shall pay to Seller the amount, if any, specified in the Payment Calculation. Notwithstanding the foregoing, in the case of Sale Event or Equity Event, the applicable Earn-out Payment shall be paid in such manner and at such time as the purchase price is paid to the Purchaser or the Owners, as the case may be, by the third party purchaser.

(g) In the case of a Seller Acceleration Event or a Purchaser Acceleration Event, if within ten (10) business days after the applicable Earn-out Payment Event, Purchaser and Hecker are unable to agree on the Company Value, then Company Value shall be determined by appraisal ("Appraisal") using the following method:

(i) Either Purchaser or Hecker may start the appraisal process by giving written notice to the other party that the Company Value is to be determined by Appraisal (the "Appraisal Notice"). Each of Purchaser or Hecker shall appoint an appraiser by giving written notice to the other party of the name of the appraiser so selected within fifteen days following the date of the Appraisal Notice. Each appraiser so appointed shall have not less than five (5) years commercial appraisal experience and shall not have previously acted in any capacity for Purchaser or Hecker. If either party fails to appoint their appraiser within said fifteen-day period, the Company Value shall be determined by the sole appraiser appointed. Each appraiser shall be instructed to complete their appraisals within thirty (30) days of their appointment. The appraisers shall conduct independent appraisals and meet within thirty (30) days after their appointment. If the lower of the two appraisals is within 90% of the Company Value of the higher appraisal, the average of the two appraisals shall be the Company Value. If the lower of

the two appraisals is not within 90% of the Company Value of the higher appraisal, the Appraisers shall meet to mutually agree on the Company Value. If the appraisers reach mutual agreement they shall issue a joint appraisal as to the Company Value.

(ii) If the two selected appraisers are unable to agree as to the Company Value, they shall jointly appoint a third appraiser who meets the qualifications set forth for appraisers above. If said appraisers fail to appoint a third appraiser within seven (7) days after such thirty (30) day period, the third appraiser who meets the qualifications set forth for appraisers above shall be appointed by the American Arbitration Association in New York, New York. The third appraiser shall be instructed to review the two appraisals, undertake such additional information gathering as may be required and within thirty (30) days of his appointment select the appraisal that he believes is closest to the Company Value. The appraisal so selected shall be the Company Value. Each party shall pay the cost of the appraiser they select, and if a third appraiser is required, each party shall pay one-half the cost of the third appraiser.

(h) Notwithstanding anything to the contrary contained in this Agreement, Purchaser may, at its option, reduce the amount of any Earn-out Payment or Capital Event Payment or Performance Earn-out Payment which may become payable hereunder the amounts of any judicially determined Losses (i) for which any Purchaser Indemnified Party has submitted a claim under Article 6 of this Agreement, or which any Indemnified Party claims it has suffered or incurred as a result of or in connection with any breach by Hecker of the Employment Agreement and/or any other agreement to which Hecker is a party with or in favor of Purchaser or any of its Affiliates; provided, however, that until such Losses are judicially determined, the Purchaser may withhold up to fifty (50%) percent of all such payments (with all amounts so withheld paid into escrow with an escrow agent chosen by the Purchaser and reasonably acceptable to the Seller). In the event that it is judicially determined that such Purchaser Indemnified Person is not entitled to indemnification for all or a portion of such Losses, Purchaser shall promptly pay to the Seller any amounts that had been withheld and paid into escrow by the Purchaser under the immediately preceding sentence in respect of the disallowed Losses, to the extent not previously paid, plus interest at the Interest Rate on such amount accruing from the date such amounts were initially withheld by the Purchaser. For purposes of this Section 2.8, no Earn-out Payment or Capital Event Payment shall be deemed to be final until the reduction contemplated herein is made.

(i) Notwithstanding anything contained herein to the contrary, at the sole option of Purchaser, which may be exercised by written notice from Purchaser ("Conversion Notice") given at any time after the second (2nd) anniversary of the Closing Date, Purchaser shall have the absolute and unconditional right to require Seller to convert its right to receive any payments under this Section 2.8 ("Payment Rights") into a fifty (50%) Class B membership interest in Purchaser (referred to herein as the "Conversion"). The Conversion shall be effected by means of the execution by Seller and Purchaser of an Amended & Restated Operating Agreement of Purchaser in the form attached hereto as **Exhibit I** (the "Operating Agreement"), pursuant to which Seller shall be deemed to have contributed the Payment Rights to Purchaser in consideration for the issuance of said Class B Membership Interest to Seller. Upon the giving of the Conversion Notice by Purchaser, Seller and Purchaser shall (within five (5) business days

thereafter) execute and deliver the Operating Agreement, which shall have an Closing Date as of the date of the Conversion Notice, and Seller shall thereafter no longer thereafter be entitled to receive any payments under this Section 2.8.

(j) Based upon Purchaser's Net Profit for the calendar years set forth below, , Purchaser shall pay to Seller the applicable percentage of One Million ($1,000,000.00) Dollars (a "Performance Earn-Out Payment"):

Period	**Annual Net Profit**	**Applicable Percentage**
2015	$600,000 or less	0%
	$1,600,000 or more	100%
2016	$2,500,000	0%
	$6,500,000	100%

For Net Profit amounts above the 0% threshold (but less than the 100% threshold), the applicable percentage shall be prorated. By way of example, if Purchaser's Net Profit for 2015 is $950,000, then Seller shall be entitled to a Performance Earn-Out Payment equal to $350,000 (i.e., $1 for each $1 of Net Profit over $600,00 with a cap of $1,000,000 at $1,600,000 of Net Profit -- $950,000 - $600,000 = $350,000). The Performance Earn-Out Payments shall be paid by Purchaser with funds contributed by its members to the capital of Purchaser and not with Purchaser's funds from operations or the proceeds of any loans.

The determination of Net Profit shall be made by the Purchaser's independent certified public accountants. Any such payment shall be due within thirty (30) days after the Net Profit for the applicable period has been finally determined.

(k) So long as any Earn-Out Payment or Performance Earn-Out Payment is payable hereunder, Purchaser shall (i) not enter into transactions on other than an arm's length basis, and (ii) maintain proper internal controls.

Section 2.9 Accounting Disputes.

(a) In the event the parties dispute the determination of the Adjustment Calculation pursuant to Section 2.7 above or any Payment Calculation pursuant to Section 2.8 above, the parties shall jointly submit their dispute to an accounting firm mutually selected by them (the "Arbitrating Accountant") for final determination, whose determination shall be made within forty-five (45) days of the date the dispute is submitted to the Arbitrating Accountant; provided, however, that the determination of the Arbitrating Accountant shall be limited exclusively to the Adjustment Calculation or Payment Calculation, as the case may be, and shall not in any manner address the interpretation or legal effect of any other provision of this Agreement (including the Appraiser provisions set forth in Section 2.8(g)). The Arbitrating Accountant shall base its determination solely on the materials presented by the parties and upon information received in response to Seller's or Purchaser's requests for additional or clarifying information and not by independent review and shall only determine those items in dispute specifically set forth in the Dispute Notice or Payment Adjustment Report and shall be no more favorable to the parties as set forth in their respective reports. The fees and expenses of the Arbitrating Accountant will be

shared by the Purchaser and the Seller in proportion to the relative amounts of the disputed amount determined to be for the account of the Purchaser and the Seller, respectively. The Arbitrating Accountant's determination as to the Adjustment Calculation or Payment Calculation, as the case may be shall be final and binding on the Parties. All communications with the Arbitrating Accountant must involve all parties and/or their representatives.

(b) For purposes of complying with this Section 2.9, the Purchaser and the Seller will furnish to each other and to the Arbitrating Accountant such work papers and other documents and information relating to the disputed items as the Arbitrating Accountant may request and are available to that party and will be afforded the opportunity to present to the Arbitrating Accountant any material related to the disputed items and to discuss the items with the Arbitrating Accountant. The Purchaser may require that the Arbitrating Accountant enter into a customary form of confidentiality agreement with respect to the work papers and other documents and information relating to the Purchaser's business provided to the Arbitrating Accountant pursuant to this Section 2.9.

Section 2.10 Allocation of Purchase Price and Assumed Liabilities. The Purchase Price and Assumed Liabilities will be allocated in accordance with a schedule of allocation prepared by Purchaser and supplied to Seller following the Closing. After the Closing, the parties will make consistent use of the allocation, fair market values and useful lives specified in such schedule for all Tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Section 1060 of the Code. Within 45 days after the date the Purchase Price is determined, the Purchaser will prepare and deliver IRS Form 8594 to the Seller to be filed with the IRS. Any adjustment to the Purchase Price will be allocated in accordance with Section 1060 of the Code. In any Proceeding related to the determination of any Tax, neither the Purchaser, the Seller nor Hecker will contend or represent that such allocation is not a correct allocation.

Section 2.11 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place through an escrow arrangement between the Seller's and Purchaser's counsel on December 30, 2014 (the "Closing Date"), subject to satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective Parties will take at the Closing itself). The Closing shall be deemed effective as of 12:01 A.M., eastern standard time, on the Closing Date.

Section 2.12 Closing Deliveries.

(a) At the Closing, the Seller will deliver or cause to be delivered to the Purchaser:

(i) a bill of sale in the form of **Exhibit A** (the "Bill of Sale") executed by the Seller;

(ii) an assignment and assumption agreement in the form of **Exhibit B** (the "Assignment and Assumption Agreement") executed by the Seller;

(iii) assignments of certain of the Purchased Intellectual Property in the forms of **Exhibits C-1**, and **C-2**, (collectively, the "IP Assignments") executed by the Seller;

(iv) evidence of payment in full and satisfaction of all existing Indebtedness of the Seller to Veritas (and all participants in that Indebtedness), including, the release and termination of all financing statements and the full and complete waiver of any rights of any kind with respect to the Purchased Assets, including any Participations to which Veritas was a party, or as otherwise required to transfer the Purchased Assets to Purchaser, free and clear of all Encumbrances in favor of Veritas, in the form of **Exhibit D-1** (collectively, the "Veritas Release"), and an assignment by Veritas to Purchaser of all Purchased Receivables which were the subject of that certain Receivables Purchase Agreement between Veritas and Rapid II, in the form of **Exhibit D-2** (collectively, the "Veritas Assignment");

(v) evidence of payment in full and satisfaction all existing Indebtedness of the Seller to Maple Hill Capital and Jack Jannett, including, the release and termination of all financing statements and the full and complete waiver of any rights of any kind with respect to the Purchased Assets, including any Participations to which any of said Persons was a party, or as otherwise required to transfer the Purchased Assets to Purchaser, free and clear of all Encumbrances in favor of such Persons, in the form of **Exhibit E** (collectively, the "Additional Releases");

(vi) an assignment of the Seller's rights under the lease agreement(s) evidencing the Seller's interest in the Leased Real Property in the form of **Exhibit F** (the "Lease Assignment(s)") executed by the Seller;

(vii) a consent and estoppel from the landlord of the Leased Real Property located in Miami consenting to the Lease Assignment and certifying as to certain matters relating the lease in the form of **Exhibit G** (the "Landlord Consent") executed by said landlord;

(viii) a certificate in the form of **Exhibit H** of the Manager of the Seller dated as of the Closing Date and attaching (A) the Seller's formation documents and all amendments thereto, certified by the Secretary of State of the jurisdiction of the Seller's formation not more than five business days prior to the Closing Date; (B) a certificate of good standing of the Seller certified by the Secretary of State of the jurisdiction of the Seller's formation and each other jurisdiction where the Seller is authorized to do business, each issued not more than five business days prior to the Closing Date; and (C) all resolutions of the Seller relating to this Agreement and the transactions contemplated by this Agreement;

(ix) a certification in the form of **Exhibit I** executed by the Seller stating, under penalty of perjury, the Seller's U.S. employer identification number and address and that the Seller is not a "foreign person" as defined in Section 1445 of the Code;

(x) releases of any Encumbrances (other than Permitted Encumbrances) affecting any of the Purchased Assets;

(xi) the Employment Agreement executed by Hecker;

(xii) a legal opinion of the Seller's counsel, in form acceptable to the Purchaser;

(xiii) evidence satisfactory to Purchaser that no taxes are due or owing by Seller to the State of Florida with respect to any period prior to the Closing Date;

(xiv) a written modification to that certain IP Assignment from Web Stars Group, LLC to RCF II making said assignment irrevocable, which modification shall be in form and substance satisfactory to Purchaser; and

(xv) such other documents, instruments and agreements as the Purchaser reasonably requests for the purpose of consummating the transactions contemplated by this Agreement.

(b) At the Closing, the Purchaser will deliver or cause to be delivered to the Seller:

(i) the Purchase Price (as may be adjusted pursuant to Section 2.6) by wire transfer of immediately available funds to the account(s) specified in writing by the Seller at least five days prior to Closing;

(ii) the Assignment and Assumption Agreement executed by the Purchaser;

(iii) the Bill of Sale and the IP Assignments, if any, that call for a signature by the Purchaser;

(iv) executed counterparts to the Lease Assignment(s); and

(v) a certificate in the form of **Exhibit K** of the Manager of the Purchaser dated as of the Closing Date and attaching (A) the Purchaser's formation documents and all amendments thereto, certified by the Secretary of State of the jurisdiction of the Purchaser's formation not more than five business days prior to the Closing Date; (B) a certificate of good standing of the Purchaser certified by the Secretary of State of the jurisdiction of the Purchaser's formation and each other jurisdiction where the Purchaser is authorized to do business, each issued not more than five business days prior to the Closing Date; and (C) all resolutions of the Purchaser relating to this Agreement and the transactions contemplated by this Agreement;

(vi) the Employment Agreement executed by the Purchaser; and

(vii) such other documents, instruments and agreements as the Seller reasonably requests for the purpose of consummating the transactions contemplated by this Agreement.

(c) At the Closing, the Purchaser will be entitled to a deduct from the Initial Purchase Price any sums owing by Seller to NAB or any of its affiliates, including, without limitation, any then unpaid portion of the sum of $263,000 currently owing by RCF II to NAB on account of certain unfunded advances.

Section 2.13 Consents.

(a) Notwithstanding any other provision of this Agreement, this Agreement does not constitute an agreement to sell, convey, assign, assume, transfer or deliver any interest in any Purchased Asset, or any claim, right, benefit or obligation arising thereunder or resulting therefrom if a sale, conveyance, assignment, assumption, transfer or delivery, or an attempt to make such a sale, conveyance, assignment, assumption, transfer or delivery, without the Consent of a third party would (i) constitute a breach or other contravention of the rights of such third party, (ii) would be ineffective with respect to any party to a Contract concerning such Purchased Asset or (iii) would, upon transfer, in any way adversely affect the rights of the Purchaser under such Purchased Asset. If the sale, conveyance, assignment, transfer or delivery by the Seller to the Purchaser of any interest in, or assumption by the Purchaser of any Liability under, any Purchased Asset requires the Consent of a third party, then such sale, conveyance, assignment, transfer, delivery or assumption will be subject to such Consent being obtained. Without limiting Section 2.13(b), if any Contract included in the Purchased Assets may not be assigned to the Purchaser by reason of the absence of any such Consent, the Purchaser will not be required to assume any Assumed Liability arising under such Contract.

(b) If any Consent in respect of a Purchased Asset has not been obtained on or before the Closing Date, the Seller will continue to use its best efforts to obtain such Consent as promptly as practicable after the Closing until such time as such Consent has been obtained, and to cooperate in any lawful and reasonable arrangement which will provide the Purchaser the benefits of any such Purchased Asset, including subcontracting, licensing or sublicensing to the Purchaser any or all of the Seller's rights with respect to such Purchased Asset and including the enforcement for the benefit of the Purchaser of any and all rights of the Seller against a third party thereunder. If and when such Consents are obtained or such other required actions have been taken, the transfer of such Purchased Asset will be effected in accordance with the terms of this Agreement.

(c) Nothing in this Section 2.13 will be deemed a waiver by the Purchaser of its right to have received on or before the Closing an effective assignment of all of the Purchased Assets or of the covenant of the Seller to obtain all Consents, nor will this Section 2.13 be deemed to constitute an agreement to exclude from the Purchased Assets any of the Assets described under Section 2.1.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES
OF THE SELLER AND HECKER

The Seller and Hecker hereby jointly and severally represent and warrant to the Purchaser that as of the Closing Date the statements set forth in this Article 3 are true and correct, except as expressly set forth on the disclosure schedule delivered by the Seller to the Purchaser concurrently with the execution and delivery of this Agreement and dated as of the date of this Agreement (the "Seller Disclosure Schedule"):

Section 3.1 Organization and Good Standing. The Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and has all requisite limited liability company power and authority to own, lease and operate its properties and assets and to conduct its business as presently conducted. The Seller is duly qualified or licensed to do business and, where applicable as a legal concept, is in good standing as a foreign limited liability company in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification or licensure necessary, except where a failure to be so qualified or licensed would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. **Section 3.1** of the Seller Disclosure Schedule sets forth an accurate and complete list of the Seller's jurisdiction of formation and the other jurisdictions in which it is authorized to do business, and an accurate and complete list of the current managers and, if applicable, current officers of Seller. Hecker is the sole member of each of the entities comprising the Seller. The Seller has delivered to the Purchaser accurate and complete copies of the articles of organization and operating agreement of the Seller, as currently in effect, and the Seller is not in default under or in violation of any provision thereof.

Section 3.2 Authority and Enforceability.

(a) The Seller has all requisite limited liability company power and authority to execute and deliver this Agreement and each Ancillary Agreement to which the Seller is a party and to perform its obligations under this Agreement and each such Ancillary Agreement. The execution, delivery and performance of this Agreement and each Ancillary Agreement to which Seller is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Seller. The Seller has duly and validly executed and delivered this Agreement and, on or prior to the Closing, the Seller will have duly and validly executed and delivered each Ancillary Agreement to which it is a party. This Agreement constitutes, and upon execution and delivery each Ancillary Agreement to which the Seller is a party will constitute, the valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

(b) Hecker has all requisite power, authority and capacity to execute and deliver this Agreement and each Ancillary Agreement to which Hecker is a party and to perform its

respective obligations under this Agreement and each such Ancillary Agreement. Hecker has duly and validly executed and delivered this Agreement and each Ancillary Agreement to which he is a party. This Agreement constitutes, and upon execution and delivery of each Ancillary Agreement to which Hecker is a party will constitute, the valid and binding obligation of Hecker, enforceable against Hecker in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 3.3 No Conflict. Neither the execution, delivery and performance of this Agreement or any Ancillary Agreement by the Seller or Hecker, nor the consummation of the transactions contemplated hereby or thereby, will (a) directly or indirectly (with or without notice, lapse of time or both) conflict with, result in a material breach or violation of, constitute a default under, give rise to any right of revocation, withdrawal, suspension, acceleration, cancellation, termination, modification, imposition of additional obligations or loss of rights under, result in any payment becoming due under, or result in the imposition of any Encumbrances (other than Permitted Encumbrances) on any of the properties or assets of the Seller (including the Purchased Assets) under, or otherwise give rise to any right on the part of any Person to exercise any remedy or obtain any relief under (i) the articles of organization or operating agreement of the Seller or any resolution adopted by the members or managers of the Seller, (ii) any Contract to which the Seller or Hecker is a party, by which the Seller, Hecker or any of their respective properties or assets (including the Purchased Assets) is bound or affected or pursuant to which the Seller or Hecker is an obligor or a beneficiary or (iii) any Law, Judgment or Governmental Authorization applicable to the Seller or Hecker or the Business, properties or assets (including the Purchased Assets); or (b) except as set forth in **Section 3.3** of the Seller Disclosure Schedule, require the Seller or Hecker to obtain any Consent or Governmental Authorization of, give any notice to, or make any filing or registration with, any Governmental Authority or other Person, and (b) in any case that would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 3.4 Capitalization and Ownership.

(a) Hecker is the sole record holder and beneficial owner, free and clear of all Encumbrances (other than Permitted Encumbrances), of all of the issued and outstanding equity securities of each of the entities comprising the Seller. Except as set forth in **Section 3.4** of the Seller Disclosure Schedule, there are no Contracts that bind the Seller or Hecker to vote, offer, purchase, issue, sell or transfer any securities of the Seller (including voting trusts, proxies, preemptive rights, rights of first refusal, co-sale rights or "bring-along" rights). No holder of Indebtedness of the Seller has any right to convert or exchange such Indebtedness for any equity securities or other securities of the Seller.

(b) The Seller does not own, control or have any rights to acquire, directly or indirectly, any capital stock or other equity interests or debt instruments or securities of any Person. The Seller is not subject to any obligation or requirement to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any Person.

Section 3.5 Financial Statements.

(a) Attached as **Section 3.5** of the Seller Disclosure Schedule are the following financial statements (collectively, the "Financial Statements"):

(i) unaudited balance sheets of the Seller as of December 31, 2012 and 2013 (the most recent of which, the "Balance Sheet") and the related unaudited statements of income, changes in Seller' equity and cash flows for each of the fiscal years then ended; and

(ii) an unaudited balance sheet of the Seller as of October 31, 2014 (the "Interim Balance Sheet") and the related unaudited statements of income, changes in Seller' equity and cash flows.

(b) The Financial Statements (including the notes thereto) are correct and complete in all material respects, are consistent with the books and records of the Seller and have been prepared in accordance with GAAP and the past custom and practice of Seller as described in **Section 3.5(b)** of the Seller Disclosure Schedule, consistently applied throughout the periods involved. The Financial Statements fairly present the financial condition, results of operations, changes in Seller' equity and cash flows of the Seller as of the respective dates and for the periods indicated therein.

Section 3.6 Books and Records. The books of account and other books and records of the Seller, all of which have been made available to the Purchaser, are accurate and complete in all material respects and have been maintained in accordance with sound business practices.

Section 3.7 Receivables.

(a) All notes and accounts receivable of Seller are properly reflected on the Closing Date Balance Sheet and represent valid obligations arising from Advances actually made or services actually performed in the ordinary course of business. Such notes and accounts receivable are current and collectible, net of any respective reserve set forth in the Closing Date Balance Sheet (which reserves have been calculated consistent with the past custom and practice of the Seller). Subject to such reserves, each such note and account receivable reflected on the Closing Date Balance Sheet will be collected in full, without any setoff, within ninety (90) days after the date on which it first became due and payable. There is no contest, claim, defense or right of setoff relating to the amount or validity of such note or account receivable.

