

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
CYNERGY DATA, LLC, *et al.*,) Chapter 11
Debtors,) Case No: 09-13038 (KG)
) Jointly Administered
)
) Hearing Date: September 15 at 2:00 p.m.
) Objections Due: September 10
) Related to Docket No. 13

**OBJECTION OF MERCHANT CASH AND CAPITAL, LLC
TO DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105, 363, 365,
503 AND 507 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004,
6006, 9007 AND 9014(I)(A) AUTHORIZING AND SCHEDULING AN AUCTION AT
WHICH THE DEBTORS WILL SOLICIT HIGHER AND BETTER OFFERS IN
CONNECTION WITH THE SALE OF CERTAIN ASSETS, (B) APPROVING THE BID
PROCEDURES FOR SUCH ASSETS, (C) APPROVING BREAK-UP FEE AND EXPENSE
REIMBURSEMENT AND (D) APPROVING THE FORM AND SCOPE OF NOTICE OF
THE BID PROCEDURES AND AUCTION; (II) APPROVING THE SALE OF THE
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES;
(III) APPROVING PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND
(IV) GRANTING RELATED RELIEF AS REQUESTED HEREIN**

Merchant Cash and Capital, LLC (“MCC”) asserts this objection to the motion of
Cynergy Data, LLC., *et al.* (the “Debtors”) for an Order Pursuant to Sections 105, 363, 365, 503
and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014(I)(A)
Authorizing and Scheduling an Auction at which the Debtors Will Solicit Higher and Better
Offers in Connection with the Sale of Certain Assets, (B) Approving the Bid Procedures for Such
Assts, (C) Approving Break-Up Fee and Expense Reimbursement and (D) Approving the Form
and Scope of Notice of the Bid Procedures and Auction; (II) Approving the Sale of the Assets
Free and Clear of All Liens, Claims, and Encumbrances; (III) Approving Procedures for
Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and

(IV) Granting Related Relief as Requested Herein (Docket No. 13) (the “Bidding Procedures Motion”), and respectfully represents as follows:

BACKGROUND

1. On September 1, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”). Since the Petition Date, the Debtors have operated their businesses as debtors in possession.

2. On the Petition Date, the Debtors filed the Bidding Procedures Motion and at the First Day Hearing, the Court scheduled a hearing on the Bidding Procedures Motion for September 15, 2009 at 2:00 p.m.

Introduction

3. MCC is a Delaware limited liability company engaged in the business of providing funding to restaurants, retail and service businesses by purchasing a portion of their future credit card receivables and providing cash advances in such transactions. In conjunction with such transactions MCC requires the merchants it does business with to use a designated credit card processor, such as Cynergy Data, LLC (“Cynergy Data” or the “Debtor”). MCC has agreements with the Debtor in connection with the processing of credit card transactions of MCC’s merchants, including an Independent Sales Organization (“ISO”) Processing Agreement. These agreements are not at issue in this objection, and MCC reserves its rights with respect to their proposed assumption and assignment

4. Significantly, Cynergy Data has a membership interest in MCC which it apparently intends to sell as part of the proposed Asset Purchase Agreement (“APA”). This membership interest is governed by the Amended and Restated Limited Liability Agreement

(“Operating Agreement”) of MCC, made on October 2, 2006. A copy of the Operating Agreement, excluding the identities of the members and their respective interests, is attached as Exhibit A. The Operating Agreement regulates, among other things, the transfer of membership interests in MCC. In particular, Section 8.2 of the Operating Agreement requires that for a proposed transfer of a membership interest to a third party, the transferor member must notify the other members, who then have the exclusive option to acquire the membership interest “upon the same terms and conditions offered by the third party” within 20 business days from receipt of the notice (the “Right of First Refusal”).

5. The proposed APA and Bid Procedures do not honor the Right of First Refusal in the Operating Agreement. In particular, no provision is made for MCC’s other members to exercise their Right of First Refusal. Indeed, there is no separate offer or separate allocation of the purchase price in the proposed APA for the Debtor’s membership interest in MCC, which would enable the other members of MCC to exercise their Right of First Refusal.

6. As set forth below, the Right of First Refusal is enforceable under Delaware law and under the Bankruptcy Code. Because the Right of First Refusal is not honored in the Debtors’ proposed APA or Bid Procedures, MCC objects and requests that this Court refuse to approve the Bid Procedures, unless an appropriate amendment that honors the Right of First Refusal is made.

The Proposed Sale of the Debtor’s Membership Interest in MCC

7. The Debtor, then known as C.P.S. Group, Inc. t/a Cyngery Data is a party to the Operating Agreement. Its designated membership interest at the time the Operating Agreement

was entered into was 31.5%, which gave it the largest membership interest among the eight members.²

8. Section 2.1 of the proposed APA conveys all of the “Transferred Assets,” which include, “(k) all investments, equity interests and other security owned or held by the Seller, to the extent transferrable (the ‘Transferred Equity’).” Section 2.2 of the proposed APA excludes certain assets from the sale, specifically, “(o) all investments and equity interests owned by the Seller listed or described in Schedule 2.2(o).” Notably absent from Schedule 2.2(o) is any mention of the Debtor’s membership interest in MCC.

9. Section 3.1 of the proposed APA sets forth a purchase price of \$81 million, less the aggregate amount for cure costs with respect to assumed and assigned executory contracts. This section also provides, “The Purchase Price shall be allocated in accordance with Schedule 10.4.” Schedule 10.4, in the version of the proposed APA appearing on the website of the Debtors’ retained claims, noticing, solicitation and balloting agent, Kurtzman Carson Consultants, www.kccllc.net/Cynergydata, is blank. MCC therefore assumes that there is no current allocation of the purchase price for Cynergy Data’s membership interest in MCC.

10. There is nothing in the proposed APA that recognizes MCC’s members’ Right of First Refusal in connection with the proposed sale of Cynergy Data’s membership interest in MCC. Similarly, the proposed Bid Procedures contain no reference to or recognition of the Right of First Refusal.

² Schedule 4.1 in the proposed APA notes: “Cynergy Data received a notice, dated August 19, 2009, from Merchant Cash and Capital, LLC asking Cynergy Data whether it wishes to participate in a new subordinated credit facility. Failure to participate could potentially result in the dilution of Cynergy Data’s equity interest.” MCC confirms that it sent such a notice to all its members in conjunction with a refinancing of MCC’s business, and that the Debtor did not respond by the required response date, which occurred prior to the filing of the Debtor’s chapter 11 petition. The dilution of the equity interests of MCC members who do not participate in a new subordinated credit facility as part of such refinancing is not the subject of this objection. MCC reserves of all its rights with respect to such transaction.

MCC's Members Right of First Refusal³

11. The Operating Agreement's provisions governing the sale of membership interests provide:

8.2. Sale to a Third Party.

8.2.1. Bona Fide Offer. If a Member ("Offering Member") receives a bona fide written offer from a third party that is not an Affiliate for the sale or transfer of all (or any portion) of his Membership Interests, the Offering Member will give notice to the other Members in writing about the name and address of the third party, his relationship or affiliation with the Offering Member, and the terms and conditions of the offer.

8.2.2. Option to Acquire. In this case, the other Members will have the exclusive option to acquire the Offering Member's Membership Interests upon the same terms and conditions as offered by the third party (in proportion to their Membership Interests). Each other Member will be entitled to exercise his option to acquire the Offering Member's interest within twenty (20) business days from the date of receipt of the notice.

8.2.3. Failure to Exercise Option. If any of the other Members do not exercise timely his option to purchase, then the Offering Member will notify the other Members. In this case, the other Members will then have an additional period of ten (10) business days from the date of receipt of the notice to acquire the portion of the Offering Member's Membership Interest that was not acquired by exercise of the option in proportion to their Membership Interests.

8.2.4. Right to Sell to Third Party. If any of the other Members do not exercise timely his option to purchase, the Offering Member will be free to transfer to the third party purchaser, the portion of his Membership Interest that was not acquired by exercise of the option.

8.2.5. Change in Terms of Offer. The Offering Member will give notice to the other Members about any change in the terms of sale with the third party purchaser. The other Members will then have the right to acquire the Offering

³ The following members of MCC join in this objection: Jodi Sheinbaum [...]

Member's Membership Interest in accordance with the changed terms within an additional period of twenty (20) business days.

8.2.6. Definitions.

8.2.6.1. An Offer is Bona Fide. For purposes of this Agreement, an offer is "bona fide" if it is on terms that are commercially reasonable and the third party is not an "Affiliate" of the Offering Member.

8.2.6.2. Affiliate. For purposes of this Agreement, a third party is an "Affiliate" of the Offering Member if:

8.2.6.2.1. the third party is a spouse, child (or spouse of a child), or grandchild (or spouse of a grandchild) of the Offering Member, or a trust in which any of the foregoing people are a grantor or beneficiary; or

8.2.6.2.2. the third party controls, is controlled by or is under common control with, the Offering Member. For purposes of this Section 8.2.6.2.2, "control" means to own or have the power to vote or direct the vote of more than 50% of the outstanding voting securities of any entity.

