

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division

In re: HPE TRANSPORTATION, LLC,

Case No. 17-50784-FJS  
Chapter 11

Debtor in Possession.

Address: 12547 Warwick Blvd., Newport News, VA 23606  
EIN: 90-0705424

**INTERIM ORDER, ON EMERGENCY BASIS: (1) AUTHORIZING USE OF  
CASH COLLATERAL; AND, (2) APPROVING DIP FACTOR FACILITY**

On May 26, 2017, HPE Transportation, LLC, debtor in possession in this Chapter 11 bankruptcy case (the “Debtor”), by counsel, filed a motion (the “Motion”) seeking: a) authorization on an emergency basis for the Debtor’s interim use of cash collateral in accordance with the proposed *Budget* attached hereto as **Exhibit 1** (the “Budget”), pending and subject to a final hearing thereon; and (b) approval on an emergency and interim basis of the *Debtor in Possession Factor Agreement* with RTS Financial Services, LLC (“RTS”, and together with the Debtor, the “Parties”), a copy of which is attached hereto as **Exhibit 2** (the “DIP Factor Facility”), pending and subject to a final hearing on the same. The Debtor filed with the Motion a *Motion for Expedited Hearing* requesting an expedited hearing on the matter, which this Court conducted on May 31, 2017.

Based upon the Motion, the hearing conducted on this matter, the representations of counsel, and the circumstances of this case, the Court makes the following findings of fact and conclusions of law:

Joseph T. Liberatore, VSB No. 32302  
Joshua D. Stiff, VSB No. 86105  
CROWLEY, LIBERATORE, RYAN & BROGAN, P.C.  
150 Boush Street, Suite 300  
Norfolk, VA 23510  
Telephone: (757) 333-4500  
Facsimile: (757) 333-4501  
*Proposed Counsel to the Debtor*

1. On May 26, 2017 (the “Petition Date”), the Debtor filed a voluntary petition in this Court under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Order for relief was entered on the same date.

2. No trustee has been appointed in this Case, and the Debtor is a debtor in possession having the rights, powers and duties afforded a trustee according to Bankruptcy Code §§ 1101, 1107 and 1108. No committee of unsecured creditors has been appointed.

3. The Court has original jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is also a core proceeding under 28 U.S.C. § 157(b)(2).

4. Venue is proper according to 28 U.S.C. §§ 1408 and 1409.

5. As of the Petition Date, the Debtor’s bankruptcy estate consists of the following cash collateral (the “Cash Collateral”):

- a. Monies held in bank accounts in the amount of \$22,578.06;
- b. All outstanding accounts and account receivables which have not yet been invoiced and thus have not been sold to RTS, which amount to approximately \$45,000.00 to \$55,000.00, and such accounts and account receivables hereafter acquired;
- c. All security reserves held by RTS, which currently amount to \$6,000.00;
- d. All proceeds of the foregoing, which include but are not limited to the Factor Proceeds (as defined herein below); and,
- e. The settlement account held by and in the possession of 1<sup>st</sup> Colonial Business Solutions, Inc. / Reliant Account Management, which amounts \$27,703.30.<sup>1</sup>

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<sup>1</sup> The Debtor intends to seek turnover of these funds from 1<sup>st</sup> Colonial Business Solutions, Inc. / Reliant Account Management to the Debtor.

6. Since August of 2011, accounts and accounts receivable of the Debtor (the “Account(s)”) have been subject to factoring agreements between the Debtor and RTS, pursuant to which RTS purchased the Debtor’s Accounts for upwards of 96% - 98% of the net value<sup>2</sup> thereof, reserving the right to demand repurchase by the Debtor of all unpaid Accounts.

7. Prior to the filing of the Voluntary Petition, RTS made demand on the Debtor for repurchase of all unpaid Accounts, which amounted to \$207,652.69. Related thereto, and pursuant to the Parties’ prepetition Factoring Agreement and the UCC Financing Statements filed with the New Jersey State Corporation Commission and the Commonwealth of Virginia State Corporation Commission, RTS maintains a properly perfected first priority security interest in the Cash Collateral (the “RTS Claim”).

8. The Cash Collateral, inclusive of the Debtor’s post-petition Accounts, represents the Debtor’s sole source of operating funds.