(b) All Purchased Receivables are properly reflected on the Closing Date Balance Sheet and represent valid obligations arising from Advances actually made in the ordinary course of business. Such Purchased Receivables are current and collectible, net of any respective reserve set forth in the Closing Date Balance Sheet (which reserves have been calculated consistent with the past custom and practice of the Seller). There is no contest, claim, defense or right of setoff relating to the amount or validity of any such Purchased Receivable.

Section 3.8 Intentionally Omitted.

<u>Section 3.9</u> <u>No Undisclosed Liabilities</u>. The Seller has no Liabilities in excess of $20,000, except for Liabilities accrued or expressly reserved for in line items on the Closing Date Balance Sheet. The Estimated Effective Balance Sheet has been prepared in accordance with GAAP, in a manner consistent with the methods and practices used to prepare the Interim Balance Sheet, and correctly and fairly presents the Estimated Net Working Capital and the other information set forth therein, all in compliance with the applicable provisions of Section 2.6.

<u>Section 3.10</u> <u>Absence of Certain Changes and Events</u>. Except as set forth in **<u>Section 3.10</u>** of the Seller Disclosure Schedule, since January 1, 2013, the Seller has conducted its business only in the ordinary course of business and there has not been any Material Adverse Effect. Without limiting the generality of the foregoing, except as set forth in **<u>Section 3.10</u>** of the Seller Disclosure Schedule, since January 1, 2013, there has not been any:

(a) amendment or authorization of any amendment to the Seller's articles of organization;

(b) change in the Seller's authorized or issued capital, or issuance, sale, grant, repurchase, redemption, pledge or other disposition of or Encumbrance on any shares of the Seller's capital stock or other voting securities or any securities convertible, exchangeable or redeemable for, or any options, warrants or other rights to acquire, any such securities;

(c) split, combination or reclassification of any of Seller's capital;

(d) declaration, setting aside or payment of any dividend or other distribution (whether in cash, securities or other property) in respect of the Seller's capital;

(e) (i) issuance, incurrence, assumption, guarantee or amendment of any Indebtedness, or (ii) loans, advances or capital contributions to, or investment in, any other Person, other than Advances made in the ordinary course of business;

(f) sale, lease, license, pledge or other disposition of, or Encumbrance (other than Permitted Encumbrances) on, any of the Seller's properties or assets' other than Participations entered into in the ordinary course of business;

(g) acquisition (i) by merger or consolidation with, or by purchase of all or a substantial portion of the assets or any stock of, or by any other manner, any business or Person or (ii) of any properties or assets that are material to the Seller individually or in the aggregate;

(h) damage to, or destruction or loss of, any of the Seller's properties or assets with an aggregate value to the Seller in excess of $20,000, whether or not covered by insurance;

(i) entry into, modification, acceleration, cancellation or termination of, or receipt of notice of cancellation or termination of, any Contract (or series of related Contracts) which involves a total remaining commitment by or to the Seller of at least $50,000 or otherwise outside the ordinary course of business;

(j) (i) except as required by Law, adoption, entry into, termination or amendment of any Seller Plan, collective bargaining agreement or employment, severance or similar Contract, (ii) amendment or acceleration by the Seller of the payment, right to payment or vesting of any compensation or benefits, (iii) payment by the Seller of any benefit not provided for as of the date of this Agreement under any Seller Plan, (iv) grant by the Seller of any awards under any bonus, incentive, performance or other compensation plan or arrangement or benefit plan, including the grant of options, appreciation rights, equity based or equity related awards, performance units or restricted equity, or the removal of existing restrictions in any Seller Plans or Contracts or awards made thereunder or (v) any action by the Seller other than in the ordinary course of business to fund or in any other way secure the payment of compensation or benefits under any Seller Plan;

(k) cancellation, compromise, release or waiver of any claims or rights (or series of related claims or rights) with a value to the Seller exceeding $20,000 or otherwise outside the ordinary course of business;

(l) settlement or compromise in connection with any Proceeding involving the Seller;

(m) capital expenditure or other expenditure by the Seller with respect to property, plant or equipment in excess of $20,000 in the aggregate;

(n) change in the Seller's accounting principles, methods or practices;

(o) acceleration or delay in the payment of accounts payable or other Liabilities or in the collection of notes or accounts receivable;

(p) making or rescission by the Seller of any Tax election, settlement or compromise of any Tax Liability or amendment of any Tax Return; or

(q) agreement by the Seller, whether in writing or otherwise, to do any of the foregoing.

Section 3.11 Assets. The Seller has good and marketable title to, or in the case of leased properties and assets, valid leasehold interests in, all of the Purchased Assets, free and clear of any Encumbrances (other than Permitted Encumbrances). The Purchased Assets constitute all of the properties and assets used in or necessary to conduct the Seller's business as conducted and as currently planned to be conducted by the Purchaser after the Closing. None of the Excluded Assets is material to the Business. Each tangible asset included in the Purchased Assets is in reasonably good operating condition and repair, ordinary wear and tear excepted, is

suitable for the purposes for which it is being used and currently planned to be used by the Seller and has been maintained in accordance with normal industry practice.

Section 3.12 Leased Real Property.

(a) The Seller does not own any real property, nor has the Seller ever owned any real property.

(b) **Section 3.12(b)** of the Seller Disclosure Schedule sets forth an accurate and complete description (by street address of the subject leased real property, the date and term of the lease, sublease or other occupancy right, the name of the parties thereto, each amendment thereto and the aggregate annual rent payable thereunder) of all land, buildings, structures, fixtures, improvements and other interests in real property that is leased or otherwise occupied by the Seller (the "Leased Real Property"). The Seller holds valid leasehold interests in the Leased Real Property, free and clear of any Encumbrances (other than Permitted Encumbrances). The Seller has delivered to the Purchaser accurate and complete copies of all leases relating to the Leased Real Property. With respect to each such lease, the Seller has not exercised or given any notice of exercise of, nor has any lessor or landlord exercised or given any notice of exercise by such party of, any option, right of first offer or right of first refusal contained in any such lease. The rental set forth in each lease of the Leased Real Property is the actual rental being paid, and there are no separate agreements or understandings with respect to the same. Each lease of the Leased Real Property grants the Seller the exclusive right to use and occupy the demised premises thereunder.

(c) To Seller's Knowledge, Seller is in peaceful and undisturbed possession of the Leased Real Property, and there are no contractual or legal restrictions that preclude or restrict the ability of the Seller to use such Leased Real Property for the purposes for which it is currently being used. The Seller has not subleased, licensed or otherwise granted to any Person the right to use or occupy any portion of the Leased Real Property, and the Seller has not received notice, and the Seller has no Knowledge, of any claim of any Person to the contrary.

Section 3.13 Intellectual Property.

(a) The Seller owns or otherwise possesses valid and legally enforceable rights to use the Purchased Intellectual Property. The Purchased Intellectual Property constitutes all of the Intellectual Property used in or necessary to conduct the Seller's business as conducted and as currently planned to be conducted by the Seller. **Section 3.13(a)** of the Seller Disclosure Schedule sets forth an accurate and complete list of all of the Purchased Intellectual Property, other than the Third Party Intellectual Property listed in the Seller Disclosure Schedule pursuant to Section 3.13(c), that is owned by the Seller (the "Owned Intellectual Property"). The Seller is the sole owner of, and has valid title to, the Owned Intellectual Property. Immediately after the Closing, the Purchaser will be the sole owner of, and will have valid title to, the Owned Intellectual Property, and will have the full right to use, license and transfer the Purchased Intellectual Property in the same manner and on the same terms and conditions that the Seller had immediately prior to the Closing.

(b) With respect to the Owned Intellectual Property, **Section 3.13(b)** of the Seller Disclosure Schedule sets forth an accurate and complete list (by name and, where applicable, registration number and jurisdiction of registration, application, certification and filing) of (i) all patents and patent applications, registered and unregistered trademarks and service marks (including Internet domain names) and applications for the same, trade names, corporate names and copyright registrations and applications, indicating for each, the applicable jurisdiction, registration number (or application number) and date issued (or date filed) and (ii) all material computer software items (provided the Seller need not separately list licenses of Internally Used Shrinkwrap Software), and identifies all Contracts under which the Seller has licensed or otherwise granted rights in any of the Owned Intellectual Property to any Person.

(c) **Section 3.13(c)** of the Seller Disclosure Schedule sets forth an accurate and complete list of all Intellectual Property that any third party has licensed or sublicensed to the Seller or otherwise authorized the Seller to use (the "Third Party Intellectual Property"), including a list of the related Contracts (provided the Seller need not separately list licenses of Internally Used Shrinkwrap Software). The Seller has not granted any sublicense or similar right with respect to any such Third Party Intellectual Property.

(d) The Owned Intellectual Property is free of all payment obligations and other Encumbrances (other than Permitted Encumbrances) and is not subject to any Judgments or limitations or restrictions on use or otherwise. No Person has any rights in the Owned Intellectual Property that could cause any reversion or renewal of rights in favor of that Person or termination of the Seller's rights in the Owned Intellectual Property. There is no Proceeding, Judgment, Contract or other arrangement that prohibits or restricts the Seller from carrying on the Business, or any portion of it, anywhere in the world or from any use of the Purchased Intellectual Property.

(e) All patents and registered and unregistered trademarks, service marks and copyrights included in the Purchased Intellectual Property are valid and subsisting under applicable Law for those respective categories of Intellectual Property. No event has occurred or circumstance exists that could render any of the Purchased Intellectual Property invalid or unenforceable, except that this representation is made only to the Seller's Knowledge concerning any Third Party Intellectual Property. The Seller has delivered to the Purchaser accurate and complete copies of all patents, registrations and applications, each as amended to date, included in the Owned Intellectual Property and all other written documentation evidencing ownership and prosecution of each such item.

(f) The Seller has not agreed to indemnify, defend or otherwise hold harmless any other Person with respect to Losses resulting or arising from the Purchased Intellectual Property, except under those Contracts summarized or described in **Section 3.13(c)** of the Seller Disclosure Schedule.

(g) To the Seller's Knowledge, no Person has used, disclosed, infringed or misappropriated any of the Purchased Intellectual Property, other than authorized uses and disclosures in accordance with the Contracts described in **Sections 3.13(b)** and **3.13(c)** of the Seller Disclosure Schedule. Immediately after the Closing, the Purchaser will have sole rights to

bring actions for infringement or misappropriation of the Owned Intellectual Property. The Seller has not commenced or threatened any Proceeding, or asserted any allegation or claim, against any Person for infringement or misappropriation of the Purchased Intellectual Property or breach of any Contract involving the Purchased Intellectual Property.

(h) Neither the conduct of the Seller's business nor the Seller's creation, use, license or other transfer of the Purchased Intellectual Property infringe or misappropriate any other Person's Intellectual Property rights. The Seller has not received notice of any pending or threatened Proceeding or any allegation or claim in which any Person alleges that the Seller, its business or the Purchased Intellectual Property has violated any Person's Intellectual Property rights. There are no pending disputes between the Seller and any other Person relating to the Purchased Intellectual Property.

(i) The Seller has taken all commercially reasonable steps necessary to protect and preserve each item of Purchased Intellectual Property, including the trade secrets and other confidential business information included in the Purchased Intellectual Property. The Seller has taken all commercially reasonable steps necessary to comply with all duties of the Seller to protect the confidentiality of information provided to the Seller by any other Person. The Seller has obtained from each of its current and former employees, consultants and other independent contractors who participated in the creation or development of any Purchased Intellectual Property an executed proprietary information and inventions assignment agreement (containing no exceptions or exclusions from the scope of its coverage) substantially in the form set forth in **Section 3.13(i)** of the Seller Disclosure Schedule. To the Seller's Knowledge, none of those current or former employees, consultants or other independent contractors has violated any of those Contracts.

Section 3.14 Contracts.

(a) **Section 3.14(a)** of the Seller Disclosure Schedule sets forth an accurate and complete list of each Contract (or group of related Contracts) to which the Seller is a party, by which the Seller or any of the Purchased Assets is bound or affected or pursuant to which the Seller is an obligor or a beneficiary, which:

(i) relates to any Advance or Participation, including any Merchant Agreement, Participation Agreement or Sales Representation Agreement;

(ii) is for the purchase or sale of materials, supplies, goods, services, equipment or other assets, the performance of which extends over a period of more than one year or that otherwise involves an amount or value in excess of $20,000;

(iii) is for capital expenditures in excess of $20,000;

(iv) is a mortgage, indenture, guarantee, loan or credit agreement, security agreement or other Contract relating to Indebtedness, other than accounts receivables and payables in the ordinary course of business;

(v) is a lease or sublease of any real or personal property, or that otherwise affects the ownership of, leasing of, title to, or use of, any real or personal property (other than personal property leases and conditional sales agreements having a value per item or aggregate payments of less than $20,000 and a term of less than one year);

(vi) is a license or other Contract under which (A) the Seller has licensed or otherwise granted rights in any Purchased Intellectual Property to any Person or (B) any Person has licensed or sublicensed to the Seller, or otherwise authorized the Seller to use, any Third Party Intellectual Property (other than licenses of Internally Used Shrinkwrap Software);

(vii) is for the employment of, or receipt of any services from, any Person on a full-time, part-time, consulting or other basis;

(viii) provides for severance, termination or similar pay to any of the Seller's current or former employees or consultants or other independent contractors;

(ix) provides for a loan or advance of any amount to any employees or consultants or other independent contractors of the Seller, other than advances for travel and other appropriate business expenses in the ordinary course of business;

(x) licenses any Person to manufacture or reproduce any of the Seller's products, services or technology or any Contract to sell or distribute any of the Seller's products, services or technology;

(xi) is a joint venture, partnership or other Contract involving any joint conduct or sharing of any business, venture or enterprise, or a sharing of profits or losses or pursuant to which the Seller has any ownership interest in any other Person or business enterprise, including any Participation;

(xii) contains any covenant limiting the right of the Seller to engage in any line of business or to compete (geographically or otherwise) with any Person, granting any exclusive rights to make, sell or distribute the Seller's products, granting any "most favored nations" or similar rights or otherwise prohibiting or limiting the right of the Seller to conduct the Business in any respect;

(xiii) involves payments based, in whole or in part, on profits, revenues, fee income or other financial performance measures of the Seller;

(xiv) is a power of attorney granted by or on behalf of the Seller (other than ordinary course powers of attorney executed in favor of Seller's accountants);

(xv) is a written warranty, guaranty or other similar undertaking with respect to contractual performance extended by the Seller other than in the ordinary course of business;

(xvi) is a settlement agreement with respect to any pending or threatened Proceeding entered into since Seller's inception;

(xvii) was entered into other than in the ordinary course of business and that involves an amount or value in excess of $20,000 or contains or provides for an express undertaking by the Seller to be responsible for consequential damages; or

(xviii) is otherwise material to the business, properties, assets or Liabilities of the Seller or under which the consequences of a default or termination could have a Material Adverse Effect.

(b) The Seller has made available to the Purchaser an accurate and complete copy (in the case of each written Contract) or an accurate and complete written summary (in the case of each oral Contract) of each Contract required to be listed in **Section 3.14(a)** of the Seller Disclosure Schedule. With respect to each such Contract required to be listed:

(i) the Contract is legal, valid, binding, enforceable and in full force and effect except to the extent it has previously expired in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity;

(ii) the Seller and, to the Seller's Knowledge, the other parties to the Contract have performed all of their respective obligations required to be performed under the Contract;

(iii) except as set forth in **Section 3.14(b)** of the Seller Disclosure Schedule, the Contract is freely assignable by the Seller to the Purchaser without the consent or approval of the other party thereto and without any changes to the terms thereof; and

(iv) neither the Seller nor, to the Seller's Knowledge, any other party to the Contract is in breach or default under the Contract and no event has occurred or circumstance exists that (with or without notice, lapse of time or both) would constitute a breach or default by the Seller or, to the Seller's Knowledge, by any such other party, or give rise to any right of revocation, withdrawal, suspension, acceleration, cancellation, termination, modification, imposition of additional obligations or loss of rights under, result in any payment becoming due under, result in the imposition of any Encumbrances (other than Permitted Encumbrances) on any of the Purchased Assets under, or otherwise give rise to any right on the part of any Person to exercise any remedy or obtain any relief under, the Contract, nor has the Seller given or received notice or other communication alleging the same

(c) To the Seller's Knowledge manager, agent, employee or consultant or other independent contractor of the Seller is a party to, or is otherwise bound by, any Contract, including any confidentiality, noncompetition or proprietary rights agreement, with any other

Person that in any way adversely affects or will affect (i) the performance of his or her duties for the Seller, (ii) his or her ability to assign to the Seller rights to any invention, improvement, discovery or information relating to the Seller's business or (iii) the ability of the Seller to conduct its business as currently conducted or as currently proposed to be conducted.

(d) Seller has in its possession, and shall deliver or make available to Purchaser at Closing (if requested), an executed original or a true and complete copy of each Vendor Agreement referenced in the list of Vendor Agreements attached hereto as part of **Schedule 3.14(a)**. All such Vendor Agreements are in the form attached hereto as **Schedule 3.14(d)** and are freely assignable by Seller to Purchaser (without any modification of the terms thereof) without the consent of the other party.

Section 3.15 Tax Matters.

(a) The Seller has timely filed all Tax Returns that it was required to file in accordance with applicable Laws, and each such Tax Return is accurate and complete in all material respects. The Seller has timely paid all Taxes due with respect to the taxable periods covered by such Tax Returns and all other Taxes (whether or not shown on any Tax Return). No claim has ever been made by a Governmental Authority in a jurisdiction where the Seller does not file a Tax Return that it is or may be subject to taxation by that jurisdiction. The Seller has not requested an extension of time within which to file any Tax Return which has not since been filed. The Seller has delivered to the Purchaser accurate and complete copies of all Tax Returns of the Seller (and its predecessors) for the year ended December 31, 2013. The unpaid Taxes of Seller (A) do not, as of the close of business on the Closing Date, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes to reflect timing differences between book and Tax income) set forth on the Estimated Closing Balance Sheet (rather than in any notes thereto)); and (B) will not exceed that reserve as adjusted on the Closing Balance Sheet. There are no liens (other than Permitted Encumbrances) on any of the assets of Seller that arose in connection with any failure (or alleged failure) to pay Taxes.

(b) All Taxes that the Seller is required by Law to withhold or collect, including sales and use Taxes and amounts required to be withheld or collected in connection with any amount paid or owing to any employee, creditor, shareholder, or other Person, have been duly withheld or collected. To the extent required by applicable Law, all such amounts have been paid over to the proper Governmental Authority or, to the extent not yet due and payable, are held in separate bank accounts for such purpose.

(c) No federal, state, local or foreign audits or other Proceedings are pending or being conducted, nor has the Seller received any (i) notice from any Governmental Authority that any such audit or other Proceeding is pending, threatened or contemplated, (ii) request for information related to Tax matters or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted or assessed by any Governmental Authority against the Seller, with respect to any Taxes due from or with respect to the Seller or any Tax Return filed by or with respect to the Seller. The Seller has not granted or been requested to grant any waiver of any statutes of limitations applicable to any claim for Taxes or with respect to any Tax assessment or deficiency.

(d) All Tax deficiencies that have been claimed, proposed or asserted in writing against the Seller have been fully paid or finally settled, and no issue has been raised in writing in any examination which, by application of similar principles, could be expected to result in the proposal or assertion of a Tax deficiency for any other year not so examined.

(e) No position has been taken on any Tax Return with respect to the business or operations of the Seller for a taxable period for which the statute of limitations for the assessment of any Taxes with respect thereto has not expired that is contrary to any publicly announced position of a taxing authority or that is substantially similar to any position which a taxing authority has successfully challenged in the course of an examination of a Tax Return of the Seller. The Seller has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of income Tax under Section 6662 of the Code.

(f) The Seller is not a party to or bound by any Tax sharing agreement, Tax indemnity obligation or similar Contract or practice with respect to Taxes (including any advance pricing agreement, closing agreement or other Contract relating to Taxes with any Governmental Authority).

(g) The Seller is not and has not been a member of an affiliated group within the meaning of Section 1504(a) of the Code (or any similar group defined under a similar provision of foreign, state or local Law) and the Seller has no Liability for Taxes of any other Person under Section 1.1502-6 of the Treasury Regulations (or any similar provision of foreign, state or local Law), as a transferee or successor, by Contract or otherwise.

(h) The Seller has not entered into any transactions with respect to the Purchased Assets that require disclosure under Section 6011 of the Code.

(i) The Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Code.

Section 3.16 Employee Benefit Matters.

(a) **Section 3.16(a)** of the Seller Disclosure Schedule sets forth an accurate and complete list of all Seller Plans. By way of example only, Seller has never had a 401(k) Plan.

(b) The Seller has delivered to the Purchaser an accurate and complete copy of (i) each writing that sets forth the terms of each Seller Plan, including plan documents, plan amendments, any related trusts, all summary plan descriptions and other summaries and descriptions furnished to participants and beneficiaries, (ii) all personnel, payroll and employment manuals and policies of the Seller, (iii) a written description of any Seller Plan that is not otherwise in writing, (iv) the Form 5500 filed in each of the most recent three plan years with respect to each Seller Plan, including all schedules thereto, financial statements and the opinions of independent accountants.

(c) Neither the Seller nor any ERISA Affiliate has ever established, maintained or contributed to, or had an obligation to maintain or contribute to, any (i) multiemployer plan as

defined in Section 3(37)(A) of ERISA, (ii) plan subject to Title IV of ERISA, (iii) voluntary employees' beneficiary association under Section 501(c)(9) of the Code, (iv) organization or trust described in Section 501(c)(17) or 501(c)(20) of the Code, (v) welfare benefit fund as defined in Section 419(e) of the Code, or (vi) a Seller Plan that is an employee welfare plan described in Section 3(1) of ERISA that has two or more contributing sponsors at least two of which are not under common control within the meaning of Section 3(40) of ERISA.

