

IN THE CIRCUIT COURT OF THE COUNTY OF GREENE
STATE OF MISSOURI

GEMINI CAPITAL GROUP, LLC

Plaintiff(s),
VS.

CHARLES E GIFFIN
HEATHER R HASKINS

Defendant (s) .

Cause No. 1131-CV00886

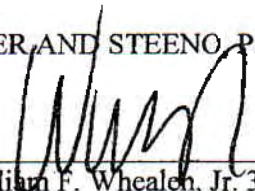
Div.

MEMORANDUM

COMES NOW, Plaintiff and files a copy of the unredacted asset purchase agreement per the court's instructions on 9/12/11.

MILLER AND STEENO P.C.

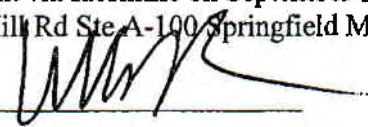
BY


William F. Whealen, Jr. 34078
Attorneys for Plaintiff
11970 Borman Drive, Suite 250
St. Louis, MO 63146
(314) 446-3300 Telephone
(314) 726-1406 Facsimile

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent via facsimile on September 14, 2011 to: Gregory A. Dorshorst, Attorney for Defendant 2847 S. Ingram Mill Rd Ste A-100 Springfield MO, 65804 fax #: 417-886-8186.

M71 09-08141-0



To: Gemini Capital

From: Thomas Ferris, CEO

Subject: Closing Statement

CLOSING STATEMENT

File Transfer Date: April 9, 2009

Funding/Closing Date: April 9, 2009

Number of accounts to be Transferred: 869

Dollar amount of accounts to be Transferred: \$ 5,983,124.65

Sale Price: 0.70%

Total Sale Dollars: \$41,881.87

Total Due at funding \$41,881.87

Concurrence: s/n Thomas Ferris
Thomas Ferris, CEO

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made and entered into as of the 7th day of April, 2009 ("Effective Date"), by and between The Sagres Company, with its principal office located at San Diego, California ("Seller"), and Gemini Capital Group, LLC (herein "Purchaser") with its principal office located at New York, NY.

WHEREAS, Seller desires to sell and Purchaser desires to buy certain Accounts (defined below) more particularly defined herein on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, it is agreed as follows:

1. **DEFINITIONS AND TERMS.** The following terms shall have the following meanings.

"Account" and collectively "Accounts" mean: accounts with a full or partial outstanding balance including but not limited to a deficiency balance after repossession and commercially reasonable disposition, insurance loss or abandonment (collectively referenced herein as an Account Receivable) from a motor vehicle retail installment sale contract or loan agreement purchased by Seller, which are described on the Account File and which are being sold pursuant to this Agreement.

"Account Document(s)" means: Originals or copies, including optical images, of any retail installment sale contract or loan agreement and other originals or copies, including optically imaged, notices, correspondence, payment checks, or other documents in the Seller's possession which relate to an Account.

"Account File" means: the computer disk, electronic file or tape describing each Account Included on a Sale File, substantially in the format of Exhibit F of this Agreement.

1.4 "Account Receivable" and, collectively, "Accounts Receivable" means: the amount shown on the Account File/Sale File as the Outstanding Balance Due and owing on each Account, together with all rights to receive or benefit from payments, proceeds from any source, or any other amounts which may hereafter become due under such Accounts including, without limitation, interest, late fees, rights to recover collection expenses or other charges, if any.

1.5 "Affiliate" means: any person or entity which directly, or indirectly through one or more intermediaries, owns or controls, is owned or controlled by, or is under common control or ownership with, Seller or Purchaser, respectively, or their respective ultimate parent.

1.6 "Closing" means: the transfer of the Accounts from Seller to Purchaser in exchange for payment of the Purchase Price.

1.7 "Closing Date" shall be as set forth in section 2 herein, unless otherwise agreed upon by Purchaser and Seller.

1.8 "Cut-Off Date" is the date when Purchaser receives the Sale File.

- 1.9 **"Obligor"** means the unreleased obligor(s) on or under the Account Documents or any subsequent obligor currently obligated on an Account.
- 1.10 **"Original Creditor"** means Auto Masters.
- 1.11 **"Outstanding Balance Due"** means the balance due for each Account to Original Creditor at the time that each Account was sold to Seller.
- 1.12 **"Sale File"** means an Account File related to the Accounts Identified to Purchaser, as updated on the Closing Date by removal of Unqualified Accounts.
- 1.13 **"Unqualified Accounts"** means the definition set forth in Section 2.1 herein.