9. The Debtor requires the use of Cash Collateral and approval of the DIP Factor Facility to prevent immediate and irreparable harm to the bankruptcy estate, minimize disruption to and avoid the termination of its operations, maintain the value of its assets and business, and maximize the return to all creditors.

10. The Debtor is unable to obtain an alternative factoring arrangement:

- a. On an unsecured basis or in a manner otherwise allowable under Bankruptcy Code § 503(b)(1) that would be sufficient to sustain its business operations; and,
- b. Allowable under Bankruptcy Code §§ 364(c)(1), (c)(2) or (c)(3) on terms more favorable than those offered by RTS under the DIP Factor Facility.

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<sup>2</sup> “Net value” means the gross amount of the Account less any discount or allowance of any nature allowed to the Account Debtor as such terms are defined in the DIP Factor Facility. *See* DIP Factor Facility, § 3.1.

11. The terms of the DIP Factor Facility have been negotiated at arm's length, arrived upon in good faith, and reflect the exercise of the Debtor's prudent business judgment, consistent with its fiduciary duties, and supported by reasonably equivalent value and consideration.

12. Under the circumstances of this case, the terms of this Order are fair and reasonable, and entry of this Order is in the best interests of the Debtor, its bankruptcy estate, creditors and parties in interest.

13. The notice provided by the Debtor of the Motion, the hearing on the Motion, and entry of this Order satisfies the requirements of Fed. R. Bankr. P. 2002, 4001, 6004 and 9014 and Bankruptcy Code §§ 102(1), 361, 362 363, and 364, and was otherwise sufficient and appropriate under the circumstances.

WHEREFORE, based on the foregoing, it is hereby ADJUDGED, ORDERED and DECREED that:

- A. The Motion is GRANTED.
- B. A final hearing on the Motion shall be held on July 18, 2017 at 11:00 AM at Judge Santoro's Courtroom, 600 Granby Street, 4th Floor, Courtroom Two, Norfolk, Virginia.
- C. This Order shall govern the Debtor's use of Cash Collateral and any and all proceeds thereof on an interim basis for the period through and including July 18, 2017 at 11:59 PM (the "Termination Date").
- D. The DIP Factor Facility is APPROVED, and the Debtor is authorized on an interim basis to factor or otherwise sell its Accounts in accordance with the terms and provisions of the DIP Factor Facility and this Order for the period through and including the Termination Date.
- E. The terms and conditions of the DIP Factor Facility apply to all Accounts purchased by Factor, including (i) Accounts purchased by Factor prior to the Petition Date (the "Prepetition

Accounts”); (ii) Accounts purchased by Factor following the Petition Date (the “Postpetition Accounts”). In the event of default under the DIP Factor Facility, and upon five (5) days’ written notice to the Debtor, RTS shall have immediate relief from the automatic stay (to the extent applicable) to assert all rights and remedies with respect to all Prepetition Accounts and Postpetition Accounts, including but not limited to its rights under the DIP Factor Facility to demand repurchase of the same.

F. The Debtor is authorized to: (a) execute the DIP Factor Facility and all other documents RTS may find reasonably necessary to implement the transactions contemplated therein; and, (b) perform all obligations under and comply with all terms and provision of the DIP Factor Facility and this Order.

G. Upon execution and delivery thereof, but subject to final approval of the same, the DIP Factor Facility shall constitute the valid and binding obligations of the Debtor enforceable in accordance with its terms. To the extent there exists any conflict among the Motion, the DIP Factor Facility and this Order, this Order shall govern and control.

H. The Debtor is authorized to receive, collect and shall deposit all Cash Collateral, including all proceeds derived from Accounts sold or factored under the DIP Factor Facility (the “Factor Proceeds”), now or hereafter in its possession or control into its debtor in possession (“DIP”) accounts promptly upon receipt thereof.

I. The Debtor is authorized to make use of all Cash Collateral, including all proceeds of all Accounts that RTS in its discretion neither purchases nor factors under the DIP Factor Facility, to pay the post-petition expenses that are reasonable and necessary to avoid immediate and irreparable harm to the Debtor’s bankruptcy estate and that are ordinary, reasonable and necessary to the operation of the Debtor’s business in conformity with the Budget, subject to RTS’

continuing first priority lien and security interest therein, and subject to the terms and conditions of this Order.