(d) Each Seller Plan is and at all times has been maintained, funded, operated and administered, and the Seller has performed all of its obligations under each Seller Plan, in each case in all material respects in accordance with the terms of such Seller Plan and in material compliance with all applicable Laws, including ERISA and the Code. All contributions required to be made to any Seller Plan by applicable Law and the terms of such Seller Plan, and all premiums due or payable with respect to insurance policies funding any Seller Plan, for any period through the Closing Date, have been timely made or paid in full or, to the extent not required to be made or paid on or before the Closing Date, have been fully reflected in line items on the Interim Balance Sheet.

(e) Each Seller Plan that is a pension plan that meets or purports to meet the requirements of Section 401(a) of the Code (a "Qualified Plan") has received a favorable determination or opinion letter from the IRS that it is qualified under Section 401(a) of the Code and that its related trust is exempt from federal income Tax under Section 501(a) of the Code, and each such Qualified Plan complies in form and in operation in all material respects with the requirements of the Code and meets the requirements of a "qualified plan" under Section 401(a) of the Code. No event has occurred or circumstance exists that could reasonably be expected to give rise to disqualification or loss of Tax-exempt status of any such Qualified Plan or trust.

Section 3.17 Employment and Labor Matters.

(a) **Section 3.17(a)** of the Seller Disclosure Schedule sets forth an accurate and complete list of all employees and independent contractors currently performing services for the Seller, including each employee on leave of absence or layoff status, along with the position, date of hire, engagement or seniority, compensation and benefits, scheduled or contemplated increases in compensation and benefits, scheduled or contemplated promotions, accrued but unused sick and vacation leave or paid time off and service credited for purposes of vesting and eligibility to participate under any Seller Plan with respect to such Persons. To the Seller's Knowledge, no employee of the Seller intends to terminate his or her employment with the Seller.

(b) Except as set forth on **Section 3.17(b)** of the Seller Disclosure Schedule: (i) the Seller is not, and has not been, a party to or bound by any collective bargaining, works council, employee representative or other Contract with any labor union, works council or representative of any employee group, nor is any such Contract being negotiated by the Seller; (ii) the Seller has no Knowledge of any union organizing, election or other activities made or threatened at any time within the past three years by or on behalf of any union, works council, employee representative or other labor organization or group of employees with respect to any employees of the Seller; and (iii) there is no union, works council, employee representative or other labor

organization, which, pursuant to applicable Law, must be notified, consulted or with which negotiations need to be conducted in connection with the transactions contemplated by this Agreement.

(c) Seller has not experienced any labor strike, picketing, slowdown, lockout, employee grievance process or other work stoppage or labor dispute, nor to the Seller's Knowledge is any such action threatened.

(d) The Seller has complied in all respects with all applicable Laws and its own policies relating to labor and employment matters, including fair employment practices, terms and conditions of employment, contractual obligations, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, workers' compensation, the payment of social security and similar Taxes, occupational safety and plant closing.

<u>Section 3.18</u> <u>Environmental, Health and Safety Matters</u>.

(a) The Seller is, and has since January 1, 2013 been, in compliance with all, and not subject to any Liability under any, Environmental Laws and Occupational Safety and Health Laws. Without limiting the generality of the foregoing, the Seller has obtained and complied in all respects with all Governmental Authorizations that are required pursuant to Environmental Laws and Occupational Safety and Health Laws for the occupation of its facilities and the operation of its businesses. An accurate and complete list of all such Governmental Authorizations is set forth in **<u>Section 3.19(b)</u>** of the Seller Disclosure Schedule.

(b) The Seller has not received any notice, report or other written communication or information regarding (i) any actual, alleged or potential violation of, or failure to comply with, any Environmental Law or Occupational Safety and Health Law or (ii) any Liability or potential Liability, including any investigatory, remedial or corrective obligation, relating to the Seller or any Leased Real Property or other property or facility currently or previously owned, leased, operated or controlled by the Seller arising under any Environmental Law or Occupational Safety and Health Law.

(c) The Seller has not treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, generated, manufactured, distributed, exposed any Person to or released any substance, including any Hazardous Material, or owned or operated any property or facility, in a manner that has given rise to, or could reasonably be expected to give rise to, any Liability, including any Liability for fines, penalties, response costs, corrective costs, personal injury, property damage, natural resources damage or attorneys' fees, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Solid Waste Disposal Act, or any other Environmental Law or Occupational Safety and Health Law.

<u>Section 3.19</u> <u>Compliance with Laws, Judgments and Governmental Authorizations</u>.

(a) Without limiting the scope of any other representation in this Agreement, except as set forth on **<u>Section 3.19(a)</u>** of the Seller Disclosure Schedule, since January 1, 2011 the Seller is in compliance and has complied in all material respects with all, and has not violated any,

Laws, Judgments or Governmental Authorizations applicable to it or to the conduct of its business or the ownership or use of any of its properties or assets. The Seller has not received any notice or other communication from any Governmental Authority or any other Person regarding any actual, alleged or potential violation of, or failure to comply with, any applicable Law, Judgment or Governmental Authorization, any actual or threatened revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization, or any actual, alleged or potential obligation on the part of the Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) **Section 3.19(b)** of the Seller Disclosure Schedule sets forth an accurate and complete list of all Governmental Authorizations held by the Seller or that otherwise relates to the conduct of its business or the ownership or use of any of the Purchased Assets, all of which are valid and in full force and effect. The Governmental Authorizations listed in **Section 3.19(b)** of the Seller Disclosure Schedule collectively constitute all of the Governmental Authorizations necessary to conduct the Seller's business lawfully in the manner in which the Seller currently conducts its business and to permit the Seller to own and use the Purchased Assets in the manner in which it currently owns and uses such assets.

Section 3.20 Legal Proceedings. **Section 3.20** of the Seller Disclosure Schedule sets forth an accurate and complete list of all pending Proceedings (a) by or against the Seller or that otherwise relate to or could reasonably be expected to affect the Seller's business, properties or assets, (b) to the Seller's Knowledge, by or against any of the members, managers or officers of the Seller in their capacities as such or (c) that challenge, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement. To the Seller's Knowledge, no other such Proceeding has been threatened, and no event has occurred or circumstance exists that could reasonably be expected to give rise to or serve as a basis for the commencement of any such Proceeding. The Seller has delivered to the Purchaser accurate and complete copies of all pleadings, correspondence, audit response letters and other documents relating to such Proceedings.

Section 3.21 Merchants.

(a) **Schedule 3.21(a)** attached sets forth an accurate and complete list of all Merchants (i) to which the Seller has, on behalf of itself or any other Person, made any Advances since January 1, 2013, which list sets forth the original amounts of all such Advances, the sums that were received on account of such Advances and any sums remaining payable to the Seller on account of such Advances, (ii) with respect to which the Seller is a party to a Merchant Agreement, or (iii) with respect to which the Seller receives any fees, residuals or compensation of any kind. Except as set forth in **Section 3.21(a)** of the Seller Disclosure Schedule, Seller has not, at any time, assigned or encumbered any of Seller's rights under any Merchant Agreement and/or otherwise to receive any payments with respect to the Merchants. Except as set forth in **Section 3.21(a)** of the Seller Disclosure Schedule, there are no commissions, fees or other sums of any kind owing by Seller to any Sales Representative, employee, contractor, representative or agent of Seller (or any other Person) in connection with the Purchased Assets.

(b) Except as set forth in **Section 3.21(b)** of the Seller Disclosure Schedule: (i) to the Knowledge of the Seller, no Merchant is in default (and would not be in default upon notice, lapse of time or both) under any provision of its Merchant Agreement; (ii) the Seller (A) has no reason to suspect, (B) has not received any notice of, fraud by, or bankruptcy or contemplated bankruptcy of, any party or guarantor to any of the Merchant Agreements, and (C) has not received any notice of default or adverse comment from any Vendor or Association in respect of any of the Merchant Agreements.

(c) Seller has in its possession, and shall deliver (if requested) to Purchaser in accordance with the Section 5.11(a) hereof, a fully executed original of each Merchant Agreement. All Merchant Agreements are in substantially the form of the merchant agreements attached hereto as **Schedule 3.21(c)** (the "Standard Merchant Agreement") and are freely assignable by Seller without the consent of the applicable Merchant. Seller has in its possession, and shall deliver (if requested) to Purchaser in accordance with Section 5.11(a) hereof, files respecting all Merchants, which files are true, complete and correct in all material respects.

(d) Except for disputes that are not material in either nature or amount, Seller is not engaged in any dispute with any Merchant. Seller does not have any reason to believe, and has not received any notice, written or oral, that the consummation of the transactions contemplated hereunder will have any adverse effect on the activities of any Merchant.

Section 3.22 Participations.

(a) **Schedule 3.22(a)** attached sets forth an accurate and complete list of all Participations to which the Seller is a party as of December 18, 2014, which list sets forth the date of the applicable Participation Agreement, the names of all Participants, the respective interests of said Participants, whether title to the Merchant Agreement covered by such Participation is in the name of the Seller or owned jointly with any of the Participants, the original amounts of all such Advances covered by such Participation, the sums that were received from the applicable Merchants on account of such Participations, the aggregate amounts paid to each of the Participants, and any sums remaining payable by the applicable Merchants on account of such Participations and how such sums are to be allocated amongst the Participants.

(b) Except as set forth in **Section 3.22(b)** of the Seller Disclosure Schedule, Seller has not, at any time, assigned or encumbered any of Seller's rights in connection with any Participation. Seller is not in default (and would not be in default upon notice, lapse of time or both) under any provision of any Participation Agreement.

(c) Seller has in its possession, and shall deliver (if requested) to Purchaser in accordance with the Section 5.11(a) hereof, a fully executed original of each Participation Agreement. All Participation Agreements are in substantially the form of the participation agreements attached hereto as **Schedule 3.22(c)** (the "Standard Participation Agreement") and are freely assignable by Seller without the consent of any of the other Participants. Seller has in its possession, and shall deliver (if requested) to Purchaser in accordance with Section 5.11(a) hereof, files respecting each Participation, which files are true, complete and correct in all material respects.

Section 3.23 Sales Representatives; Vendors.

(a) **Schedule 3.23(a)** attached lists all of the Sales Representatives and identifies the applicable Merchant(s) with respect to which each such Sales Representative is entitled to be paid a commission. All Sales Representatives are independent contractors and not employees or agents of Seller.

(b) Seller is not in default (and would not be in default upon notice, lapse of time or both) under any provision of the Sales Representation Agreements, a complete list of which is set forth on **Schedule 3.23(a)**. Except as set forth on **Schedule 3.23(a)**, neither Seller nor any of the Sales Representatives has given any notice of its election to terminate any of the Sales Representation Agreements.

(c) Seller has in its possession a fully executed original of each Sales Representation Agreement. All agreements with Sales Representatives are in the form attached hereto as **Schedule 3.23(c)** (the "**Standard Sales Representation Agreements**"), and are freely assignable by Seller without the consent of the applicable Sales Representative. With respect to each Sales Representative, Seller has in its possession files respecting all Sales Representatives, which files are true, complete and correct in all material respects.

(d) Except for disputes that are not material in either nature or amount, Seller is not engaged in any dispute with any Sales Representative. The Seller does not have any reason to believe, and has not received any notice, written or oral, that the consummation of the transactions contemplated hereunder will have any adverse effect on the business relationship of the Seller with any Sales Representative.

(e) The Seller has no knowledge that any Sales Representative (or any officer, director, shareholder, partner or principal of any Sales Representative) (i) has been convicted of a felony, (ii) has been subject to a fine or penalty of any Association (including with respect to the Rules), or (iii) has been deregistered or "blacklisted," so-called, by any Association.

(f) Seller does not maintain or provide any bonus plans or programs or other benefits of any kind for any Sales Representative which are not disclosed in the Standard Sales Representation Agreement.

(g) **Schedule 3.23(g)** attached sets forth an accurate and complete list of all Vendor Agreements to which the Seller has been, or currently is, a party since January 1, 2013. Except as set forth in **Section 3.23(g)** of the Seller Disclosure Schedule, Seller has not, at any time, assigned or encumbered any of Seller's rights in connection with any Vendor Agreement. Seller is not in default (and would not be in default upon notice, lapse of time or both) under any provision of any Vendor Agreement. Seller has in its possession, and shall deliver (if requested) to Purchaser in accordance with the Section 5.11(a) hereof, a fully executed original of each Vendor Agreement. Seller has in its possession, and shall deliver (if requested) to Purchaser in accordance with Section 5.11(a) hereof, files respecting each Vendor Agreement, which files are true, complete and correct in all material respects.

Section 3.24 Insurance. **Section 3.24** of the Seller Disclosure Schedule sets forth an accurate and complete list of (a) all certificates of insurance, binders for insurance policies and insurance maintained by the Seller, or under which the Seller has been the beneficiary of coverage at any time within the past two years, and (b) all performance bonds and letters of credit securing contractual performance by the Seller. All premiums and/or fees due and payable under such certificates of insurance, binders, policies, bonds and letters of credit maintained by Seller have been paid and the Seller is otherwise in compliance with the terms thereof. The Seller has not failed to give in a timely manner any notice of any claim that may be insured under any certificate of insurance, binder or policy required to be listed in **Section 3.24** of the Seller Disclosure Schedule and there are no outstanding claims which have been denied or disputed by the insurer. The Seller maintains, and at all times during the past two years has maintained, in full force and effect, certificates of insurance, binders and policies of such types and in such amounts and for such risks, casualties and contingencies as is reasonably adequate to fully insure the Seller against insurable losses, damages, claims and risks to or in connection with its business, properties, assets and operations. The Seller has never maintained, established, sponsored, participated in or contributed to any self-insurance program, retrospective premium program or captive insurance program.

Section 3.25 Foreign Corrupt Political Practices Act; Export Control.

(a) Neither the Seller nor its Affiliates have, to obtain or retain business for the Seller, directly or indirectly offered, paid or promised to pay, or authorized the payment of, any money or other thing of value (including any fee, gift, sample, travel expense or entertainment with a value in excess of $100 in the aggregate to any one individual in any year), to: (i) any person who is an official, officer, agent, employee or representative of any Governmental Authority; (ii) any political party or official thereof; (iii) any candidate for political or political party office; or (iv) any other individual or entity; while knowing or having reason to believe that all or any portion of such money or thing of value would be offered, given, or promised, directly or indirectly, to any such official, officer, agent, employee, representative, political party, political party official, candidate, individual, or any entity affiliated with such political party or official or political office.

(b) Each transaction is properly and accurately recorded on the books and records of the Seller, and each document upon which entries in the Seller's books and records are based is complete and accurate in all respects. The Seller maintains a system of internal accounting controls adequate to insure that the Seller maintains no off-the-books accounts.

Section 3.26 Related Party Transactions. Except as set forth in **Section 3.26** of the Seller Disclosure Schedule, no member, manager, officer or employee of the Seller, or Affiliate of any such member, manager, director, officer or employee (each, an "Associate"), or Affiliate of the Seller, (i) owns, directly or indirectly, and whether on an individual, joint or other basis, any interest in (A) any property or asset, real, personal or mixed, tangible or intangible, used in or pertaining to the Seller's business, (B) any Person that has had business dealings or a financial interest in any transaction with the Seller, other than business dealings conducted in the ordinary course of business on terms and conditions as favorable to the Seller as would have been

obtained by it at the time in a comparable arm's-length transaction with a Person other than an Associate or an Affiliate of the Seller or (C) any Person that is a supplier, customer or competitor of the Seller, (ii) has had since January 1, 2013 business dealings or a financial interest in any transaction with the Seller, other than, in the case of the Seller's employees, salaries and employee benefits and other transactions pursuant to any Seller Plans in the ordinary course of the Business or (iii) serves as an officer, director or employee of any Person that is a supplier, customer or competitor of the Seller.

Section 3.27 No Guarantees. None of the Liabilities of the Seller is guaranteed by or subject to a similar contingent obligation of any other Person. The Seller has not guaranteed or become subject to a similar contingent obligation in respect of the Liabilities of any other Person. There are no outstanding letters of credit, surety bonds or similar instruments of the Seller or any of its Affiliates in connection with the Seller's business or the Purchased Assets.

Section 3.28 Brokers or Finders. Neither the Seller, nor Hecker nor any Person acting on behalf of the Seller or Hecker has incurred any Liability to pay any fees or commissions to any broker, finder or agent or any other similar payment in connection with any of the transactions contemplated by this Agreement.

Section 3.29 Solvency. The Seller is not insolvent and will not be rendered insolvent by any of the transactions contemplated by this Agreement. As used in this Section, "insolvent" means that the sum of the debts and other probable Liabilities of the Seller exceeds the present fair saleable value of the Seller's assets.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Seller that as of the Closing Date the statements set forth in this Article 4 are true and correct:

Section 4.1 Organization and Good Standing. The Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of its formation and has all requisite limited liability company power and authority to own, lease and operate its properties and assets and to conduct its business as presently conducted. The Purchaser is duly qualified or licensed to do business and, where applicable as a legal concept, is in good standing as a foreign limited liability company in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification or licensure necessary.

Section 4.2 Authority and Enforceability. The Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement to which it is a party and to perform its obligations under this Agreement and each such Ancillary Agreement. The execution, delivery and performance of this Agreement and each Ancillary Agreement to which the Purchaser is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Purchaser. The Purchaser has duly and validly executed and delivered this Agreement

and, on or prior to the Closing, the Purchaser will have duly and validly executed and delivered each Ancillary Agreement to which it is a party. This Agreement constitutes, and upon execution and delivery each Ancillary Agreement to which the Purchaser is a party will constitute, the valid and binding obligation of the Purchaser, as applicable, enforceable against the Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.3 No Conflict. Neither the execution, delivery and performance by the Purchaser of this Agreement and each Ancillary Agreement to which the Purchaser is a party, nor the consummation by the Purchaser of the transactions contemplated hereby or thereby, will: (a) directly or indirectly (with or without notice, lapse of time or both), conflict with, result in a breach or violation of, constitute a default under, give rise to any right of revocation, withdrawal, suspension, acceleration, cancellation, termination, modification, imposition of additional obligations or loss of rights under, result in any payment becoming due under, or result in the imposition of any Encumbrance on any of the properties or assets of the Purchaser under (i) the articles of organization of the Purchaser or any resolution adopted by members or managers of the Purchaser, (ii) any Contract to which the Purchaser is a party or by which the Purchaser is bound or to which any of its properties or assets is subject or (iii) any Law, Judgment or Governmental Authorization applicable to the Purchaser or any of its properties or assets; or (b) require the Purchaser to obtain any Consent or Governmental Authorization of, give any notice to, or make any filing or registration with, any Governmental Authority or other Person, except with respect to clauses (a) and (b) in any case that would not reasonably be expected to have, either individually or in the aggregate, a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement or on the ability of the Purchaser to consummate the transactions contemplated by this Agreement.

Section 4.4 Legal Proceedings. There is no Proceeding pending or, to the Purchaser's knowledge, threatened, against the Purchaser that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement.

Section 4.5 Brokers or Finders. Neither the Purchaser nor any Person acting on its behalf has incurred any Liability to pay any fees or commissions to any broker, finder or agent or any other similar payment in connection with any of the transactions contemplated by this Agreement.

ARTICLE 5
ADDITIONAL COVENANTS

Section 5.1 Tax Matters.

(a) The Seller will pay in a timely manner all applicable sales (including bulk transfer), use, transfer, conveyance, documentary, recording, notarial, value added, excise, registration, stamp, gross receipts and similar Taxes and fees ("Transfer Taxes"), arising out of

or in connection with or attributable to the transactions effected pursuant to this Agreement and the Ancillary Agreements.

(b) If, prior to the Closing, there have been any Taxes based on the value of property assessed against any of the Purchased Assets, the Seller will pay those Taxes attributable to periods or partial periods ending on or prior to the Closing Date, and the Purchaser will pay those Taxes attributable to periods or partial periods beginning after the Closing Date, with a daily allocation for any period that begins before the Closing Date and ends after the Closing Date. Each party agrees to cooperate with the other party in paying or reimbursing Tax obligations in accordance with this Section 5.1(b). Nothing in this Agreement makes a party liable for the income or franchise Taxes of the other party. This Section 5.1(b) does not apply to Transfer Taxes, which are the sole obligation of the Seller under the provisions of Section 5.1(a).

(c) Purchaser (and any other Person required to withhold with respect to any payment made under this Agreement) shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement such amounts as may be required to be deducted or withheld therefrom under any provision of U.S. federal, local or foreign tax Law. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

Section 5.2 Excluded Liabilities. In addition to the Seller's obligation to pay Taxes pursuant to Section 5.1, the Seller agrees to pay and perform when due all Excluded Liabilities.

Section 5.3 Restrictions on Dissolution. The Seller will not dissolve until the later of (a) five (5) years from the date hereof, and (b) the first anniversary of the Earn-out Payment.

Section 5.4 Confidentiality.

(a) From and after the Closing, the Seller and Hecker will, and will cause each of its respective Affiliates and its and their members, managers, directors, officers, shareholders, employees, agents, consultants and other advisors and representatives (its "Restricted Persons") to, maintain the confidentiality of, and not use for their own benefit or the benefit of any Person other than the Purchaser, the Confidential Information. The foregoing shall not apply to any employee who is a party to an existing confidentiality agreement in favor of the Seller, which agreement is being assigned to Purchaser as part of the Purchased Assets.

(b) Except as contemplated by Section 5.5, the Seller and Hecker will not, and the Seller and Hecker will cause each of their respective Restricted Persons not to, disclose to any Person any information with respect to the legal, financial or other terms or conditions of this Agreement, any of the Ancillary Agreements or any of the transactions contemplated hereby or thereby. The foregoing does not restrict the right of any party to disclose such information (i) to its respective Restricted Persons to the extent reasonably required to facilitate the negotiation, execution, delivery or performance of this Agreement and the Ancillary Agreements, (ii) to any Governmental Authority or arbitrator to the extent reasonably required in connection with any Proceeding relating to the enforcement of this Agreement or any Ancillary Agreement and (iii)

as permitted in accordance with Section 5.4(d). The Seller and Hecker will advise their respective Restricted Persons with respect to the confidentiality obligations under this Section 5.4 and will be responsible for any breach or violation of such obligations by its Restricted Persons.