2. **SALE AND PURCHASE OF ACCOUNTS.**

Seller agrees to sell and Buyer agrees to purchase all of Seller's right, title, and interest, free and clear of any and all liens and encumbrances, in and to the Account File. Proof of the sale shall consist of Exhibits A through F, attached hereto, as necessary for the sale. The sale shall take place as of the Effective Date of this Agreement. The purchase price for the sale shall be paid on the same date as the transfer and sale of the portfolio.

- 2.1 The term **"Account"** shall not include any Account which, as of the Cut Off Date, is classified as follows (hereinafter referred to as **"Unqualified Account"** or collectively **"Unqualified Accounts"**): (a) deceased Obligor (as determined by the date of death provided by a Credit Bureau, Accurint, Banko, Lexis/Nexis, or Death Certificate); (b) Satisfied or Settled (the amount was paid or settlement check was received by Seller prior to the Cut Off Date, or due to the Seller's filing of a Form 1099 C with respect to an Account); (c) a release of liability of any Obligor (an Account for which an Obligor was released of liability prior to the Cut Off Date by a court of competent jurisdiction or Seller); (d) pending litigation (any Account subject to any pending litigation or other legal proceeding whether filed by or against Seller or its agents); (e) a voluntary or involuntary petition in bankruptcy is pending or has been discharged (as determined by Accurint, Banko, or Lexis/Nexis); (f) the debt was the result of fraudulent activity; (g) all Obligors were under the age of majority at the time the sale contract or loan agreement was originated; or (h) any Account that does not include any Account Documents for up to 5% of the number of Accounts sold. Seller does not represent nor guarantee the amount, contents or completeness of the Account Documents for each Account.
- 3. **PURCHASE PRICE.** Subject to the terms and conditions of this Agreement, Purchaser shall pay and deliver to Seller on the Closing Date for each Account an amount equal to seventy (70) basis points of the Sale File, as applicable (herein the **"Purchase Price Percentage"**) times the aggregate principal component of the Accounts Receivable (herein the **"Purchase Price"**). Purchaser shall pay the foregoing amount by wire transfer to be wired directly to Seller in immediately available funds in accordance with the wiring instructions set forth on the Closing Statement in the form of *Exhibit B* attached to and made a part of this Agreement.
- 4. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller represents and warrants to Purchaser that as of the Closing Date of this Agreement:

- 4.1 Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of California.
- 4.2 The execution, delivery and performance by Seller of this Agreement have been duly authorized by any necessary corporate action on the part of Seller. Seller has full power to consummate the transactions contemplated hereby. Neither the execution and delivery by Seller of this Agreement, the consummation by Seller of the transactions contemplated hereby, nor compliance by Seller with the provisions hereof will conflict with or result in a breach of, or constitute a default under, any law or governmental regulation or any judgments or order binding upon Seller or its properties or any agreement or instrument to which Seller is a party or by which it is bound.
- 4.3 This Agreement will not violate any order of any court or governmental body having competent jurisdiction over Seller.
- 4.4 Seller will sell, assign and transfer its right, title and interest in and to the Accounts to Purchaser.
- 4.5 Seller represents and warrants that it has not previously sold any of the Accounts.
- 4.6 The Accounts transferred to Purchaser pursuant to this Agreement are free and clear of all assignments, liens, charges, encumbrances and other security interest or contingency claims.
- 4.7 Seller or its agents have not sent any settlement offers or other compromise offers en masse to any Obligor.
- 4.8 Seller hereby acknowledges and represents that the sale of the Accounts to Purchaser hereunder (i) is not made in contemplation of the insolvency of Seller, (ii) is not made with the intent to hinder, delay or defraud Seller or the creditors of Seller, (iii) has been approved by an officer of Seller with the authority to approve the sale of Accounts, (iv) will be recorded in the records of Seller and such records will be continuously maintained by the Seller in accordance with its policies and procedures, and (v) represents a bona fide and arm's length transaction undertaken for adequate consideration in the ordinary course of business. Further, Seller hereby acknowledges and represents that Purchaser is neither an insider nor an affiliate of Seller.
- 4.9 The Accounts (including the Accounts Receivable reflected therein) have been serviced or collected by Seller in compliance with applicable state and federal laws, rules and regulations.
- 4.10 Seller has the legal power and authority to sell the Accounts to Purchaser and to execute, deliver and perform its obligations under this Agreement.
- 4.11 Each Account and corresponding Account Receivable is a valid and, insofar it is not statute-barred and does not meet the definition of an Unqualified Account set forth in Section 2.2 of this Agreement, enforceable obligation of the Obligor and there are no credits or offsets that exist against such Accounts.

4.12 Seller agrees to deliver on the Closing Date, the Sale File, which file will contain all Accounts in the Account File, which are eligible for sale under the terms of this Agreement, and that no Account has been referred to any outside collection agency.