J. The Debtor is further authorized to make use of all Cash Collateral, including all proceeds of all Accounts that RTS in its discretion neither purchases nor factors under the DIP Factor Facility, to:

- a. Pay all allowable administrative claims under Bankruptcy Code §§ 503(b) or 507(b); and,
- b. Deposit all Cash Collateral remaining after payment of all Operating Expenses listed in the Budget and all allowable administrative claims under Bankruptcy Code §§ 503(b) or 507(b) in a DIP account designated for reorganization costs and non-ordinary course administrative expenses, which the Debtor shall create and identify as the “DIP Reorganization Fund.”

K. The Debtor may only use Cash Collateral for purposes not provided for in the Budget or this Order upon prior written authorization of RTS or by further order of this Court.

L. RTS is authorized to collect, receive and retain all proceeds of Prepetition Accounts that, as of the Petition Date, remain unpaid. The Debtor is further authorized to turnover any proceeds of such Prepetition Accounts that it receives directly to RTS.

M. In consideration of the DIP Factor Facility, all amounts due to RTS under the DIP Factor Facility, including amounts due to RTS in connection with Prepetition Accounts, are granted superpriority administrative expense status under Bankruptcy Code § 364(c)(1) with priority over all costs and expenses of administration of this case that are incurred under any

provision of the Bankruptcy Code, except such administrative expenses approved by this Court for payment of counsel retained by the Debtor under Bankruptcy Code §§ 327, 330 and 331.

N. In further consideration of the DIP Factor Facility, all amounts due to RTS under the DIP Factor Facility, including amounts due to RTS in connection with Prepetition Accounts, are secured by first priority liens on and security interest in all assets and property of the Debtor (now owned or hereafter acquired) pursuant to sections 364(c)(2) and (c)(3) of the Bankruptcy Code, excluding all tractors, trucks and trailers of the Debtor and the bankruptcy estate. For purposes of this interim Order, the rights granted to RTS under sections 364(c)(2) and (c)(3) of the Bankruptcy Code shall not extend to any avoidance actions or recoveries under Chapter 5 of the Bankruptcy Code.

O. The RTS Claim is valid, enforceable, unavoidable and not subject to subordination and there are no claims, defenses, offsets, deductions or counterclaims of any kind whatsoever thereto; provided, however, that any creditor or other party in interest may file a complaint with this Court on or before sixty (60) days after entry of this Order to challenge the validity, priority and/or extent of the RTS Claim, or to assert any claims, defenses, offsets, deductions or counterclaims thereto. If no such complaint is filed on or before such date, then (i) the RTS Claim shall be deemed to be an allowed, first priority secured claim that is valid, enforceable, unavoidable and not subject to subordination in all respects, and (ii) it shall be conclusively determined that there are no claims, defenses, offsets, deductions or counterclaims of any kind thereto. The Debtor and RTS will allow any party who so requests the opportunity to inspect all records and documents Debtor or RTS have relied upon in asserting that RTS maintains a properly perfected first priority secured claim against the Cash Collateral.

P. The liens provided herein secure all of the Debtor's obligations to RTS. Such liens shall not, without the written consent of RTS, be made subject to, or *pari passu* with, any other lien or security interest, and shall be valid and enforceable against the Debtor and any trustee appointed in this case upon the conversion of the Case to a proceeding under chapter 7 of the Bankruptcy Code, or in any other proceedings, and/or upon the dismissal of the Case.

Q. All sales of Accounts by the Debtor to RTS following entry of an Order approving the DIP Factor Facility are hereby approved pursuant to Bankruptcy Code § 363, and RTS is approved as a buyer in good faith in accordance with Bankruptcy Code § 363(m) and afforded the protections thereof.

R. Upon request by either the Debtor or the U.S. Trustee, and within fourteen (14) days of such request, RTS shall provide thereto an accounting of the Prepetition Accounts in the form of periodic aging reports. No transfer by the Debtor to RTS or lien granted to RTS by the Debtor shall be avoidable under the provisions of chapter 5 of the Bankruptcy Code.