(c) If a party or any of its respective Restricted Persons become legally compelled to make any disclosure that is prohibited or otherwise restricted by this Agreement, then such party will (i) give the other party immediate written notice of such requirement, (ii) consult with and assist the other party in obtaining an injunction or other appropriate remedy to prevent such disclosure (at the cost of the requesting party) and (iii) use its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any information so disclosed. Subject to the previous sentence, the disclosing party or such Restricted Persons may make only such disclosure that, in the written opinion of its counsel, in form and substance reasonably acceptable to the other party, it is legally compelled or otherwise required to make to avoid standing liable for contempt or suffering other material penalty.

Section 5.5 Public Announcements. Any public announcement or similar publicity with respect to this Agreement or the transactions contemplated by this Agreement will be issued at such time and in such manner as the Purchaser and Hecker shall mutually determine. The Purchaser and the Seller will consult with each other concerning the means by which the employees, customers, suppliers and others having dealings with the Seller will be informed of the transactions contemplated by this Agreement, and the Purchaser has the right to have a representative present for any such communication.

Section 5.6 Assistance in Proceedings. From and after the Closing, at the reasonable request of the Purchaser and subject to customary confidentiality restrictions, the Seller will and will cause its Affiliates to cooperate with the Purchaser and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and records in connection with, any Proceeding involving or relating to (i) any of the transactions contemplated by this Agreement or (ii) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving the Seller or its business. The Purchaser shall reimburse the Seller for all out-of-pocket expenses incurred in providing such cooperation.

Section 5.7 Privileges. The Seller acknowledges that the Purchased Assets include all attorney work-product protections, attorney-client privileges and other legal protections and privileges to which the Seller may be entitled in connection with any of the Purchased Assets or Assumed Liabilities. The Seller is not waiving, and will not be deemed to have waived or diminished, any of its attorney work-product protections, attorney-client privileges or similar protections or privileges as a result of the disclosure of information to the Purchaser and its representatives in connection with this Agreement and the transactions contemplated by this Agreement. The Seller and the Purchaser (a) share a common commercial interest in all of the information and communications that may subject to such protections and privileges, (b) are or may become joint defendants in Proceedings to which such protections and privileges may relate and (c) intend that such protections and privileges remain intact should either party become subject to any actual or threatened Proceeding to which such information or communications

relate. The Seller agrees that it and its Affiliates will have no right or power after the Closing Date to assert or waive any such protection or privilege included in the Purchased Assets. The Seller will take any actions reasonably requested by the Purchaser, at the sole cost and expense of the Purchaser unless the Purchaser is entitled to indemnification therefor under the provisions of Article 6, in order to permit the Purchaser to preserve and assert any such protection or privilege included in the Purchased Assets.

Section 5.8 Confidential Information, Non-competition and Non-solicitation.

(a) Hecker acknowledges that it has occupied a position of trust and confidence with the Seller prior to the date hereof and has had access to and has become familiar with the Confidential Information.

(b) The Seller and Hecker acknowledge that (i) the business of the Seller relating to the use and operation of the Purchased Assets prior to Closing is national in scope; (ii) the Seller's business prior to Closing competes with other businesses that are or could be located in any part of North America; (iii) the Purchaser has required that the Seller and Hecker make the covenants set forth in Sections 5.8(c) and 5.8(d) of this Agreement as a condition to the Purchaser's purchase of the Purchased Assets; (iv) the provisions of Sections 5.8(c) and 5.8(d) of this Agreement are reasonable and necessary to protect and preserve the Purchaser's interests in and right to the use and operation of the Purchased Assets from and after Closing; and (v) the Purchaser would be irreparably damaged if the Seller or Hecker were to breach the covenants set forth in Sections 5.8(c) or 5.8(d) of this Agreement and, therefore, the Seller and Hecker hereby irrevocably and unconditionally agree that, in addition to any other remedies which the Purchaser may have under this Agreement or otherwise at law or in equity, all of which remedies shall be cumulative, the Purchaser shall be entitled to apply to any court of competent jurisdiction for preliminary and permanent injunctive relief and other equitable relief, without the posting of any bond or other security.

(c) The Seller and Hecker acknowledge and agree that the protection of the Confidential Information is necessary to protect and preserve the value of the Purchased Assets. Therefore, the Seller and Hecker hereby agree not to disclose to any unauthorized Persons or use for its own account or for the benefit of any third party any Confidential Information, whether or not such information is embodied in writing or other physical form or is retained in the memory of any Person, without the Purchaser's written consent, unless and to the extent that the Confidential Information is or becomes generally known to and available for use by the public other than as a result of the Seller's or Hecker's fault or the fault of any other Person bound by a duty of confidentiality to the Purchaser or the Seller. The Seller and Hecker agrees to deliver to the Purchaser at the time of execution of this Agreement, and at any other time the Purchaser may request, all documents, memoranda, notes, plans, records, reports and other documentation, models, components, devices or computer software, whether embodied in a disk or in other form (and all copies of all of the foregoing), that contain Confidential Information and any other Confidential Information that such Person may then possess or have under its control; provided, however, the Seller may retain a copy of any such documentation if necessary for the continued operation of the Seller moving forward.

(d) As an inducement for the Purchaser to enter into this Agreement, the Seller and Hecker (the "Covenantors"), jointly and severally, on behalf of themselves and their Affiliates, hereby covenant and agree as follows:

(i) During the Non-Competition Period, none of the Covenantors shall, directly or indirectly through another Person, engage in any capacity in the Business, including, without limitation, render services or advice in any capacity for any Person engaged in the Business, or have any ownership in, raise any capital for or make any loans to any Person engaged in the Business; provided, however, the foregoing shall not restrict any Covenantor from purchasing or holding not more than five percent (5%) of the outstanding securities of any class of the outstanding voting securities of any other Person engaged in the Business whose securities are listed on a national securities exchange or restrict Hecker from participating in advances made by Purchaser as permitted by the Employment Agreement;

(ii) During the Non-Solicitation Period, none of the Covenantors shall, directly or indirectly through another Person, (i) solicit, encourage or induce any Merchant to obtain Advances from or otherwise do business with any competitor of the Purchaser or any of its Affiliates, or to cease obtaining Advances from or doing business with, reduce business with, or divert business from the Purchaser or any of its Affiliates, or (ii) in any way interfere with the relationship between any such Merchant and the Purchaser or any of its Affiliates, or attempt to do any of the foregoing;

(iii) During the Non-Solicitation Period, none of the Covenantors shall, directly or indirectly through another Person, (i) solicit, encourage, induce or attempt to induce any Sales Representative to cease performing services for the Purchaser or any of its Affiliates, or in any way interfere with the relationship between the Purchaser or any of its Affiliates and any Sales Representative, or (ii) recruit, solicit, retain, hire, or attempt to do any of the foregoing with respect to any Sales Representative; and

(iv) During the Non-Solicitation Period, none of the Covenantors shall, directly or indirectly through another Person, (i) solicit, encourage, induce or attempt to induce any employee to leave the employ of the Purchaser or any of its Affiliates, or in any way interfere with the relationship between the Purchaser or any of its Affiliates and any such employee, or (ii) recruit, solicit, retain, hire, or attempt to do any of the foregoing with respect to any employee.

(e) In the event of a breach by the Seller or Hecker of any covenant set forth in this Section 5.8, the term of such covenant will be extended by the period of the duration of such breach by the Seller or Hecker, as the case may be.

(f) Neither the Seller nor Hecker will, directly or indirectly through another Person, during the Non-Solicitation Period after the Closing, disparage the Purchaser or any of its Affiliates, the Purchased Assets, the business formerly conducted by the Seller, the business conducted by the Purchaser using the Purchased Assets or any member, manager, shareholder, director, officer, employee or agent of the Purchaser.

(g) If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 5.8(a) through (f) is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Section 5.8 will be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

Section 5.9 Use of Name. From and after the Closing, the Seller and Hecker will not, and will cause their Affiliates not to, directly or indirectly, use or do business, or assist any third party in using or doing business under the name "Rapid Capital" or by another name similar to such names and marks, except as necessary to effect the change of the Seller's name or to evidence that such change has occurred, or in connection with the filing of Tax Returns or for such other non-commercial uses as may be required by Law. Promptly after the Closing, the Seller will file all documents with the appropriate Governmental Authorities in the state of its incorporation and any other jurisdictions in which it is qualified or licensed to do business, to change the name of the Seller to a name that it not the same or confusingly similar to its name used prior to the Closing.

Section 5.10 Refunds and Remittances. If the Seller (or any of its Affiliates), on the one hand, or the Purchaser, on the other hand, after the Closing Date receives any funds properly belonging to the other party in accordance with the terms of this Agreement, the receiving party will promptly so advise such other party, will segregate and hold such funds in trust for the benefit of such other party and will promptly deliver such funds to an account or accounts designated in writing by such other party.

Section 5.11 Access to Records.

(a) As soon after the Closing as is practicable, Seller shall cause to be delivered to the Purchaser the originals of (or, in the event that the Seller does not have and cannot reasonably obtain possession of originals, then copies of) all books, records and documents of Seller relating to the Purchased Assets (including, without limitation, the original files maintained by Seller with respect to the Merchants, the Participations and the Sales Representatives) and the Assumed Liabilities.

(b) After the Closing, the Purchaser will retain for a period consistent with the Purchaser's record retention policies and practices those records included in the Purchased Assets delivered to the Purchaser. The Purchaser also will provide the Seller and its employees, agents, consultants and other advisors and representatives reasonable access thereto, during normal business hours and on at least three business days' prior written notice, to enable them to prepare financial statements or Tax Returns or deal with Tax audits. After the Closing, the Seller will, and will cause each of its Affiliates and its and its Affiliates' respective employees, agents, consultants and other advisors and representatives to, provide the Purchaser and its employees, agents, consultants and other advisors and representatives reasonable access to records that are or that relate to Excluded Assets, during normal business hours and on at least three business days'

prior written notice, for any reasonable business purpose specified by the Purchaser in such notice.

Section 5.12 Further Assurances. Subject to the other express provisions of this Agreement, the parties will cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and the parties agree (a) to furnish, or cause to be furnished, upon request to each other such further information, (b) to execute and deliver, or cause to be executed and delivered, to each other such other documents and (c) to do, or cause to be done, such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated by this Agreement. Without limitation of the foregoing, in the event that, following the Closing, the Parties discover that any Contract of the Seller was not assumed by the Purchaser under Section 2.1(g) nor included in the Excluded Assets under Section 2.2(c), the Purchaser shall have the option, in its sole discretion, to include such Contract in the Purchased Assets and require the Seller to assign and transfer such Contract to the Purchaser in the manner contemplated by Section 2.12 hereof.

Section 5.13 Employees and Employee Benefits.

(a) The Seller will use all commercially reasonable efforts to cause its employees to make available their employment services to the Purchaser. The Purchaser is not obligated to hire any employee of the Seller but may interview and make offers of employment to any, some, or all of the Seller's employees. Prior to Closing, the Purchaser shall provide the Seller with a list of the Seller's employees to which the Purchaser has made an offer of employment that has been accepted to be effective on the Closing Date (collectively, the "Hired Employees"). At the Closing, the Seller will provide the Purchaser with completed IRS Form W-9s and I-9 forms and attachments with respect to all Hired Employees, except for such employees as the Seller will certify in writing to the Purchaser are exempt from such I-9 requirement. Effective immediately before the Closing, the Seller is terminating the employment of all of the Hired Employees.

(b) The Purchaser will set its own initial terms and conditions of employment for the Hired Employees and others it may hire, including work rules, benefits and salary and wage structure, all as permitted by applicable Law. The Purchaser is not obligated to assume any collective bargaining agreements under this Agreement. The Seller will be solely liable for any severance payment required to be made to its employees as a result of the transactions contemplated by this Agreement.

(c) It is understood and agreed that (i) the Purchaser's extension of offers of employment as set forth in this Section will not constitute a Contract (express or implied) on the part of the Purchaser to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that the Purchaser may establish pursuant to individual offers of employment and (ii) employment offered by the Purchaser is "at will" and may be terminated by the Purchaser or by an employee at any time for any reason (subject to any written commitments to the contrary made by the Purchaser or an employee and applicable Laws governing employment). Nothing in this Agreement will be deemed to prevent or restrict in any way the right of the Purchaser to terminate, reassign, promote or demote any of the Hired

Employees after the Closing, or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(d) From and after the Closing the Seller will remain solely responsible for all Liabilities to or in respect of its employees and former employees, including Hired Employees, and beneficiaries and dependents of any such employee or former employee, relating to or arising in connection with or as a result of (i) the employment of any such employee or former employee or the actual or constructive termination of employment of any such employee or former employee (including in connection with the consummation of the transactions contemplated by this Agreement and including the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the continuation coverage requirements of Sections 601 *et seq.* of ERISA and Section 4980B of the Code ("COBRA")), (ii) the participation in or accrual of benefits or compensation under, or the failure to participate in or to accrue compensation or benefits under, any Seller Plan or other employee or retiree benefit or compensation plan, program, practice, policy or other Contract of the Seller, or (iii) accrued but unpaid salaries, wages, bonuses, incentive compensation, vacation or sick pay or other compensation or payroll items (including deferred compensation). By way of illustration only, the Seller shall be solely responsible for the payment of any bonuses to any of its employees or former employees with respect to calendar year 2014. In addition, from and after the Closing, the Seller will remain solely responsible for all Liabilities to or in respect of the Hired Employees and their beneficiaries or dependents relating to or arising in connection with any claims, whether such claims are asserted before, on or after the Closing Date, for life, disability, accidental death or dismemberment, supplemental unemployment compensation, medical, dental, hospitalization, other health or other welfare or fringe benefits or expense reimbursements which claims relate to or are based upon an occurrence on or before the Closing Date (including claims for continuing treatment in respect of any illness, accident, disability, condition or confinement which occurs or commences on or before the Closing Date).

(e) All Hired Employees who are participants in the Seller Plans that are pension plans as defined in Section 3(2) of ERISA will retain their accrued benefits under such Seller Plans as of the Closing Date. The Seller (or the applicable Seller Plan) will retain sole liability for the payment of such benefits as and when such Hired Employees become eligible for them under such Seller Plans. The Seller will cause the Hired Employees to be fully and immediately vested in their accrued benefits under each such Seller Plan as of the Closing Date.

(f) Seller will caused to be transferred and assigned to Purchaser, as an Assumed Contract, such health insurance and other benefits plans as Purchaser may elect to assume ("Assumed Plans"). Until such transfer of Assumed Plans has been completed, Seller cause all Hired Employees to continue to be covered under the Assumed Plans (and Purchaser shall reimburse Seller for the actual out-of-pocket costs paid by Seller for such continued coverage, upon presentation of supporting documentation).

Section 5.14 Pre-Closing Covenants. The Parties agree as follows with respect to the period commencing on the execution of this Agreement and ending as of the consummation of the Closing:

(a) Seller will give any notices to third parties which are required by agreement, and Seller will use its best efforts to obtain any third party consents that are necessary or that Purchaser may request in connection with the transactions contemplated hereby. Prior to the delivery of such notices, Seller shall give Purchaser a reasonable period of time to review and comment on the form and substance of such notices. Seller shall promptly advise Purchaser of any difficulties experienced in obtaining any of the consents and of any conditions proposed or requested for any of such consents.

(b) The Seller Parties will not engage in any practice, take any action, or enter into any transaction respecting any of the Assets outside the ordinary course of business.

(c) The Seller Parties shall use commercially reasonable efforts to keep their business and properties intact in all material respects, including its present operations, physical facilities, working conditions, and relationships with the Merchants.

(d) Seller will permit representatives and agents of Purchaser to have full access upon reasonable advance notice during normal business hours, and in a manner so as not to unreasonably interfere with the normal business operations of Seller, to all premises, properties, assets, buildings, structures, improvements, in order to inspect its books, records (including financial and Tax records), contracts, and documents of or pertaining to the Merchants and/or the Business.

(e) Seller will give, as soon as possible after discovery thereof, but not later than one (1) business day prior to the Closing Date, written notice to Purchaser of any material change in the information contained in the representations and warranties of any Seller set forth in Article III or of any event or circumstance which, if it had occurred on or prior to the Closing Date, would cause any of such representations or warranties not to be true and correct in any material respect at and as of the Closing Date (the "Disclosure Schedule Updates"). If such Disclosure Schedule Updates reflect an occurrence which is unsatisfactory to Purchaser, in its sole discretion, Purchaser shall have the right to terminate this Agreement pursuant to and in accordance with Section 7.3 of this Agreement.

(f) Unless and until such time as this Agreement shall be terminated pursuant to the terms set forth herein, the Seller Parties will not (a) solicit, initiate, or encourage the submission of any proposal or offer from any Person relating to the acquisition of any of the Assets or any other assets of Seller (including any acquisition structured as a merger, consolidation, or share exchange), or (b) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any Person to do or seek any of the foregoing. The Seller Parties will notify Purchaser immediately if any Person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.

(g) At or prior to the Closing, the Seller Parties shall obtain the release of any Encumbrances on the Purchased Assets (other than any Permitted Encumbrances) and shall provide to Purchaser original releases of all such Encumbrances for filing with each Governmental Authority or office in which any such Encumbrances or evidence thereof shall have been previously filed.

Section 5.15 Company Opportunity. The parties acknowledge that CFM and its Affiliates (the "CFM Group") are engaged in the Business. During the period commencing on the date hereof and ending on the earlier of the occurrence of an Earn-Out Payment Event or the Closing Date of the Conversion, the Purchaser shall cause the CFM Group not to: (i) pursue any merchant funding opportunity developed by or brought to the Purchaser without the consent of Hecker; (ii) use the Purchaser's proprietary information (including but not limited to origination techniques and lead generation campaigns) in any other business without Hecker's consent, unless such information was (A) already known to the CFM Group prior to learning it from the Seller or Hecker, as shown by documentary evidence, or (B) independently developed by the CFM Group, as shown by documentary evidence; (iii) solicit, encourage or induce any Merchant that does business with the Purchaser to cease doing business with, reduce business with, or divert business from the Purchaser, or in any way interfere with the relationship between any such Merchant and the Purchaser; (iv) solicit, encourage, induce or attempt to induce any Sales Representative of the Purchaser to cease performing services for the Purchaser, or in any way interfere with the relationship between the Purchaser and any Sales Representative; or (v) solicit, encourage, induce or attempt to induce any employee of the Purchaser to leave the employ of the Purchaser, or in any way interfere with the relationship between the Purchaser and any such employee.

ARTICLE 6
INDEMNIFICATION

Section 6.1 Indemnification by the Seller and Hecker. Subject to the limitations expressly set forth in Section 6.5, the Seller and Hecker, jointly and severally (the "Seller Indemnitors"), will indemnify and hold harmless the Purchaser and its Affiliates and their respective members, managers, directors, officers, equity owners, employees, agents, consultants and other advisors and representatives (collectively, the "Purchaser Indemnified Parties") from and against, and will pay to the Purchaser Indemnified Parties the monetary value of, any and all Losses incurred or suffered by any of the Purchaser Indemnified Parties directly or indirectly arising out of, relating to or resulting from any of the following:

(a) any material inaccuracy in or breach of any representation or warranty or other statement of the Seller or Hecker contained in this Agreement, the Seller Disclosure Schedule, any Ancillary Agreement or in any certificate, instrument or other document delivered by or on behalf of the Seller or Hecker pursuant to this Agreement or any Ancillary Agreement;

(b) any nonfulfillment, nonperformance or other breach of any covenant or agreement of the Seller or Hecker contained in this Agreement, the Seller Disclosure Schedule, any Ancillary Agreement or in any certificate, instrument or other document delivered by or on behalf of the Seller or Hecker pursuant to this Agreement or any Ancillary Agreement;

(c) any Excluded Liability and any other Liability arising out of the ownership or operation of the Purchased Assets before the Closing that is not an Assumed Liability; and

(d) any Proceedings, demands or assessments incidental to any of the matters set forth in clauses (a) through (c) above.

Section 6.2 Indemnification by the Purchaser. Subject to the limitations expressly set forth in Section 6.5, the Purchaser will indemnify and hold harmless the Seller from and against, and will pay to the Seller the monetary value of, any and all Losses incurred or suffered by the Seller directly or indirectly arising out of, relating to or resulting from any of the following:

(a) any inaccuracy in or breach of any representation or warranty or other statement of the Purchaser contained in this Agreement, the Purchaser Disclosure Schedule, any Ancillary Agreement or in any certificate, instrument or other document delivered by the Purchaser pursuant to this Agreement or any Ancillary Agreement;

(b) any nonfulfillment, nonperformance or other breach of any covenant or agreement of the Purchaser contained in this Agreement, the Purchaser Disclosure Schedule, any Ancillary Agreement or in any certificate, instrument or other document delivered by the Purchaser pursuant to this Agreement or any Ancillary Agreement;

(c) any of the Assumed Liabilities; and

(d) any Proceedings, demands or assessments incidental to any of the matters set forth in clauses (a) through (c) above.

Section 6.3 Claim Procedure.

(a) A party that seeks indemnity under this Article 6 (an "Indemnified Party") will give prompt written notice (a "Claim Notice") to the party from whom indemnification is sought (an "Indemnifying Party") containing (i) a description and, if known, the estimated amount of any Losses incurred or reasonably expected to be incurred by the Indemnified Party, (ii) a reasonable explanation of the basis for the Claim Notice to the extent of the facts then known by the Indemnified Party and (iii) a demand for payment of those Losses.

(b) Within 30 days after delivery of a Claim Notice, the Indemnifying Party will deliver to the Indemnified Party a written response in which the Indemnifying Party will either:

(i) agree that the Indemnified Party is entitled to receive all of the Losses at issue in the Claim Notice; or

(ii) dispute the Indemnified Party's entitlement to indemnification by delivering to the Indemnified Party a written notice (an "Objection Notice") setting forth in reasonable detail each disputed item, the basis for each such disputed item and certifying that all such disputed items are being disputed in good faith.

(c) If the Indemnifying Party fails to take either of the foregoing actions within 30 days after delivery of the Claim Notice, then the Indemnifying Party will be deemed to have irrevocably accepted the Claim Notice and the Indemnifying Party will be deemed to have irrevocably agreed to pay the Losses at issue in the Claim Notice.

(d) If the Indemnifying Party delivers an Objection Notice to the Indemnified Party within 30 days after delivery of the Claim Notice, then the dispute may be resolved by any legally available means consistent with the provisions of Section 7.12.

