

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

KNIGHT CAPITAL FUNDING III, LLC,

Plaintiff,

vs.

WYLDER'S HOLISTIC PET CENTER INC,
a(n) Delaware corporation, and MELISSA
BACELAR, individually,

Defendant(s).

GENERAL JURISDICTION DIVISION

CASE NO.:

COMPLAINT

Plaintiff, KNIGHT CAPITAL FUNDING III, LLC, a foreign limited liability company registered to do business in Florida, by and through undersigned counsel, brings an action against Defendants, WYLDER'S HOLISTIC PET CENTER INC, a(n) California corporation and MELISSA BACELAR, and, in support of its claims for affirmative relief, alleges the following:

PARTIES

1. Plaintiff, KNIGHT CAPITAL FUNDING III, LLC, ("Knight Capital"), is a Delaware limited liability company with its principal place of business in Miami-Dade County.
2. Defendant WYLDER'S HOLISTIC PET CENTER INC ("Corporate Defendant"), is a(n) Delaware corporation.
3. Defendant MELISSA BACELAR ("Individual Defendant"), is a(n) California resident over 18 years of age and is otherwise *sui juris*.

JURISDICTION AND VENUE

4. This is a civil action in which the amount in controversy exceeds \$15,000.00, exclusive of court costs, pre-judgment interest, and reasonable attorneys' fees.

5. This Court has jurisdiction over the Defendants and venue is proper in Miami-Dade County because the Defendants voluntarily consented to this Court's exclusive jurisdiction when they executed the Future Receivables Sale Agreement.

FACTUAL ALLEGATIONS

6. On or about June 27, 2017, Knight Capital and the Defendants entered into a Future Receivables Sale Agreement ("Sale Agreement"), a redacted copy of which is attached hereto as **Exhibit "A"**.

7. Pursuant to the Sale Agreement, the Defendants agreed to sell \$54,510.00 of the Corporate Defendant's future receivables ("Purchased Receivables") to Knight Capital, in exchange for an up-front and immediate payment of \$39,500.00 ("Purchase Price").

8. On or about June 27, 2017, Knight Capital, in good faith and in accordance with the terms and conditions of the Sale Agreement, tendered to the Defendants the Purchase Price, which the Defendants accepted, acknowledged and received for their use, benefit and enjoyment.

9. Pursuant to the Sale Agreement, the Defendants agreed to remit 17.90% of the Corporate Defendant's daily receivables ("Purchased Receivables") to Knight Capital until the Purchased Receivables were received in full by Knight Capital.

10. The Defendants expressly authorized and directed Knight Capital to withdraw the Purchased Receivables via Automatic Clearing House ("ACH") from the Corporate Defendant's authorized bank account.

11. In the event that the Corporate Defendant misrepresented any material fact, or breached any duty or obligation set forth in paragraph 2 of the Terms and Conditions attached to the Sale Agreement ("Covenants"), the Individual Defendant, as guarantor, agreed to assume and guarantee the full, complete, and timely performance of all of the Corporate Defendant's obligations under the Sale Agreement.

12. Knight Capital withdrew Purchased Receivables in the total amount of \$8,141.08 from the Corporate Defendant's authorized bank account.

13. However, on or about August 4, 2017, after receiving the Purchase Price from Knight Capital, the Corporate Defendant willfully and intentionally caused the rejection of Knight Capital's ACH withdrawal of the Purchased Receivables.

14. After Knight Capital notified the Defendants of the rejection of the ACH withdrawal of the Purchased Receivables, the Defendants failed to provide Knight Capital with a new or valid authorized account from which Knight Capital could withdraw the Purchased Receivables, or make other arrangements for delivery of the Purchased Receivables to Knight Capital.

15. Pursuant to the Sale Agreement, an event of default occurred when the Corporate Defendant deliberately obstructed the remittance of the Purchased Receivables to Knight Capital. Pursuant to Section 8 of the Terms and Conditions of the Sale Agreement, all unpaid Purchased Receivables become immediately due and owing upon any event of default.

16. The Defendants are liable to Knight Capital for all unpaid Purchased Receivables pursuant to the terms and conditions of the Sale Agreement.

17. Presently, the unpaid Purchased Receivables outstanding amount is \$46,368.92.

18. Pursuant to Terms and Conditions of the Sale Agreement, Knight Capital is entitled to recover reasonable attorneys' fees and costs from the Defendants.

COUNT I
BREACH OF CONTRACT

19. Knight Capital incorporates and re-alleges the allegations in paragraphs 1 through 18 above as if set forth fully herein.

20. On or about June 27, 2017, Knight Capital and the Defendants, entered into the Sale Agreement (**Exhibit “A”**).

21. Knight Capital duly transferred to the Defendants the sum of \$39,500.00 in good faith and with the reasonable expectation that the Defendants would tender the Purchased Receivables in accordance with the terms of the Sale Agreement.

22. Knight Capital has fully performed all conditions precedent to the Corporate Defendant’s performance under the contract.

23. The Corporate Defendant breached the Sale Agreement by obstructing the remittance of the Purchased Receivables to Knight Capital. Specifically, the Corporate Defendant failed to provide Knight Capital with a new or valid authorized bank account from which Knight Capital could withdraw the Purchased Receivables or, in the alternative, make other arrangements for delivery of the Purchased Receivables after Knight Capital notified it of failure to remit the Purchased Receivables.

24. As a result of the Corporate Defendant’s breach, Knight Capital sustained damages of \$46,368.92, which became due on August 4, 2017.

WHEREFORE, Knight Capital demands judgment for damages against WYLDER’S HOLISTIC PET CENTER INC, a(n) Delaware corporation, in the amount of \$46,368.92, plus court costs pursuant to section 57.041, Florida Statutes, reasonable attorneys’ fees pursuant to the Sale Agreement, and such other and further relief that this Court deems just and proper.

COUNT II
UNJUST ENRICHMENT

25. Knight Capital incorporates and re-alleges the allegations in paragraphs 1 through 5 above as if set forth fully herein.

26. Knight Capital purchased accounts receivable from the Corporate Defendant, and paid a reasonable price for those receivables.

27. The Corporate Defendant had knowledge before and after that Knight Capital paid for the aforementioned accounts receivable.

28. The Corporate Defendant benefitted from the payment that Knight Capital provided.

29. Knight Capital paid the Corporate Defendant, and it would be inequitable for the Corporate Defendant to retain Knight Capital's payment without providing Knight Capital the receivables that it purchased.

WHEREFORE, Knight Capital demands judgment for damages against WYLDER'S HOLISTIC PET CENTER INC, a(n) Delaware corporation, plus court costs pursuant to section 57.041, Florida Statutes, and such other and further relief that this Court deems just and proper.

COUNT III
GUARANTY

30. Knight Capital incorporates and re-alleges the allegations in paragraphs 1 through 24 above as if set forth fully herein.

31. On or about June 27, 2017, the Individual Defendant, for valuable consideration, executed a Guaranty in which (s)he guaranteed the full and complete performance of the Corporate Defendant's obligations under the Sale Agreement in the event that the Corporate Defendant deliberately breached or frustrated performance of any of the Covenants contained within the Sale Agreement. The Guaranty is incorporated into **Exhibit "A"**.

32. Thereafter, Knight Capital, relying on the Guaranty, purchased the Purchased Receivables of the Corporate Defendant, in the sum of \$54,510.00.

33. On or about August 4, 2017, Knight Capital failed to receive the Purchased Receivables due to the rejection of the ACH withdrawal because the Corporate Defendant deliberately obstructed the remittance of the Purchased Receivables.

34. Knight Capital notified the Corporate Defendant of the failure to remit the Purchased Receivables. The Corporate Defendant, however, failed to provide a new or valid authorized bank account from which Knight Capital could withdraw the Purchased Receivables, or make other arrangements for the delivery of the Purchased Receivables.