S. The Clerk of Court is directed upon entry to mail a copy of this Order to:

HPE Transportation, LLC  
c/o Joseph T. Liberatore  
150 Boush Street, Suite 300  
Norfolk, VA 23510

RTS Financial Service, LLC  
c/o Wolcott Rivers Gates  
200 Bendix Road, Suite 300  
Virginia Beach, VA 23452

U.S. Trustee  
200 Granby Street, Suite 625  
Norfolk, VA 23510



DATE: Jun 2 2017

/s/ Frank J. Santoro  
United States Bankruptcy Judge

ENTERED: 6/2/17

WE ASK FOR THIS:

/s/ Joshua D. Stiff  
Counsel for the Debtor

/s/ Olya Antle (permission to affix received via email on 6/1/2017)  
Counsel for RTS Financial Service, LLC

SEEN AND NO OBJECTION:

/s/ Nicholas S. Herron (permission to affix received via email on 6/1/2017)  
Office of the United States Trustee

**CERTIFICATE PURSUANT TO LBR 9022-1(C)**

I certify that in accordance with LBR 9022-1(C), this Order has either been endorsed by all necessary parties, or such necessary parties have been served a copy of this Order by U.S. Mail, postage pre-paid, including the following:

Small Business Financial Solutions, LLC  
c/o CSC-Lawyers Incorporating Service Company  
7 St. Paul Street, Suite 820  
Baltimore, MD 21202

Small Business Financial Solutions, LLC  
c/o Raleigh Lancaster  
4500 East West Highway, 6<sup>th</sup> Floor  
Bethesda, MD 20814

The Smarter Merchant  
1115 Broadway, 12<sup>th</sup> Floor  
New York, NY 10010

Corporation Service Company, as Representative  
PO Box 2576  
Springfield, IL 62708

/s/ Joshua D. Stiff

Budget (through July 31, 2017)			
	Jun-17	Jul-17	60 Day Total
<b><u>Operating Income</u></b>			
Operating Income	\$ 252,633.00	\$ 252,633.00	\$ 505,266.00
Down Truck Discount	\$ (5,741.66)	\$ (5,741.66)	\$ (11,483.32)
<b>Total Operating Income</b>	<b>\$ 246,891.34</b>	<b>\$ 246,891.34</b>	<b>\$ 493,782.68</b>
<b><u>Operating Expenses</u></b>			
<b><u>Transportation Services</u></b>			
Driver Advance	\$ 21,866.08	\$ 21,866.08	\$ 43,732.16
EZ Pass	\$ 18,000.00	\$ 18,000.00	\$ 36,000.00
Independent Contractors	\$ 54,272.68	\$ 54,272.68	\$ 108,545.36
Misc. Road Expense	\$ 284.49	\$ 284.49	\$ 568.98
Purchase Transportation	\$ 6,804.00	\$ 6,804.00	\$ 13,608.00
Service Fee	\$ 300.00	\$ 300.00	\$ 600.00
<b><u>Automobile Expenses</u></b>			
Tickets	\$ 232.96	\$ 232.96	\$ 465.92
Diesel Fuel	\$ 54,127.66	\$ 54,127.66	\$ 108,255.32
Highway Vehicle Tax	\$ 583.33	\$ 583.33	\$ 1,166.66
IFTA Road Taxes	\$ 566.66	\$ 566.66	\$ 1,133.32
License Plates	\$ 1,700.00	\$ 1,700.00	\$ 3,400.00
Repairs & Maintenance	\$ 22,844.00	\$ 22,844.00	\$ 45,688.00
<b><u>Insurance Expenses</u></b>			
Medical - drivers	\$ 140.00	\$ 140.00	\$ 280.00
Health Insurance (Officer)	\$ 2,164.00	\$ 2,164.00	\$ 4,328.00
Workman's Comp	\$ 371.92	\$ 371.92	\$ 743.84
Cargo Insurance	\$ 1,291.66	\$ 1,291.66	\$ 2,583.32
General Liability	\$ 130.83	\$ 130.83	\$ 261.66
Auto Liability	\$ 12,304.16	\$ 12,304.16	\$ 24,608.32
Physical Damage Liability	\$ 10,746.58	\$ 10,746.58	\$ 21,493.16
<b><u>Payroll</u></b>			
Office Wages	\$ 5,286.66	\$ 5,286.66	\$ 10,573.32
Officer's Salary	\$ 2,200.00	\$ 2,200.00	\$ 4,400.00
Employee Taxes	\$ 1,133.00	\$ 1,133.00	\$ 2,266.00
<b><u>Rental Expense</u></b>			
Car Rental	\$ 474.00	\$ 474.00	\$ 948.00
Trailer Rental	\$ 3,950.00	\$ 3,950.00	\$ 7,900.00
<b><u>Office Supplies</u></b>			
Checks	\$ 63.20	\$ 63.20	\$ 126.40
Cleaning	\$ 100.00	\$ 100.00	\$ 200.00
Driver Supplies	\$ 58.00	\$ 58.00	\$ 116.00
Express Mail	\$ 1,152.53	\$ 1,152.53	\$ 2,305.06
Insurance	\$ 30.00	\$ 30.00	\$ 60.00
Postage	\$ 351.23	\$ 351.23	\$ 702.46
Rent	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00
Supplies	\$ 87.50	\$ 87.50	\$ 175.00
Telephone	\$ 552.33	\$ 552.33	\$ 1,104.66
<b><u>Administrative Expenses</u></b>			
Reorganization Fund	\$ 10,000.00	\$ 10,000.00	\$ 20,000.00
RTS Attorney Fees & Costs	\$ 2,500.00	\$ 2,500.00	\$ 5,000.00
Bookkeeper Fees	\$ 200.00	\$ 200.00	\$ 400.00
Registration	\$ 140.00	\$ 140.00	\$ 280.00
Safety	\$ 700.00	\$ 700.00	\$ 1,400.00
<b><u>Other Expenses</u></b>			
Business Licenses & Permits	\$ 21.07	\$ 21.07	\$ 42.14
City Taxes	\$ 21.00	\$ 21.00	\$ 42.00
Computer & Internet	\$ 25.66	\$ 25.66	\$ 51.32
Dues & Subscriptions	\$ 127.54	\$ 127.54	\$ 255.08
Tracking System	\$ 480.00	\$ 480.00	\$ 960.00
<b>Total Operating Expenses</b>	<b>\$ 239,384.73</b>	<b>\$ 239,384.73</b>	<b>\$ 478,769.46</b>
<b>Net Monthly Operating Cash</b>	<b>\$ 7,506.61</b>	<b>\$ 7,506.61</b>	<b>\$ 15,013.22</b>