Section 8.2.2 thus plainly provides the Right of First Refusal for MCC's members in connection with this proposed sale.⁴ The enforceability of this right in bankruptcy sales is discussed below.

Enforceability of Right of First Refusal

12. In *In re IT Group, Inc.*, 302 B.R. 483 (D.Del. 2003), District Judge Farnan upheld the bankruptcy court in enforcing the right of first refusal of members of a Delaware limited liability company in the context of a bankruptcy sale. Specifically, the court rejected the

⁴ MCC notes that, in accordance with Section 8.4 of the Operating Agreement, assignees of members' interests do not automatically become members themselves. They become members only upon approval of a majority in voting interest of the members (other than the transferring member), and satisfaction of additional conditions, including the permissibility of the transfer under the Operating Agreement, the written agreement of the transferee to be bound by the Operating Agreement, and the execution of such documents as the president of MCC may request. In accordance with Section 8.6 of the Operating Agreement, assignees of members' interests who do not become members do not have managerial rights. The effect of such provisions of the Operating Agreement is not at issue in this objection. MCC reserves its rights with respect to the approval of assignees of membership interests to become new members.

contention that a right of first refusal was an unenforceable *ipso facto* clause under section 365(e) or an unenforceable anti-assignment clause under section 365(f) of the Bankruptcy Code. *Id.* at 487-89.

13. In addition, the Right of First Refusal of MCC members is not an interest in property that the Debtor may sell free and clear of under section 363(f) of the Bankruptcy Code. None of the five alternative requirements is satisfied. In particular, there is no applicable non-bankruptcy law that permits the sale of the membership interest free and clear of the Right of First Refusal ((f)(1)); the other MCC members have not consented (f)(2)); the Right of First Refusal interest is not a lien ((f)(3)); the Right of First Refusal is not subject to a bona fide dispute ((f)(4)); and no legal or equitable proceeding in which the MCC members can be compelled to take a money satisfaction of their Right of First Refusal has been or can be identified ((f)(5)).

14. As a result, there is no provision of the Bankruptcy Code which overrides the Right of First Refusal for purposes of the Debtors' proposed APA and Bid Procedures. The Right of First Refusal is enforceable under Delaware Law, *see* 6 Del. C. § 18-702(a), must be honored, and the Bid Procedures must be appropriately amended before they can be approved.

15. MCC members Jodi Sheinbaum and Kassap Family Limited Partnership join in this objection.

Conclusion

16. For all the foregoing reasons, MCC respectfully requests that the Court refuse to approve the Debtors' proposed Bid Procedures, unless they are appropriately amended to recognize and honor the Right of First Refusal, including by providing an economically

appropriate allocation in the APA and in each competing bid of the purchase price for the Debtor's membership interest in MCC, so that the Right of First Refusal may be appropriately exercised.

Dated: September 10, 2009
Wilmington, Delaware

STEVENS & LEE, P.C.



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Counsel for Merchant Cash and Capital, LLC

[REDACTED]AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
MERCHANT CASH AND CAPITAL, LLC

This Amended and Restated Limited Liability Company Agreement (“Agreement”) is made on October 2, 2006 among Merchant Cash and Capital, LLC (“Company”) and the Members of the Company.

RECITALS

A. The Company is a limited liability company organized pursuant to the laws of the State of Delaware, specifically the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time.

B. The Company was formed by filing a Certificate of Formation with the Secretary of State of the State of Delaware.

C. The Company has been formed for the purpose of purchasing interests in the revenues of companies having subprime credit (“Business”).

D. The undersigned deem it advisable and in their best interest to amend and restate the Operating Agreement dated April 1, 2005 in its entirety.

AGREEMENT

1. Definitions. The following terms used in this Agreement will have the meanings set forth below:

1.1. “Act” means the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time.

1.2. “Affiliate” is defined in Section 8.2.6.2.

1.3. “Board” is defined in Section 6.8.

1.4. “Bona Fide” is defined in Section 8.2.6.1.

1.5. “Capital Account” is defined in Section 4.1.

1.6. "Capital Contribution" means any contribution of cash, property, services performed or to be performed, or a promissory note or other obligation to contribute cash, property, or services performed or services to be performed, made by (or on behalf of) a Member pursuant to Section 4.4.

- 1.7. "Certificate" means the Company's Certificate of Formation.
- 1.8. "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.9. "Committee" is defined in Section 6.3.1.
- 1.10. "Compensation Committee" is specified in Section 6.3.1.
- 1.11. "Confidential Information" is defined in Section 12.1.
- 1.12. "Covered Claim" is defined in Section 6.9.1.
- 1.13. "inventions" is defined in Section 13.1.
- 1.14. "Investor Members" means all of the following Members, taken together as a group: Greatwood Holdings, LLC; Jodi Sheinbaum, Kassap Family Limited Partnership, JASW, LLC, M and M Ventures III and TB Management, LLC.
- 1.15. "Losses" is defined in Section 4.8.1.
- 1.16. "Member" means a Person who owns Membership Interests.
- 1.17. "Membership Interests" means a Member's interest in the Company, and includes a Member's right to vote (to the extent provided in this Agreement or by Act), his right to receive distributions of profits in accordance with this Agreement, and his right to the distribution of assets of the Company upon its liquidation. A Member's percentage interest in the Company is determined by dividing the number of Membership Interests which he holds by the total number of Membership Interests outstanding.
- 1.18. "Offering Member" is defined in Section 8.2.1.
- 1.19. "Person" means a natural person, partnership (whether general or limited or trust, estate, association, corporation, limited liability company, custodian, nominee or any other individual or entity (in its own or any representative capacity)).
- 1.20. "President" is specified in Section 6.1.
- 1.21. "Profits" is defined in Section 4.8.1.
- 1.22. "Regulations" mean the Income Tax Regulations (including Temporary Regulations) promulgated under the Code.

1.23. "Regulatory Allocations" is defined in Section 4.8.3.2.

1.24. "Tax Item" is defined in Section 4.9.

1.25. "Tax Matters Member" is defined in Section 7.3.1.

1.26. "Unaffiliated Business" is defined in Section 6.4.

2. The Company and Its Business.

2.1. Company Name. The name of the Company is Merchant Cash and Capital, LLC.

2.2. Effective Date. This Agreement is effective upon signing by the Company and the Members.

2.3. Term. The term of the Company will continue until cancelled in accordance with the Act.

2.4. Purposes of the Company. The purpose of the Company is to purchase interests in the revenues of companies having subprime credit, and to engage in any other business and any other activities in which a limited liability company may legally engage.

2.5. Powers of the Company. The Company will have all powers as are necessary or appropriate to carry out the business purposes of the Company.

2.6. Principal Place of Business. The principal place of business of the Company will be located at 45 West 36th Street, 6th Floor, New York, New York 10018 or any place that fifty-one (51%) percent in voting interests of the Members and the President of the Company may designate from time to time.

2.7. Fiscal Year. The fiscal year of the Company will be the calendar year. The Company will have the same fiscal year for income tax purposes and for financial accounting purposes.

3. Membership Interests and Members.

3.1. Members. The Members, their percentage of Membership Interests and their capital contribution are identified on Schedule 1. Their respective addresses are shown on the signature pages of this Agreement.

3.2. Voting Rights. Each Member has the right to vote his Membership Interests.

3.2.1. Agreement About Voting. The Investor Members each agree that Sigmund Kassap will have the right and power to vote their Membership Interests on all matters

to be determined by the Members, subject to the restrictions set forth herein. In connection with this voting agreement, and to implement it, the Investor Members each appoint Sigmund Kassap as their proxy and attorney-in-fact. The Investor Members each further agree that if Sigmund Kassap dies or is unable or unwilling to serve in these capacities (or in the capacities as Chair and member of the Compensation Committee (as specified in Section 6.3) and as member of the Board of Directors (as specified in Section 6.8)), his successor (as to all of these capacities) will be Harry Kassap.

3.2.2 Restrictions on Voting By Proxy. All Members (including the Investor Members) agree that voting by proxy shall not be permitted with respect to (a) the issuance of additional equity interests in the Company, whether pursuant to Section 3.5 of this Agreement or otherwise; (b) the matters requiring the approval of Members described on Section 6.2 of this Agreement; (c) transfers of Membership Interests pursuant to Section 8 of this Agreement; and (d) dissolution and termination of the Company pursuant to Section 11 of this Agreement or otherwise. In any vote on any such matter, any proxy given by any Member shall be null and void for the purposes of such vote, and the Member or Members who gave such proxy shall have the right to vote on such matter.