4.13 The Accounts were not selected for retention, placement or sale as a result of any adverse selection or credit scoring by or on behalf of Seller.

5. **INDEMNIFICATION BY SELLER.** Seller agrees to defend, indemnify and hold harmless (whether suit is instituted or not) Purchaser and its respective Affiliates, employees, agents and representatives against any and all liabilities, judgments, damages, claims, demands, costs, expenses or losses (including reasonable attorneys fees) incurred, arising out of or related to (i) any representation or warranty made by Seller in connection with this Agreement having been untrue or incorrect in any material respect when made or deemed made, (ii) the breach by Seller of any covenant or agreement made by it herein, (iii) any collection actions undertaken by Seller prior to the respective Closing Date pursuant to this Agreement, or (iv) any action or proceedings being instituted by any person based upon an allegation which, if true, would indicate the existence of any of the foregoing circumstances.

In the event any claim is made, or any suit or action is commenced against Purchaser in respect of which indemnification may be sought by Purchaser under this Section 5, Purchaser shall promptly, within ten (10) business days, give Seller notice and Seller shall be entitled to conduct the defense thereof at Seller's expense; provided, however, Purchaser shall be entitled to participate in the defense thereof at its own expense if such claim, suit or action relates to or includes events after the Closing Date. Seller may (but need not) defend or participate in the defense of any such claim, suit, or action, but Seller shall notify Purchaser within ten (10) business days after receipt of Purchaser's foregoing notice if Seller shall not desire to defend or participate in the defense of any such claim, suit or action relating to events after the Closing Date. After written notice by Seller to Purchaser of its election to assume control of the defense of any claim, suit or action, Seller shall not be liable to Purchaser for any expenses subsequently incurred by Purchaser in connection with the defense of such claim, suit or action; all such expenses shall be paid by Purchaser. Purchaser shall cooperate with Seller in the defense or handling of any claim, action or investigation relating to the subject matter of this Agreement.

Any such settlement or compromise of, or any final judgment or decree entered on or in any claim, suit or action which Purchaser had defended or participated in the defense of in accordance herewith, shall be deemed to have been consented to by, and shall be binding upon, Seller as fully as if Seller had assumed the defense thereof and a final judgment or decree had been entered in such suit or action, or with regard to such claim, by a court of competent jurisdiction for the amount of such settlement, compromise, judgment or decree, including without limitation court costs and reasonable attorney's fees.

The allocation between Seller and Purchaser of any amounts due in connection with any claim, suit or action involving events prior to and after the respective Closing Date shall be determined by the court deciding such claim, suit or action or by the parties if such claim, suit or action is settled. Seller shall obtain the prior written approval of Purchaser before entering into any settlement of any claim which it defends or ceasing to defend against such claim, if pursuant to or as a result of such settlement or cessation,

Injunctive or other equitable relief or admission of liability would be imposed against Purchaser.

6. **COVENANTS & AGREEMENTS OF SELLER & PURCHASER.**

6.1 Seller shall remit to Purchaser all payments, with respect to any Account sold to Purchaser, which are received by Seller or Sellers' agents after the Cut-Off Date within four (4) weeks of Seller's receipt. If any monies received by Seller result in a returned check or amount returned as unpaid or a misapplied payment, upon demand by Seller, Purchaser shall refund to Seller said amounts or payments. After the Closing Date, Seller is also entitled to receive and retain any sales tax refunds requested by it, warranty refunds or other rebates or refunds and all credit insurance proceeds requested by Seller and received within 360 days from the Closing Date with respect to any Account sold to Purchaser. With respect to sales tax refunds, however, there shall be no such time limit from and after the Closing Date. Purchaser agrees to reasonably cooperate with Seller by providing copies and/or originals of Account Documents as necessary to pursue sales tax refunds.

6.2 To the extent that Seller has previously reported information on the Receivables to the major credit bureaus, Seller shall notify its selected credit reporting agencies within 30 days of the closing date of the sale and transfer of the Receivables to Buyer and change the reporting notice of each account to sold or transferred or cause such reporting to be deleted from said credit reports at Seller's discretion. Seller will not "update" or modify its reporting if any account is subsequently paid off or settled after the Closing Date.

6.3 The Accounts are sold on a servicing released basis meaning that on and after the respective Closing Date Seller shall take no further action to collect or otherwise service the sold Accounts.

6.4 Seller shall promptly notify Purchaser of any written communication received by Seller relating to or with respect to any Accounts and shall deliver a copy of any such written communication within thirty (30) days of receipt thereof. Such communications shall include (but not be limited to) letters; notices of death, disability or bankruptcy; complaints; summons and requests for information.