**EXHIBIT 1**

**DEBTOR IN POSSESSION FACTORING AGREEMENT**

THIS FACTORING AGREEMENT (the "Agreement") made and entered into as of **MAY 24, 2017** (the "Effective Date") by and between **RTS FINANCIAL SERVICE, INC.**, ("Factor"), a Kansas Corporation; and **HPE TRANSPORTATION LLC, as Debtor-in-Possession** ("Assignor"), a New Jersey Limited Liability Company.

**RECITALS**

1. Assignor desires to sell to Factor all of its existing and future Accounts Receivable ("Accounts") arising from services performed in the regular course of Assignor's business; and
2. Factor desires to purchase certain of those Accounts, which Factor in its sole discretion deems acceptable for purchase, according to the terms and conditions provided in this Agreement.
3. Assignor is a debtor in Chapter 11 proceedings assigned case number 17-50784-FJS (the "Case") pending in the United States Bankruptcy Court for Eastern District of Virginia – Newport News Division (the "Court"). The Case was commenced on May 26, 2017 (the "Petition Date"). Since the Petition Date, Assignor has been operating its business as a Debtor-in-Possession pursuant to Chapter 11 U.S.C. § 101 et. seq. (the "Bankruptcy Code").
4. This Agreement is, in all respects, subject to the approval of the Court, by order ("Order") issued in the Case.
5. Upon approval by Order of the Court, the applicable terms and conditions of this Agreement shall apply to all Accounts purchased by Factor, including (i) Accounts (as defined herein below) purchased by Factor prior to the Petition Date; (ii) Accounts purchased by Factor between the Petition Date and entry of the Order; and (iii) Accounts purchased by Factor following entry of the Order.

In consideration of the above recitals and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**SECTION 1. DEFINITIONS**

An "Account" means any right to payment for services rendered by or on behalf of Assignor. "Account Debtor" means a person or other entity, which is obligated to pay the Account.

**SECTION 2. PURCHASE OF ACCOUNTS**

2.1 Assignor agrees to present to Factor for purchase, with recourse, all Accounts arising from the activities and services performed by Assignor.