3.3. Distribution Rights. The Members are entitled to receive distributions as specified in Section 4.

3.4. Admission of Additional Members. The Company may admit additional Members upon the affirmative vote of sixty-five percent (65%) in voting interest of the Members. Any additional Members will, as a condition of membership in the Company, agree in writing to be bound by the terms and provisions of this Agreement as a Member.

3.5. Additional Classes of Membership Interests. Sixty five percent (65%) in voting interest of the Members may amend this Agreement (from time to time) to provide for additional classes of Members having such relative rights, powers, and duties as may be established (excluding rights, powers, and duties senior to existing classes of Members with respect to the assets of the Company attributable to such classes). Membership Interests may be issued which have no voting rights, provided that the absence of such voting rights is noted by an appropriate legend on the certificates (if any) evidencing the Membership Interests.

3.6. Obligations of Company. C.P.S. Group, Inc. (doing business as Cynergy Data) ("Cynergy") agrees to the following provisions:

3.6.1. Initial Start-Up Support. Cynergy will provide, at no cost to the Company, all back office support for information Technology, bookkeeping, marketing, and business development; and adequate space for the Company's business operations, until the Company has positive net cash flow. For purposes of calculating net cash flow pursuant to this paragraph, any and all fees paid to Directors of the Company shall be excluded from the computation.

3.6.2. Customer Support. Cynergy will market the Company's financial products to Cynergy existing and future customers and prospects.

3.6.3 The obligations of Cynergy pursuant to this section shall be binding on any corporate successor to Cynergy.

4. Capital Accounts, Distributions and Allocations of Profits and Losses.

4.1. Capital Accounts. There will be established on the books of the Company a Capital Account for each Member. The Capital Account for each Member will be credited with the Capital Contributions of the Member, and with the amount of Profits allocable to the Member pursuant to Section 4.8.2, and will be charged with the amount of all distributions made to the Member and the amount of all Losses allocable to the Member pursuant to Section 4.8.3. Capital Accounts will be maintained in accordance with the accounting rules set forth in the Regulations under Section 704(b) of the Code.

4.2. No Interest on Capital Contributions or Capital Accounts. No Member will be entitled to receive any interest on his Capital Contributions or his outstanding Capital Account balance.

4.3. Advances to Company.

4.3.1. Restrictions. No Member will advance funds or make loans to the Company in excess of the amounts required to be contributed by him to the capital of the Company, without the express written consent of sixty-five percent (65%) in voting interests of the Members. Any approved advances or loans by a Member will not result in any increase in the amount of the Member's Capital Account, or entitle him to any increase in his Membership Interest. The amounts of such advances or loans will be a debt of the Company to the Member, and will be payable or collectible only out of the Company's assets.

4.4. Capital Contributions by Member. Each of the Members has made a Capital Contribution to the Company, and each of their Capital Accounts were duly credited, as specified on Schedule 1.

4.4.1. No Future Obligation. No Member will be required or obligated to make any contribution in excess of his initial Capital Contribution (and any additional Capital Contributions which a Member elects to make).

4.5. Withdrawal of Capital Contributions. No Member will have the right to withdraw from the Company (or demand a return of) all or any part of the Capital Contribution.

4.6. Distributions. A minimum of fifty (50%) percent of taxable income of the Company shall be distributed, after reasonable reserves for debts, liabilities (including current portions of debts due to a bank or institutional lender), expenses, and projected working capital requirements, will be distributed to the Members. Any additional distributions shall be made at such times and in such amounts as the Members holding a majority of the Membership Interests may determine. Notwithstanding any other provisions to the contrary contained in this Agreement, the Company shall not make a distribution to any Member on account of its interest

in the Company if such distribution would violate Section 18-607 of the Act or other applicable law. All distributions of cash will be distributed to the Members in proportion to their Membership Interests.

4.7. Distribution of Net Proceeds on Liquidation. Upon the liquidation of the Company within the meaning of Regulations Section 1.704-1(2)(ii)(g), after payment of (or adequate provision for) the debts and obligations of the Company, the remaining assets of the Company will be distributed (or deemed distributed in the event of a termination under Section 708(b)(1)(B) of the Code) to the Members (in proportion to their Membership Interests).

4.8. Allocations of Profits and Losses and Certain Distributions of Cash.

4.8.1 Definition of Profits and Losses. "Profits" and "Losses" mean the annual income and loss (respectively) of the Company for a fiscal year (or portion), as determined by the Company's regularly-engaged certified public accountants in accordance with principles consistently applied in determining income, gains, expenses, deductions, and losses reported by the Company for federal income tax purposes on its tax return (including, as applicable, any gain or loss from the sale, exchange, or other disposition of assets). To the extent that any alternatives may be available to the Company as to the tax treatment of Profits and Losses, the selection of the applicable option will be made by the Members holding a majority of the Membership Interests.

4.8.2 Allocation of Profits and Losses. Profits and Losses will be allocated to the Members (in proportion to their Membership Interests).

4.8.3 Regulatory Allocations.

4.8.3.1. Substantial Economic Effect. It is the intention of the Members that the allocations pursuant to this Section be made in such manner as will have substantial economic effect or otherwise be in accordance with the Members' interests in the Company in accordance with Regulations Sections (b) and 1.704-2.

4.8.3.2. The Regulatory Allocations. The provisions of the Regulations regarding "partner nonrecourse deductions," "nonrecourse deductions," "qualified income offset," "partnership minimum gain," and "partner nonrecourse debt minimum gain," as such terms are defined in Regulation Sections 1.704-2(i)(1), 1.7042(b)(1), 1.704-1(b)(2)(ii)(d), 1.704-2(b)(2) and 1.704-2(i)(2) (respectively) are incorporated in this Agreement by reference. These provisions are referred to in this Agreement as the "regulatory allocations."

4.8.3.3. Reversal of Regulatory Allocations. To the maximum extent permitted by Act, the parties intend that, to the extent that any regulatory allocation is required to be made, the allocation will be reversed as rapidly as possible so that the Capital Account of each Member will be equal to the amount that it would have been, had the regulatory allocation never been made.

4.8.3.4. Adjustment to Tax Basis. To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss will be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that section of the Regulations.

4.8.3.5. Compensation to Members. To the extent any compensation paid to any Member by the Company is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in the person's capacity as a Member within the meaning of Code Section 707(a), the Member will be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member's Capital Account will be adjusted to reflect the payment of that compensation. Such adjustment shall not affect the Member's Membership Interest.

4.8.3.6. Reduction in Economic Interest. If a Member's economic interest in the Company is reduced (provided the reduction does not result in a complete termination of the Member's economic interest), the Member's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of Code Section 751) and on the date of redemption will not be reduced. Notwithstanding any other provision of this Agreement to the contrary, that portion of the profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to Section 4.7 which is taxable as ordinary income (recapture) for federal income tax purposes will, to the extent possible without increasing the total gain to the Company or to any Member, be specially allocated among the Members in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture. If the allocation of ordinary income (recapture) cannot be resolved in the manner specified in this Section, the allocation will be determined by the Members holding a majority of the Membership Interests. All amounts required to be withheld pursuant to Code Section 1446 or any other provision of federal, state, or local tax Act will be made at the rate of fifty (50%) percent.

4.9. Distributions Related to Taxes. The Company will, after taking into account the reasonable needs of the Company's business operations, make periodic cash distributions to the Members in amounts sufficient (i) to enable each Member to pay timely federal, state, and local taxes attributable to allocations to them for any fiscal year of items of income, gain, loss, deduction, and credit (a "Tax Item") from the Company and any Tax Items arising out of the adjustments under Section 743 of the Code that are attributable to any Member, and (ii) to cause all distributions to the Members pursuant to this Section to have been made to them in proportion to the allocation of Profits and Losses. In determining the amount that will enable each Member to pay such taxes (including estimated taxes) on a timely basis, the maximum effective combined federal, state, and local tax rate will be assumed to be fifty (50%) percent.

4.10. Allocation of Certain Sale Proceeds.

4.10.1. Sale of Entity. Upon any sale (or other transfer) by the Members of all (or substantially all) of the interests in the Company in a single transaction (or a series of related transactions), the proceeds of the sale (or transfer) will be held and allocated by the Members among themselves as if the Company had directly sold substantially all of its assets, subject to its liabilities, and had then liquidated and distributed such proceeds among the members in accordance with the distribution provisions of Section 4.7. By the approval of sixty-five percent (65%) in the voting rights percent of the Members, this section may be modified, altered or amended.

4.10.2. Same Economic Effect. It is the intention of this Section to cause the Members, among themselves, to realize the proceeds in the same proportions, whether the assets of the Company are sold directly by the Company, or indirectly by means of a sale or transfer of the interests of the Members.