6.5 Seller shall, in the event it receives an oral communication from any Obligor or other person with respect to any Account transferred hereunder, use reasonable efforts to direct any such persons to contact Purchaser in writing at: Gemini Capital Group; 177 E. 87th St., Suite 408; New York, NY 10128.

7. **CLOSING.** The respective Closing of the sale and purchase of the Accounts shall take place at the time and in the manner described in *Exhibit B*, or such other date and location as shall be mutually agreed upon by the parties hereto (the actual date of the Closing being herein called the "Closing Date"). On the Closing Date or such later time set forth below, the following shall be done:

- 7.1 Seller shall deliver or cause to be delivered to Purchaser for the Accounts to be sold (I) the Account Documents in its possession for all the Accounts transferred pursuant to this Agreement and (II) an Assignment and Bill of Sale in the form attached as **Exhibit C** assigning to Purchaser all of Seller's right, title and interest in and to the Accounts and Accounts Receivable.

Seller shall deliver to Purchaser the original file for each accounts listed in the Sale File in its possession no later than 30 days from the respective closing date. Buyer has reviewed the available Account Documents to its full and complete satisfaction. Buyer hereby acknowledges that the Account Documents are not complete for every Account and will not contain a right to cure letter for each Account that is purchased by the Buyer.

If an original retail installment contract or loan agreement for an Account is not available, Seller agrees to: (I) send to Purchaser, upon Purchaser's request, a signed and notarized Lost Document Affidavit, in the form substantially similar to Exhibit D, or (II) in the case of a lost or misplaced Certificate of Title, the Seller agrees, at the request and expense of Purchaser, to sign any document that is prepared by Purchaser and that is required by the title or registration laws of any jurisdiction or to reasonably assist Purchaser by any other means for the sole purpose of obtaining a replacement or lost title. Seller shall use its best efforts to complete and return such documents to Purchaser within thirty (30) days of receiving them from Purchaser.

Purchaser may only designate one party to receive all such documents whether said party is Purchaser itself or Purchaser's designee.

- 7.2 Purchaser shall pay to the Seller the Purchase Price as set forth in **Section 3** of this Agreement.
- 7.3 Seller shall prepare and deliver to Purchaser a Closing Statement in the form of **Exhibit B** attached hereto and an Assignment and Bill of Sale in the form of **Exhibit C** attached hereto.

8. **PURCHASE OF UNQUALIFIED ACCOUNTS.** In the event that Purchaser (I) identifies and returns to Seller, within ninety (90) days of the respective Sale File transfer date, any Account which was an Unqualified Account (as defined in **Section 2.1 (a-g)** hereof) as of the respective Cut Off Date, or within thirty (30) days of the effective transfer of the Account Documents, any Account which was an Unqualified Account (as defined in **Section 2.1 (h)** hereof) for up to 5% of the number of Accounts sold, as of the respective Cut Off Date, or which, as of the respective Cut Off Date, breached Seller's representations and warranties in **Section 4** of this Agreement (ii) provides to Seller reasonable documentation to verify the status of any Unqualified Account in the prescribed format, set forth in Exhibit E and incorporated herein by reference, and (III) advises Seller of the amount of any monies received for or on any such Unqualified Accounts, Seller shall, within ninety (90) days of its reasonable determination that any Account is an Unqualified Account, repurchase the Unqualified Account and pay Purchaser the dollar amount of the Purchase Price for such Unqualified Account less the amount of any monies received or collected by Purchaser on such Unqualified Account. Any payments received by Purchaser after the date of repurchase on such Accounts will be promptly forwarded to Seller.

9. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF PURCHASER.**

Purchaser hereby represents, warrants, agrees and covenants, as of the Closing Date of this Agreement that:

- 9.1 Purchaser and its agents, employees, representatives and assignees shall comply with all applicable state and federal debt collection laws and any other applicable state and federal laws, in the collection and servicing of all Accounts and Accounts Receivable and in the performance of Purchaser's obligations under this Agreement.
- 9.2 Purchaser shall not institute any enforcement or legal action or proceeding in the name of Seller or any Affiliate of Seller, or make reference to Seller or any Affiliate of Seller in any correspondence, credit reporting, or discussion with any Obligor or other "person" in connection with the Accounts or in any other document, statement or communication, except such reference may be made under any circumstance if done for the sole purpose of identifying that an Account was purchased from Seller. The foregoing sentence presumes that Purchaser will only contact a "person" with respect to the enforcement or collection of the Accounts if and as Purchaser is lawfully permitted to do so in accordance with applicable laws. In addition, Purchaser shall not misrepresent, mislead, deceive or otherwise fail to adequately disclose to any particular Obligor or guarantor or other person the identity of Purchaser as the owner of the Accounts. Purchaser will not take any action that impugns or harms Seller. Seller shall have the right to seek the entry of an order by a court of competent jurisdiction enjoining any violation of this Section.
- 9.3 Purchaser has not dealt with any broker, agent or finder in connection with the transaction contemplated by this Agreement that would give rise to a claim for a brokerage commission or finder's fee upon execution of this Agreement or consummation of the transactions contemplated hereby.
- 9.4 Purchaser is a corporation duly organized and validly existing, and in good standing under the laws of the State of New York. Purchaser has all applicable or required licenses to collect and service the Accounts and Accounts Receivable, to perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.
- 9.5 Purchaser has all requisite power and authority to enter into this Agreement and to perform all of its obligations under this Agreement and the undersigned signatory is authorized to act on behalf of and bind Purchaser to the terms of this Agreement. This Agreement and all of the obligations of Purchaser hereunder are the legal, valid and binding obligations of Purchaser, enforceable in accordance with the terms of this Agreement, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).
- 9.6 Performance of this Agreement by Purchaser will not violate any order or decree of any court or governmental body having competent jurisdiction over Purchaser or conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Purchaser is a party or by which it is bound.

- 9.7 Neither the Purchaser nor any of its officers, partners, agents, representatives, employees or parties in interest has in any way colluded, conspired, connived or agreed directly or indirectly with any other bidder, firm or person to submit a collusive or sham bid, or any bid other than a bona fide bid, or to fix prices. Further, Purchaser hereby acknowledges and represents that Seller is neither an insider nor an affiliate of Purchaser.
- 9.8 Purchaser is a sophisticated, informed buyer, has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of the transaction contemplated by this Agreement. Purchaser agrees and represents that the Accounts, Account Documents and Account File made available to it were an adequate and sufficient basis on which to determine whether and at what price to purchase the Accounts and Accounts Receivable.
- 9.9 The transactions contemplated by this Agreement do not involve, nor are they intended in any way to constitute, the sale of a "security" or "securities" within the meaning of any applicable securities laws and none of the representations, warranties or agreements of the Purchaser or Seller shall create any inference that the transactions involve any "security" or "securities."
- 9.10 Purchaser is in full compliance with its obligations under the terms of any Confidentiality Agreement executed by Purchaser to review the information made available by Seller or its agents, and the terms thereof are hereby incorporated herein.
10. **PRIVACY.** Purchaser and Seller shall comply in all respects with all applicable requirements of Title V of the Gramm-Leach-Bliley Act of 1999 and its implementing regulations. Purchaser and Seller agree that confidentiality and safeguarding obligations regarding consumer obligors shall continue indefinitely.
11. **CONFIDENTIALITY.** Seller and Purchaser will keep confidential and will not, without the other's written consent, which will not be unreasonably withheld, divulge, disclose or disseminate information pertaining to this transaction except to those entities, persons, regulators or agencies who have a bona fide legal right to receive such information.
12. **INDEMNIFICATION BY PURCHASER.** Purchaser agrees to defend, indemnify and hold harmless (whether suit is instituted or not) Seller and its respective Affiliates, employees, officers, agents and representatives against any and all liabilities, judgments, damages, claims, demands, costs, expenses or losses (including reasonable attorney's fees) incurred, arising out of or related to (i) any representation or warranty made by Purchaser in connection with this Agreement having been untrue or incorrect in any respect when made or deemed made, (ii) the breach by Purchaser of any covenant or agreement made by it herein, (iii) any action or proceeding being instituted by any person based upon an allegation or assertion which, if true, would indicate the existence of any of the foregoing circumstances; or (iv) any collection actions undertaken by Purchaser after the respective Closing Date pursuant to this Agreement.

In case any claim is made, or any suit or action is commenced against Seller in respect of which indemnification may be sought by Seller under this Section, Seller shall promptly, within 10 business days, give Purchaser notice thereof and Purchaser shall be entitled to conduct the defense thereof at Purchaser's expense; provided, however, Seller shall be

entitled to participate in the defense thereof at its own expense if such claim, suit or action is related to or includes events prior to the respective Closing Date. Purchaser may (but need not) defend or participate in the defense of any such claim, suit or action, but Purchaser shall notify Seller within ten (10) business days if Purchaser shall not desire to defend or participate in the defense of any such claim, suit or action related to events prior to the respective Closing Date. After written notice by Purchaser to Seller of its election to assume control of the defense of any claim, suit or action, Purchaser shall not be liable to Seller for any expenses subsequently incurred by Seller in connection with the defense of such claim, suit or action; all such expenses shall be paid by Seller. Seller shall cooperate with Purchaser in the defense or handling of any claim, action or investigation relating to the subject matter of this Agreement.