2.2 Factor, in its sole discretion, may purchase such Accounts from Assignor as Factor determines to be acceptable. Assignor hereby agrees to sell, assign, transfer, convey and deliver to Factor, such Accounts as Factor shall elect to purchase. Assignor will notify each Account Debtor of the sale of its Account or Accounts to Factor and shall place a clear statement or legend, approved by Factor, on each such Account invoice, bill of lading, purchase order or statement, stating that such Account has been sold and assigned, and is payable to Factor at its office at 9300 Metcalf Avenue, Overland Park, Kansas 66212 or at such other address as Factor shall designate in writing. All remittances received by Assignor for payment of Accounts sold to Factor are the property of Factor, and Assignor shall hold such proceeds in trust for Factor, and shall immediately deliver to Factor, in the identical form, all payments received by Assignor on each such Account, together with all documents accompanying the remittance to Assignor. Assignor guarantees the timely payment of the monies and amounts represented by the assigned Accounts. Factor will not purchase Accounts representing services for which assignor did not in fact act as a Transportation Carrier.

**SECTION 3. PURCHASE PRICE AND FACTORING CHARGE; SECURITY RESERVES**

3.1 The purchase price for each Account purchased by Factor hereunder shall be the net amount of such Account, less the Factor's fee, which fee shall be an amount equal to **TWO PERCENT (2.0%)** of such net amount. "Net amount" means the gross amount of the Account less any discount or allowance of any nature allowed to the Account Debtor. Throughout the term of this Agreement, Factor will review the US Prime Rate ("Prime") in effect as of the first business day of each calendar month and, in the event that the then current Prime changes, the parties hereby agree to a commensurate increase/decrease to the Factor's fee.<sup>1</sup> The Prime in effect on the date of this Agreement is 4.0%.

3.2 Payment of the purchase price to Assignor shall be made as follows:

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<sup>1</sup> The Factor's fee change is calculated by using the following formula: (Prime in Effect - Contract Prime)/365\*Number of Days Invoice is Open\*Invoice Amount.

(a) Upon the presentation by Assignor to Factor of documents reasonably acceptable to Factor, for an Account approved for purchase by Factor, and provided no claim or dispute shall then exist with the Account Debtor as to the Account, Factor will advance to the Assignor the purchase price of the Account, less the security reserve provided for below.

(b) Assignor shall at all times maintain on deposit with Factor a minimum security reserve of \$2,000.00. In addition, for every \$100,000.00 of unpaid Accounts purchased by Factor from Assignor, Factor shall withhold an additional security reserve in the amount of \$2,000.00 from each such additional \$100,000.00 of unpaid Accounts outstanding and owing to Factor.

Example:

Balance of Unpaid Accounts	Security Reserve
\$0.00-\$100,000.00	\$2,000.00
\$100,000.01-\$200,000.00	\$4,000.00
\$200,000.01-\$300,000.00	\$6,000.00

(c) Provided Assignor shall not otherwise be in default in any respect under this Agreement, Factor shall (i) remit each \$2,000.00 increment of security when and as the total unpaid Accounts falls below the \$100,000.00 amount for which such security was required under section (b) above; and (ii) remit the remaining minimum \$2,000.00 security reserve or any remaining security reserve upon the termination of this Agreement.

#### SECTION 4. SECURITY INTEREST

Assignor hereby grants to Factor as collateral, to secure all of the debts, liabilities and obligations of Assignor to Factor under this Agreement, including all reasonable costs and expenses incurred by Factor in connection with the enforcement of its rights under this Agreement, a security interest in the following property of Assignor: (a) all Accounts, wherever located or situated, and whether now existing or arising in the future, and whether now owned or at any time in the future acquired by Assignor, together with all proceeds and monies due or becoming due on such Accounts; all guaranties, insurance and security for such Accounts; all security reserves related to such Accounts; all of Assignor's rights and interests in the goods giving rise to such Accounts, and the rights associated with or related or pertaining to such goods, including without limitation the right of stoppage in transit and any and all related insurance, any items substituted therefore as replacements and all additions thereto; (b) all of Assignor's chattel paper, instruments, general intangibles, securities, contract rights and insurance associated with or related to the Accounts; (c) all equipment, inventory, and deposit accounts; and (d) all proceeds of any of the foregoing Accounts, property, rights and interests. Factor in its own name, or Factor's collateral agent Proprius 211 Trust in its name as the agent of Factor, may file financing statements and all amendments thereto describing as the collateral any or all of the foregoing collateral by any description Factor or its collateral agent deems appropriate in any jurisdiction or office Factor or its collateral agent deems appropriate to perfect Factor's security interest in foregoing collateral.