35. Knight Capital notified the Individual Defendant that the Corporate Defendant breached the Sale Agreement by obstructing the remittance of the Purchased Receivables to Knight Capital. However, the Individual Defendant failed to provide a new or valid authorized account for the Corporate Defendant, from which Knight Capital could withdraw the Purchased Receivables, nor did (s)he make any other arrangements for the delivery of the Purchased Receivables to Knight Capital.

36. The Individual Defendant breached the terms of the Guaranty by failing to remit the requisite Purchased Receivables following the Corporate Defendant's breach and deliberate frustration of the performance of the Covenants.

37. The Individual Defendant's breach of the Guaranty directly and proximately damaged Knight Capital.

WHEREFORE, Knight Capital demands judgment against MELISSA BACELAR, for damages, court costs pursuant to section 57.041, Florida Statutes, reasonable attorneys' fees pursuant to the Guaranty, and such other and further relief that this Court deems just and proper.

Respectfully submitted on behalf of the Plaintiff

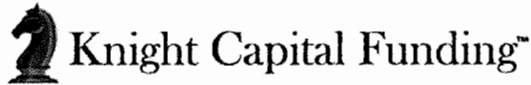
By: /s/ Phillip Yates

Amanda L. Barton - Florida Bar No. 83792

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Phillip W. Z. Yates - Florida Bar No. 106244
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EXHIBIT A

Receivables Sale Agreement



FUTURE RECEIVABLES SALE AGREEMENT

This **FUTURE RECEIVABLES SALE AGREEMENT** ("Agreement") dated 06/27/2017 ("Effective Date"), is made by and between the undersigned Knight Capital Funding entity ("Purchaser"), and WYLDER'S HOLISTIC PET CENTER INC ("Merchant").

Purchase Price: (The dollar amount Purchaser is paying for the Amount Sold.)	Amount Sold: (The amount of Future Receivables being sold by Merchant.)	Purchased Percentage: (The percentage of daily Future Receivables that Merchant agrees to remit to Purchaser.)	Dollar Amount of Purchased Percentage: (This amount represents the dollar amount of the Purchased Percentage based upon the financial information Merchant provided to Purchaser.)
<u>\$39,500.00</u>	<u>\$54,510.00</u>	<u>17.9%</u>	<u>\$353.96</u>

Purchaser and Merchant agree as follows:

- 1. Sale.** Merchant hereby sells to Purchaser a finite amount of its Future Receivables, the dollar value of which is set forth above as "Amount Sold", in exchange for the Purchase Price. Merchant agrees to remit the Purchased Percentage of Merchant's Future Receivables until Purchaser receives the total Amount Sold. "Future Receivables", when used anywhere in this Agreement, means:

- All funds that Merchant receives from electronic payment cards to purchase Merchant's products and services;
- All funds that Merchant receives from cash, checks, money orders, electronic transfer, electronic payment cards or other forms of payment to purchase Merchant's products and services.

THIS IS NOT A LOAN. This is a sale of assets and, as such, there is no predetermined repayment term. If Merchant's business declines or if Merchant's business closes in due course (and Merchant has not violated, or deliberately frustrated performance of, the terms of this Agreement, or otherwise deliberately deceived Purchaser), Merchant will not be in default under this Agreement. Purchaser is entering into this Agreement knowing the risks that Merchant's business may decline or fail, and Purchaser assumes these risks based on Merchant's representations, warranties, and covenants in this Agreement, which are designed to give Purchaser a reasonable and fair opportunity to receive the benefit of its bargain.

FOR THE AVOIDANCE OF DOUBT, THIS FUTURE RECEIVABLES SALE AGREEMENT IS BY AND BETWEEN MERCHANT AND THE UNDERSIGNED KNIGHT CAPITAL FUNDING ENTITY. ANY INDEPENDENT SALES ORGANIZATION OR BROKER THAT PLAYED A ROLE IN THE INTRODUCTION OF MERCHANT TO THE UNDERSIGNED KNIGHT CAPITAL FUNDING ENTITY IS IN NO WAY AUTHORIZED TO ACT AS AN AGENT OF, OR BIND KNIGHT CAPITAL FUNDING IN ANY MANNER, WHATSOEVER. THE INDEPENDENT SALES ORGANIZATION OR BROKER DOES NOT HAVE THE AUTHORITY OR RIGHT TO MAKE, ALTER, MODIFY, OR DISCHARGE ANY CONTRACT, AGREEMENT, OR ANY PORTION THEREOF THAT MAY BE ENTERED INTO BY AND BETWEEN MERCHANT AND PURCHASER. MERCHANT IS HEREBY ADVISED AND AFFIRMATIVELY ACKNOWLEDGES ITS UNDERSTANDING THAT IT IS NOT TO CHANGE ITS POSITION IN RELIANCE UPON ANY REPRESENTATIONS OR PROMISES MADE BY AN INDEPENDENT SALES ORGANIZATION OR BROKER, UNLESS EXPRESSLY AUTHORIZED BY THE UNDERSIGNED KNIGHT CAPITAL FUNDING ENTITY, IN WRITING, ON KNIGHT CAPITAL FUNDING LETTERHEAD.

Initials

2. **Right to Cancel.** Merchant may cancel this transaction at any time within three (3) days after Purchaser forwards the Purchase Price to Merchant. Merchant must return the entire Purchase Price to Purchaser. **Any setup fees charged by Purchaser are non-refundable.**
3. **Fees.** Purchaser does not charge interest, late fees, or broker fees. Purchaser purchases the Future Receivables at a discount. **A setup fee in the amount of 2.5% will be paid by Merchant to Purchaser at the time of sale via setoff against the Purchase Price.** This setup fee covers the costs incurred by Purchaser as a result of underwriting and analyzing Merchant's business, pursuant to Merchant's request.
4. **Purchased Percentage and Remittance Method.** Purchaser cannot increase the Purchased Percentage without Merchant's consent. Purchaser agrees to accept the daily remittance of the Purchased Percentage: (i) directly from Merchant's card processor ("Direct Split"); or (ii) by debiting, via ACH, Merchant's bank account ("Direct Debit"). Purchaser may, in its sole discretion, upon notice to Merchant, change the method by which it will accept the remittance of the Purchased Percentage.

(i) Direct Split: If Purchaser agrees to accept the daily remittance of the Purchased Percentage through Direct Split, Merchant will enter into an agreement with a card processor ("Processor") acceptable to Purchaser, and authorize Processor to pay the Purchased Percentage directly to Purchaser until Purchaser receives the total Amount Sold. Merchant acknowledges that Processor will be acting on behalf of Purchaser to collect the Purchased Percentage. Merchant irrevocably grants Processor the right to hold the Purchased Percentage and to pay Purchaser directly (at, before or after the time Processor credits or remits to Merchant the balance of the Future Receivables not sold by Merchant to Purchaser) until Purchaser receives the entire Amount Sold. Processor may provide Purchaser with all information Purchaser deems pertinent. Merchant agrees to hold Purchaser harmless for the Processor's actions or omissions.

(ii) Direct Debit: If Purchaser agrees to accept the remittance of the Purchased Percentage via Direct Debit, Merchant irrevocably authorizes Purchaser or its designated successor or assignee to initiate a debit of the Purchased Percentage via Automatic Clearing House ("ACH") from Merchant's authorized bank account ("Direct Debit Account") or other Approved Accounts, as defined in the Terms and Conditions section of this Agreement. Merchant authorizes Purchaser to debit, via ACH, the Direct Debit Account for the Purchased Percentage each business day until such time as the Amount Sold has been remitted in full.