Any such settlement or compromise of, or any final judgment or decree entered on or in any claim, suit or action which Seller had defended or participated in the defense of in accordance herewith, shall be deemed to have been consented to by, and shall be binding upon, Purchaser as fully as if Purchaser had assumed the defense thereof and a final judgment or decree had been entered in such suit or action, or with regard to such claim, by a court of competent jurisdiction for the amount of such settlement, compromise, judgment or decree, including without limitation court costs and reasonable attorney's fees.

The allocation between Seller and Purchaser of any amounts due in connection with any claim, suit or action involving events prior to and after the respective Closing Date shall be determined by the court deciding such claim, suit or action or by the parties if such claim, suit or action is settled. Purchaser shall obtain the prior written approval of Seller before entering into any settlement of any claim which it defends or ceasing to defend against such claim, if pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief or admission of liability would be imposed against Seller.

13. **NOTICES.** Any notice or other communication permitted or required under this Agreement or given hereunder to a party hereto shall be in writing and shall be deemed given (i) three business days after being deposited in the U.S. mail, certified (return receipt requested), postage prepaid; (ii) upon transmission, if sent by facsimile transmission with a copy sent by any other method described in this Section; or (iii) upon delivery, if served personally or sent by any generally recognized overnight delivery or courier service, and sent to the addresses set forth below or to such other person or address as each party may from time to time provide to the other on notice given in accordance with this Section:

If to Purchaser: Gemini Capital Group
177 E. 87th St., Suite 408
New York, NY 10128
Attention: Roger Neustadt

If to Seller: The Sagres Company
10350 Science Center Dr., Suite 100
San Diego, CA 92121
Attention: Tom Ferris

14. **SEVERABILITY.** If any provision, or application thereof, of this Agreement is held unlawful or unenforceable in any respect, the parties hereto agree that such illegibility or unenforceability shall not affect other provisions or applications that can be given effect, and this Agreement shall be construed as if the unlawful provision or application had not been contained herein. The parties hereto agree that any court may modify the objectionable provision so as to make it valid, reasonable and enforceable and agree to be bound by the terms of such provision, as modified by the court.
15. **AMENDMENTS.** This Agreement may be amended or modified only by a written instrument executed by all the parties.
16. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.
17. **FACSIMILE SIGNATURES.** For purpose of this Agreement (but not for the Assignment and Bill of Sale), a signature or signatures delivered via facsimile or telecopier transmission shall be deemed to be an original signature or signatures when attached to this Agreement.
18. **CAPTIONS & SECTIONS.** The captions or headings in this Agreement or in the Exhibits appended hereto are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. Any reference to a Section in this Agreement shall refer to all paragraphs and subparagraphs within that Section.
19. **GOVERNING LAW.** This Agreement is made pursuant to, and shall be construed under the laws of California.
20. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. This Agreement is intended to define the full extent of the legally enforceable undertakings of the parties hereto, and no related promise, understanding, discussion, commitment, understanding or representation, written or oral, which is not set forth explicitly in this Agreement is intended by either party to be legally binding. Both parties acknowledge that in deciding to enter into this transaction they have relied on no representations, warranties, statements, promises, or commitments, written or oral, other than those explicitly set forth in this Agreement. This Agreement supersedes all prior understandings, negotiations and discussions, written or oral, of the parties relating to the transactions contemplated by this Agreement.
21. **ASSIGNMENT; SUCCESSORS; THIRD PARTY BENEFICIARIES.** This Agreement may not be assigned by either party hereto, except Purchaser may assign this Agreement in whole or in part to an Affiliate of Purchaser after notifying Seller and Seller may assign this Agreement in whole or in part to an Affiliate of Seller after notifying Purchaser, provided that any such Affiliate agrees in writing to be bound by the terms of this Agreement and that Purchaser and/or Seller, as appropriate, remain liable for the performance of the obligations of such Affiliate under this Agreement to the extent permitted by law. This Agreement and the rights and obligations created under it shall be

fully binding on and inure to the sole benefit of each party hereto, its successors and permitted assigns. In the event a party assigns or attempts to assign this Agreement without consent, no rights of the assignor under this Agreement shall flow to, or benefit, the assignee and Seller shall have no obligation to such person or entity under this Agreement. Nothing in this Section shall be interpreted as limiting Purchaser's ability to pledge, assign or sell the Accounts without the consent of Seller, and in such case Seller shall have no obligation to such person or entity under this Agreement.