(e) Any indemnification of the Purchaser Indemnified Parties pursuant to this Article 6 will be effected by wire transfer of immediately available funds from the Seller or Hecker to an account designated by the Purchaser, and any indemnification of the Seller pursuant to this Article 6 will be effected by wire transfer of immediately available funds to an account designated by the Seller.

(f) The foregoing indemnification payments will be made within five business days after the date on which (i) the amount of such payments are determined by mutual agreement of the parties, (ii) the amount of such payments are determined pursuant to Section 6.3(c) if an Objection Notice has not been timely delivered in accordance with Section 6.3(b) or (iii) both such amount and the Indemnifying Party's obligation to pay such amount have been finally determined by a final Judgment of a court having jurisdiction over such proceeding as permitted by Section 7.12, if an Objection Notice has been timely delivered in accordance with Section 6.3(b).

Section 6.4 Third Party Claims.

(a) Without limiting the general application of the other provisions of this Article 6, if another Person not a party to this Agreement alleges facts that, if true, would mean that a party has breached its representations and warranties in this Agreement, the party for whose benefit the representations and warranties are made will be entitled to indemnity for those allegations and demands and related Losses under and pursuant to this Article 6. If the Indemnified Party seeks indemnity under this Article 6 in respect of, arising out of or involving a claim or demand, whether or not involving a Proceeding, by another Person not a party to this Agreement (a "Third Party Claim"), then the Indemnified Party will include in the Claim Notice (i) notice of the commencement or threat of any Proceeding relating to such Third Party Claim within 30 days after the Indemnified Party has received written notice of the commencement of the Third Party Claim and (ii) the facts constituting the basis for such Third Party Claim and the amount of the damages claimed by the other Person, in each case to the extent known to the Indemnified Party. Notwithstanding the foregoing, no delay or deficiency on the part of the Indemnified Party in so notifying the Indemnifying Party will relieve the Indemnifying Party of any Liability under this Agreement except to the extent the Indemnifying Party has suffered actual Losses directly caused by the delay or other deficiency.

(b) Within 30 days after the Indemnified Party's delivery of a Claim Notice under this Section 6.4, the Indemnifying Party may assume control of the defense of such Third Party Claim by giving to the Indemnified Party written notice of the intention to assume such defense, but if and only if the Indemnifying Party further:

(i) acknowledges in writing to the Indemnified Party that any Losses that may be assessed in connection with the Third Party Claim constitute Losses for which the Indemnified Party will be indemnified pursuant to this Article 6 without contest or

objection and that the Indemnifying Party will advance all expenses and costs of defense; and

(ii) retains counsel for the defense of the Third Party Claim reasonably satisfactory to the Indemnified Party and furnishes to the Indemnified Party evidence satisfactory to the Indemnified Party that the Indemnifying Party has and will have sufficient financial resources to fund on a current basis the cost of such defense and pay all Losses that may arise under the Third Party Claim.

However, if the Seller or Hecker are the Indemnifying Party, in no event may the Indemnifying Party assume, maintain control of, or participate in, the defense of any Third Party Claim (A) involving criminal liability, (B) in which any relief other than monetary damages is sought against the Indemnified Party or (C) in which the outcome of any Judgment or settlement in the matter could adversely affect the Indemnified Party's Tax Liability or the ability of the Indemnified Party to conduct its business (collectively, clauses (A) – (C), the "Special Claims"). An Indemnifying Party will lose any previously acquired right to control the defense of any Third Party Claim if for any reason the Indemnifying Party ceases to actively, competently and diligently conduct the defense.

(c) If the Indemnifying Party does not, or is not able to, assume or maintain control of the defense of a Third Party Claim in compliance with Section 6.4(b), the Indemnified Party will have the right to control the defense of the Third Party Claim. If the Indemnified Party controls the defense of the Third Party Claim, the Indemnifying Party agrees to pay to the Indemnified Party promptly upon demand from time to time all reasonable attorneys' fees and other costs and expenses of defending the Third Party Claim. To the extent that the Third Party Claim does not constitute a Special Claim, the party not controlling the defense (the "Noncontrolling Party") may participate therein at its own expense. However, if the Indemnifying Party assumes control of such defense as permitted above and the Indemnified Party reasonably concludes (upon written advice of counsel) that the Indemnifying Party and the Indemnified Party have conflicting interests or different defenses available with respect to the Third Party Claim, then the reasonable fees and expenses of counsel to the Indemnified Party will be considered and included as "Losses" for purposes of this Agreement. The party controlling the defense (the "Controlling Party") will reasonably advise the Noncontrolling Party of the status of the Third Party Claim and the defense thereof and, with respect to any Third Party Claim that does not relate to a Special Claim, the Controlling Party will consider in good faith recommendations made by the Noncontrolling Party. The Noncontrolling Party will furnish the Controlling Party with such information as it may have with respect to such Third Party Claim and related Proceedings (including copies of any summons, complaint or other pleading which may have been served on such party and any written claim, demand, invoice, billing or other document evidencing or asserting the same) and will otherwise cooperate with and assist in the defense of the Third Party Claim.

(d) If the Indemnified Party is controlling the defense of a Third Party Claim, the Indemnified Party has the right to agree in good faith to any compromise or settlement of, or the entry of any Judgment arising from, the Third Party Claim without prior notice to or consent of the Indemnifying Party. All amounts paid or payable under such settlement or Judgment are

Losses that the Indemnifying Party owes to the Indemnified Party under this Article 6. The Indemnifying Party will not agree to any compromise or settlement of, or the entry of any Judgment arising from, the Third Party Claim without the prior written consent of the Indemnified Party, which consent the Indemnified Party will not unreasonably withhold or delay. The Indemnified Party will have no Liability with respect to any compromise or settlement of, or the entry of any Judgment arising from, any Third Party Claim effected without its consent.

(e) Notwithstanding the other provisions of this Article 6, if a Person not a party to this Agreement asserts that a Purchaser Indemnified Party is liable to such Person for a monetary or other obligation which individually may constitute or result in Losses not to exceed $100,000 for which the Purchaser Indemnified Party may be entitled to indemnification pursuant to this Article 6, and the Purchaser Indemnified Party reasonably determines that it has a business reason to fulfill such obligation, then (i) the Purchaser Indemnified Party will be entitled to satisfy such obligation, without prior notice to or consent from the Indemnifying Party, (ii) the Purchaser Indemnified Party may subsequently make a claim for indemnification in accordance with the provisions of this Article 6 and (iii) the Purchaser Indemnified Party will be reimbursed, in accordance with the provisions of this Article 6, for any such Losses for which it is entitled to indemnification pursuant to this Article 6, subject to the limitations set forth in Section 6.5 and the right of the Indemnifying Party to dispute the Purchaser Indemnified Party's entitlement to indemnification, or the amount for which it is entitled to indemnification, under the provisions of this Article 6.

Section 6.5 Survival of Representations and Warranties; Limitations.

(a) All representations and warranties contained in this Agreement, the Seller Disclosure Schedule, the Purchaser Disclosure Schedule, any Ancillary Agreement or in any certificate, instrument or other document delivered pursuant to this Agreement will survive the Closing, irrespective of any facts known to any Indemnified Party at or prior to the Closing or any investigation at any time made by or on behalf of any Indemnified Party, for a period of two (2) years from the Closing Date; provided, however, that the Fundamental Representations will survive indefinitely.

(b) All claims for indemnification under Section 6.1(a) or Section 6.2(a) must be asserted prior to the expiration of the applicable survival period set forth in Section 6.5(a); provided, however, that if an Indemnified Party delivers to an Indemnifying Party, before expiration of the applicable survival period of a representation or warranty as set forth in Section 6.5(a), either a Claim Notice based upon a breach of any such representation or warranty, or a notice that, as a result of a claim or demand made by a Person not a party to this Agreement, the Indemnified Party reasonably expects to incur Losses, then the applicable representation or warranty will survive until, but only for purposes of, the resolution of the matter covered by such notice. If the claim with respect to which such notice has been given is definitively withdrawn or resolved in favor of the Indemnified Party, the Indemnified Party will promptly so notify the Indemnifying Party.

(c) The Indemnified Parties shall be entitled to indemnification under Section 6.1(a) or Section 6.2(a), as applicable, only to the extent that the aggregate amount of Losses exceed on

a cumulative basis an amount equal to $25,000 of the Purchase Price (the "Deductible"), after which point the applicable Indemnifying Parties will be obligated to indemnify the applicable Indemnified Parties from and against all such Losses in excess of the Deductible. The maximum amount for which the Indemnified Parties shall be liable in the aggregate under Section 6.1(a) or Section 6.2(a), as applicable, shall not exceed an amount equal to $2,500,000 plus, in the case of Seller and Hecker, 50% of the sum of any Earn-Out Payment or Earn-out Performance Payment (the "Cap"). Notwithstanding anything herein to the contrary, Losses in connection with or arising out of any breaches or inaccuracies of the Fundamental Representations shall not be subject to the Deductible or Cap, and the maximum amount for which the Seller shall be liable in the aggregate under this Agreement (other than in the case of fraud) shall not exceed the entire Purchase Price. Notwithstanding anything else to the contrary set forth herein, the limitations set forth in this Section 6.5(c) shall not apply to (x) breach of the warranties and representations in Section 3.7, (y) the obligations of the Parties under Sections 6.1(b), 6.1(c), 6.1(d), 6.2(b) or 6.2(c), or (z) any fraudulent acts or omissions or intentional misrepresentations committed by any Party.

(d) Under no circumstances shall any Indemnified Party be entitled to be indemnified for punitive damages, except to the extent such damages are payable in respect of a Third Party Claim.

Section 6.6 Exercise of Remedies by Purchaser Indemnified Parties other than the Purchaser. No Purchaser Indemnified Party (other than the Purchaser or any successor or assignee of the Purchaser) is entitled to assert any indemnification claim or exercise any other remedy under this Agreement unless the Purchaser (or any successor or assignee of the Purchaser) consents to the assertion of the indemnification claim or the exercise of such other remedy.

Section 6.7 Set-Off. Without limiting any rights of any Purchaser Indemnified Party, Purchaser shall have the option of recovering and recouping all or any part of any judicially determined Losses suffered by any or all of them as to which it or they shall be entitled to indemnification from the Seller Indemnitors under Section 6.1 by reducing the amount of any sums owing from time to time by any Purchaser Indemnified Party to any of the Seller Indemnitors by the amount of such Losses.

Section 6.8 Exclusive Remedy. Each of the parties to this Agreement agrees that, except for equitable or injunctive relief (including specific performance) or claims of, or causes of action arising from, fraud, such party's exclusive remedy with respect to any Losses arising in connection with the matters set forth in this Agreement shall be limited to the provisions of this Article VI; it being understood that the foregoing limitation shall not apply to any Contract or other agreement entered into in connection herewith (including, without limitation, the form of agreements attached as Exhibits to this Agreement that have been entered into in connection herewith).

ARTICLE 7
CONDITIONS TO CLOSING; TERMINATION

Section 7.1. Conditions to Purchaser's Obligation. The obligation of Purchaser to consummate the Closing is subject to satisfaction of the following conditions:

(a) All of the representations and warranties made by the Seller Parties in this Agreement and each such representation and warranty (considered individually), (i) that are qualified by materiality, shall be true and correct and (ii) that are not qualified by materiality, shall be true and correct in all material respects, in each case as of the date of this Agreement and at and as of the Closing Date with the same force and effect as though such representations and warranties had been made at and as of the Closing Date (except that representations and warranties that by their terms speak as of the date of this Agreement or some other date need be true and correct, or true and correct in all material respects, as the case may be, only as of such specified date), without giving effect to any Disclosure Schedule Updates;

(b) The Seller Parties shall have performed and complied in all material respects with each of its obligations and covenants under this Agreement that are to be performed or complied with prior to or at the Closing;

(c) The Seller Parties shall have procured (upon terms satisfactory to Purchaser) and delivered to Purchaser all third party Consents and Governmental Authorizations required in connection with the transactions contemplated by this Agreement, including, without limitation, any Consents required in connection with the assignment by the Seller of any Contract to be assigned to Purchaser in accordance with this Agreement;

(d) No claim, action, suit, or other proceeding shall be pending or threatened before any Governmental Authority or before any arbitrator (a) that challenges, otherwise attempts to prevent consummation of, seeks to restrain, alter, prohibit or otherwise materially interfere with this Agreement or any of the transactions contemplated by this Agreement, (b) that could cause any of the transactions contemplated by this Agreement to be rescinded following consummation, (c) that could affect adversely the right of Purchaser to own the Purchased Assets and to operate the Business, or (d) that could cause material harm or injury to Purchaser. No injunction, restraining or other order or decree of any nature of Governmental Authority shall exist against any of the Parties hereto, or any of the principals, officers, managers or members of any of them, that restrains, prevents or materially and adversely changes the transactions contemplated by this Agreement;

(e) Between January 1, 2014 and the Closing, there shall have occurred no change, event, occurrence or circumstance that has had (or could have) a Material Adverse Effect, including, without limitation, a default under the terms of any Contract that would permit the acceleration of any material amounts due thereunder or termination thereof;

(f) The Seller Parties shall have delivered, or caused to be delivered, to Purchaser all instruments, documents, certificates and agreements required pursuant to this Agreement, each properly executed and dated;

(g) All applicable consents, authorizations, approvals, permits and orders required by any Governmental Authority with respect to the transactions contemplated in this Agreement shall have been obtained, shall have become effective and final, shall be in full force and effect upon terms satisfactory to Purchaser;

(h) The Seller Parties shall have delivered to Purchaser such documents and certificates of officers and public officials as shall be reasonably requested by Purchaser's counsel to establish the existence and good standing of Seller and the due authorization of this Agreement and the transactions contemplated hereby by Seller;

(i) All proceedings, corporate or otherwise, required to be taken by the Seller Parties in connection with the performance of this Agreement and the consummation of the transactions contemplated by this Agreement, and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby and incident thereto, shall be complete and reasonably satisfactory in form and substance to Purchaser and its counsel, and the Seller Parties shall have made available to Purchaser for examination the originals or true and correct copies of all certificates, opinions, instruments and other documents that Purchaser and its counsel may reasonably request in connection with the transactions contemplated by this Agreement;

(j) On the Closing Date and simultaneously with the Closing, there shall not be any Encumbrances on any of the Purchased Assets, and Purchaser shall have obtained reports in form and substance satisfactory to Purchaser and its counsel to the effect that (a) none of the Purchased Assets is subject to any record Lien for federal, state or local Taxes or assessments, and (b) there are no effective or outstanding financing statements in respect of any of the Assets of Seller, except for financing statements that will be released at or prior to the Closing;

(k) Seller shall have provided Purchaser with a copy of a Compliance Report prepared by Seller’s counsel. Purchaser’s obligation to consummate the Closing will be subject to Purchaser's satisfaction (in its sole and absolute discretion) with said Compliance Report;

(l) Purchaser shall have received from each Hired Employee and each of Seller’s independent contractors which Purchaser desires to engage such employment contract, employment/offer letter independent contractor agreement, as the case may be, confidentiality and non-competition agreements and the like as are satisfactory to Purchaser, including, without limitation, agreements with Scott Kaplan, Jeff Myatt, Ricardo Sablon and such other key employees as are identified by Purchaser;

(m) Seller shall have provided Purchaser with evidence that the dispute regarding Seller’s use of the Seller’s trade name(s) has been fully resolved in a manner satisfactory to Purchaser;

(n) Seller shall have provided Purchaser with an interim financial statement dated as of November 30, 2014 and Purchaser shall be satisfied with said financial statement;

(o) Simultaneously with the Closing, that certain loan in the original principal amount of $350,000 from Marc Gardner to HG123, LLC and Hecker shall be paid in full; and

(p) At or prior to the Closing, Seller and Purchaser shall have agreed in writing as to the amount of the Target Net Working Capital and Purchaser and Hecker shall have agreed in writing as to the **Schedule of Day-to-Day Operations** to be attached to the Employment Agreement.

Purchaser may waive any condition specified in this Article 7 if it executes a writing so stating at or prior to the Closing.

Section 7.2. Conditions to Seller's Obligation. The obligation of the Seller Parties to consummate the Closing is subject to satisfaction of the following conditions:

(a) All of the representations and warranties made by Purchaser in this Agreement (considered collectively and individually) must have been true and correct in all material respects as of the date of this Agreement and must be true and correct in all material respects at and as of the Closing Date with the same force and effect as though such representations and warranties had been made at and as of the Closing Date; and

(b) Purchaser shall have performed and complied in all material respects with its obligations and covenants under this Agreement which are to be performed or complied with by Purchaser prior to or at the Closing.

(c) Purchaser shall have delivered to Seller such documents and certificates of officers and public officials as shall be reasonably requested by Seller and its counsel to establish the existence and good standing of Purchaser and the due authorization of this Agreement and the transactions contemplated hereby by Purchaser.

The Seller Parties may waive any condition specified in this Section 7.02 if they execute a writing so stating at or prior to the Closing.

Section 7.03. Events of Termination. Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated at any time prior to completion of the Closing, as follows:

(a) by the Seller Parties, on the one hand or Purchaser, on the other hand at any time after December 30, 2014, if the Closing has not occurred and the party seeking to terminate this Agreement is not in material breach or default of any provision of this Agreement;

(b) by Purchaser if any information reflected in any Disclosure Schedule Update is not satisfactory to Purchaser, in its sole discretion;

(c) by written agreement of the Seller Parties and Purchaser; or

(d) by Purchaser if the Closing has not occurred (other than through the failure of Purchaser to comply fully with its obligations under this Agreement) on or before the Closing Date, as a result of the non-satisfaction of any of the conditions set forth in Section 7.1 hereof.

This Agreement may not be terminated after completion of the Closing.

Section 7.4. Effect of Termination. If this Agreement is terminated pursuant to Section 7.3, all rights and obligations of the parties under this Agreement shall terminate; provided, however, that, if this Agreement is terminated because of a breach of this Agreement by the non-terminating party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal and equitable remedies shall survive such termination unimpaired.

ARTICLE 8
GENERAL PROVISIONS

Section 8.1 NAB Guarantee. From and after (and conditioned upon) the consummation of the Closing, NAB hereby unconditionally, absolutely and irrevocably guarantees, undertakes and promises to cause the Purchaser to fully and promptly pay, perform and observe all of the Purchaser's obligations under, with respect to, in connection with or otherwise arising after the consummation of the Closing out of or relating to this Agreement and any Ancillary Agreement to which the Purchaser is a party (collectively, the "NAB Obligations"), whether according to the present terms hereof, or pursuant to any change in the terms, covenants and conditions hereof at any time hereafter made or granted by Purchaser, including pursuant to any amendments, waivers, extensions or renewals affecting this Agreement and the transactions contemplated hereby. In the event that the Purchaser fails in any manner whatsoever to pay, perform or observe any of the NAB Obligations, the Purchaser will itself duly and promptly pay, perform or observe, as the case may be, such NAB Obligations, or cause the same to be duly and promptly paid, performed or observed, in each case as if NAB were itself the Purchaser with respect to such NAB Obligations. In regards to monetary obligations, NAB agrees that its guarantee under this Section 8.1 constitutes a guarantee of payment when due and not of collection. Notwithstanding anything in this Section 8.1 to the contrary, Seller may proceed to enforce this Section 8.1 against NAB without first pursuing or exhausting any right or remedy that Seller or any of its successors or assigns may have against the Purchaser, any of its successors or assigns (or any Affiliates thereof) or any other Person. The obligations of NAB under this Section 8.1 shall be valid and enforceable and, to the fullest extent permitted by applicable Law. NAB waives (i) any direct or indirect defense based on a lack of power or authority by the Purchaser to execute, deliver or perform this Agreement and (ii) any other legal or equitable defense available to a guarantor under applicable Law; provided, however, that NAB shall have the benefit of all defenses available to Purchaser. Any payment by NAB pursuant to this Section 8.1 will, to the extent of actual receipt by Seller of such payment as it relates to any NAB Obligation under this Agreement, discharge such NAB Obligation of the Purchaser to Seller under this Agreement. NAB agrees that its guarantee under this Section 8.1 shall continue to be effective or be reinstated, as the case may be, if at any time full or partial payment of any NAB Obligation is rescinded or must otherwise be restored upon the insolvency, bankruptcy or reorganization of the Purchaser or otherwise. NAB agrees that it shall have no right of subrogation, contribution or indemnity with respect to payments made under this Section 8.1 until such time as all NAB Obligations have been paid in full. The NAB Obligations shall include all reasonable, documented out-of-pocket fees and expenses of the Purchaser (including

the reasonable, documented fees and expenses of its counsel) for the protection or enforcement of the rights of Seller against NAB under this Section 8.1., but only in the event that that Seller is the prevailing party in any action to enforce the NAB Obligations.

Section 8.2 Notices. All notices and other communications under this Agreement must be in writing and are deemed duly delivered when (a) delivered if delivered personally or by nationally recognized overnight courier service (costs prepaid), (b) sent by facsimile with confirmation of transmission by the transmitting equipment (or, the first business day following such transmission if the date of transmission is not a business day) or (c) received or rejected by the addressee, if sent by United States of America certified or registered mail, return receipt requested; in each case to the following addresses or facsimile numbers and marked to the attention of the individual (by name or title) designated below (or to such other address, facsimile number or individual as a party may designate by notice to the other parties):

If to the Purchaser or NAB:

c/o North American Bancard, LLC
250 Stephenson Highway
Troy, Michigan 48083
Attn: Marc Gardner

with a mandatory copy (not constituting notice) to:

Berkowitz, Trager and Trager, LLC
8 Wright Street, 2nd Floor
Westport, Connecticut 06880
Attention: David A. Greenberg, Esq.

If to the Seller or Hecker:

11900 Biscayne Boulevard, Suite 210
Miami, FL 33181
Attn: Craig Hecker

with a mandatory copy (not constituting notice) to:

DLA Piper LLP (US)
200 South Biscayne Blvd., 25th Floor
Miami, Florida 33131
Attn: Jacqueline G. Hodes, Esq.

Section 8.3 Amendment. This Agreement may not be amended, supplemented or otherwise modified except in a written document signed by each party to be bound by the amendment and that identifies itself as an amendment to this Agreement. Any amendment of this Agreement signed by Hecker is binding upon and effective against the Seller regardless of whether or not the Seller has in fact signed such amendment.