Merchant understands that due to the delay of the receipt of data by Purchaser and the operations and rules of the ACH system under the National Automated Clearing House Association ("NACHA"), the Direct Debit method may result in a mismatch between the timing of the receipt of Future Receivables and of the debit. If Purchaser withdraws an incorrect amount from the Direct Debit Account, Merchant authorizes Purchaser to cure and correct the error, after Merchant notifies Purchaser. Merchant understands and agrees that the Dollar Amount of Purchased Percentage is calculated from the financial information that the Merchant provided and is obliged to continually provide to the Purchaser. Merchant agrees to follow the NACHA rules.

In the event of a default of Merchant's obligations under the Agreement, including, without limitation, if Merchant changes its Direct Debit Account, blocks Purchaser's ACH withdrawals, or otherwise hinders or impedes the exercise of Purchaser's rights hereunder, Merchant authorizes Purchaser to debit any of the Merchant's Approved Accounts for any portion of the Purchased Percentage that was not remitted, in breach of this Agreement. Further, Merchant authorizes all of its banking institutions to accept and to charge any debit entries initiated by Purchaser to any of Merchant's bank accounts.

Merchant understands that the foregoing ACH authorization is a fundamental condition to induce Purchaser to enter into the Agreement. Consequently, such authorization is intended to be irrevocable. If Merchant terminates its ACH authorization, Purchaser may deem such termination to be an Event of Default.

5. **Calculation of Dollar Amount of Purchased Percentage.** Purchaser bases its calculation of the dollar amount to which the Purchased Percentage correlates ("Dollar Amount of Purchased Percentage"), on the financial information submitted by Merchant to Purchaser. The Dollar Amount of Purchased Percentage was calculated by evaluating at least the preceding three (3) months of Merchant's bank statements. Purchaser added the total amount of each month's deposits and then deducted any amounts that did not appear to represent proceeds derived from the sale of Merchant's products or services; that number represents the gross monthly revenue of Merchant. The total gross monthly revenue for those months was summed, then

divided by the number of calendar months over which that revenue was generated; this is the average monthly revenue. The percentage set forth as the Purchased Percentage, above, was then applied to the average monthly revenue; this is the dollar amount that correlates to the percentage of receivables that Merchant sold to Purchaser. The dollar amount correlating to that percentage of average monthly revenue was then divided by twenty-one (the average number of business days in a calendar month); this is the Dollar Amount of Purchased Percentage. This calculation utilizes the average number of business days in a month, not the average number of calendar days, since Purchaser only collects the Dollar Amount of Purchased Percentage on business days. Every day but Saturdays, Sundays, and days on which the Federal Reserve is closed shall be considered a business day. **By executing this Agreement, Merchant hereby acknowledges that the Dollar Amount of Purchased Percentage, above, accurately represents Purchased Percentage, and that Purchaser's analysis of financial information that Merchant provided and the corresponding calculations are correct.** The amount reflected in the Dollar Amount of Purchased Percentage will be debited each business day for the first calendar month of this Agreement, as it represents Merchant's most up-to-date financial information.

In order to ensure that Purchaser's debits represent the actual Purchased Percentage that Merchant sold to Purchaser, Merchant shall provide full monthly bank statements for all Approved Accounts within ten (10) days of receipt for Purchaser's analysis. If the updated bank statements reflect a change in the Future Receivables, the dollar amount debited by Purchaser will change, accordingly, to accurately reflect the Purchased Percentage. If the Merchant chooses not provide an updated bank statement for a calendar month, or does not prompt Purchaser to analyze Merchant's electronic bank statements (in the event that Purchaser has access to the electronic statements), Merchant agrees that it is affirmatively representing to Purchaser that the Future Receivables have not changed from the prior month and that the dollar amount being remitted to Purchaser accurately reflects the Purchased Percentage. If, at any time during the term of this Agreement, Merchant submits updated bank statements for any calendar month, Purchaser may request and Merchant shall provide, any and all updated bank statements since the date of execution of this Agreement. Upon receipt of the bank statements, Purchaser shall analyze and determine whether the total dollar amount debited by Purchaser is greater than the actual Purchased Percentage of Future Receivables that Merchant sold to Purchaser. If so, at Merchant's election, Purchaser shall either: (i) credit Merchant the difference between the dollar amount debited and the actual Purchased Percentage; or (ii) suspend any further ACH withdrawals until Merchant generates Future Receivables such that the Purchased Percentage of those Future Receivables is equivalent to the amount previously debited in excess of the actual Purchase Percentage of Future Receivables that Merchant sold to Purchaser. If the updated bank statements reflect that the amounts debited by Purchaser are less than the actual Purchased Percentage, at Merchant's election, Merchant shall either: (x) promptly pay the difference between the actual Purchased Percentage and the amounts debited by Purchaser; or (y) double the Dollar Amount of Purchased Percentage until Merchant remits the actual Purchased Percentage of Future Receivables that Merchant sold to Purchaser.

Purchaser agrees to analyze Merchant's bank statements and other pertinent financial information that Purchaser may request when Merchant provides that information to Purchaser or prompts Purchaser to review that information (if Merchant grants Purchaser electronic access), but Merchant understands and acknowledges that the initial analysis of Merchant's bank statements may not take place until 45-60 days after Purchaser furnishes the Purchase Price to Merchant. Furthermore, Merchant affirmatively acknowledges that the Dollar Amount of the Purchase Percentage accurately reflects Merchant's normal, average revenue stream, based upon Merchant's prior business history. If Merchant experiences an abnormal increase or decrease in its monthly revenue stream, Merchant agrees that it shall provide supporting documentation to Purchaser demonstrating the abnormal increase or decrease in Merchant's revenue for a particular month. Merchant agrees that it shall continue to provide aforementioned supporting financial documentation for subsequent months if the abnormal increase or decrease in revenue persists. Merchant agrees that if it chooses not to provide financial documentation or prompt Purchaser to analyze electronically available information for subsequent months, it is affirmatively representing to Purchaser that its revenue stream has returned to normalcy, and that the Dollar Amount of Purchased Percentage is an accurate representation of the Purchased Percentage for those months in which Merchant does not provide such information.

- 6. Authorization to Share Processing Data.** Merchant authorizes its acquiring institution or its designated POS processor to forward, on a daily basis, to any third party designated by Purchaser, all electronic payment transaction records that its acquiring institution or its designated POS processor capture on its behalf.

Knight Capital Funding™

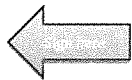
7. **Timing, Method of Payment by Purchaser.** Purchaser will pay the Purchase Price or any portion thereof to Merchant at a time and by a method at Purchaser's discretion. **Before executing this Agreement, Purchaser may conduct a processing trial to determine whether the Purchased Percentage will be correctly processed and reported to Purchaser. If the processing trial is not completed to Purchaser's satisfaction, it will refund to Merchant all funds retained during the processing trial.**

8. Merchant and any individual signing on Merchant's behalf, or in his/her individual capacity as the Principal (as defined in the Terms and Conditions) of Merchant, below, agree that he/she has read, understands, and agrees to abide by these foregoing contract terms and all provisions contained in the Terms and Conditions attached hereto and incorporated by reference herein, including without limitation the provisions of Section 12 of the Terms and Conditions entitled "Individual Liability of Principal(s) for Breach of Representations, Warranties and Covenants". Furthermore, the persons signing below on behalf of any entity represent that they are authorized and empowered to execute this Agreement on behalf of the entity for which they are signing, and that the execution, delivery, and performance under this Agreement is duly authorized by the entity for which they are signing.

9. Merchant expressly acknowledges that Purchaser's acceptance of this Agreement is contingent upon subsequent verification of certain information provided by Merchant. By executing this Agreement, Merchant offers to sell the Future Receivables to Purchaser, subject to the terms hereunder, and Purchaser shall not be deemed to have accepted this Agreement, nor shall it become binding, until Purchaser affirmatively acknowledges its acceptance by paying the Purchase Price to Merchant.