In the event of Assignor's breach of any warranty made in this Agreement or the Assignor's failure to observe or perform any of the provisions or obligations of this Agreement, Assignor shall be in default, and, if the Assignor fails to cure such default within five (5) business days after written notice from Factor, Factor may enforce payment and exercise any and all of the rights and remedies provided by Article 9 of the Uniform Commercial Code. In addition, upon default by Assignor that is not timely cured, Factor shall also have the right to take all actions necessary to collect the Accounts directly from the Account Debtors.

#### SECTION 5. REPURCHASE OF ACCOUNTS

All Accounts purchased by Factor from Assignor are purchased with full recourse. If Assignor breaches any warranty or otherwise violates or defaults on any of its obligations hereunder, or if any Account purchased by Factor hereunder is not paid in full on or before the payment due date of such Account, then upon request by Factor, Assignor shall immediately repurchase such Account from Factor for an amount equal to the face amount of such Account (less any payments received by Factor on such Account from the Account Debtor), together with interest thereon at the rate of **ZERO%** per annum from the date of the assignment of such Account to Factor. Any security reserve held by Factor for such Account shall be released only in accordance with Section 3.2(b), and Factor shall in all events also be entitled to and shall retain its Factor's fee on the Account. Typically, Factor will require repurchase of any unpaid Account no later than **90** days after the Account invoice date, unless Factor, in its sole discretion chooses otherwise. However, in all cases, any unpaid Account must be repurchased by Assignor within **120** days after the Account invoice date. Assignor shall not be relieved of its absolute repurchase obligation hereunder, even though the Account Debtor, whose Account Assignor must repurchase hereunder, was listed on Factor's debtor credit rating list.

#### SECTION 6. REPRESENTATIONS AND WARRANTIES

Assignor represents, covenants, warrants and agrees as follows:

6.1 If Assignor is a limited liability company duly organized, existing and in good standing under the laws of the state of **New Jersey**; that the execution, delivery and performance of this Agreement are in every respect within its

corporate powers and have been duly authorized by appropriate corporate action; and that this Agreement, when duly executed and delivered by the Assignor and the Factor, will constitute a legal, valid and binding agreement of the Assignor fully enforceable in accordance with its terms and conditions, subject to approval by the Court.

6.2 The Assignor's address set out in Section 14 of this Agreement is the address of Assignor's principal office and its sole place of business. Assignor shall give Factor immediate written notice of any change in the location of its principal office, the addition of any new place or places of business and their addresses, any name change or the addition of any name under which Assignor does business, or any change in the nature or status of Assignor's business or operations.

6.3 As to each Account purchased by Factor under this Agreement: (1) the Account is not yet past due, arose in the ordinary course of Assignor's business and represents a bona fide completed transaction; (2) the title of Assignor to the Account is absolute and subject to no assignment, claim, lien or security interest; (3) the Account, as shown on Assignor's books and records and on any invoices, bills of lading or statements, delivered to Factor is a legally enforceable debt owed by Account Debtor to Assignor in its full face amount; (4) no partial payment has been made by anyone on such Account; (5) no set off, credit, allowance, adjustment, counterclaim or defense to such Account exists or will exist and no agreement has been made or will be made with any person or entity under which any deduction or discount may be claimed on such Account; (6) the Account is payable not more than thirty (30) days from the date of assignment of the Account to Factor.

6.4 Assignor shall execute any and all financing statements, Uniform Commercial Code forms or other documents or instruments which Factor deems necessary to protect its interest under this Agreement.