Notwithstanding anything in this Section 23 of this Agreement to the contrary, the Seller hereby consents to the Purchaser's pledge and assignment of its right, title and interest in and to the Accounts and in and to this Agreement to any lender providing financing to Purchaser's acquisition of the Accounts as long as (i) Purchaser remains obligated to such lender for such financing and (ii) the lender's acquisition of all of Purchaser's rights occurs only if Purchaser is in default of its obligations under such financing arrangement and proof of default is provided to Seller.

22. **EXPENSES.** Unless specifically provided for elsewhere in this Agreement, each party will bear all costs and expenses incurred by it in connection with the transactions herein, including legal fees, accounting fees and taxes (if any) that are imposed upon that party based upon its activities hereunder.
23. **WAIVER.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
24. **INDEPENDENT COUNSEL AND INTERPRETATION.** Each party acknowledges that it had the opportunity for its legal counsel to participate in the preparation and drafting of this Agreement, and that each has been or has had the opportunity to be represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, and that they have executed this Agreement with the consent and upon the advice of said independent counsel. Accordingly, it is agreed that any legal rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement or any addenda, amendments, schedules or exhibits thereto to favor any party against the other.
25. **ANNOUNCEMENTS, MARKS & NAMES, AND ADVERTISING.** Neither party nor their respective Affiliates will issue any external announcements, press releases or advertising, whether verbal or written, in any way pertaining to the subject matter of this Agreement without first obtaining the prior written consent of the other party. Without the other party's prior written consent, neither party shall use or refer to any name, mark, symbol or other trade identity of the other party or any of their respective Affiliates in any advertisement, press release, letter or other communication, except as specifically permitted in this Agreement.
26. **SIGNING AUTHORITY.** The signatories on behalf of the parties warrant and represent that they have the authority to enter into this Agreement and to bind their respective principal on whose behalf the signatory acts. This Agreement shall not be considered binding until fully executed by both the Seller and the Purchaser.
27. **ATTORNEYS' FEES AND COSTS OF ENFORCEMENT; WAIVER OF JURY TRIAL.** In any action relating hereto, the losing party shall pay to the prevailing party reasonable costs

and expenses, including court costs and attorneys' fees, incurred in the action, and each party waives any right to require a jury trial.

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

PURCHASER:

Gemini Capital Group, LLC

By: 

Name: Roger Neustadt

Its: CEO

SELLER:

The Sagres Company

By:

Name: Tom Ferris

Its: CEO

and expenses, including court costs and attorneys' fees, incurred in the action, and each party waives any right to require a jury trial.

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

PURCHASER:

Genlnt Capital Group

By: _____

Name: Roger Neustadt

Its: _____

SELLER:

The Sagres Company

By: 

Name: Tom Ferris

Its: CEO

EXHIBIT A
ACCOUNT SUMMARY

On the Closing Date, there are 869 Accounts that will be sold by Seller to Purchaser in the aggregate amount of the Accounts Receivable, which total \$5,983,124.65. These Accounts are individually listed on the Sale File.

**EXHIBIT B
CLOSING STATEMENT**

Number of Accounts as Itemized in the Account File: 869
Purchase Balance Amount for said Accounts: \$5,983,124.66
Purchase Price Percentage: 0.70%
Purchase Price: \$41,881.87

Closing date for the file is April 9, 2009.

- A. On the Closing Date, Purchaser shall pay to Seller, by wire transfer in immediately available funds, the amount of \$41,881.87
- B. Seller agrees to transfer the said Accounts to Purchaser prior to the Closing Date.

Funds must be wired as follows:

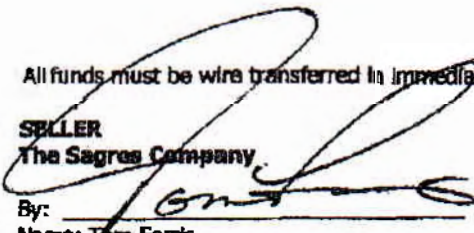
Bank: International City Bank
4493 Ruffin Road
San Diego, CA 92123
(858) 292-9100

Account: The Sagres Company
10350 Science Center Drive Suite 100
San Diego, California 92121
(858) 554-1211

Reference: Gemini032509

All funds must be wire transferred in immediately available federal funds.

SELLER
The Sagres Company

By: 
Name: Tom Ferris
Title: CEO

PURCHASER

By: _____
Name: Roger Neustadt
Title: _____

EXHIBIT C**ASSIGNMENT AND BILL OF SALE**

The Sagres Company, ("Seller"), for value received and pursuant to the terms and conditions of the Purchase and Sale Agreement dated as of the 7th day of April 2009 ("Agreement") between Seller and Gemini Capital Group (hereinafter called "Purchaser") sells, assigns, and transfers to Purchaser, its successors and assigns, all of Seller's rights, title, and interest in and to those certain Accounts and Accounts Receivable (which terms are defined in the Agreement) listed on Exhibit A attached hereto, without recourse and without representation or warranty of collectibility, or otherwise, except to the extent stated in the Agreement.