KNIGHT CAPITAL FUNDING III, LLC:

MERCHANT:



By: *J Patterson*

By: *MB*
Melissa Bacelar (Jun 27, 2017)

Print Name: Janelle Patterson

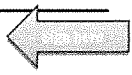
Print Name: Melissa Bacelar

Title: Financial Controller

Title: Owner

Date: _____

Date: Jun 27, 2017



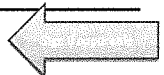
PRINCIPAL: *MB*
Melissa Bacelar (Jun 27, 2017)

Print Name: Melissa Bacelar

Date: Jun 27, 2017



ADDITIONAL PRINCIPAL: _____



Print Name: _____

Date: _____





TERMS AND CONDITIONS

1. These Terms and Conditions are incorporated into any Future Receivables Sale Agreement (an "FRSA") between Purchaser and Merchant, (together, the "Agreement") and together with all Merchant's answers and other disclosures on the Merchant Verification Form, all of which are fundamental representations made by Merchant for the purpose of inducing Purchaser to enter into this Agreement, are the entire agreement between the parties and supersede all prior agreements, undertakings, negotiations, and discussions, whether oral or written, of the parties.

2. Merchant's Representations, Warranties and Covenants. Merchant represents, warrants, and covenants that at all times, with regard to any portion of the Amount Sold that remains unpaid: (i) the Future Receivables are not and will not be voluntarily subjected to any claims, charges, liens, restrictions, encumbrances or security interests of any nature, unless previously disclosed to Purchaser and to which Purchaser consented in writing; (ii) Merchant has not and will not sell the Future Receivables to any other party without Purchaser's express, prior written consent; (iii) Merchant will not change or add credit card processors without the prior, written consent of Purchaser; (iv) Merchant will not take any action to discourage the use of any electronic payment cards, and will not cause any event to occur that may have an adverse effect on the use, acceptance or authorization of electronic payment cards for the purchase of Merchant's products and services, or cause a diversion of any of Merchant's Future Receivables, without Purchaser's prior, written consent; (v) Merchant will use the Purchase Price solely for business purposes and not for personal, family, or household expenses; (vi) Merchant is financially solvent (i.e. the assets that Merchant owns exceed the value of Merchant's liabilities and Merchant is able to pay its obligations as they come due) as of the date of this Agreement and anticipates that it will remain solvent; (vii) Merchant will not conduct its business under any name, or through any entity, other than the entity that is printed on the FRSA, will not change its business location(s), and will not temporarily or permanently close its business for renovations or for any other purpose without the prior, written consent of Purchaser; (viii) Merchant will not undertake any transaction involving the sale of any part of Merchant's business without Purchaser's prior, written consent; (ix) Merchant will not willingly forfeit control of its business without Purchaser's prior, written consent; (x) Merchant has not filed for protection under any chapter of the Bankruptcy Code in the last six months, has not consulted with a bankruptcy attorney in the last six months, and is not currently contemplating the filing of a bankruptcy proceeding or closing Merchant's business; (xi) all information provided by Merchant to Purchaser is true and correct; (xii) Merchant possesses and will maintain adequate insurance coverage to protect against all risks that are necessary to protect its business and will show proof upon demand; (xiii) Merchant has been, and is currently, in compliance with all statutes, rules, ordinances, or other laws or regulations governing permits, licenses, and approvals that are necessary to conduct its business, and has paid, and will continue to pay, all necessary local, state, and federal taxes and fees; (xiv) Merchant and the person(s) signing this Agreement on behalf of Merchant have full power and authority to enter into and perform under this Agreement; (xv) Merchant will sign all documents that Purchaser deems necessary to perform under this Agreement, and will provide Purchaser copies of all documents related to Merchant's credit card processing activity, or financial and banking affairs, within five (5) days of Purchaser's request; (xvi) Purchaser shall have the right to inspect, audit, check and make copies of any of the books, records, journals, orders, receipts, correspondence that relate to Merchant's accounts or other transactions between the parties thereto and the general financial condition of Merchant; (xvii) Merchant will permit Purchaser or its agent to conduct site inspections of Merchant's business, at any reasonable time this Agreement is in effect, without prior notice to Merchant and shall permit the site inspector to photograph the interior and exterior of any of Merchant's places of business, including any signage; (xviii) Merchant is not in default of any agreement with any creditor with which it established a relationship prior to the execution of this Agreement, nor has Merchant entered into any forbearance agreement with a creditor unless it has been previously disclosed to Purchaser, and to which Purchaser consented in writing; (xix) Merchant will not share its portal log-on credentials, provided by Purchaser, with any non-party to this Agreement; (xx) Merchant understands and acknowledges that Purchaser has agreed to purchase the Future Receivables based upon Merchant's current operations, and agrees that it shall not enter into any transaction, such as the sale, assignment, pledge, or alienation, in any form, of stock or assets, that could result in a change of control of Merchant, or devaluation of Merchant, without Purchaser's prior written consent; and (xxi) Merchant will promptly return the entire Purchase Price to Purchaser if it discovers that it is in violation of any of the provisions of this Section 2.

3. Approved Account. If Merchant instructs Purchaser to debit the Purchased Percentage from Merchant's bank account, Merchant shall maintain an account (the "Direct Debit Account") into which its Future Receivables will be deposited, and will not change or add bank accounts without the prior, written approval of Purchaser. All bank accounts that have been approved by Purchaser shall be "Approved Accounts." Merchant agrees to complete all necessary forms to establish the Direct Debit Account and will ensure that all Future Receivables are deposited in, or otherwise immediately credited to, the Direct Debit Account until Merchant remits the total Amount Sold to Purchaser. Merchant will provide Purchaser and its authorized agents with all information, authorizations, and passwords necessary for verifying Merchant's receivables, receipts, and deposits into the Direct Debit Account. It shall be incumbent upon the Merchant, and Merchant shall have the affirmative duty, to furnish its monthly bank statements to Purchaser, in order to ensure that all ACH debits accurately correspond to the Purchased Percentage. Merchant agrees that the Purchased Percentage of any Future Receivables deposited into an Approved Account will remain in an Approved Account until the daily Purchased Percentage amount of Future Receivables is withdrawn from the Direct Debit Account by Purchaser. Merchant will be held responsible for any charges incurred by Purchaser resulting from any rejected ACH debit attempt. Merchant agrees to hold Purchaser harmless for any overdraft fees or rejected transactions that may result from Purchaser ACH debiting of the Purchased Percentage in accordance with the terms of this Agreement.



4. Indemnity. Merchant will indemnify, defend and hold Purchaser harmless from and against all lawsuits, costs, causes of action, judgments, complaints, orders, and claims, including, without limitation, attorneys' fees arising from or relating to any claim that Merchant has breached this Agreement or that any representation, warranty, or statement Merchant has made is not accurate. Purchaser will notify Merchant of any claim for indemnity hereunder, select counsel of Purchaser's choice, and Merchant will promptly pay all defense costs and satisfy any judgments.

5. Merchant Information. Merchant authorizes Purchaser to contact any credit reporting or database service, Merchant's current and prior card processors, and Merchant's current and prior banking institutions to get information Purchaser deems necessary to review and evaluate Merchant's application or to monitor and maintain Merchant's account.

6. Events of Default. Merchant shall be in default of the Agreement should any of the following events occur: (i) Merchant makes any misrepresentation hereunder or breaches any warranty, agreement, promise or covenant in this Agreement; (ii) Merchant instructs its banking institution to stop payment on any authorized ACH withdrawal initiated by Purchaser; (iii) Merchant obstructs Purchaser's access to electronic bank information for the Approved Accounts; (iv) Merchant applies for, or agrees to, any merchant cash advance or any other form of financing without the prior, written consent of Purchaser; (v) the sale of any of Merchant's assets outside the ordinary course of business, without Purchaser's prior, written consent; (vi) the sale of any of Merchant's Future Receivables, without Purchaser's prior, written consent; (vii) Merchant deliberately depletes the balance in any Approved Account; (viii) Merchant diverts funds away from any Approved Account or changes its Processor, without prior, written authorization from Purchaser; or (iv) Merchant otherwise obstructs, hinders, or interferes with the remittance of the Amount Sold to Purchaser through any other deliberate act, or omission by or on behalf of Merchant.