4.10.3. All Consideration. In any sale of Company interests or assets, all consideration paid directly or indirectly to any Member (however denominated, and including without limitation payments in respect of covenants not to compete) will be held and allocated among the Members as if the proceeds were received by the Company and distributed among the Members in accordance with the provisions of this Section. By the approval of fifty-one (51%) percent of the Members, this section may be modified, altered or amended.

5. Meetings of Members.

5.1. Who May Call Meetings.

5.1.1. By President. The President may call a meeting of the Members at any time.

5.1.2. By Members. Irrespective of any Member having given a proxy to another party, meetings of Members may be called at any time by Members holding at least eight (8%) percent of the Membership Interests.

5.1.3. Manner of Calling a Meeting. Meetings will be called by giving notice in accordance with Section 5.3.

5.2. Place of Meetings. All meetings of Members will be held at the principal office of the Company (or at such other place as will be set forth in the notice of meeting).

5.3. Notice of Meetings. Written notice of the time, place, and purpose of a meeting of Members will be given not less than seven (7) nor more than thirty (30) days before the date of the meeting to each Member. Notice will be given either personally or by mailing such notice to each Member's address (as it appears on the books of the Company). No notice need be given of an adjourned meeting, provided that the time and place to which a meeting is adjourned are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the only business that may be transacted is limited to the purposes specified in the

notice of meeting. However, if after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be given to each Member of record as of the new record date.

5.4. Record Dates. The Members calling a meeting of the Members may fix in advance a date as the record date for the purpose of determining Members entitled to notice of, and to vote at, a meeting of Members or an adjournment; or to express consent (or to dissent) from a proposal without a meeting; or for the purpose of determining Members entitled to receive payment of a distribution or allotment of a right; or for the purpose of any other action. The date fixed will not be more than forty (40) nor less than ten (10) days before the date of the meeting or other action. Only Members who are Members of record on the date so fixed will be entitled to notice of, and to vote at, the meeting (or adjournment) or to express consent (or to dissent) from the proposal, or to receive the distribution or to receive the allotment of rights, or to participate in any other action.

5.5. List of Members. The President will have charge of the transfer records for Membership Interests of the Company. The President will make and certify a complete list of the Members entitled to vote at a meeting of all of the Members (or any adjournment). The list will be arranged alphabetically with the address of and the number of Membership Interests held by each Member. The list will be produced at the time and place of the meeting, will be subject to inspection by any Member during the whole time of the meeting, and will be prima facie evidence as to who are the Members entitled to examine the list, or to vote at the meeting. The list will be updated at regular intervals.

5.6. Quorum. A quorum for a meeting of Members will consist of the Members present at the meeting in person or by proxy who (as of the record date for such meeting) were holders of at least a majority of the Membership Interests. Whether or not a quorum is present, a meeting of Members may be adjourned by a vote of at least a majority of the Membership Interests present in person or by proxy.

5.7. Proxies. Subject to the restrictions on voting by proxy set forth in Section 3.2.2 of this Agreement or otherwise herein provided, a Member entitled to vote at a meeting of Members of the Company or to express consent or dissent without a meeting may authorize other persons to act for it by proxy. A proxy will be signed by the Member (or the Member's authorized agent or representative), and will not be valid after the expiration of three years from its date (unless otherwise provided in the proxy). A proxy is revocable at the pleasure of the Member executing it, except as otherwise stated herein or in the proxy or provided by the Act.

5.8. Manner of Voting. Votes will be cast in writing signed by the Member or by proxy. When an action is to be taken by a vote of the Members of the Company, it will be authorized by the affirmative vote of the holders of at least a majority of the Membership Interests of the Company entitled to vote.

5.9. Consent. Any action required or permitted to be taken at a meeting of the Members of the Company, may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by Members holding

Membership Interests representing not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote were present and voted. Each written consent will bear the date and signature of each Member who signs the consent. The list of Members maintained in accordance with Section 5.5 will be prima facie evidence as to who are the Members entitled to execute such consents.

6. Management of the Company.

6.1. Management by the Members; Delegation of Authority to the President. The Company and its business shall be managed and controlled by the Members. The Members shall have full and complete power, authority and discretion to manage and control the Company and its business. Unless a greater percentage is specifically required pursuant to the Act, the Certificate, this Agreement or applicable law, any act or approval of the Members shall require the affirmative vote or consent of Members owning a majority of the voting interests of the Company. From time to time, the Members may appoint, and delegate some or all of their management responsibilities to, one or more officers for the Company.

Subject to the preceding paragraph, the Members hereby unanimously agree that the responsibility for management of the day to day operations of the business and affairs of the Company will be delegated to the President pursuant to the Act. Subject to the preceding paragraph, all matters relating to the day to day operations of the Company will be within the sole discretion of the President (except for those matters set forth in Section 6.2 and 6.3). The President is, and will be, Stephen J. Sheinbaum. The President and other officers of the Company shall derive their authority only by way of an express grant from the Members or this Agreement. The President and any other officers of the Company shall be appointed by the Members, and the President and each other officer shall hold his or her office until his or her successor has been appointed by the Members or until his or her earlier resignation, removal or other vacancy. The Members may remove the President or any other officer, at any time, with or without cause. However, if the President or other officer has a written employment agreement which contains provisions with regard to the removal of the President or other officer or with regard to termination of the employment agreement, the provisions of such employment agreement will apply, rather than the terms set forth in this paragraph. The removal of an officer who is also a Member shall not affect such person's rights and duties as a Member and shall not constitute the withdrawal of such person as a Member of the Company. Any vacancy in the office of President or any other officer position occurring as the result of an officer's resignation, removal, death, disability or any other reason whatsoever may be filled by the Members.

6.1.1. Employment Agreement. The Company and the President have entered into an employment agreement as of April 1, 2005. It is intended that on or about the date on which this Agreement is executed, an amended employment agreement will be executed, extending the term of the President for five (5) years from October 2, 2006 but otherwise on the same terms as the existing employment agreement.

6.1.2. Individual Obligations. The President is signing this Agreement in his individual capacity with respect to the provisions of Section 6, 9 and 10.

6.2. Limitation of Powers. The President may not, without the approval of Members holding sixty-five percent (65%) in voting interests of the Members, take any of the following actions:

6.2.1. Real Estate. Purchase, finance, improve, grant options with respect to, sell, convey, assign, mortgage, or lease personal, real, or intangible property of the Company;

6.2.2. Borrowing. Obtain loans (secured and unsecured) for the Company, or mortgage or pledge all (or any portion) of the property or assets of the Company;

6.2.3. Refinance. Prepay (in whole or in part), refinance, recast, increase, decrease, modify, amend, restate, or extend any mortgage, security assignment, pledge, or other security instrument. It is intended that the monies invested by the Capital Standard Holdings, LLC, Timothy Poster and Thomas Breitling shall be used to retire the current long-term debts of the Company, totaling Eight Million Five Hundred Thousand Dollars (\$8,500,000.00);

6.2.4. Sale. Sell or exchange (or otherwise dispose of) or agree to sell or exchange (or otherwise dispose of) all (or substantially all) of the property or assets of the Company for property, cash, or on terms (or any combination), except in a liquidating sale upon dissolution of the Company;

6.2.5. Merger. Merge or consolidate with any other Person, if (a) the Company is not the surviving entity or (b) the Company is the surviving entity and the effect of the transaction would be to issue additional Membership Interests or otherwise alter the equity interests or voting or related rights attributable to existing Membership Interests;

6.2.6. Bankruptcy. File a petition in bankruptcy;

6.2.7. Creditors. Make, execute, or deliver any assignment for the benefit of creditors;

6.2.8. Contravention. Do any act in contravention of this Agreement or the Certificate;

6.2.9. Impossibility. Do any act that would make it impossible to carry on the business of the Company, except in a liquidating sale upon dissolution of the Company; or

6.2.10. Liability. Knowingly take any action that would subject any Member to personal liability in any jurisdiction.

6.3. Compensation Committee.

6.3.1. Delegation. The Members hereby delegate to the Executive Compensation Committee (“Committee”) the sole power and authority to oversee the compensation of the Company’s employees.

6.3.2. Composition. The Committee is composed of six (6) members: Marcelo Paladini, Eduardo Borgato, Timothy Poster, Sigmund Kassap, Stephen Sheinbaum and Thomas Breitling. Sigmund Kassap shall serve as Chair of the Committee. Stephen Sheinbaum shall recuse himself from any discussion or vote of the compensation committee in connection with his compensation.

6.3.3. Powers of the Committee. The Committee will have the following powers and duties:

6.3.3.1. to provide oversight and guidance for compensation and benefit philosophy for all employees of the Company;

6.3.3.2. to make determinations about compensation plans, policies, and benefit programs for the Company's employees generally;

6.3.2.3. The President of the Company shall have the right to make all decisions about hiring and firing of the Company's employees other than himself and to review the performance of the Company's employees other than himself.