Section 8.4 Waiver and Remedies. The parties may (a) extend the time for performance of any of the obligations or other acts of any other party to this Agreement, (b) waive any inaccuracies in the representations and warranties of any other party to this Agreement contained in this Agreement or in any certificate, instrument or document delivered pursuant to this Agreement or (c) waive compliance with any of the covenants, agreements or conditions for the benefit of such party contained in this Agreement. Any such extension or waiver by any party to this Agreement will be valid only if set forth in a written document signed on behalf of the party or parties against whom the waiver or extension is to be effective. Any such extension or waiver signed by the Hecker is binding upon and effective against the Seller regardless of whether or not the Seller has in fact signed the extension or waiver. No extension or waiver will apply to any time for performance, inaccuracy in any representation or warranty, or noncompliance with any covenant, agreement or condition, as the case may be, other than that which is specified in the written extension or waiver. No failure or delay by any party in exercising any right or remedy under this Agreement or any of the documents delivered pursuant to this Agreement, and no course of dealing between the parties, operates as a waiver of such right or remedy, and no single or partial exercise of any such right or remedy precludes any other or further exercise of such right or remedy or the exercise of any other right or remedy. Any enumeration of a party's rights and remedies in this Agreement is not intended to be exclusive, and a party's rights and remedies are intended to be cumulative to the extent permitted by law and include any rights and remedies authorized in law or in equity.

Section 8.5 Entire Agreement. This Agreement (including the Schedules and Exhibits hereto and the documents and instruments referred to in this Agreement that are to be delivered at the Closing) constitutes the entire agreement among the parties and supersedes any prior understandings, agreements or representations by or among the parties, or any of them, written or oral, with respect to the subject matter of this Agreement.

Section 8.6 Assignment and Successors and No Third Party Rights. This Agreement binds and benefits the parties and their respective heirs, executors, administrators, successors and assigns, except that neither Seller nor Hecker may assign any rights under this Agreement without the prior written consent of the Purchaser, which consent may be withheld in the Purchaser's sole and absolute discretion. Nothing expressed or referred to in this Agreement will be construed to give any Person, other than the parties to this Agreement, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement except such rights as may inure to a successor or permitted assignee under this Section.

Section 8.7 Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way and the parties agree to negotiate in good faith to replace such invalid, illegal and unenforceable provision with a valid, legal and enforceable provision that achieves, to the greatest lawful extent under this Agreement, the economic, business and other purposes of such invalid, illegal or unenforceable provision.

Section 8.8 Exhibits and Schedules. The Exhibits and Schedules to this Agreement are incorporated herein by reference and made a part of this Agreement. The Seller Disclosure

Schedule and the Purchaser Disclosure Schedule are arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article 3 and Article 4, as applicable. The disclosure in any section or paragraph of the Seller Disclosure Schedule or the Purchaser Disclosure Schedule qualifies other sections and paragraphs in this Agreement only to the extent it is reasonably apparent by appropriate cross-references that a given disclosure is applicable to such other sections and paragraphs. The listing or inclusion of a copy of a document or other item is not adequate to disclose an exception to any representation or warranty in this Agreement unless the representation or warranty relates to the existence of the document or item itself.

Section 8.9 Interpretation. In the negotiation of this Agreement, each party has received advice from its own attorney. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no provision of this Agreement will be interpreted for or against any party because that party or its attorney drafted the provision.

Section 8.10 Governing Law. The internal laws of the State of Florida (without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of laws of any other jurisdiction) govern all matters arising out of or relating to this Agreement and its Exhibits and Schedules and all of the transactions it contemplates, including its validity, interpretation, construction, performance and enforcement and any disputes or controversies arising therefrom or related thereto.

Section 8.11 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. The parties accordingly agree that, in addition to any other remedy to which they are entitled at law or in equity, the parties are entitled to injunctive relief to prevent breaches of this Agreement and otherwise to enforce specifically the provisions of this Agreement. Each party expressly waives any requirement that any other party obtain any bond or provide any indemnity in connection with any action seeking injunctive relief or specific enforcement of the provisions of this Agreement.

Section 8.12 Jurisdiction and Service of Process. Any action or proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement must be brought in the courts of the State of Florida, County of Miami-Dade, or, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of Florida. Each of the parties knowingly, voluntarily and irrevocably submits to the exclusive jurisdiction of each such court in any such action or proceeding and waives any objection it may now or hereafter have to venue or to convenience of forum. Any party to this Agreement may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 8.2. Nothing in this Section 8.12, however, affects the right of any party to serve legal process in any other manner permitted by law.

Section 8.13 Waiver of Jury Trial. **EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTIONOR**

PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE ACTIONS OF ANY PARTY TO THIS AGREEMENT IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT.

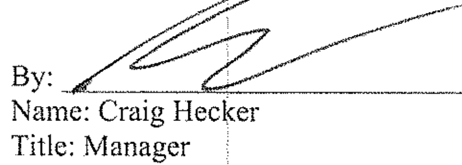
Section 8.14 Expenses. Except as otherwise provided in this Agreement (including pursuant to Section 2.3(c)), each party will pay its respective direct and indirect expenses incurred by it in connection with the preparation and negotiation of this Agreement and the consummation of the transactions contemplated by this Agreement, including all fees and expenses of its advisors and representatives. If this Agreement is terminated, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from any breach of this Agreement by another party.

Section 8.15 Counterparts. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original as against the party that signed it, and all of which together constitute one agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. The signatures of all parties need not appear on the same counterpart. The delivery of signed counterparts by facsimile or email transmission that includes a copy of the sending party's signature(s) is as effective as signing and delivering the counterpart in person.

[Signature page follows.]

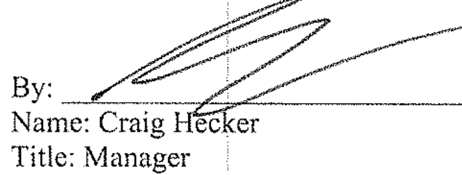
The parties have executed and delivered this Asset Purchase Agreement as of the date indicated in the first sentence of this Asset Purchase Agreement.

HRH FUNDING, LLC



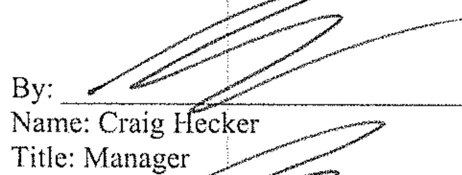
By: ______________________________
Name: Craig Hecker
Title: Manager

RAPID CAPITAL FUNDING II, LLC

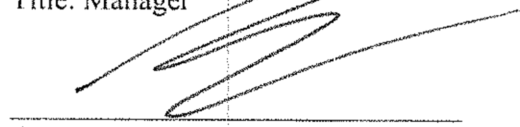


By: ______________________________
Name: Craig Hecker
Title: Manager

RAPID CAPITAL FUNDING, LLC



By: ______________________________
Name: Craig Hecker
Title: Manager



____
Craig Hecker

RCF ACQUISITION COMPANY, LLC

By: ______________________________
Name: Marc Gardner
Title: Manager

ACCEPTANCE AND AGREEMENT OF NAB

The undersigned agrees to be bound by the terms set forth in Section 8.1 of the Agreement.

NORTH AMERICAN BANCARD, LLC

By: ______________________________
Name: Marc Gardner
Title: Manager

The parties have executed and delivered this Asset Purchase Agreement as of the date indicated in the first sentence of this Asset Purchase Agreement.

HRH FUNDING, LLC

By: ______________________________
Name: Craig Hecker
Title: Manager

RAPID CAPITAL FUNDING II, LLC

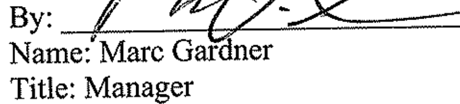
By: ______________________________
Name: Craig Hecker
Title: Manager

RAPID CAPITAL FUNDING, LLC

By: ______________________________
Name: Craig Hecker
Title: Manager

____
Craig Hecker

RCF ACQUISITION COMPANY, LLC

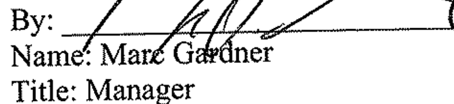


By: ______________________________
Name: Marc Gardner
Title: Manager

ACCEPTANCE AND AGREEMENT OF NAB

The undersigned agrees to be bound by the terms set forth in Section 8.1 of the Agreement.

NORTH AMERICAN BANCARD, LLC



By: ______________________________
Name: Marc Gardner
Title: Manager

EXHIBIT B

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated as of December 31, 2014, by and between RCF ACQUISITION COMPANY, LLC, a Florida limited liability company with its offices at 250 Stephenson Highway, Troy, Michigan 48083 ("**Company**"), and CRAIG HECKER, an individual ("**Executive**").

WHEREAS, Executive is a party to that certain Asset Purchase Agreement dated as of the date hereof (the "**Asset Purchase Agreement**" or "**APA**") by and among the Company, Rapid Capital Funding II, LLC, a Florida limited liability company ("**RCF**"), Rapid Capital Funding, LLC, a Florida limited liability company ("**Rapid I**"), and HRH Funding, LLC, a Florida limited liability company ("**HRH**"), pursuant to which the Company is purchasing substantially all of the assets of RCF, Rapid I and HRH (collectively referred to as the "**Sellers**" and individually as a "**Seller**"); and

WHEREAS, the Company desires to employ Executive to render services for the Company on a full-time exclusive basis.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties agree as follows:

1. *Term of Employment.* The term of Executive's employment under this Employment Agreement (the "**Employment Term**") will commence on the date hereof (the "**Commencement Date**") and continue until terminated pursuant to Section 7 hereof.

2. *Positions.*

(a) Executive shall serve as Chief Executive Officer ("**CEO**") of the Company, subject to removal from such position as provided below. In that capacity, Executive shall be responsible for all of the sales and marketing activities of the Company and shall manage or direct, as applicable, the day-to-day operations of the business of the Company. Notwithstanding anything contained herein to the contrary, Executive shall not take (or permit the Company to take) any action which is outside of the scope of the day-to-day operations of the business of the Company (as more particularly described on a **Schedule of Day-to-Day Operations** to be mutually agreed to by the Company and Executive and incorporated herein by reference), without first obtaining the required written consent of Marc Gardner or his designee (the "**Owner**"). Executive shall report to the Owner.

(b) During the Employment Term, Executive shall devote all of his business time and efforts to the performance of his duties hereunder and shall not otherwise be gainfully employed; provided, however, that Executive shall be allowed, to the extent that such activities do not materially interfere with the performance of his duties and responsibilities hereunder, to manage his passive personal investments, and to serve on corporate, civic, or charitable boards or committees. Notwithstanding the foregoing, Executive shall not serve on any corporate board of directors or in a similar capacity (except for serving as the manager of Nearbrook Capital, LLC, a Florida limited liability company ("**Nearbrook**"), whose sole business activity shall be to serve as the vehicle through which Executive participates in advances by the Company pursuant to Section 5(b) below), subject to the limitations on the activities of said entity as set forth below

herein and in the Asset Purchase Agreement) with any other entity if such service would be inconsistent with his fiduciary responsibilities to the Company

(c) Executive warrants and represents (and breach hereof shall be cause for termination by the Company of Executive's employment for "cause") that neither Executive nor any affiliate of Executive is a party to any other agreement or bound by any obligation of any sort that would (i) restrict or in any way interfere with his ability to perform fully all of his obligations hereunder and/or (ii) vest in any other person, firm or entity any right to recover damages as a result of Executive's performance hereunder, and/or (iii) permit any other person or entity to enjoin or otherwise prevent full compliance by him of his obligations hereunder. Executive further represents and warrants that his performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement or obligation to keep in confidence proprietary information, knowledge or data acquired by him in confidence or in trust prior to his employment with the Company, and he will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any other third party (other than the Sellers), and he will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any third party (other than the Sellers). As a material inducement to the Company entering into this Agreement, Executive covenants and agrees that Executive will not, directly or indirectly, violate (or cause or permit the Company to violate) or breach any terms of any confidentiality, non-disclosure, non-use or similar obligations of Executive with respect to any third party. Without limiting any of the Company's rights or remedies, Executive agrees to indemnify, defend and hold the Company harmless from and against all any and all losses, costs, claims, damages, suits and expenses (including, without limitation, reasonable attorneys' fees) which the Company may suffer or incur as a result of any breach by Executive of his obligations under this Section 2(c).

3. *Base Salary.* For all services to be rendered by Executive to the Company under this Agreement, or otherwise, the Company shall pay to Executive a base salary ("**Base Salary**") at the rate of Four Hundred Thousand ($400,000.00) Dollars per annum (subject to reduction as hereinafter provided), which sum shall be paid on such periodic basis as the Company routinely pays its employees. The Company shall have the right to reduce the rate of Executive's annual Base Salary by $50,000 for each calendar quarter during the term of Executive's employment as to which the Company fails to achieve the target operating projections set forth in the attached **Schedule of Projections**, as the same may be amended by mutual written agreement of the Company and Executive; provided, however, that (i) such reduction shall be effective commencing with the calendar quarter immediately succeeding the calendar quarter with respect to which the Company failed to meet said projections, (ii) in no event may such annual Base Salary be so reduced below $300,000, and (iii) in the event that, following (and to the extent of) such a reduction in Executive's annual Base Salary, the Company meets the applicable target operating projections for any succeeding calendar quarter, then Executive's annual Base Salary shall be increased by $50,000 (or the amount of the reduction, if less), but in no event may said annual Base Salary be increased above $400,000, such increase shall be effective commencing with the calendar quarter immediately succeeding the calendar quarter with respect to which the Company met said projections.

4. *Bonuses.*

(a) During the Employment Term, the Company will pay the Executive a

profit-sharing bonus ("**Profit Bonus**") equal to the twenty-six & 7/10ths (26.7%) percent of the Net Profit of the Company (as hereinafter defined) with respect to each calendar year during the Employment Term; provided, however, that in the event of a change in the income tax rates in the State of Michigan, then said percentage shall be appropriately adjusted in accordance with the working papers attached hereto as **Exhibit A**. The Profit Bonus, if any, shall be paid to Executive within seventy-five (75) days after the end of the calendar year with respect to which the Profit Bonus relates; provided, however, that the Company may, in its discretion, make estimated payments to Executive based upon the Company's estimate of Net Profits for the applicable calendar year, with an appropriate reconciliation once actual Net Profits have been determined by the Company. "**Net Profit**" means the net profit from the normal operations of the Company, as determined in accordance with generally accepted accounting principles in the manner applied by the Company's independent certified public accountants in preparing the Company's financial statements. For purposes of clarification, Net Profit shall be computed after deduction of interest expense, depreciation and amortization, but before the payment of taxes, and shall be based upon the Company performing (or obtaining from third parties), at the Company's expense, all back office functions. The determination of Net Profit and the amount of any Profit Bonus shall be made by the Company's independent certified public accountants; provided, however, Executive can dispute any such calculations in accordance with Section 2.9 of the Asset Purchase Agreement. Notwithstanding anything contained herein to the contrary, upon the effective date of the Conversion (as defined in the APA), Executive shall no longer be entitled to the payment of any Profit Bonus.

(b) In order to be entitled to receive any such Profit Bonus, Executive must be employed by the Company on the last day of the applicable calendar year or calendar quarter, as the case may be; **provided**, **however**, in the event that Executive's employment has been terminated by the Company for other than an event constituting "Super Cause" (as hereinafter defined), then Executive shall be entitled to receive a prorated Profit Bonus payment, if any is achieved, based upon the number of days during such calendar year or calendar quarter, as the case may be, that Executive was employed by the Company.

5. *Employee Benefits and Vacation.*

(a) During the Employment Term, Executive shall be entitled to participate in all pension, retirement, savings, welfare and other employee benefit plans and arrangements and fringe benefits and perquisites generally maintained by the Company from time to time for the benefit of the senior executives of the Company and Executive and his dependents (the "**Covered Individuals**") shall be entitled to participate in all employee medical benefit plans sponsored or maintained by the Company, including all group hospitalization, medical, health and accident, Disability, life, accidental death and other insurance, and any similar plans or programs of the Company now existing or hereafter established. During the Employment Term, Executive shall be entitled to vacation each year in accordance with the Company's policies in effect from time to time, but in no event less than four (4) weeks paid vacation per calendar year (prorated for any period of time less than a full year). Executive shall not be permitted to accrue vacation time from any previous year of employment with the Company. Executive shall also be entitled to such periods of sick leave as is customarily provided by the Company for its senior executive employees.

(b) So long as Executive is involved with the Company in any capacity,

Executive will be allowed to personally participate in up to five (5%) percent of any package of funded advances by the Company with his personal capital or through Nearbrook (the intention being that Executive shall not have the right to select individual advances within which to participate). Without limiting anything contained herein or in the Asset Purchase Agreement to the contrary, all opportunities relating to the Business (as defined in the Asset Purchase Agreement) shall belong solely to the Company and may not be pursued, directly or indirectly, by or on behalf of Executive, including, with limitation, by Nearbrook or any other entity in which Executive, members of his family or any of his affiliates (as defined in the APA) has an ownership interest or receives any fee, compensation or payments).

6. *Business Expenses*. The Company shall reimburse Executive for the travel, entertainment and other business expenses incurred by Executive in the performance of his duties hereunder, and reimbursement of expenses shall be in accordance with the Company's policies as in effect from time to time.

7. *Termination.*

(a) *Termination Events*. The employment of Executive under this Employment Agreement shall terminate upon the occurrence of any of the following events: (i) the death of Executive; (ii) the termination of Executive's employment by the Company due to Executive's Disability pursuant to Section 7(b) hereof; (iii) the termination of Executive's employment by Executive, either voluntarily or with Good Reason; (iv) the occurrence of an Earn-out Payment Event (as defined in the Asset Purchase Agreement); or (v) the termination of Executive's employment by the Company for Cause pursuant to Section 7(c).

(b) *Disability*. If Executive is unable to carry out his material duties pursuant to this Employment Agreement for more than ninety (90) days (whether or not consecutive) in any twelve (12) consecutive month period by reason of the same or related physical or mental reasons or suffers any medically determined physical or mental impairment that can be expected to result in death or that can be expected to render Executive incapable of performing his duties to Employer for ninety (90) days or more (a "**Disability**"), the Company may terminate Executive's employment for Disability, at any time, upon thirty (30) days prior written notice (a "**Notice of Disability Termination**"). In the event that the Company and Executive disagree on whether a Disability has occurred, the Company and Executive shall each appoint a medical doctor and the medical doctors will appoint a third medical doctor. The three medical doctors shall determine by majority vote whether a Disability has occurred within thirty days of their appointment. The decision of the medical doctors, once rendered, shall be final and binding and not subject to further review or challenge.

(c) *Cause*. A termination for Cause means a termination by the Company by written notice upon the occurrence of an event of Cause. For purposes of this Employment Agreement, the term "**Cause**" shall mean:

(i) the failure of Executive to follow the proper written direction of the "Owner" with respect to a material matter, other than any such failure resulting from incapacity due to physical or mental illness, which, if curable, goes uncured for a period of 30 days after a written demand for performance is delivered to Executive by the

Owner;

(ii) failure by Executive to perform any of the material duties required of him hereunder (other than any such failure resulting from incapacity due to physical or mental illness) which, if curable, goes uncured for a period of 30 days after a written demand for performance is delivered to Executive by the Owner;

(iii) Executive being convicted of, or pleading guilty to, a felony (other than a felony involving a motor vehicle). A termination pursuant to this subsection shall be deemed "Super Cause";

(iv) any "material" breach by Executive of this Agreement (which breach, if curable, is not cured within thirty (30) days of the Notice of Termination for Cause));

(v) the breach by Executive of any fiduciary duty owed by Executive to the Company, including, but not limited to, any breach by Executive of his confidentiality, non-compete or non-solicitation obligations. A termination pursuant to this subsection shall be deemed "Super Cause";

(vi) Executive's dishonesty, misappropriation or fraud with regard to the Company (other than good faith expense account disputes or which involves less than $5,000 in the aggregate). A termination pursuant to this subsection shall be deemed "Super Cause";

(vii) any conduct by Executive that is materially injurious to the Company, including, without limitation, the taking of any action beyond the scope of his authority;

(viii) a material breach by Executive or any of the Sellers under of any of their warranties, representations or obligations under the Asset Purchase Agreement or any other agreement to which any of them is a party with the Company, Capital For Merchants, LLC or North American Bancard, LLC, or any of their affiliates, (which breach, if curable, is not cured within thirty (30) days of the Notice of Termination for Cause). A termination pursuant to this subsection shall be deemed "Super Cause"; or

(ix) in the event of the failure of the Company to achieve the target projections for the Company's Net Profit set forth in the attached **Schedule of Projections**, as the same may be amended by mutual written agreement of the Company and Executive, for two (2) out of any four (4) consecutive calendar quarters; provided that up to a 15% shortfall will be permitted in no more than three (3) calendar quarters.

A breach or default shall be "material" or "materially injurious" if the damages or losses which are suffered or incurred (or which can reasonably be expected to be suffered or incurred) by the Company shall exceed $250,000 (taking into account all damages or losses, on a cumulative basis); **provided, however**, that any breach of confidentiality, non-compete or non-solicitation obligations shall not be subject to the foregoing $250,000 threshold.

At the Company's sole election, in lieu of terminating Executive's employment upon the occurrence of any of the events constituting Cause, the Company shall have the right to remove Executive as CEO and reduce Executive's responsibilities and reduce his Base Salary to $100,000.00. In the event of any such reduction in Base Salary resulting from the removal of Executive as a CEO and reassignment of Executive to a different position within the Company, the amount of any Base Salary paid to Executive shall be deducted from any payments to be made to Executive pursuant to Section 4(a) hereof.

The Company may terminate Executive's employment for Cause, at any time, upon written notice that shall indicate the specific termination provision in Section 7(c) relied upon and shall set forth in reasonable detail the facts and circumstances that provide for a basis for termination for Cause ("**Notice of Termination for Cause")**. The date of termination for a termination for Cause shall be the date indicated in the Notice of Termination for Cause.