7. Remedies on Events of Default. Upon any Event of Default enumerated in Section 6, above: (i) Merchant agrees that Purchaser shall be entitled to all Future Receivables generated by Merchant, until Purchaser receives the Amount Sold; (ii) Purchaser may exercise any and all remedies available to secured creditors under the Uniform Commercial Code; (iii) Purchaser may elect to rescind this Agreement in its entirety; (iv) the prevailing party in any action will be entitled to any and all costs, including reasonable attorneys' fees, in connection with the defense, protection or enforcement of rights under this Agreement; and (v) Purchaser will otherwise be entitled to all remedies available to it under applicable law.

8. Waiver. Purchaser's failure to exercise, or delay in exercising, any right under this Agreement, will not constitute a waiver of such right, nor will any single or partial exercise by Purchaser of any right under this Agreement preclude the future exercise of any other right.

9. Governing Law, Forum Selection, and Waivers. The parties agree that this Agreement is accepted and executed in the State of Florida. The parties to this agreement further agree that all Future Receivables are to be remitted to Purchaser at its principle place of business in Miami-Dade County, Florida. This Agreement will be governed by and enforced in accordance with the laws of the State of Florida, without regard to principles of conflict of laws to the extent such principles would require application of any other law. Both parties agree that all legal proceedings and any other action or claim arising out of or relating to this Agreement, or a transaction that is subject, or relates in any way, to this Agreement, whether based in contract, statute, tort or otherwise, shall be held in the mandatory and exclusive forum and venue of the state courts in Miami-Dade County, Florida, and waive the right to remove any proceedings or action to, federal court. This forum selection clause and choice of law provision shall be construed as mandatory, rather than permissive, and no action may be brought in any other state or jurisdiction. The parties hereby waive any claim against, or objection to, venue in, and in personam jurisdiction of, the state courts in Miami-Dade County, Florida. The parties hereby irrevocably waive any objection, defense, and any right of immunity on the grounds of venue or the inconvenience of the forum, or to the jurisdiction of such courts, or from the execution of judgments resulting therefrom. ALL PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY LAWSUIT ARISING OUT OF, OR RELATED, IN ANY WAY, TO THIS AGREEMENT, OR ANY TRANSACTION ARISING OUT OF, THAT IS THE SUBJECT OF, OR RELATES IN ANY WAY TO THIS AGREEMENT.

10. DISPUTE RESOLUTION. THE PARTIES SHALL RESOLVE ANY CLAIMS, DISPUTES, OR CONTROVERSIES ARISING OUT OF, OR RELATED IN ANY WAY, TO THIS AGREEMENT BY NEUTRAL, BINDING ARBITRATION IN MIAMI-DADE COUNTY, FLORIDA, UNLESS THE PARTIES MUTUALLY AGREE ON A DIFFERENT LOCATION. THE PARTY INITIATING THE ARBITRATION PROCEEDING MAY SELECT FROM THE FOLLOWING ARBITRATION ORGANIZATIONS, WHICH WILL APPLY THE APPROPRIATE RULES FOR COMMERCIAL CLAIMS TO ARBITRATE THE DISPUTE: AMERICAN ARBITRATION ASSOCIATION ("AAA"), OR ANY OTHER ORGANIZATION UPON WHICH THE PARTIES MUTUALLY AGREE. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT THAT HAS JURISDICTION. NO CLAIM SUBMITTED TO ARBITRATION WILL BE HEARD BY A JURY. THE PARTIES SHALL MUTUALLY AGREE UPON AN ARBITRATOR. IF THE PARTIES CANNOT AGREE ON AN ARBITRATOR, EACH PARTY WILL CHOOSE THEIR OWN ARBITRATOR, THEN THOSE TWO ARBITRATORS SHALL MUTUALLY AGREE UPON A THIRD ARBITRATOR, WHO WILL ACT AS THE LEAD ARBITRATOR. ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. § 1 ET. SEQ.) AND NOT BY ANY STATE LAW CONCERNING ARBITRATION. THIS SECTION 10 WILL SURVIVE ANY TERMINATION OR TRANSFER OF THIS AGREEMENT. IF ANY PART OF THIS ARBITRATION CLAUSE, OTHER THAN WAIVERS OF CLASS ACTION RIGHTS, AS SET FORTH BELOW, IS DEEMED OR FOUND TO BE UNENFORCEABLE FOR ANY REASON, THE REST WILL REMAIN ENFORCEABLE. IF A WAIVER OF CLASS ACTION RIGHTS IS DEEMED OR FOUND TO BE UNENFORCEABLE FOR ANY REASON IN A CASE IN WHICH CLASS ACTION ALLEGATION HAVE BEEN MADE, THE REMAINDER OF THIS ARBITRATION CLAUSE



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WILL BE UNENFORCEABLE.

FURTHERMORE, ALL PARTIES HERETO AGREE THAT NEITHER WILL JOIN ANY CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY IN A LAWSUIT, ARBITRATION OR OTHER PROCEEDING; THAT NO CLAIM ANY PARTY HAS AGAINST THE OTHER SHALL BE RESOLVED ON A CLASS-WIDE BASIS; AND THAT NEITHER PARTY WILL ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE. EACH PARTY HERETO WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST ANY OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY PUBLIC POLICY. TO THE EXTENT ANY PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST ANY OTHER PARTY, THE PARTIES HEREBY AGREE THAT: (i) THE PREVAILING PARTY WILL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (ii) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

11. Reporting. Merchant and each individual signing this Agreement authorize Purchaser to obtain their credit report or background report. Any report(s) that Purchaser obtains may include, without limitation, the business's or individuals' credit history or similar characteristics, employment and education verifications, social security verification, criminal and civil history, and Department of Motor Vehicle records, or related information. Any reports obtained may be used by Purchaser to determine if it will proceed with the purchase of the Future Receivables from Merchant. Merchant and Purchaser shall also provide and execute any additional documents, instruments, forms, and writings that Purchaser may require to access and review any tax information (including tax returns) about Merchant's business (including, without limitation, execution of Internal Revenue Service form 4506T).