6.3.4. Meetings of the Committee. The Committee shall meet quarterly on the same dates on which the Board of Directors holds its quarterly meetings in accordance with Section 6.8 of this Agreement. In addition, the Committee will meet with such frequency, and at such intervals, as the Chair will determine is necessary to carry out its duties and responsibilities, but in any case, at least four times each year. Meetings of the Committee may be called as needed by the Chair. The Chair will preside, when present, at all meetings of the Committee. The Committee may meet by telephone or videoconference, and may take action by written consent.

6.3.A Audit Committee There shall be an Audit Committee consisting of three members selected by a majority of the voting interests of the Members. The Audit Committee will meet at such times and places as a majority of the Audit Committee shall determine. The Committee shall have the right to meet directly with and receive financial information and financial statements directly from the Company's outside accountants and to receive any and all internal financial information and financial statements directly from the providers of such financial information and statements and statements from the Company's bank accounts directly from the applicable banks. The President will take or cause to be taken all action required to ensure that all such financial information, financial statements and bank statements are sent directly to the members of the Audit Committee.

6.4. Conflict of Interests and Fiduciary Obligations. Subject to the provisions of Section 9 of this Agreement, the Members, the Board of Directors and the President may engage in other business ventures of any nature or description independently or with others, whether currently existing or created in the future ("Unaffiliated Business"). The Company will have no right to the income or profits derived from an Unaffiliated Business. Under no circumstances will the interest of the Member in an Unaffiliated Business be deemed a conflict of interest with the activities of the Company, nor will the Member be restricted in his

activities on behalf of any Unaffiliated Business. The Members specifically confirm that the merchant credit processing business is an Unaffiliated Business.

6.5. Dealings with Company. The Company may, in the sole discretion of the Members holding a majority of the Membership Interests, contract with any Person (including any officer, Member, or Affiliate) to perform any services or to provide materials that may be required or desirable to carry on the business of the Company.

6.6. Exculpation. No Member, officer or director (“Covered Person”) will be liable to the Company or its Members, or any other Person who has an interest or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company, and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, unless a judgment or other final adjudication adverse to it establishes that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of Act, or that such Covered Person personally gained a financial profit or other advantage to which such Covered Person was not legally entitled. Any act or omission of a Covered Person, if done in reliance upon the advice of legal counsel or public accountants selected by the Company, will be conclusively presumed not to constitute bad faith, intentional misconduct, or a knowing violation of law.

A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

This Section 6.6 shall survive any termination of the Agreement.

6.7. Indemnification of Members, Officers, and Members of the Board of Directors.

6.7.1. Covered Claims. Except as specified in Section 6.6, in any threatened, pending, or completed claim, action, suit, or proceeding to which any Covered Person was (or is) a party or is threatened to be made a party by reason of his activities on behalf

of the Company ("Covered Claim"), the Company will indemnify and hold harmless the Member or officer against losses, damages, expenses (including attorneys' and accountants' fees), judgments, and amounts paid in settlement.

6.7.2. Excluded Claims. No Covered Person will be indemnified for a Covered Claim, if a judgment or other final adjudication adverse to him establishes that (a) his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (b) he personally gained a financial profit or other advantage to which he was not legally entitled.

6.7.3. Advance of Expenses. The Company will pay the expenses (including attorneys' fees and accountants fees) incurred in defending a Covered Claim in advance of the final disposition of the Covered Claim, upon receipt of an undertaking by (or on behalf of) the Covered Person to repay such amount if he is ultimately determined not to be entitled to indemnity.

6.7.4. Limited Recourse. Each Member will look solely to the assets of the Company for return of the Member's Capital Account; and if the property of the Company remaining after the discharge of the debts and liabilities of the Company (including those owed to a Member) is insufficient to return a Member's Capital Account, the Member will have no recourse against any other Member.

6.7.5. No Presumption. The resolution of any action, suit, or proceeding (by judgment, order, settlement, or otherwise) adverse to any Covered Person will not create a presumption that the conduct of the Covered Person constitutes an excluded claim under Section 6.72.

6.7.6. Survival. This Section 6.7 shall survive any termination of the Agreement.

6.8. Board of Directors. The Members hereby establish a Board of Directors ("Board"). The members of the Board are Sigmund Kassap, Harry Kassap, Stephen Sheinbaum, Marcelo Paladini, Timothy Poster, Thomas Breitling and Ed Borgato. The Board will have the power to advise and consult on business matters affecting the Company. The Board will meet quarterly in January, April, July and October of each year, not more than thirty (30) days following the end of each fiscal quarter and, otherwise, with such frequency, and at such intervals, as its members will determine is necessary to carry out its duties and responsibilities. The Board may meet by telephone or videoconference. In lieu of reimbursement for expenses incurred by Directors in the performance of their duties and responsibilities, each Director shall be paid, in quarterly increments at the time meetings are held, an annual fee of Twelve Thousand Dollars (\$12,000.00). Each Director elected, designated or appointed by the Members shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Directors need not be Members. Jodi Sheinbaum, C.P.S. Group, Inc., the Kassap Family Limited Partnership, Capital Standard Holdings, LLC, M and M Ventures III, LLC and TB Management, LLC shall each have the right to name a member of the Board of Directors so long as he, she or it holds a Membership Interest in the Company.

The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the President on not less than one day's notice to each Director by telephone, facsimile, mail, telegram or any other means of communication, and special meetings shall be called by the President or Secretary in like manner and with like notice upon the written request of any one or more of the Directors.

Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or similar communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in Person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

The Members of the Board, by a majority vote of its members, shall have the right to expand the number of directors. Further the Members of the Board may, by a majority vote of its members establish committees other than the ones established by this Agreement and may decide the number of and the members of such committees, as well as the duties, rights and restrictions of such committees.

Notwithstanding the last sentence of Section 18-402 of the Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

7. Rights, Duties, and Obligations of the Members.

7.1. Liability of Members. Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Members nor the officers nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, officer or Director of the Company. No Member will have personal liability with respect to any liabilities or obligations of the Company, except to the extent that such Member assumes or guarantees in writing any of the debts of the Company. No Member will be personally liable or obligated, except as otherwise required by the Act, either (a) to pay any deficiency in the Member's Capital Account to the Company or any creditor of the Company or the other Members, or (b) to pay the amount of any distribution to the Company or any creditor of the Company or the other Members.

7.2. Rights and Duties of the Members.

7.2.1. No Control. The Members will have no part in the control, management, direction, or operation of the affairs of the Company, except as set forth in this Agreement or as required by the Act.

7.2.2. No Power to Bind. No Member (in his individual capacity as a Member) will have any power to act for, or bind, the Company.

7.3. Tax Matters Member.

7.3.1. Designation. Jodi Sheinbaum is designated the "Tax Matters Member" in accordance with Section 6231(a)(7) of the Code.

7.3.2. Authority. The Tax Matters Member will have all powers necessary to perform fully, including the power to retain attorneys and accountants of his choice. The Tax Matters Member is authorized to represent the Company before taxing authorities and courts in tax matters affecting the Company and the Members in their capacity as Members and is entitled to take any actions on behalf of the Company in any such tax proceedings as approved by the President.

7.3.3. Duties. To the extent and in the same manner as provided by applicable Act, the Tax Matters Member (a) will furnish the name, address, Membership Interests and taxpayer identification number of each Member to the Secretary of the Treasury or his delegate; and (b) will keep each Member informed of any administrative and judicial proceedings for the adjustment at the Company level of any items required to be taken into account by a Member for income tax purposes. The Tax Matters Member will give notice to each Member of an audit.

7.3.4. Expenses and Indemnification. The Tax Matters Member will be entitled to be reimbursed by the Company for all reasonable costs and expenses incurred by him in connection with any administrative or judicial proceeding with respect to any tax matter involving the Company or the Members (in their capacities as Members), and to be indemnified by the Company (solely out of Company assets) with respect to any action brought against him in connection with any judgment or settlement of any proceeding.

7.4. Termination of a Member. A person will cease to be a Member upon the occurrence of any of the following events:

7.4.1. Voluntary Withdrawal. The Member withdraws by voluntary act from the Company;

7.4.2. Assignment. The Member ceases to be a Member through a permitted assignment of all of his Membership Interests to the Company or to others;

7.4.3. Sale. A Member sells his Membership Interests to another party in accordance with Section 8; or

7.4.4 . Judgment. A judgment or final adjudication against, or admission by, a Member of a wrongdoing as specified in Section 6.7.2.(a) or (b).

7.5. No Dissolution in Certain Events. The bankruptcy, dissolution, expulsion, incapacity, or withdrawal of a Member, or the occurrence of any other event which terminates the continued membership of a Member, will not (by reason of such event) cause the dissolution of the Company. The Company will continue to operate following the occurrence of any such event.