In addition to any remedies that may be available to the Company, the Company may, to the maximum extent permitted by law, offset any judicially determined damages or losses which the Company may suffer or incur as a result of any of the events giving rise to a termination for Cause against all payments to be made to Executive under this Agreement; provided, however, that until such damages and losses are judicially determined, the Company may withhold up to fifty (50%) percent of all such payments (with all amounts so withheld paid into escrow with an escrow agent chosen by the Company and reasonably acceptable to Executive).

(d) *Good Reason.* For purposes of this Agreement, "**Good Reason**" means the occurrence of the following without Executive's prior written consent (provided that any such event below shall only constitute "Good Reason" if (1) facts and circumstances do not exist based upon which Executive could have been terminated for Cause (regardless of any required notice or cure period), (2) Executive gives written notice to the Company specifying in reasonable detail the circumstances claimed to provide the basis for such termination and does so within thirty (30) days following the initial occurrence of such circumstance, (3) the Company fails to cure the circumstances set forth in Executive's written notice within thirty (30) days of actual receipt of such notice, and (4) Executive terminates his employment within ten (10) days following the end of such thirty (30) day cure period): (i) a material breach of this Agreement by the Company, including a material reduction in Executive's compensation or benefits pursuant to Sections 3, 4 or 5 of this Agreement, other than any such reduction which is permitted by this Agreement; or (ii) the permanent relocation of Executive by Employer to a location outside of Dade or Broward County, Florida.

8. *Consequences of Termination of Employment.*

(a) *Death.* If Executive's employment is terminated during the Employment Term by reason of Executive's death, the employment period under this Employment Agreement shall terminate as of the date of death without further obligations to Executive's estate or legal

representatives under this Employment Agreement except for (i) any Base Salary earned but not yet paid through the end of the month of in which employment terminated, (ii) any accrued vacation pay payable pursuant to the Company's policies, and (iii) any unreimbursed business expenses payable pursuant to Section 6. Amounts due in connection with Paragraph 8(a)(i)-(iii) shall be paid to Executive's estate in a lump sum.

(b) *Disability.* If Executive's employment is terminated by reason of Executive's Disability, Executive shall be entitled to receive the payments and benefits to which his representatives would be entitled in the event of a termination of employment by reason of his death.

(c) *Termination upon Earn-out Payment Event.* If Executive's employment hereunder is terminated as result of the occurrence of an Earn-out Payment Event, Executive shall be entitled to receive only the items set forth in Paragraph 8(a)(i)-(iii) above and shall have no further right to any benefits hereunder.

(d) *Termination by the Company with Cause or Termination by Executive.* If Executive's employment hereunder is terminated (i) by the Company for Cause, or (ii) by Executive, Executive shall be entitled to receive only the items set forth in Paragraph 8(a)(i)-(iii) above and shall have no further right to any benefits hereunder.

(e) *Special Severance.* In the event that Executive's employment hereunder is terminated by the Company for Cause (but other than for an event constituting Super Cause) or the Executive terminates his employment for Good Reason, and such termination occurs prior to the occurrence of an Earn-out Payment Event or the effective date of the Conversion, then, until the occurrence of an Earn-out Payment Event or the effective date of the Conversion, whichever first occurs, Executive shall be entitled to continue to receive, as special severance, payment of an amount equal to the Profit Bonus which Executive would otherwise have been entitled to receive in accordance with the terms of Section 4(a) above had Executive remained employed by the Company through the day immediately preceding the date of the occurrence of the Earn-out Payment Event or the effective date of the Conversion, whichever first occurs.

(f) *Release Agreement.* The Company's obligation to provide any payments pursuant to Paragraph 8 hereof is expressly conditioned upon Executives' execution and delivery to the Company of a release agreement, reasonably satisfactory to the Company as drafted at the time of the Company's termination of employment, including, but not limited to:

(i) An unconditional release of all rights to any claims, charges, complaints, grievances, known or unknown to Executive, through the date of the Executive's termination from employment;

(ii) A representation and warranty that Executive has not filed or assigned any claims, charges, complaints, or grievances against the Company;

(iii) An agreement not to use, disclose or make copies of any confidential information of the Company, as well as to return any such confidential information and property to the Company upon execution of such release;

(iv) An agreement to maintain the confidentiality of the release;

(v) A reaffirmation of his restrictive covenants; and

(v) An agreement to indemnify the Company, in the event that Executive breaches any portion of such release.

9. *Confidentiality/Noncompetition/Non-Solicitation.*

(a) The Company and Executive acknowledge and agree that the services to be provided by Executive pursuant to this Employment Agreement are unique and extraordinary and, as a result of such employment, Executive will be in possession of Confidential Information relating to the business practices of the Company. The term "**Confidential Information**" shall mean any and all information (verbal and written) relating to the Company or any of its affiliates, or any of their respective activities, including, but not limited to, information relating to trade secrets, personnel lists, lists of sales representatives or independent sales organizations, financial information, research projects, services used, pricing, merchants, merchant lists and prospects, suppliers, service providers, product sourcing, marketing, selling and servicing. Executive agrees that he will not, during or at any time after the termination of employment, directly or indirectly, use, communicate, disclose or disseminate to any person, firm or corporation any confidential information of the Company acquired by Executive during his employment by the Company.

(b) Reference is hereby made to Section 5.8 of the Asset Purchase Agreement which imposes certain non-competition and non-solicitation obligations on Executive. The terms of said Section 5.8 are incorporated into this Agreement by reference thereto and are agreed to be obligations of Executive under this Agreement, all as if fully set forth herein.

(c) Executive recognizes that the Company would suffer irreparable damage if t Executive were to violate the provisions of this Section 9. In the event Executive shall violate any of the terms or provisions of this Section 9, the Company shall have, in addition to any and all remedies of law, the right to seek and obtain, without bond or notice, *ex parte* or after a hearing, an injunction, specific performance or other equitable relief to prevent the violation of Executive's obligations hereunder and in connection therewith shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, attorneys' fees. Executive agrees that in the event of any breach of the covenants contained in this paragraph 9, in addition to any remedies that may be available to the Company, the Company may, to the maximum extent permitted by law, offset any judicially determined damages or losses which the Company may suffer or incur against all payments to be made to Executive under this Agreement and recover all such payments previously made to Executive pursuant to this Agreement; provided, however, that until such damages and losses are judicially determined, the Company may withhold up to fifty (50%) percent of all such payments (with all amounts so withheld paid into escrow with an escrow agent chosen by the Company and reasonably acceptable to Executive). In the event that it is judicially determined that the Company is not entitled to such damages or losses, the Company shall promptly pay to Executive any amounts that had been withheld and paid into escrow by the Company under the immediately preceding sentence in respect of the disallowed withholding, to the extent not previously paid, plus interest on such amount accruing from the date such amounts were initially withheld by the Company at an annual rate equal to one month LIBOR plus 2.5 percent. The parties agree that any such breach would cause injury to the Company that cannot reasonably or adequately be quantified and that such relief does not

constitute in any way a penalty or a forfeiture.

10. *Miscellaneous.*

(a) *Governing Law.* This Employment Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to principles of conflict of laws.

(b) *Entire Agreement and Amendment.* This Employment Agreement and the instruments contemplated herein, contain the entire understanding of the parties with respect to the employment of Executive by the Company from and after the date hereof and supersedes any prior agreements between the Company and Executive. There are no restrictions, agreements, promises, warranties, covenants or undertakings between the parties with respect to the subject matter herein other than those expressly set forth herein and therein. This Employment Agreement may not be altered, modified, or amended except by written instrument signed by the parties hereto.

(c) *No Waiver.* The failure of a party to insist upon strict adherence to any term of this Employment Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Employment Agreement. Any such waiver must be in writing and signed by Executive or an authorized officer of the Company, as the case may be.

(d) *Assignment.* This Employment Agreement shall not be assignable by Executive.

(e) *Successors; Binding Agreement; Third Party Beneficiaries.* This Employment Agreement shall inure to the benefit of and be binding upon the personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees legatees and permitted assignees of the parties hereto.

(f) *Communications.* For the purpose of this Employment Agreement, notices and all other communications provided for in this Employment Agreement shall be in writing and shall be deemed to have been duly given (i) when delivered by hand, or (ii) two business days after being mailed by United States registered or certified mail, return receipt requested, postage prepaid, or sent via reputable overnight courier addressed to the respective addresses set forth on the initial page of this Employment Agreement, provided that all notices to the Company shall be directed to the attention of Marc Gardner, or to such other address as any party may have furnished to the other in writing in accordance herewith. Notice of change of address shall be effective only upon receipt.

(g) *Withholding Taxes.* The Company may withhold from any and all amounts payable under this Employment Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

(h) *Survivorship.* The respective rights and obligations of the parties hereunder shall survive any termination of Executive's employment to the extent necessary to the agreed preservation of such rights and obligations.

(i) *Counterparts.* This Employment Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

(j) *Headings.* The headings of the sections contained in this Employment Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Employment Agreement.

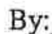
(k) *Life Insurance.* The Company may, in its sole discretion, at any time after the execution of this Agreement, apply for and procure as owner, and for its own benefit, insurance on the life of Executive, in such amounts and in such form or forms as the Company may choose. Executive shall have no interest whatsoever in any such policy or policies, but shall, at the request of the Company, submit to such medical examinations, supply such information, and execute such documents as may be required by the insurance company or companies to whom the Company has applied for such insurance.

(l) **BOTH PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS EMPLOYMENT AGREEMENT OR ANY ANCILLARY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR THE EMPLOYER TO RETAIN EXECUTIVE.**

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Employment Agreement as of the day and year first above written.

RCF ACQUISITION COMPANY, LLC



By:______________________________
Name: Marc Gardner
Title: Manager

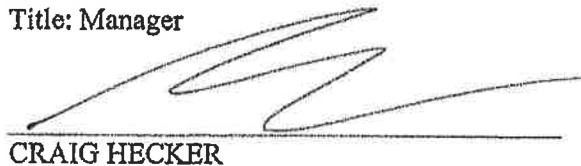
____
CRAIG HECKER

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have duly executed this Employment Agreement as of the day and year first above written.

RCF ACQUISITION COMPANY, LLC

By:________________________________
Name: Marc Gardner
Title: Manager



CRAIG HECKER

[SIGNATURE PAGE TO EMPLOYMENT AGREEMENT]

EXHIBIT A

Net Income	2,000,000	
Retained Cash	25%	
Federal tax rate	39.6%	
MI tax rate	4.25%	
Retained cash	500,000	25.0%
Total Taxes	854,282	
Total net cash	645,718	
Net cash each	322,859	
Distribution to CH	534,535	26.7%
Taxable to NAB	1,465,465	
NAB Taxes	642,607	
NAB Net	322,859	-
Distributable to NAB	965,465	48.3%

SCHEDULE OF DAY-TO-DAY OPERATIONS

The Chief Executive Officer (the "CEO") is responsible for leading the development and execution of the Company's short and long term strategy with a view of creating shareholder value and achieving annual profit levels consistent with the approved financial forecasts. The CEO's leadership role also entails being responsible for day-to-day management decisions and for implementing the Company's long and short term plans, subject to the specific provisions hereof and subject to the supervision and direction of Management (as hereinafter defined) . For purposes hereof, the term "Management" shall mean the Manager(s) of the Company and their designees.

More specifically, the duties and responsibilities of the CEO shall include the following:

1. lead, in conjunction with Management, the development of the Company's strategy;
2. lead and oversee the implementation of the Company's long and short term plans in accordance with its strategy;
3. hire and terminate staff as necessary to enable it to achieve the approved strategy;
4. oversee expenditures of the Company in conjunction with the authorized annual budget of the Company;
5. work with Management to assess the principal risks of the Company and to ensure that these risks are being reasonably monitored and managed by the CEO;
6. work with Management to identify effective internal controls and management information systems while CEO implements and maintains such controls and systems;
7. work with Management to identify appropriate systems to enable the Company to conduct its activities lawfully while CEO implements and maintains such systems;
8. report to Management ;
9. ensure that Management is properly informed and that sufficient information is provided to Management to enable it to form informed judgments as to all material matters affecting the Company;
10. work in concert with Management to develop management agendas;
11. request special meetings with Management when reasonably appropriate;
12. sit on committees of Management where appropriate as requested by the Manager.

Notwithstanding anything contained herein to the contrary:

(a) Management will have control over all financial and accounting functions.

(b) CEO and Management will continue to develop standardized underwriting policies and procedures that the CEO will be responsible for implementing, including credit authority levels for various personnel within the Company; provided, however, that any individual deal (or series of related deals) initially in excess of $200,000 (and subject to modification as part of ongoing updates to credit policies and procedures) shall require the approval of Management.

(c) CEO will comply (and cause the Company to comply) with the compliance plan, covering, but not limited to, lead generation; sales processes; underwriting; and, retention and renewals, developed jointly with Management, as the same may be amended from time to time (the "Compliance Plan").

(d) CEO and Management will jointly adopt annual budgets, that may be modified from time to time. The parties acknowledge that the agreed upon projections and budgets for 2015 through

2017 are set forth on the **Schedule of Projections** attached to the Employment Agreement, and any change to same shall require the approval of Management.

(e) CEO will have the authority for capital expenditures up to $25,000 in any one transaction (or series of related transactions). Any such transaction(s) in excess of $25,000 must be pre-approved by Management unless already approved in detail based on annual budget submission.

(f) CEO shall have primary authority on pricing, but only so long as underwriting guidelines and performance metrics are adhered to and default rates are under 9.0%. Management approval shall be required for any campaigns that expect to have default rates in excess of 9.0%.

SCHEDULE OF PROJECTIONS

OUTPUTS

RAPID CAPITAL FINANCIAL MODEL

HIGHLY CONFIDENTIAL

November 18, 2014

Returns	2014	2015	2016	2017
Portfolio Income				
Pre-Tax Income		2,192,684	9,405,207	11,797,434
Unearned Advance Fee Income		9,116,083	10,441,676	13,057,985
Less: Unearned Income Loss Reserve		(720,171)	(824,892)	(1,031,581)
Total Portfolio Income		*10,588,596*	*19,021,991*	*23,823,838*
5.00x Multiple of Portfolio Income		52,942,981	95,109,956	119,119,188
6.00x Multiple of Portfolio Income		63,531,577	114,131,947	142,943,025
7.00x Multiple of Portfolio Income		74,120,174	133,153,938	166,766,863
Average Enterprise Value		**63,531,577**	**114,131,947**	**142,943,025**

Production Volumes	2014	2015	2016	2017
New Funded Origination (Monthly Average)	2,720,703	4,589,017	5,831,537	7,001,323
3rd Party Funded Origination (Monthly Average)	90,675	655,603	761,779	907,603
Renewal Funded (Monthly Average)	1,968,273	3,349,178	3,974,410	4,911,223
Total Monthly Funded Production	**4,779,651**	**8,593,799**	**10,567,726**	**12,820,149**
New Funded Origination (Annual)	32,648,433	55,068,209	69,978,449	84,015,872
3rd Party Funded Origination (Annual)	1,088,102	7,867,238	9,141,350	10,891,238
Renewal Funded (Annual)	23,619,281	40,190,139	47,692,916	58,934,680
Total Annual Funded Production	**57,355,817**	**103,125,586**	**126,812,715**	**153,841,790**
New Origination RTR (Annual)	42,760,487	72,139,354	91,671,768	110,060,792
3rd Party Funded RTR (Annual)	1,490,700	10,778,117	12,523,650	14,920,997
Renewal RTR (Annual)	30,875,646	52,649,081	62,477,720	77,204,431
Total Annual RTR Production	**75,126,833**	**135,566,552**	**166,673,138**	**202,186,220**

Rapid Capital - Projected Balance Sheet	2014	2015	2016	2017
ASSETS				
Cash	2,803,524	500,000	500,000	500,000
Merchant advances receivable	5,689,364	29,406,718	33,682,826	42,122,531
Advance fee income receivable	1,763,703	9,116,083	10,441,676	13,057,985
Total Merchant Recivables	7,453,067	38,522,801	44,124,502	55,180,515
Prepaid expenses	109,188	927,111	1,080,345	1,345,337
Other receivables	86,301	86,301	86,301	86,301
Other Current Assets	289,648	289,648	289,648	789,648
Total current assets	**10,741,729**	**40,325,861**	**46,080,797**	**57,401,801**
Property and equipment, net	101,667	150,496	232,138	257,834
TOTAL ASSETS	**10,843,395**	**40,476,357**	**46,312,934**	**57,659,635**
LIABILITIES AND MEMBERS' EQUITY				
Accounts Payable and Accrued Exp	299,240	576,850	635,018	803,970
Accrued payroll and taxes	124,029	154,038	163,136	206,315
Unearned advance fee income	1,763,703	9,116,083	10,441,676	13,057,985
Loan payable - Revolving (Funded)	8,855,663	28,635,941	23,674,453	20,395,280
Total liabilities	**11,122,201**	**38,562,478**	**34,993,848**	**34,543,115**
Members' equity - beginning	353,834	(278,806)	1,913,879	11,319,086
Pre-tax income - current period	(621,405)	2,192,684	9,405,207	11,797,434
Members' equity - ending	**(278,806)**	**1,913,879**	**11,319,086**	**23,116,520**
TOTAL LIABILITIES AND MEMBERS' EQUITY	10,843,395	40,476,357	46,312,934	57,659,635

Rapid Capital - Projected Income Statement	2014	2015	2016	2017
Revenues				
Advance Fee Income		19,065,809	30,695,662	36,363,501
Commission Income		779,415	948,955	1,147,683
Residual Income		-	-	-
Fee Income		1,715,561	2,009,242	2,427,530
Service Fee Income		-	-	-
Total Revenue		21,560,785	33,653,860	39,938,715
Expenses				
Variable OPEX		2,219,789	2,299,409	3,177,807
Originations		7,331,706	8,480,020	10,053,426
Fixed OPEX		2,103,674	2,244,242	2,477,790
Depreciation		83,170	63,558	134,024
Reserve for losses		5,275,468	8,493,423	10,061,702
Total Expense		17,013,808	21,580,653	25,904,749
% of sales		78.9%	64.1%	64.9%
Operating Income		4,546,977	12,073,207	14,033,965
Interest Expense, Net		2,354,293	2,668,000	2,236,531
Pre-Tax Income		2,192,684	9,405,207	11,797,434
Income Tax		-	-	-
Net Income		2,125,939	9,324,444	11,697,888
Net Income Margin		9.9%	27.7%	29.3%
EBITDA		4,630,148	12,136,765	14,167,989
EBITDA margin		21.5%	36.1%	35.5%
Free Cash Flow		7,551,323	17,962,189	21,993,160

Rapid Capital - Debt Service	2014	2015	2016	2017
Total Receivable		38,522,801	44,124,502	55,180,515
EBITDA		4,630,148	12,136,765	14,167,989
Net Debt		28,135,941	23,174,453	19,895,280
Debt/EBITDA		6.08x	1.91x	1.40x
LTV		73.0%	52.5%	36.1%

Rapid Capital - Projected Cash Flow Statement	2014	2015	2016	2017
OPERATING ACTIVITIES				
Pre-Tax Income		2,192,684	9,405,207	11,797,434
Depreciation		83,170	63,558	134,024
Changes in Balance Sheet Accounts				
Merchant advances receivable		(23,717,354)	(4,276,108)	(8,439,705)
Allowance for Doubtful Accounts		-	-	-
Advance fee income receivable		(7,352,380)	(1,325,593)	(2,616,308)
Prepaid expenses		(817,922)	(153,235)	(264,991)
Other receivables		-	-	-
Other Current Assets		-	-	-
Accounts Payable and Accrued Exp		277,610	58,168	168,952
Accrued payroll and taxes		30,009	9,098	43,180
Unearned advance fee income		7,352,380	1,325,593	2,616,308
Net Cash Provided by Operating Activities		(21,951,802)	5,106,689	3,438,893
INVESTING ACTIVITIES				
Capex		(132,000)	(145,200)	(159,720)
Net Cash Used in Investing Activities		(132,000)	(145,200)	(159,720)
FINANCING ACTIVITIES				
Equity Issued (Distributions), Net		-	-	-
Veritas Loan payable - Revolving (Funded)		-	-	-
Loans payable - other		-	-	-
Loan payable - Revolving (Funded)		19,780,278	(4,961,489)	(3,279,173)
Net Cash Used in Financing Activities		19,780,278	(4,961,489)	(3,279,173)
Beginning Cash Balance		2,803,524	500,000	500,000
Cash Used		(2,303,524)	0	0
Ending Cash Balance		500,000	500,000	500,000