12. INDIVIDUAL LIABILITY OF PRINCIPAL(S) FOR BREACH OF REPRESENTATIONS, WARRANTIES AND COVENANTS. By signing the FRSA in his/her individual capacity (each such signer, a "Principal" of the Merchant), in the event that Principal(s) causes, allows, or fails to prevent Merchant's breach or violation of any of the representations, warranties and covenants in Section 2 of the Terms and Conditions, Principal(s) hereby assumes and, jointly and severally, guarantees the full, complete and timely performance of all of Merchant's obligations under the Agreement. If Principal(s) causes or allows Merchant to intentionally act in any manner or intentionally make any omission such that either the act or omission would constitute an Event of Default pursuant to Section 6 of the Terms and Conditions of the Agreement, Principal(s) hereby agrees to be personally liable for Merchant's failure to perform any and all of Merchant's obligations under this Agreement. Furthermore, in the event that Principal(s) causes or allows Merchant to breach any obligation hereunder, Principal(s) agrees to personally assume liability for Merchant's breach of its obligations to Purchaser, and remit any Future Receivables that Merchant generates and become due to Purchaser whereby Purchaser would otherwise be entitled to collect from Merchant under the Agreement, immediately, upon written notice from Purchaser, setting forth Merchant's violation(s) or breach of the representations, warranties and covenants in Section 2. All parties hereto agree that Principal(s) is agreeing to guaranty *performance*, not payment or collection. It shall not constitute an Event of Default if Merchant's Future Receivables decline sharply or Merchant goes out of business or ceases to operate, naturally, and in the normal, ordinary course of business, and the decline in business is not a result of an intentional act or omission by Merchant, Principal(s) or their agents, officers, or representatives. It will be incumbent upon Merchant to prove that it ceased operations because of factors beyond its control, and that Merchant did not directly, or indirectly, act or fail to act in a manner that would compromise the solvency or financial health of Merchant. Purchaser may enforce its rights against any Principal before, during, or after any enforcement against Merchant, or without any enforcement against Merchant. Principal's obligations are continuing and shall remain in full force and effect and shall not be released, discharged or affected by any reason or thing except by Purchaser's written release. If payment of any sum by Merchant is recovered as a preference or fraudulent conveyance under any bankruptcy or insolvency law, the liability of any Principal under this guaranty shall continue and remain in full force and effect notwithstanding such recovery. Each Principal acknowledges receiving a copy of this Agreement and having read the terms of this Agreement. Each Principal's signature on the FRSA will serve as confirmation that Principal(s) understands all terms and conditions of this Agreement. Each Principal agrees that this guaranty is continuing and absolute and that Purchaser may compromise with, settle with, or release any other obligor under this Agreement without notice to, or consent by, Principal(s) and without affecting Principal's liability. For the avoidance of doubt, if an Event of Default should occur or Merchant breaches the representations, warranties and covenants in Section 2, Principal(s) agree to assume liability for (i) all damages sustained by Purchaser; (ii) any and all costs, including reasonable attorneys' fees, incurred by Purchaser in connection with the defense, protection or enforcement of Purchaser's rights under this Agreement; and (iii) all other remedies available to Purchaser under applicable law.

13. Telephone Monitoring, Recording and Contacts. Merchant and Principal(s) agree that any call between Purchaser (and its agents, employees, and representatives), Merchant, (and its agent, employee or representative of Merchant), and/or Principal(s) may be monitored and recorded. Merchant and Principal(s) consent to conduct business by electronic means. Merchant and Principal(s) further agree that: (1) it has an established business relationship Purchaser and may be contacted periodically by Purchaser regarding transactions with Purchaser; (ii) such contacts are not considered unsolicited or inconvenient; and (iii) any such contact may be made using any cellular or other telephone number that Principal(s), Merchant or its representative has provided to Purchaser, using any e-mail address Principal(s), Merchant or its representatives, have provide to Purchaser, or using an automated dialing, announcing, artificial voices, prerecorded messages, or similar device,



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unless prohibited by law. Merchant and Principal(s) are not required to agree to this Section 13 in order to enter into this Agreement. If Merchant or Principal(s) wishes to opt out of this Section, or if Merchant or Principal(s) wants to change how Purchaser contact them, including with respect to any telephone number that Purchaser may use, please call Purchaser at (855) 462-4249 (and select Customer Service from the menu prompts).

14. Security Interest. Merchant acknowledges that it is selling its Future Receivables to Purchaser and that, in accordance with Article 9 of the Uniform Commercial Code, such transaction constitutes either the sale of accounts or general intangibles. The Uniform Commercial Code denotes the seller of accounts or general intangibles as a debtor, and the buyer of accounts or general intangibles as a secured creditor. In order to secure Merchant's full performance of its obligations under this Agreement, Merchant hereby grants to Purchaser (or one of its affiliates or assignees) a first priority, continuing security interest in and to all of Merchant's present and future accounts receivable, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment, inventory wherever located, and proceeds now or hereafter owned or acquired by Merchant. Upon any Event of Default, Purchaser may exercise all remedies available to secured parties under the Uniform Commercial Code or any other applicable law. Merchant also consents to Purchaser's creation and perfection of all instruments that Purchaser determines are reasonably necessary to perfect Purchaser's rights under this security interest including, without limitation, a UCC-1 financing statement.


15. Irreparable Harm. The parties expressly agree and acknowledge that a violation of this Agreement by Merchant will cause Purchaser irreparable injury, not adequately compensable by monetary damages. Merchant therefore agrees that in the event it breaches this Agreement, Purchaser shall be entitled to, as a matter of right, equitable relief in the form of, but not limited to a restraining order, an injunction, a decree or decrees of specific performance, or any other form of adequate equitable relief in a court of competent jurisdiction, in addition to any other remedies available at law or in equity.

16. Account Information from Third Party Sites. Merchant and Principal(s) authorize Purchaser to retrieve company and personal information, respectively, from third-party financial institutions with which Merchant or Principal(s) have relationships. Purchaser may work with one or more online financial service providers under contract to access this account information and review bank statements, including Yodlee, Inc. and Clarilogic, Inc. d/b/a DecisionLogic ("Approved Service Providers").

By accepting these terms and conditions, Merchant and Principal(s) authorize Purchaser and Approved Service Providers to access third party sites designated by Merchant and Principal(s), to retrieve information requested by Merchant, and to register for accounts requested by Merchant. Merchant hereby grants Purchaser and Approved Service Providers a limited power of attorney, and Merchant hereby appoints Purchaser and Approved Service Providers as Merchant's true and lawful attorney-in-fact, to access third-party internet sites, servers, or documents, retrieve information, and use Merchant's information, with the full power and authority to do and perform every act and thing necessary to accomplish those means. MERCHANT ACKNOWLEDGES AND AGREES THAT WHEN PURCHASER AND APPROVED SERVICE PROVIDERS ACCESS AND RETRIEVE INFORMATION FROM THIRD PARTY SITES, PURCHASER AND APPROVED SERVICE PROVIDERS ARE ACTING AS MERCHANT'S AGENT, AND NOT THE AGENT OF, OR ON BEHALF OF, THE THIRD PARTY AND AGREES TO HOLD PURCHASER AND APPROVED SERVICE PROVIDERS HARMLESS AGAINST ALL CLAIMS THAT MAY ARISE AGAINST THE THIRD PARTY SITES. Merchant understands and agrees that the Service (as defined below) is not endorsed or sponsored by any third party account providers accessible through the Service.

17. RELEASE AND LIMITATION OF LIABILITY. MERCHANT AND PRINCIPAL(S) AGREE TO HOLD PURCHASER HARMLESS FOR, AND RELEASE PURCHASER FROM, ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS, CAUSES OF ACTION, SUITS IN EQUITY OF WHATEVER KIND OR NATURE, IN EXCESS OF \$1,000, WHICH MAY RESULT FROM ANY AND ALL ACTS OR OMISSIONS OF PURCHASER OR ANY PURCHASER'S AGENTS, EMPLOYEES, REPRESENTATIVES, OR ASSIGNEES (INCLUDING NEGLIGENT ACTS OR OMISSIONS, REGARDLESS OF WHETHER OR NOT THOSE ACTIONS OR OMISSIONS CONSTITUTE GROSS NEGLIGENCE). MERCHANT AND PRINCIPAL(S) AGREE THAT REGARDLESS OF ANY CLAIMS MERCHANT OR PRINCIPAL(S) MAY HAVE AGAINST PURCHASER, MERCHANT'S AND PRINCIPAL'S SOLE REMEDY WILL BE AN ACTION AT LAW, AND THAT MERCHANT WILL NOT BE ENTITLED TO AND HEREBY WAIVES ANY AND ALL CLAIMS FOR PUNITIVE, EXEMPLARY, CONSEQUENTIAL, STATUTORY, OR SPECIAL DAMAGES AND LOST PROFITS OF ANY KIND. IF MERCHANT OR PRINCIPAL FILES AN ACTION AGAINST PURCHASER AND PURCHASER IS THE PREVAILING PARTY, MERCHANT AND/OR PRINCIPAL AGREE TO PAY ALL OF PURCHASER'S ATTORNEYS' FEES AND COSTS INCURRED IN THE MATTER.