8. Sale of Membership Interests.

8.1. Limitations on Transferability. Except as provided in Section 8.3 or elsewhere in this Agreement, a Member may not sell, transfer, or assign his Membership Interests to any Person. Any attempted sale, transfer or assignment of any Membership Interests that does not comply with the provisions of this Agreement will be null, void, and of no force or legal effect. Except as otherwise provided in Sections 8.2 and 8.3 of this Agreement, with the consent of fifty-one (51%) percent of the voting interests of the Members other than the Member proposing to transfer his or her Membership Interests, a Member may be permitted to sell, transfer or assign his Membership Interests. In the event that any Member requests the right to sell, transfer or assign any or all of its Membership Interest, any proxy given by any Member shall be null and void for the purpose of approving or rejecting such request, in whole or in part, and the Member or Members who gave such proxy shall have the right to vote on such request.

8.2. Sale to a Third Party.

8.2.1. Bona Fide Offer. If a Member ("Offering Member") receives a bona fide written offer from a third party that is not an Affiliate for the sale or transfer of all (or any portion) of his Membership Interests, the Offering Member will give notice to the other Members in writing about the name and address of the third party, his relationship or affiliation with the Offering Member, and the terms and conditions of the offer.

8.2.2. Option to Acquire. In this case, the other Members will have the exclusive option to acquire the Offering Member's Membership Interests upon the same terms and conditions as offered by the third party (in proportion to their Membership Interests). Each other Member will be entitled to exercise his option to acquire the Offering Member's interest within twenty (20) business days from the date of receipt of the notice.

8.2.3. Failure to Exercise Option. If any of the other Members do not exercise timely his option to purchase, then the Offering Member will notify the other Members. In this case, the other Members will then have an additional period of ten (10) business days from the date of receipt of the notice to acquire the portion of the Offering Member's Membership Interest that was not acquired by exercise of the option in proportion to their Membership Interests.

8.2.4. Right to Sell to Third Party. If any of the other Members do not exercise timely his option to purchase, the Offering Member will be free to transfer to the third party purchaser, the portion of his Membership Interest that was not acquired by exercise of the option.

8.2.5. Change in Terms of Offer. The Offering Member will give notice to the other Members about any change in the terms of sale with the third party purchaser. The other Members will then have the right to acquire the Offering Member's Membership Interest in accordance with the changed terms within an additional period of twenty (20) business days.

8.2.6. Definitions.

8.2.6.1. An Offer is Bona Fide. For purposes of this Agreement, an offer is "bona fide" if it is on terms that are commercially reasonable and the third party is not an "Affiliate" of the Offering Member.

8.2.6.2. Affiliate. For purposes of this Agreement, a third party is an "Affiliate" of the Offering Member if:

8.2.6.2.1. the third party is a spouse, child (or spouse of a child), or grandchild (or spouse of a grandchild) of the Offering Member, or a trust in which any of the foregoing people are a grantor or beneficiary; or

8.2.6.2.2. the third party controls, is controlled by or is under common control with, the Offering Member. For purposes of this Section 8.2.6.2.2, "control" means to own or have the power to vote or direct the vote of more than 50% of the outstanding voting securities of any entity.

8.3. Affiliate Transfers. A Member will be permitted to transfer all (or any part) of his Membership Interest to his Affiliates without obtaining the consent of the President, Board or other Members. Any such transfer shall comply with the provisions of Section 8.4.

8.4. Requirements for Assignee to Become a Member. Any assignee of an interest in the Company will be admitted as a Member only upon approval of a majority in voting interest of the Members (other than the transferring Member) and satisfaction of the following additional conditions:

8.4.1. Permitted Transfer. The interest in the Company with respect to which the transferee is being admitted was acquired by means of a permitted transfer;

8.4.2. Agreement in Writing. The transferee agrees, in writing, to be bound by this Agreement as a Member, and executes such documents as the President may request;

8.4.3. Payment of Legal Costs. The transferee pays (or reimburses the Company) for all reasonable legal costs that the Company incurs in connection with the admission of the transferee as a Member.

8.4.4. Rights Between a Member and His Transferee. Nothing in this Agreement will affect the rights (between themselves) of a Member and its transferee or transferor.

The approval of admission of a Member will not release the Member originally transferring the interest in the Company from any liability to the Company that may have existed prior to the approval.

8.5. Prohibited Transfers.

8.5.1. No Legal Effect. Any purported transfer of an interest in the Company that is not a permitted transfer will be null, void, and of no legal force or effect; provided, however, that if the Company is required to recognize a transfer that is not a permitted transfer (or if the Company is its sole discretion, elects to recognize a transfer that is not a permitted transfer), the interest so transferred will be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement which have become fully vested with respect to the transferred interest, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities that the transferor or transferee of such interest may have to the Company. In no event will the assignee be entitled to any future allocation of profit and loss from the ongoing business activities of the Company.

8.5.2. Result of Transfer. In the case of a transfer (or attempted transfer) of an interest in the Company that is not a permitted transfer:

8.5.2.1. Indemnity. The parties engaging (or attempting to engage) in such transfer will be liable to indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that they may incur (including, without limitation, incremental tax liability and attorneys' fees and expenses) as a result of such transfer (or attempted transfer) and enforcement of this indemnity; and

8.5.2.2. Forfeiture in Certain Cases. If the transfer (or attempted transfer) is made in bad faith, the Member engaging in the transfer will forfeit fifty (50%) percent of his Membership Interest, and the Company will cancel the forfeited Membership Interests on its membership register.

8.6. Rights of Unadmitted Assignees. A person who acquires an interest in the Company from a Member, but who is not admitted as a Member pursuant to Section 8.3, will be entitled only to distributions with respect to such interest in the Company to the extent of a Member's Capital Account as of the date of the transfer. He will have no right to any information or accounting of the affairs of the Company, will not be entitled to inspect the

books or records of the Company, will not have any of the voting rights of a Member, and will not be entitled to participate in any allocation of Profits and Losses after the date of the transfer.

8.7. Transfers During a Fiscal Year. If any interest in the Company is transferred in any fiscal year in compliance with the provisions of this Section 8, each item of Profit and Loss and all other items attributable to the transferred interest in the Company for such fiscal year will be divided and allocated between the transferor and transferee by taking into account their varying interests in the Company during such fiscal year in accordance with Section 706(d) of the Code, using any conventions permitted by Act and selected by the President. As of the date of such transfer, the transferee will succeed to the Capital Account of the transferor with regard to the transferred interest. All distributions on or before the date of such transfer will be made to the transferor, and all distributions thereafter will be made to the transferee. Solely for the purposes of making such allocations and distributions, the Company will recognize such transfer not later than the end of the calendar month during which it is given written notice of such transfer; provided, however, that if the Company is notified about a transfer at least ten (10) business days prior to the transfer, the Company will recognize such transfer as the date of such transfer; and provided further that if the Company does not receive a notice stating the date the interest in the Company was transferred (and any other information that the President may require) within thirty (30) days after the end of the fiscal year during which the transfer occurs, then all such items will be allocated, and all distributions will be made, to the person who (according to the books and records of the Company) was the owner of the interest in the Company on the last day of the fiscal year during which the transfer occurs. Neither the President, nor the Company, nor any Member will incur any liability for making allocations and distributions in accordance with the provisions of this Section, whether or not the President or any Members have knowledge of any transfer of ownership of any interest in the Company.

9. Restrictive Covenants.

9.1. Confidentiality. The Members acknowledge that each of them is (or will be) privy to some (or all) of the following information ("Confidential Information"), in whatever form it is compiled or maintained by the Company:

9.1.1. Customer names, contact information, preferences, pricing and any other specific information compiled and maintained by the Company;

9.1.2. Prospect names, contact information, preferences, pricing, and any other specific information compiled and maintained by the Company;

9.1.3. Marketing plans and methods;

9.1.4. Business plans;

9.1.5. Prices the Company pays for goods and services;

9.1.6. Profit margins of the Company;

9.1.7. Business processes and methods;

9.1.8. Confidential customer/client information;

9.1.9. Non-public financial information;

9.1.10. Any of the Company's confidential, secret, or other proprietary information, knowledge, or data (oral, written, digital, or optical); and

9.1.11. Any other information the Company treats as confidential and/or proprietary.

The Confidential Information constitutes valuable, special, and unique assets of the business of the Company. Therefore, each Member agrees not to disclose any such Confidential Information to any Person for any reason other than the business of the Company.

For purposes of this Agreement, "Confidential Information" does not include, and will cease to include, any information if, when, and to the extent that it:

- (A) is (or becomes) generally available to the public, other than as a result of a disclosure by a Member in breach of this Agreement;
- (B) is available to a Member on a non-confidential basis prior to its disclosure; or
- (C) becomes available to a Member on a non-confidential basis from a source other than the Company, provided the source is not bound by a confidentiality agreement with the Company, or is otherwise not prohibited from transmitting the information to the Member by a contractual, legal, or fiduciary obligation of which the Member had prior knowledge (or reasonably should have been aware).