Rapid Capital Funding
Combined Income Statement

	2014	2015												
	December	January	February	March	April	May	June	July	August	September	October	November	December	January
Revenues														
Advance Fee Income	124,952	378,038	637,612	904,668	1,179,939	1,466,693	1,766,333	1,951,821	2,018,117	2,086,390	2,155,841	2,225,980	2,294,377	2,357,179
Commission Income	53,205	54,611	56,056	57,780	59,458	62,229	64,356	66,459	67,992	69,942	71,538	73,565	75,429	76,350
Residual Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-Recurring Fee Income	120,210	122,679	125,247	128,534	131,705	137,682	142,006	146,268	149,063	152,932	155,888	159,955	163,603	164,967
Service Fee Income	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Revenue	**298,367**	**555,327**	**818,914**	**1,090,982**	**1,371,102**	**1,666,604**	**1,972,695**	**2,164,548**	**2,235,172**	**2,309,264**	**2,383,267**	**2,459,501**	**2,533,409**	**2,598,496**
Expenses														
Variable OPEX	159,152	165,760	182,856	183,792	184,687	189,803	190,980	189,022	186,675	187,703	188,490	182,983	187,037	190,122
Originations	522,628	534,617	546,031	558,547	570,883	593,739	607,842	621,850	635,612	647,018	659,026	672,737	685,803	690,993
Fixed OPEX	159,463	165,499	169,575	170,481	171,365	176,161	177,225	177,473	177,480	178,458	179,288	179,056	181,613	185,766
Depreciation	4,973	5,250	5,556	5,861	6,167	6,473	6,778	7,084	7,389	7,695	8,000	8,306	8,611	4,459
Amort of Cap Fin Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Reserve for losses	34,574	104,602	176,426	250,320	326,487	405,831	488,740	540,065	558,409	577,300	596,517	615,924	634,849	652,226
Other Expenses														
Non-Recurring expense	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Expense	880,790	975,728	1,080,444	1,169,001	1,259,589	1,372,006	1,471,566	1,535,494	1,563,565	1,598,173	1,631,321	1,659,006	1,697,914	1,723,566
% of sales	295.2%	175.7%	131.9%	107.2%	91.9%	82.3%	74.6%	70.9%	70.0%	69.2%	68.4%	67.5%	67.0%	66.3%
Operating Income	(582,423)	(420,401)	(261,530)	(78,019)	111,513	294,598	501,129	629,054	671,607	711,091	751,946	800,495	835,495	874,930
Other Income/(Expense)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest Expense, Net	38,982	87,237	120,063	155,231	182,937	203,416	216,509	223,347	227,420	230,803	233,628	235,903	237,799	238,964
Pre-Tax Income	**(621,405)**	**(507,638)**	**(381,593)**	**(233,251)**	**(71,424)**	**91,182**	**284,620**	**405,707**	**444,187**	**480,287**	**518,318**	**564,592**	**597,696**	**635,966**
Income Tax	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Income	**(621,405)**	**(507,638)**	**(381,593)**	**(233,251)**	**(71,424)**	**91,182**	**284,620**	**405,707**	**444,187**	**480,287**	**518,318**	**564,592**	**597,696**	**635,966**
Interest Adjusted to Net Income	(3,169)	(3,776)	(4,321)	(4,734)	(5,082)	(5,526)	(5,771)	(5,931)	(6,043)	(6,200)	(6,337)	(6,422)	(6,602)	(6,715)
Actual Net Income	**(624,573)**	**(511,414)**	**(385,914)**	**(237,984)**	**(76,506)**	**85,656**	**278,849**	**399,776**	**438,144**	**474,087**	**511,981**	**558,170**	**591,094**	**629,251**
EBITDA	**(577,450)**	**(415,150)**	**(255,974)**	**(72,158)**	**117,680**	**301,070**	**507,907**	**636,138**	**678,997**	**718,785**	**759,946**	**808,801**	**844,106**	**879,388**
EBITDA margin	(193.5%)	(74.8%)	(31.3%)	(6.6%)	8.6%	18.1%	25.7%	29.4%	30.4%	31.1%	31.9%	32.9%	33.3%	33.8%
Free Cash Flow	**(581,859)**	**(397,785)**	**(199,612)**	**22,931**	**261,230**	**503,485**	**780,139**	**952,855**	**1,009,985**	**1,065,282**	**1,122,835**	**1,188,822**	**1,241,157**	**1,292,651**

Rapid Capital Funding
Combined Income Statement

	2016										
	February	March	April	May	June	July	August	September	October	November	December
Revenues											
Advance Fee Income	2,414,541	2,465,612	2,507,786	2,542,605	2,571,681	2,593,591	2,610,898	2,626,273	2,642,940	2,666,654	2,695,902
Commission Income	77,274	77,327	77,264	77,874	78,405	78,827	79,394	80,053	80,785	82,299	83,103
Residual Income	-	-	-	-	-	-	-	-	-	-	-
Non-Recurring Fee Income	166,340	165,720	164,799	165,608	166,213	166,540	167,116	167,932	168,932	171,944	173,130
Service Fee Income	-	-	-	-	-	-	-	-	-	-	-
Total Revenue	**2,658,155**	**2,708,659**	**2,749,849**	**2,786,087**	**2,816,299**	**2,838,959**	**2,857,408**	**2,874,258**	**2,892,658**	**2,920,897**	**2,952,135**
Expenses											
Variable OPEX	190,667	190,660	190,580	190,924	191,218	191,443	191,758	192,131	192,548	193,450	193,907
Originations	695,133	695,982	696,370	699,409	702,135	704,437	707,237	710,405	720,373	726,905	730,640
Fixed OPEX	186,072	186,055	185,991	186,199	186,375	186,506	186,681	186,894	188,775	189,329	189,598
Depreciation	4,100	4,159	4,217	4,275	4,334	4,670	5,006	5,316	5,299	8,694	9,031
Amort of Cap Fin Costs	-	-	-	-	-	-	-	-	-	-	-
Reserve for losses	668,098	682,230	693,899	703,533	711,579	717,641	722,430	726,684	731,296	737,857	745,950
Other Expenses											
Non-Recurring expense	-	-	-	-	-	-	-	-	-	-	-
Total Expense	**1,744,071**	**1,759,086**	**1,771,057**	**1,784,341**	**1,795,640**	**1,804,697**	**1,813,112**	**1,821,430**	**1,838,290**	**1,856,236**	**1,869,126**
% of sales	65.6%	64.9%	64.4%	64.0%	63.8%	63.6%	63.5%	63.4%	63.6%	63.6%	63.3%
Operating Income	914,084	949,574	978,792	1,001,746	1,020,658	1,034,262	1,044,296	1,052,828	1,054,367	1,064,661	1,083,009
Other Income/(Expense)	-	-	-	-	-	-	-	-	-	-	-
Interest Expense, Net	239,186	238,061	235,186	231,187	226,672	221,749	216,646	211,635	206,857	202,741	199,116
Pre-Tax Income	**674,898**	**711,513**	**743,606**	**770,559**	**793,986**	**812,513**	**827,650**	**841,193**	**847,510**	**861,920**	**883,893**
Income Tax	-	-	-	-	-	-	-	-	-	-	-
Net Income	**674,898**	**711,513**	**743,606**	**770,559**	**793,986**	**812,513**	**827,650**	**841,193**	**847,510**	**861,920**	**883,893**
Interest Adjusted to Net Income	(6,759)	(6,756)	(6,734)	(6,731)	(6,720)	(6,701)	(6,686)	(6,676)	(6,738)	(6,770)	(6,777)
Actual Net Income	**668,139**	**704,757**	**736,872**	**763,828**	**787,266**	**805,811**	**820,964**	**834,518**	**840,772**	**855,150**	**877,116**
EBITDA	**918,184**	**953,732**	**983,009**	**1,006,021**	**1,024,992**	**1,038,931**	**1,049,301**	**1,058,145**	**1,059,666**	**1,073,355**	**1,092,040**
EBITDA margin	34.5%	35.2%	35.7%	36.1%	36.4%	36.6%	36.7%	36.8%	36.6%	36.7%	37.0%
Free Cash Flow	**1,347,096**	**1,397,901**	**1,441,722**	**1,478,368**	**1,509,899**	**1,534,823**	**1,555,085**	**1,573,193**	**1,584,105**	**1,608,472**	**1,638,874**

Rapid Capital Funding
Combined Cashflow statement

	2014	2015											
	December	January	February	March	April	May	June	July	August	September	October	November	December
OPERATING ACTIVITIES													
Pre-Tax Income	(621,405)	(507,638)	(381,593)	(233,251)	(71,424)	91,182	284,620	405,707	444,187	480,287	518,318	564,592	597,696
Depreciation	4,973	5,250	5,556	5,861	6,167	6,473	6,778	7,084	7,389	7,695	8,000	8,306	8,611
Changes in Balance Sheet Accounts													
Merchant advances receivable	(5,689,364)	(4,959,013)	(4,211,891)	(3,481,396)	(2,715,174)	(2,075,994)	(1,293,163)	(906,433)	(849,779)	(850,160)	(792,062)	(797,770)	(784,519)
Allowance for Doubtful Accounts	-	-	-	-	-	-	-	-	-	-	-	-	-
Advance fee income receivable	(1,763,703)	(1,537,294)	(1,305,686)	(1,079,233)	(841,704)	(643,558)	(400,880)	(280,994)	(263,431)	(263,550)	(245,539)	(247,309)	(243,201)
Prepaid expenses	219,637	(94,036)	(96,461)	(99,564)	(102,511)	(108,140)	(112,015)	(70,209)	(25,845)	(27,114)	(27,082)	(27,898)	(27,047)
Other receivables	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Current Assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Capitalized Financing Costs	-	-	-	-	-	-	-	-	-	-	-	-	-
Accounts Payable and Accrued Exp	29,932	32,254	35,576	30,086	30,776	38,193	33,824	21,719	9,537	11,758	11,262	9,406	13,219
Accrued payroll and taxes	14,089	5,052	7,150	1,588	1,547	5,977	1,951	825	312	1,791	1,472	(475)	2,818
Unearned advance fee income	1,763,703	1,537,294	1,305,686	1,079,233	841,704	643,558	400,880	280,994	263,431	263,550	245,539	247,309	243,201
Other Current Liabilities	-	-	-	-	-	-	-	-	-	-	-	-	-
Deferred Tax Liability	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Cash Provided by Operating Activities	(6,042,139)	(5,518,130)	(4,641,662)	(3,776,675)	(2,850,618)	(2,042,310)	(1,078,005)	(541,309)	(414,199)	(375,743)	(280,091)	(243,839)	(189,221)
INVESTING ACTIVITIES													
Capex	(10,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)
Net Cash Used in Investing Activities	(10,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)	(11,000)
FINANCING ACTIVITIES													
Equity Issued (Distributions), Net	-	-	-	-	-	-	-	-	-	-	-	-	-
Veritas Loan payable - Revolving (Funded)	-	-	-	-	-	-	-	-	-	-	-	-	-
Loans payable - other	-	-	-	-	-	-	-	-	-	-	-	-	-
Loan payable - Revolving (Funded)	8,355,663	3,225,606	4,652,662	3,787,675	2,861,618	2,053,310	1,089,005	552,309	425,199	386,743	291,091	254,839	200,221
Tax Distributions	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Cash Used in Financing Activities	8,355,663	3,225,606	4,652,662	3,787,675	2,861,618	2,053,310	1,089,005	552,309	425,199	386,743	291,091	254,839	200,221
Net Change in Cash and Cash Equivalents	2,303,524	#########	-	-	-	-	-	-	-	-	-	-	-
Cash and Cash Equivalents, Beginning Balance	500,000	2,803,524	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Cash and Cash Equivalents, Ending Balance	2,803,524	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
BS Cash	2,803,524	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Variance	-	-	-	-	-	-	-	-	-	-	-	-	-

EXHIBIT C

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION SECTION

CASE NO. 17-015626-CA-40

FILED FOR RECORD 2017 ... PM 2:00 CIRCUIT & COUNTY CTS MIAMI-DADE COUNTY, FL. CIVIL DIVISION #150

CRAIG HECKER,

Plaintiff,

vs.

RAPID CAPITAL FINANCE, LLC, MARC GARDNER, and **NORTH AMERICAN BANCARD LLC.**

Defendants.

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EX PARTE ORDER GRANTING TEMPORARY INJUNCTION

THIS CAUSE came before the Court upon the Plaintiffs' Emergency Motion for Temporary Injunction, filed on June 29, 2017.

Having reviewed the record and finding that the relief sought in the Motion is appropriate, hearing argument of counsel, it is

ORDERED and ADJUDGED as follows:

The Court was informed that counsel for Plaintiff had been advised by corporate counsel Kamisar that a hearing was scheduled for July 29, 2017 at 11:00 a.m. Mr. Kamisar was given instructions to call into the hearing via Court Call. Mr. Kamisar responded that he was not authorized to participate in the hearing. In an abundance of caution, the Court attempted to contact Mr. Kamisar at both his work and cell numbers and was connected to voice mail. The Court then proceeded with the hearing.

The Court reviewed the complaint, the emergency motion for temporary injunction,

and the affidavit of the Plaintiff filed herein.

Initially the Court requested clarification of the difference between the name of the named party defendant Rapid Capital Finance, LLC and the signatory to the Asset Purchase Agreement, RCF Acquisition Company, LLC. Counsel for Plaintiff advised that the name of the company had changed over time via assignment, and that Rapid Capital Finance LLC was the proper party to the action.

Having clarified the foregoing, the Court finds:

1. The Motion is **GRANTED**.

2. The Court finds for purposes of this injunction that Marc Gardner is the owner of North American Bancard which in turn is the owner of Rapid Capital Finance, LLC.

3. Plaintiff, Craig Hecker, is the CEO of Rapid Capital Finance, LLC, and a party to the Asset Purchase Agreement and Employment Agreement at issue here.

4. Plaintiff, upon information and belief, and based on an email received from Mr. Haggarty, CFO of North American Bancard, a planned transaction to strip Rapid Capital Finance of its assets via the transfer of its assets to a newly formed company owned by Defendant Gardner was imminent as of the close of business today. In addition, if the transaction did not proceed, Rapid Capital Finance would be shut down as of the close of business today. The Court has instructed counsel for Plaintiff to supplement the record with a copy of the email, the Court having been provided with an opportunity to review the email by reviewing the contents on Plaintiff's cell phone.

5. The Court finds such a transfer of assets violates §2.8(k) of the Asset Purchase Agreement, as it appears the planned transaction is not an arm's length transaction and thus is violative of the provision.

6. The Court further finds that such a shutdown is also prohibited as matters relating to the Earn-Out Payment and Performance Earn-Out Payment remain unresolved and such a shutdown would cause irreparable harm to the Plaintiff.

7. Such a transfer is likewise prohibited as it would constitute a constructive termination without cause of Plaintiff from his position as CEO, which is likewise not permitted by the Agreements.

8. The purpose of a temporary injunction is to preserve the status quo pending a final hearing when full relief may be granted.

9. Based on the foregoing the Court finds Plaintiff has no adequate remedy at law in light of the factual situation presented, and money damages will not suffice to make the Plaintiff whole or cure the loss or shut down of the business. The issuance of an injunction will maintain the status quo.

10. Further, the Court finds Plaintiff has a sufficient likelihood of success on the merits based on the facts provided to entitle him to an injunction and such an injunction is in the public interest. *See Santos v. Tampa*, 857 So. 2d 315 (Fla. 2d DCA 2003).

11. This Court finds on June 29, 2017 at 11:45 A.M., that irreparable harm will result if a temporary injunction is not immediately entered due to the potential loss of value of Plaintiff Craig Hecker's interests and rights in Rapid Capital Finance, LLC's business that would result from the transfer of assets or other disruption of their business, which is imminent.

12. Further, considering the facts and circumstances of the cases, including the fact that the harm is imminent, and Plaintiff's attempts to provide notice via e-mail and letter, no further notice to Defendants was necessary pursuant to Florida Rule of Civil Procedure 1.610.

13. The Defendants, their employees, agents, or affiliates are hereby temporarily enjoined from further violation of the Asset Purchase Agreement and the Employment Agreement by the transfer of the assets of Rapid Capital Finance, LLC to a newly formed company, or related entity of North American Bancard, LLC or Mark Gardner, or otherwise causing the shutdown of Rapid Capital Finance LLC's ongoing business.

14. Due to the lack of foreseeable damages from enjoining Defendants, pursuant to Fla. R. Civ. P. 1.610 Plaintiff must post a bond in the amount of $10,000 by the close of business today, and this injunction will become effective upon approval of the bond by the Clerk of the Court.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 06/30/17.

JOHN W. THORNTON
CIRCUIT COURT JUDGE

ORIGINAL
JUDGE JOHN W. THORNTON JR.

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Thornton's staff.

Copies furnished to:
Dan@axslawgroup.com;Jeff@axslawgroup.com;hk@bertralaw.com;dag@bertralaw.com

EXHIBIT D

From: **Howard Komisar** hk@bertralaw.com
Subject: RE: RCF - Hecker
Date: July 3, 2017 at 9:39 AM
To: Daniel Tropin dan@axslawgroup.com
Cc: David Greenberg dag@bertralaw.com, Jeremy Ben-David jeremy@axslawgroup.com, Jeff Gutchess jeff@axslawgroup.com, Benjamin Wolkov ben@axslawgroup.com, Craig hecker miamiwatches36@gmail.com

HK

Dan:

Your correction to the list of “to be negotiated” is fine. Please confirm when withdrawals have been filed.

Howard D. Komisar, Esq.
Berkowitz, Trager & Trager, LLC
8 Wright Street
Westport, Connecticut 06880
(203) 291-8203 (Direct Dial)
(203) 226-3801 (Fax)
hk@bertralaw.com
Website: www.bertralaw.com
The information in this transmittal is privileged and confidential and is intended only for the recipient(s) listed above. If you are neither the intended recipient(s) nor a person responsible for the delivery of this transmittal to the intended recipient(s), you are hereby notified that any unauthorized distribution or copying of this transmittal is prohibited. If you have received this transmittal in error, please notify me immediately at (203) 226-1001.

Pursuant to U.S. Treasury Department Regulations, we must inform you that any tax advice contained in this communication, including any attachments and enclosures, is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax-related penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

From: Daniel Tropin [mailto:dan@axslawgroup.com]
Sent: Monday, July 3, 2017 8:33 AM
To: Howard Komisar <hk@bertralaw.com>
Cc: David Greenberg <dag@bertralaw.com>; Jeremy Ben-David <jeremy@axslawgroup.com>; Jeff Gutchess <jeff@axslawgroup.com>; Benjamin Wolkov <ben@axslawgroup.com>; Craig hecker <miamiwatches36@gmail.com>
Subject: Re: RCF - Hecker

Thanks. We’ve made one small correction, as the reference to Craig’s office appears in the “to be negotiated” column after its already in the agreed column. Please confirm your agreement and I will proceed with filing.

The agreement in principle of Mr. Hecker, Rapid Capital Finance, LLC (“RCF”) and Specialty Finance Group, LLC (“SFG”):
(1) Mr. Hecker’s profit interest and advance participation rights in SFG would remain consistent with his current employment agreement, with the only exception being that his profit interest would be reduced from 50% to 35%;
(2) Mr. Hecker would have the same minority protections with respect to SFG that he has had with respect to RCF and, in addition, a management board seat;
(3) SFG would have exclusive rights to NAB entities’ customers, which exclusivity would be based on commitments by Mr. Hecker to market MCA products to the portfolio in a responsible manner and to achieve certain, mutually agreed financial results (to be worked out between Craig and NAB). The parties will discuss the return of Craig’s profit interest to 50% in SFG in the event that NAB breaches its obligations relating to its exclusive commitment;
(4) The parties will walk through RCF’s financial performance in an effort to determine whether Craig has earned the special bonuses for 2015 and 2016. Those bonuses will be paid immediately if RCF’s performance during those periods establish that they are due and owing under the current arrangement; and
(5) Mr. Hecker will commit to spending at least 50% of his time in either the LA or Miami office of

(5) Mr. Hecker will commit to spending at least 50% of his time in either the LA or Miami office of SFG.
The parties will negotiate in good faith on the following three points:
(1) Legal fee reimbursement; and
(2) Clarification on Marc's capital commitment to SFG.
Based on the above, we will immediately file a notice of voluntary dismissal without prejudice for the complaint and the injunction, and RCF/SFG agrees not to proceed to transfer the assets of RCF or shut down the business operations of RCF for a period of 30 days from the date hereof, while a formal agreement is worked out.

Thanks,
Daniel Tropin
AXS Law Group, PLLC

dan@axslawgroup.com
Mobile: 305.546.5646

Office: 305.297.1878
2121 NW 2nd Avenue, Suite 201Wynwood, FL 33127

Visit www.axslawgroup.com

On Jul 3, 2017, at 8:11 AM, Howard Komisar <hk@bertralaw.com> wrote:

Dan:

Per our discussion this morning, the attached is intended to set forth the agreement in principle of Mr. Hecker, Rapid Capital Finance, LLC (“RCF”) and Specialty Finance Group, LLC (“SFG”):
(1) Mr. Hecker’s profit interest and advance participation rights in SFG would remain consistent with his current employment agreement, with the only exception being that his profit interest would be reduced from 50% to 35%;
(2) Mr. Hecker would have the same minority protections with respect to SFG that he has had with respect to RCF and, in addition, a management board seat;
(3) SFG would have exclusive rights to NAB entities’ customers, which exclusivity would be based on commitments by Mr. Hecker to market MCA products to the portfolio in a responsible manner and to achieve certain, mutually agreed financial results (to be worked out between Craig and NAB). The parties will discuss the return of Craig’s profit interest to 50% in SFG in the event that NAB breaches its obligations relating to its exclusive commitment;
(4) The parties will walk through RCF’s financial performance in an effort to determine whether Craig has earned the special bonuses for 2015 and 2016. Those bonuses will be paid immediately if RCF’s performance during those periods establish that they are due and owing under the current arrangement; and
(5) Mr. Hecker will commit to spending at least 50% of his time in either the LA or Miami office of SFG.
The parties will negotiate in good faith on the following three points:
(1) The amount of time physically in office in Miami;
(2) Legal fee reimbursement; and
(3) Clarification on Marc's capital commitment to SFG.
Based on the above, you will immediately file a notice of voluntary dismissal without prejudice for the complaint and the injunction, and RCF/SFG agrees not to proceed to transfer the assets of RCF or shut down the business operations of RCF for a period of 30 days from the date hereof, while a formal agreement is worked out.
Please confirm your side’s agreement to the above.

Howard D. Komisar, Esq.

EXHIBIT E

Beneficiary of NAB/TMS Deal Could Be Rapid Capital Funding

July 14, 2017 | By: Sean Murray

Square is not alone in offering working capital to their payment processing customers. Troy,MI-based North American Bancard (NAB) has been offering their customers merchant cash advances through a Troy-based subsidiary known as Capital For Merchants (CFM) for more than 10 years. And after seeing the growth of that segment, NAB went out and acquired Miami,FL-based Rapid Capital Funding (RCF) in late 2014.

Now, NAB has become even bigger by acquiring Total Merchant Services to make them the seventh largest payment processor in North America. The new combined company, which will operate under the NAB name, will rival Square in annual processing volume.

One beneficiary of the deal could be RCF, who merged with CFM earlier this year. RCF has historically had a sizable direct sales operation that facilitated financing for all merchants, regardless of whether or not they processed payments with NAB. That continued until recently when

they reportedly pivoted towards focusing more of their new origination efforts on NAB's (and now combined with TMS's) 350,000+ merchants.

RCF was founded nearly 10 years ago. They acquired Anaheim,CA-based rival American Finance Solutions in the fall of 2014, right before joining the NAB family.

Last modified: July 14, 2017

Sean Murray is the President and Chief Editor of deBanked and the founder of the Broker Fair Conference. Connect with me on LinkedIn or follow me on twitter.

Category: merchant cash advance

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