18. DISCLAIMER OF WARRANTIES. MERCHANT EXPRESSLY UNDERSTANDS AND AGREES THAT MERCHANT'S USE OF APPROVED SERVICE PROVIDERS' SERVICE ("SERVICE") AND ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THAT OF THIRD PARTIES) INCLUDED IN OR ACCESSIBLE FROM THE SERVICE IS AT MERCHANT'S SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. PURCHASER AND APPROVED SERVICE PROVIDERS EXPRESSLY DISCLAIM ALL WARRANTIES AS TO THE SERVICE AND ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THAT OF THIRD PARTIES) ACCESSIBLE FROM THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PURCHASER AND APPROVED SERVICE PROVIDERS MAKE NO WARRANTY THAT (i) THE SERVICE WILL MEET MERCHANT'S REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE

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QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY MERCHANT THROUGH THE SERVICE WILL MEET MERCHANT'S EXPECTATIONS, OR (v) ANY ERRORS IN THE TECHNOLOGY WILL BE CORRECTED. ANY MATERIAL OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT MERCHANT'S OWN DISCRETION AND RISK, AND MERCHANT IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO MERCHANT'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY MERCHANT FROM PURCHASER OR APPROVED SERVICE PROVIDERS THROUGH OR FROM THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

19. LIMITATION OF LIABILITY RELATED TO THE SERVICE. MERCHANT AGREES THAT NEITHER PURCHASER NOR APPROVED SERVICE PROVIDERS NOR ANY OF THEIR AFFILIATES, ACCOUNT PROVIDERS OR ANY OF THEIR AFFILIATES WILL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF GETTING SUBSTITUTE GOODS AND SERVICES, (iii) ANY PRODUCTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH OR FROM THE SERVICE; (iv) UNAUTHORIZED ACCESS TO ALTERATION OF MERCHANT'S TRANSMISSIONS OR DATA; (v) STATEMENT OR CONDUCT OF ANYONE ON THE SERVICE; (vi) THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE OR NON-PERFORMANCE OF ANY THIRD PARTY ACCOUNT PROVIDER SITE, EVEN IF THE PROVIDER HAS BEEN ADVISED PREVIOUSLY OF THE POSSIBILITY OF SUCH DAMAGES; OR (vii) ANY OTHER MATTER RELATING TO THE SERVICE.

20. Proprietary Rights. Merchant is only permitted to use content delivered to Merchant, through the Service, on the Service. Merchant may not copy, reproduce, distribute, or create derivative works from this content. Further, Merchant agrees not to reverse engineer or reverse compile any of the Service technology.

21. Content Merchant Provides. Merchant is licensing to Purchaser and its service providers any information, data, passwords, materials or other content ("Content") Merchant provides through or to the Service. Purchaser may use, modify, display, distribute, and create new material, using that content, to provide the Service to Merchant. By submitting Content, Merchant automatically agrees, or promises that the owner of such Content has expressly agreed that, without any particular time limit, and without the payment of any fees, Purchaser may use the Content for the purposes set out above. As between Purchaser and Approved Service Providers, Purchaser owns Merchant's confidential account information.

22. Miscellaneous. Merchant may not assign this Agreement or any rights and licenses granted hereunder. Purchaser may assign this Agreement or any rights without restriction or limitations. This Agreement will be binding upon Merchant and inure to the benefit of Purchaser, its successors and assigns. Certain authorizations effective upon Merchant's signing of this Agreement (as expressly set forth in this Agreement) will be effective and binding immediately upon Merchant's signature and will not be deemed withdrawn or revoked should Purchaser determine not to sign the Agreement. In the event of any inconsistencies between the Terms and Conditions and any FRSA between Purchaser and Merchant, the FRSA will control. No modification of this Agreement will be effective unless it is in writing and signed by each of the parties, except that Purchaser can amend the Agreement, to the extent permitted herein and not otherwise prohibited by law, by giving Merchant prior written notice. If any provisions of this Agreement are determined to be invalid, illegal or unenforceable in any respect, the remaining provisions will not be affected in any manner, and that provision shall be interpreted as modified to the minimum extent necessary to make it enforceable, so long as the law allows such a modification. The signatures to this Agreement may be evidenced by facsimile copies or other electronic means reflecting the party's signature hereto, including the use of services that comply with the requirements of the E-SIGN Act and any such copy or signature shall have the same legal and evidentiary effect as if it were an original signature. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original, but all of which together will constitute but one and the same instrument. Merchant consents to the electronic delivery of the disclosures, notices, terms and conditions, other documents, and any future changes from Purchaser. Merchant also agrees that Purchaser does not need to provide Merchant with an additional copy of the disclosures, notices, terms and conditions, and other documents, and any future changes, unless specifically requested. Furthermore, any independent sales organization or broker who played any role in facilitating this Agreement between Merchant and the above-named Knight Capital Funding entity is in no way authorized to act as an agent of, or bind Knight Capital Funding in any manner, whatsoever. Merchant is hereby advised not to change its position in reliance upon any representations or promises made by an independent sales organization or broker, unless expressly authorized by Purchaser, in writing. The headings of the sections contained in this agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this agreement. This Agreement is the product of collaboration between the Parties. The Parties acknowledge and agree that each has been given an opportunity to independently review this Agreement with legal counsel, has agreed to the particular language of the provisions hereof and that this Agreement shall be construed as though both Parties fully participated in the drafting of this Agreement.


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T: 855.462.4BIZ | F: 866.293.8143 | M: 9 East Loockerman Street, Suite 3A-543, Dover, Delaware 19901 | W: www.KnightCapitalFunding.com



This Authorization Agreement for Direct Deposit (ACH Credit) and Direct Collections (ACH Debits) is part of (and incorporated by reference into) the Future Receivables Sale Agreement. Merchant should keep this important legal document for Merchant's records. Any capitalized term(s) that are not otherwise defined shall retain the same meaning set forth in the Future Receivables Sale Agreement.

DISBURSEMENT OF RECEIVABLES SALE PROCEEDS. By signing below, Merchant authorizes Purchaser to disburse the Purchase Price, less the amount of any applicable setup fee, by initiating an ACH credit, wire transfer, or similar means to the checking account indicated below (or a substitute checking account Merchant later identifies and is acceptable to Purchaser) (hereinafter referred to as the "Designated Checking Account") in the disbursement amount set forth in the accompanying Future Receivables Sale Agreement.

COLLECTION OF FUNDS ARISING FROM FUTURE RECEIPTS. By signing below, Merchant authorizes Purchaser to collect amounts Purchaser is entitled to receive under the Future Receivables Sale Agreement by initiating ACH Debits of the Purchased Percentage of Merchant's daily receivables to the Designated Checking Account each business day until Purchaser receives the Amount Sold. At the time of execution of the Future Receivables Sale Agreement, the Parties agree that the Purchased Percentage equates to the Dollar Amount of Purchased Percentage set forth in the Future Receivables Sale Agreement, and that the Dollar Amount of Purchased Percentage shall be debited each business day. However, Merchant acknowledges and agrees that the Dollar Amount of Purchased Percentage may change and fluctuate so that it directly correlates to the fluctuation of the amount of Future Receivables generated by Merchant.

Merchant authorizes Purchaser to increase the amount of any scheduled ACH debit entry or assess multiple ACH debits for the amount of any previously scheduled payment(s) that was not paid because Merchant's financial institution was not open or was not able to process ACH transactions. If a transaction is rejected by Merchant's financial institution for any reason other than termination of this authorization, including without limitation insufficient funds, Merchant understands that Purchaser may, at its discretion, attempt to process the transaction again as permitted under the NACHA Rules. Merchant also authorizes Purchaser to initiate ACH entries to correct any erroneous payment transaction. Merchant understands that Merchant is responsible for ensuring that funds arising from Future Receivables of Merchant remain in the Designated Checking Account each day until Purchaser debits the amount to which it is entitled under the Future Receivables Sale Agreement. Merchant agrees to notify Purchaser promptly if there are any changes to the account and routing numbers of the Designated Checking Account. Purchaser is not responsible for any overdrafts, rejected transactions, or other fees that may result from credits or debits initiated under this Authorization Agreement. This authorization is to remain in full force and effect until Buyer has received written notification from Merchant at Knight Capital Funding, Attn: Customer Service, 9 E. Loockerman St., Ste 3A-543, Dover, DE 19901 at least 5 banking days prior to its termination, to afford Purchaser a reasonable opportunity to act on it. The origination of ACH transactions to the Designated Checking Account must comply with, and both Merchant and Purchaser agree to be bound by, the provisions of applicable law and the NACHA Rules.