Purchaser and Seller agree that the Purchase Price (which term is defined in the Agreement) shall be as stated in Paragraph 3 of the Agreement and as set forth in the Closing Statement attached to the Agreement.

IN WITNESS WHEREOF, Seller has signed and delivered this instrument on the (date) 7-13-2009.

SELLER

The Sagres Company

By:

Name: Tom Ferris

Its: CEO

ACKNOWLEDGE & AGREE TO THE ABOVE

Purchaser : Gemini Capital Group

By: _____

Name: Roger Neustadt

Its: _____

EXHIBIT C**ASSIGNMENT AND BILL OF SALE**

The Sagres Company, ("Seller"), for value received and pursuant to the terms and conditions of the Purchase and Sale Agreement dated as of the 7th day of April 2009 ("Agreement") between Seller and **Gemini Capital Group** (hereinafter called "Purchaser") sells, assigns, and transfers to Purchaser, its successors and assigns, all of Seller's rights, title, and interest in and to those certain Accounts and Accounts Receivable (which terms are defined in the Agreement) listed on Exhibit A attached hereto, without recourse and without representation or warranty of collectibility, or otherwise, except to the extent stated in the Agreement.

Purchaser and Seller agree that the Purchase Price (which term is defined in the Agreement) shall be as stated in Paragraph 3 of the Agreement and as set forth in the Closing Statement attached to the Agreement.

IN WITNESS WHEREOF, Seller has signed and delivered this instrument on the (date) _____.

SELLER

The Sagres Company

By: _____

Name: Tom Ferris

Its: CEO

ACKNOWLEDGE & AGREE TO THE ABOVE

Purchaser : Gemini Capital Group, L.L.C.

By: _____

Name: Roger Neustadt

Its: CEO

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EXHIBIT C

ASSIGNMENT AND BILL OF SALE

SHAC, Inc. ("Seller"), for value received and pursuant to the terms and conditions of the Purchase and Sale Agreement dated as of the 18th day of December 2007 ("Agreement") between Seller and The Sagres Company (hereinafter called "Purchaser") sells, assigns, and transfers to Purchaser, its successors and assigns, all of Seller's rights, title, and interest in and to those certain Accounts and Accounts Receivable (which terms are defined in the Agreement) listed on Exhibit A attached hereto.

Purchaser and Seller agree that the Purchase Price (which term is defined in the Agreement) shall be as stated in Paragraph 3 of the Agreement and as set forth in the Closing Statement attached to the Agreement.

IN WITNESS WHEREOF, Seller has signed and delivered this instrument on the (date) December 21, 2007

SELLER

SHAC, Inc.

By: [Signature]Name: Harvey L. White Jr.Its: V.P.

ACKNOWLEDGE & AGREE TO THE ABOVE

The Sagres Company

By: [Signature]Name: Jerry GreenblattIts: VP/CIO

EXHIBIT D**AFFIDAVIT OF LOST DOCUMENT**

The undersigned, being duly authorized, makes the following statement on behalf of The Sagres Company ("Seller"):

1. On April 9, 2009, Seller sold, conveyed, transferred and assigned to Gemini Capital Group all of Seller's right, title, interest and obligations (as set forth in the Purchase and Sale Agreement dated April 7, 2009) in the following Account(s):

Account Number

Debtor's Name

2. The retail installment contract or loan agreement, as applicable, relating to the aforesaid Account(s) has/have been lost or misplaced and cannot be found.

3. At the time of the conveyance, transfer and assignment, the sum of \$_____ was reflected on the records of Seller as due and owing from the Debtor.

Dated: _____

Name: _____

Title: _____

State of California

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

Exhibit E**SPECIFICATIONS FOR PUTBACK FILE LAYOUT****A. Data File Format**

1. Excel

B. Individual Account Data Fields Needed

1. Seller Internal Account Number
2. Customer Social Security Number
3. Customer First Name
4. Customer Middle Initial
5. Customer Last Name
6. Home Street Address
7. Home Address – City
8. Home Address – State
9. Home Address – Zip Code
10. Purchase Dollar Balance
11. Deceased Flag (1=Yes or 0=No)
12. Deceased Date
13. Bankruptcy Flag (1=Yes or 0=No)
14. Bankruptcy Chapter
15. Bankruptcy Status
16. Bankruptcy Filing Date
17. Other
18. Purchase Date

Exhibit F

Sale File Format

Format to be agreed upon by Buyer and Seller