In no event will the Confidential Information disclosed under this Agreement be considered a public disclosure of such Confidential Information.

9.1.12. This Section 9.1 shall survive any termination of this Agreement.

9.2. Permitted Disclosures. Nothing in this Agreement will restrict any Member from disclosing Confidential Information when required to do so pursuant to statute, rule, regulation, court order, or other governmental order or request; provided that the Member making the disclosure will inform the other Members as soon as possible and prior to the disclosure. The Member making the disclosure will be permitted to rely on advice of his own counsel in determining the extent of his disclosure.

9.3. Non-Competition.

9.3.1. Covenant. Each Member agrees that so long as he owns Membership Interests in the Company and thereafter during the "Restricted Period" (defined in Section 9.3.3), he will not (directly or indirectly) own, operate, manage, join, control, finance, or participate in the ownership, management, operation, control, or financing, of, or be connected as an officer, director, employee, partner, manager, member, principal, agent, representative, consultant, or otherwise with, any Person engaged in purchasing interests in the revenues of companies having sub-prime credit or making cash advances to merchants.

9.3.2 Opportunities. Each Member confirms that all of his business opportunities which relate to the Company's Business are (and will be) the sole property of the Company. Each Member agrees that he will not avail himself (directly or indirectly) of any such opportunity, except on behalf of the Company.

9.3.3. Further Restrictions. Cynergy agrees that it will cause its principals and key employees to agree, in writing, to be bound individually by the provisions of Sections 9.1, 9.3, 9.4 and 9.5.

9.3.4. Definition. "Restricted Period" means the period of time commencing on the last day of a Member's ownership of Membership Interests in the Company, and ending eighteen (18) months later.

9.4. Non-Solicitation. Each Member agrees that so long as he owns Membership Interests in the Company and thereafter during the Restricted Period, he will not (directly or indirectly), whether for the Member's own account or for the account of an Affiliate or any other Person, interfere with the Company's relationship with, endeavor to entice away from the Company, hire, or solicit any business from, any person who (or which) at any time is (or was) an employee, consultant, agent, business partner, supplier, or customer of, or in the habit of dealing with, the Company.

9.5. Non-Disparagement. The Members each agree not to make any statements (whether oral or in writing) that would tend to disparage or defame the Company, its services, its Members, or its employees. This Section 9.5 shall survive any termination of this Agreement.

9.6. Remedies. The Members each acknowledge that compliance with Sections 9.1, 9.3, 9.4 and 9.5 of this Agreement is necessary to protect the business and goodwill of the Company, and that a breach of this Agreement will immediately, irreparably, and continually damage the Company. The Members each further acknowledge that money damages may not be adequate to remedy a breach of Sections 9.1, 9.3, 9.4 or 9.5 of this Agreement. Consequently, the Members each agree that if any of them breaches (or threatens to breach) Sections 9.1, 9.3, 9.4 or 9.5 of this Agreement, the Company will be entitled to both (a) preliminary and permanent injunctions (without any bond or other security being required) in order to enjoin such actual or threatened breach, (b) money damages and (c) if, and only if, such breach was knowing or intentional, the Member shall forfeit his or its right to be a Managing Member or be on the Board

of Directors or on any Committees of the Company. Nothing in this Agreement will be construed to prohibit the Company from pursuing any other remedy that may be available.

10. Assignment of Intellectual Property.

10.1. Disclosure. Each Member, who is also an employee of the Company, will promptly communicate and disclose to the Company all inventions, ideas, discoveries, improvements, modifications, writings, artistic or creative material, and other intellectual property in any form whatsoever (whether or not patented and/or copyrighted) ("Inventions"), conceived, developed, or made by him during his employment by the Company, whether solely or jointly with others, and whether or not patentable or copyrightable, (a) which relate to any matters or business of the type carried on or being developed by the Company, or (b) which result from or are suggested by any work done by him in the course of his employment by the Company. Each Member, who is also an employee of the Company, will also promptly communicate and disclose to the Company all other data obtained by him concerning the business or affairs of the Company in the course of his employment by the Company. Each Member who is not an employee shall have the same duties and obligations pursuant to this Section 10, as a Member who is an employee, except that the term Inventions shall only apply to Inventions which relate to the business of the Company.

10.2. Property. All written materials, records, and documents (in any form) made by each Member or coming into his possession concerning the business or affairs of the Company will be the sole property of the Company. Upon the termination of the full-time employment of a Member for any reason, the Member will promptly deliver the original and all copies (whether physical or electronic) of same to the Company. Each Member agrees to render to the Company such reports of the activities undertaken by him or conducted under his direction pursuant to this provision, as the Company may request from time to time.

10.3. Assignment. Each Member hereby assigns to the Company all of his rights in the Inventions conceived, developed, or made by him during his employment by the Company, whether solely or jointly with others. Each Member agrees to assist and cooperate with the Company (or its designee) during or subsequent to his employment, at the Company's sole expense, in filing patent and/or copyright applications on, and obtaining for the Company's benefit, patents and/or copyrights for, such Inventions in any and all countries and jurisdictions. Each Member hereby assigns to the Company all such patent and/or copyright applications, and all patents and/or copyrights which may issue thereon. The Inventions are, will be, and will remain the sole and exclusive property of the Company (or its designee). This Section 10.3 shall survive any termination of this Agreement.

11. Dissolution and Termination of the Company.

11.1. Events of Dissolution. The Company will dissolve and its affairs shall be wound up upon the first to occur of any of the following events:

11.1.1 Election. An election to dissolve the Company made by the affirmative vote of sixty-five percent (65%) in voting rights of the Members; or

11.1.2. Sale. The sale, exchange, involuntary conversion, or other disposition or transfer of all (or substantially all) of the assets of the Company.

11.1.3. Termination. The termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining Member of the Company in the Company unless the business of the Company is continued in a manner permitted by this Agreement or the Act.

11.1.4. Decree. Entry of a decree of judicial dissolution under Section 18-802 of the Act.

11.2. Upon the occurrence of any event that causes the last remaining Member of the Company to cease to be a member of the Company, to the fullest extent permitted by law, the personal representative of such Member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such Member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute Member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining Member of the Company in the Company.

11.3. In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

11.3 (a) Actions on Dissolution.

11.3.1. Liquidator. Upon the dissolution of the Company, the President will designate one or more persons to act as liquidator to wind up the Company. The liquidator will have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and businesslike manner.

11.3.2. Effect of Dissolution. Upon the dissolution and winding up of the Company, the Company will cease to carry on its business, except as permitted by the Act, and the liquidator will do all things necessary to effectuate the dissolution.

11.3.3. Final Accounting. Upon the dissolution and winding up of the Company, a proper accounting will be made from the date of the last previous accounting to the date of winding up. The liquidator will immediately proceed to wind up the affairs of the Company.

11.3.4. Application of Proceeds. Unless otherwise required by the Act, the proceeds of liquidation will be applied first to the payment of the debts and liabilities of the Company (including debts and liabilities owed to the Members), the expenses of liquidation and

the establishment of any reserves that the liquidator deems necessary for potential or contingent liabilities of the Company. If there are any remaining proceeds, they will be distributed to the Members in accordance with Section 4.7.

11.3.5. Distribution in Kind. If the liquidator determines that the Members would be materially adversely affected by a liquidation of the Company's assets, the liquidator may distribute all or a portion of the Company's assets in kind to the Members, as agreed to in writing by holders of a majority of the Membership Interests.

11.3.6. Deferral of Liquidation. If the liquidator determines that an immediate sale of part or all of the Company's assets would cause undue loss to the Members, the liquidator, may to avoid the loss, either:

11.3.6.1. Deferral. Defer the liquidation of, and withhold from distribution for a reasonable time, any assets of the Company, except those necessary to satisfy debts and liabilities of the Company (including debts or liabilities owed to the Members); or

11.3.6.2. Distribution. Distribute to the Members, in lieu of cash, undivided interests in the Company's assets, and liquidate only those assets that are necessary to pay the debts and liabilities of the Company.

11.4. Statement of Dissolution. Within a reasonable time following the completion of the dissolution and winding up of the Company, the liquidator will submit a statement (which need not be audited) to each Member, setting forth the assets and liabilities of the Company as of the date of winding up and the amount of distribution to each Member. Any Member will be entitled to have the statement audited at his own expense.

11.5. Termination of Company. When all debts, liabilities, and obligations have been paid and discharged (or adequate provisions have been, made) and all the remaining property and assets have been distributed to the Members as provided in this Agreement, the Company will be terminated, and the liquidator may execute and file a Certificate of Termination with the Secretary of State of Delaware in accordance with the Act.