If Merchant's financial institution rejects Purchaser's debits for any reason, Merchant is still responsible for making timely remittances of the Purchased Percentage to Purchaser each business day, pursuant to the Future Receivables Sale Agreement.

BUSINESS PURPOSE ACCOUNT. By signing below, Merchant attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes.

The individual signing below on behalf of Merchant certifies that he/she is an authorized signer on the Designated Checking Account. Merchant will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Merchant requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

Primary Bank Name: First Republic Bank

Branch:

ABA Routing Number: [REDACTED]

Account Number: [REDACTED]

Secondary Bank Name:

Branch:

ABA Routing Number:

Account Number:

Account Holder Name: WYLDER'S HOLISTIC PET CENTER INC

Tax ID Number: [REDACTED]

Signature: [Handwritten Signature]

Date: Jun 27, 2017

Title: Owner



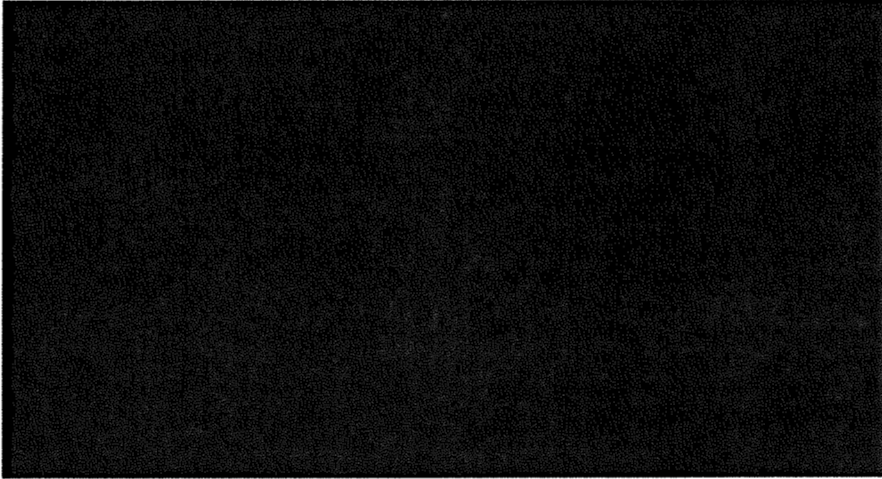
***Important Note: If this form is submitted securely by e-mail or other electronic submission method, my/our typed name(s) in the fields provided serve as original signature(s)



View Only Access Authorization

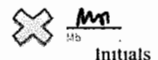
To facilitate your funding, we need to view your bank account(s) to verify the information that has been submitted is accurate. Please be assured that the information you provide will be kept secure and will not be communicated to anyone except Knight Capital Funding for internal purposes only.

Please fill out the form below and provide us with all the information necessary to safely and accurately assess your bank account:



*****TO ENSURE YOUR PRIVACY PLEASE EMAIL OR FAX THIS FORM DIRECTLY TO KNIGHT CAPITAL FUNDING. WE CANNOT AND WILL NOT BE HELD RESPONSIBLE IF YOU DO OTHERWISE. *****

FAX: 866.293.8143 | EMAIL: funding@knightcapitalfunding.com





Merchant Verification Form

Merchant Name WYLDER'S HOLISTIC PET CENTER INC
Address [Redacted]

Please check one:
Yes No

- 1. Within the last 90 days, have you discussed or do you currently have any intentions or plans to close, sell, or change the name or legal structure of your business?
2. Are you currently in, or contemplating filing bankruptcy, personally or on behalf of the business, or involved in any lawsuit or legal proceeding?
3. Do you have any existing merchant cash advance balances?
4. Are you or your business currently in default of any agreement, or in forbearance, with a creditor?
5. Will selling the Future Receivables cause you to breach any agreement with a creditor?
6. Purchaser calculated that \$353.96 accurately reflects 17.9% of the business's average daily receivables. Do you disagree with Purchaser's calculation?
7. Do you plan to use any funds received from Purchaser for anything other than business purposes?

If you have answered YES to any of the questions , above, please explain:

I have a cash advance with knight capital

I hereby certify that the above statements are true and correct to the best of my knowledge. I authorize my landlord and credit card processor to discuss confidential account information for the purpose of satisfying the requirements of the Future Receivables Sale Agreement.

Completed and attested by:

Signature [Handwritten Signature]
Print Name Melissa Bacelar
Date Jun 27, 2017



Knight Capital Funding™

Merchant Working Capital

Application # APP-349723

Sales Agent Name
UpdatesDate of Application
06/19/2017Working Capital Requested
\$39,500.00

Merchant Contact Information

Business Legal Name WYLDER'S HOLISTIC PET CENTER INC		Business DBA Name The Wagmer	
Physical Street Address [REDACTED]		City Studio City	State CA
Billing Street Address (if different than above) [REDACTED]		City Van Nuys	Zip Code 91604
Physical Location Phone # [REDACTED]		Billing Location Phone # [REDACTED]	Preferred Contact Phone # [REDACTED]
Owner Cell Phone # [REDACTED]	Fax # [REDACTED]	Email Address (Required) [REDACTED]	
Type of Business Entity (Check One) <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor			
Does the Merchant have any other businesses with open contracts for working capital? (check one) <input type="checkbox"/> Yes <input type="checkbox"/> No		State of Incorporation CA	Use of Proceeds
Industry Type (SIC Code or Description)	Office Space <input type="checkbox"/> Rent <input type="checkbox"/> Mortgage <input type="checkbox"/> Amount:		Current Credit Card Processor
Gross Annual Sales (Previous Year's Tax Returns)	Date Ownership Started Accepting Credit Cards	Average Monthly Credit Card Volume \$	

Recent Gross Monthly Receivables of Merchant	Last Month Vol	Two Months Ago Vol	Three Months Ago Vol	Four Months Ago Vol

Owner/Officer Information #1

Owner/Office #1 Melissa Bacelar	Job Title Owner	[REDACTED]	
Home Street Address [REDACTED]		City Van Nuys	State CA
		Zip Code 91405	

Owner/Officer Information #2

List 3 Trade References with Contact Information

Trade Reference #	Balance \$	Contact Name	Phone #
Trade Reference #1			
Trade Reference #2			
Trade Reference #3			

Landlord Name	Landlord Phone #	Federal Tax ID# [REDACTED]	Business Website Address www.thewagmor.com
Open Judgments/Tax Liens?	Open Bankruptcies?	s Seasonal?	If Yes, Seasonal Months

The information supplied in this confidential financing application, company profile form, and all forms and documents submitted (collectively the "Application") to Knight Capital Funding, LLC, its subsidiaries or its Assignee (collectively "Factor") in connection herewith is true and correct to the best of my/our knowledge and belief. I/we authorize Knight Capital Funding LLC, or its participating Factors to investigate my/our business and personal credit through its various agencies for the purpose of evaluation and verification. If this application is printed and faxed, hand signatures are required, but if this form is submitted securely, our typed name(s) in the fields provided serve as original signature(s).

Owner/Officer Name (Print Legibly) Melissa	Owner/Officer Signature X <u>Melissa Bacelar</u> <small>Melissa Bacelar (Jun 27, 2017)</small>	←	Date Jun 27, 2017
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