12. Books, Records and Returns.

12.1. Books of Account and Records. The Company's books and records (including a register showing the names and addresses of the Members and their Membership Interests, a copy of this Agreement, and any other records required to be maintained by the Act) will be maintained at the principal office of the Company. All such books and records will be available for inspection and copying by the Members (or their duly authorized representatives) during ordinary business hours, on reasonable advance notice. The President will keep accurate books and records of the operation of the Company, which will reflect all transactions and be appropriate and adequate for the Company's business and for carrying out the provisions of this Agreement.

12.2. Tax Returns. President will cause the Company's tax returns to be prepared and filed. After the end of each fiscal year, the President will cause to be furnished to each Member a statement, to be used in the preparation of the Member's income tax returns, showing the amounts of any profits and losses, tax credits, and gains allocable to the Member for the Fiscal year and the amount of any distributions made to the Member by the Company during the fiscal year.

12.3. Deposit of Company Funds. All revenues, assessments, loan proceeds, and other receipts of the Company will be maintained on deposit in interest bearing and non-interest bearing accounts and other investments as the President deems appropriate. Any interest or other income generated by the Company's deposits or investments will be for the Company's account. Company funds may be commingled with other Company funds, and may be withdrawn, expended, and distributed as authorized by this Agreement. The Company will not commingle Company funds with the separate funds of the President, the Members (or their Affiliates), or any other Person.

13. Membership Certificates.

13.1. Form; Signature. The certificates for Membership Interests of the Company will be in the form to be determined by the Members. The certificates will be numbered consecutively and recorded in the books of the Company as they are issued. Each certificate will state: (i) that the Company has been formed under the Acts of the State of Delaware and (ii) the registered holder's name and the number and class of Membership Interests. Each certificate will be signed by the President and the Secretary and will bear the seal of the Company. If a certificate is countersigned by a transfer agent (or registered by a registrar), the signature of the Company's officer may be a facsimile signature. If any officer who signed (or whose facsimile signature was placed on a certificate), will have ceased to be an officer before a certificate is issued, it may nevertheless be issued by the Company with the same effect as if he were an officer on the date of issuance.

13.2. Lost Certificates. The President may direct that a new certificate (or certificates) be issued in place of any certificate (or certificates) issued by the Company and alleged to have been lost or destroyed, upon the furnishing to the Company of an affidavit to that effect by the Member claiming that the certificate has been lost or destroyed. When authorizing the issuance of a new certificate (or certificates), the President may, in its discretion and as a condition precedent to the issuance of a replacement certificate, require the owner of the lost or destroyed certificate (or certificates), or his legal representative, to give the Company (and its transfer agent and registrar) a bond in such sum as it may direct (including a bond without limit as to amount) as indemnity against any claim which may be made against the Company with respect to the certificate alleged to have been lost or destroyed.

13.3. Registration of Transfer. Upon compliance with the restrictions on the transferability of Membership Interests, and upon surrender to the Company (or transfer agent) of a certificate (or certificates) for Membership Interests duly endorsed (or accompanied by proper evidence of succession, assignment, or authority to transfer), it will be the duty of the

Company (or transfer agent) to (a) issue a new certificate to the person entitled to it, (b) cancel the old certificate, and (c) record the transaction upon its books.

13.4. Legend on Membership Certificates. The parties will write or cause to be written upon the face of their Membership certificates and upon any Membership certificates which they may acquire in the future, the following legend:

“The transferability of the Membership Interest represented by this certificate is restricted by an Amended and Restated Limited Liability Company Agreement among the Company and its Members dated _____ 2006, a copy of which Agreement may be examined in the office of the Company.”

14. General Provisions.

14.1. Amendments. This Agreement may not be altered, changed, amended, terminated or modified except in writing, signed by Members owning ninety percent (90%) of the voting interests of the Company.

14.2. Further Action. The parties will execute and deliver all documents, provide all information, and take (or forbear from) all actions that may be necessary or appropriate to achieve the purposes of this Agreement.

14.3. Entire Agreement. This Agreement supersedes any prior understandings and agreements among the parties regarding the subject matter of this Agreement.

14.4. Exclusivity of Agreement. This Agreement is the sole source of agreement of the parties with respect to the operation of the Company. Except to the extent a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or the Regulations, or as expressly prohibited by the Act, this Agreement will govern even when inconsistent with (or different from) the provisions of the Act or any other Act or rule. To the extent any provision of this Agreement is prohibited or ineffective under the Act, this Agreement will be considered amended to the smallest degree possible in order to make this Agreement effective under the Act. In the event the Act is subsequently amended or interpreted to validate any provision of this Agreement that was formerly invalid, such provision will be considered to be valid from the effective date of such interpretation or amendment.

14.5. Agreement Binding. This Agreement will be binding upon the heirs, executors, guardians, administrators, successors, and assigns of the parties.

14.6. No Third Party Beneficiaries. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Members. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person.

14.7. Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to its benefits. No such waiver will be effective unless set forth in a written instrument duly executed by (or on behalf of) the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, will be deemed to be or construed as a waiver of the same (or any other) term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Act or otherwise afforded, will be cumulative and not alternative.

14.8. Notices.

14.8.1. Manner of Notice. Any notice, demand, or request required or provided for in this Agreement, or served, given, or made in connection with it, will be in writing and will be deemed properly served, given or made if delivered in person, sent by registered or certified mail, postage prepaid, or sent on an overnight priority basis by a nationally recognized overnight courier service, in each case, to the parties at the address specified below each party's signature, or at such other address as such party hereto may hereafter designate in writing to the others in accordance with this Section 14.8.

14.8.2. Date of Notice. Any notice will be deemed to have been delivered (i) on the date of personal delivery, (ii) on the fifth day following mailing, or (iii) on the business day following delivery to an overnight courier.

14.9. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future Act, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) the provision will be fully severable, (b) this Agreement will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part, (c) the remaining provisions of this Agreement will remain in full force and effect, and will not be affected by the illegal, invalid or unenforceable provision (or by its severance), and (d) in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible.

14.10. Governing Law. This Agreement will be governed, construed, and enforced in all respects in accordance with the laws of the State of Delaware (without regard to principles of conflicts of laws).

14.11. Consent to Jurisdiction; Venue. The Company and every Member knowingly and voluntarily consent and submit to personal jurisdiction over each of them in the State of New York. The Company and every Member knowingly and voluntarily agree that all disputes arising out of this Agreement will be adjudicated exclusively in the federal or state courts located in the State of New York.

14.12. Legal Counsel. Each party represents that he has been represented by, and has consulted with, counsel of his own choosing; that he has been counseled as to his rights and

remedies; and that he enters into this Agreement voluntarily and without duress of any kind. Each party acknowledges and agrees that he and his respective counsel has reviewed and had an opportunity to make changes to this Agreement. The customary rule of construction, by which ambiguities are construed against the drafting party, will not apply to this Agreement.

14.13. Counterparts; Fax. This Agreement may be signed in one or more counterparts, each of which will be considered an original, but all of which will be considered one and the same Agreement. This Agreement will become effective when one or more of such counterparts have been signed by each party and delivered to each other party.

Any signature delivered by a party by facsimile transmission will be deemed to be an original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

MERCHANT CASH AND CAPITAL, LLC

By: _____
Name: Stephen J. Sheinbaum
Title: President

Address: 45 West 36th Street, 6th Floor
New York, NY 10018

C.P.S. Group, Inc. T/A
CYNERGY DATA

By: _____
Name: Mr. Marcello Paladini
Title:

Address: 109-15 14th Avenue
Suite 200
College Park, NY 11356

[NOTE: OTHER SIGNATORIES AND THE SCHEDULE SHOWING THE IDENTITIES OF THE OTHER MEMBERS AND THEIR PERCENTAGE INTERESTS HAVE BEEN DELETED FROM THIS ELECTRONIC VERSION]

CERTIFICATE OF SERVICE

I, Joseph H. Huston, Jr., hereby certify that on September 10, 2009, I caused a true and correct copy of the foregoing *Objection Of Merchant Cash And Capital, LLC To Debtors' Motion For An Order Pursuant To Sections 105, 363, 365, 503 And 507 Of The Bankruptcy Code And Bankruptcy Rules 2002, 6004, 6006, 9007 And 9014(I)(A) Authorizing And Scheduling An Auction At Which The Debtors Will Solicit Higher And Better Offers In Connection With The Sale Of Certain Assets, (B) Approving The Bid Procedures For Such Assts, (C) Approving Break-Up Fee And Expense Reimbursement And (D) Approving The Form And Scope Of Notice Of The Bid Procedures And Auction; (II) Approving The Sale Of The Assets Free And Clear Of All Liens, Claims, And Encumbrances; (III) Approving Procedures For Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases; And (IV) Granting Related Relief As Requested Herein* to be served upon counsel listed below electronically through the Court's CM/ECF System and via regular mail:


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/s/ Joseph H. Huston, Jr.
Joseph H. Huston, Jr.