6.5 Assignor shall indemnify, defend and hold Factor harmless from and against any and all misrepresentations or breaches of warranty or other defaults hereunder by Assignor, and from any losses, expenses, attorneys' fees or other costs incurred by Factor caused by or arising out of any such defaults or breaches of this Agreement by the Assignor and from any costs expenses or attorneys' fees incurred by Factor in enforcing Factor's rights under this Agreement; from any dispute or claim resulting in liability, loss, expense, cost or attorneys' fees caused by or arising out of the rejection of any work performed or services rendered by Assignor; or from any alleged claim, dispute, action, defense or set off of every kind and nature asserted by any Account Debtor. To the extent any pre-petition indemnification claims against Assignor exist, Factor shall first seek relief from the automatic stay pursuant to 11 U.S.C. § 362 prior to seeking enforcement of this indemnification provision against Assignor.

6.6 The Assignor shall not, without the express written consent of the Factor, release, compromise, settle or adjust any Account purchased hereunder, or grant any discounts, allowances or credits thereon.

## **SECTION 7. POWER OF ATTORNEY**

7.1 In order to carry out this Agreement, and to avoid unnecessary notification of Account Debtors, Assignor irrevocably appoints Factor as Assignor's true and lawful attorney with the full power and right to: (a) invoice or bill for, collect, receive, and deposit to Assignor's bank accounts any and all amounts which may be due or become due to Assignor from Account Debtors, and to use Assignor's name for purposes of billing and collection of any and all amounts due; (b) receive, accept, open, dispose of and redirect any and all mail addressed to Assignor; (c) negotiate any checks received in payment of Accounts whether payable to Assignor or Factor or both, and endorse the name of Assignor on any checks or other evidences of payment or other instruments or documents that may come into the possession of Factor on Accounts purchased by Factor and on any invoices or other documents or instruments relating to any of the Accounts or relating to any collateral or security hereby granted by Assignor to Factor; (d) in Assignor's name, or otherwise, demand, make claim for, sue for, collect, grant extensions, compromise, discharge, and get or give releases for any and all monies or funds due or to become due on Accounts; (e) execute and deliver receipts or acknowledgments to Account Debtors for such amounts due which shall be binding upon Assignor and Factor; (f) notify Account Debtors of the sale of Accounts to Factor and notify and instruct Account Debtors, in Assignor's name, of the address and procedures for making payments on any Accounts that are sold to Factor or which constitute collateral hereby granted by Assignor to Factor; (g) take all steps necessary to insure payment of such amounts and monies due, and do any and all things in Assignor's name necessary or proper to carry out the purposes intended by this Agreement; (h) file financing statements and all amendments thereto, describing as collateral any or all of the collateral described in Section 4 hereof by any description Factor deems appropriate in any jurisdiction or office Factor deems appropriate to perfect its security interest in the collateral described in Section 4 hereof; and (i) initiate debit or credit entries through the Federal Reserve Automated Clearing House System (ACH) to any deposit account maintained by Assignor wherever located in order to satisfy any obligations of Assignor to Factor under this Agreement. It is understood that this power of attorney is coupled with an interest, and is irrevocable until: (a) all obligations of Assignor to Factor under this Agreement have been satisfied; or (b) the Court orders otherwise.

7.2 Exercise of the foregoing powers shall be in the sole and absolute discretion of Factor, but Factor shall have no obligation to exercise any of the foregoing powers. Nothing contained in this Agreement shall in any way require Factor to initiate or become a party to any litigation or other legal proceedings.



7.3 The Factor shall not, under any circumstances, or in any event whatsoever, have any liability for any error, omission or delay of any kind occurring in the collection, payment or settlement of any Account or of any instrument received in full or in part payment thereof or in dealing with any lien, security or guaranty of any such Account

## **SECTION 8. BOOKS, RECORDS AND FINANCIAL STATEMENTS**

All of Assignor's books, accounts, ledgers, correspondence, records and papers pertaining to all of the Assignor's Accounts and business shall be accurately and properly prepared and maintained by Assignor and shall disclose the sale of Accounts purchased by Factor. All such books, ledgers, accounts, records, correspondence and papers shall be opened by Assignor at all reasonable times for Factor's inspection, audit and copying. Assignor shall, not less often than quarter annually, furnish Factor with financial statements, including income statements and balance sheets showing Assignor's financial condition. Assignor shall also provide Factor with annual financial statements certified by an independent accountant acceptable to Factor.

## **SECTION 9. ATTORNEY'S FEES AND EXPENSES**

If Factor retains the services of an attorney to enforce any obligation of Assignor to Factor under this Agreement, Factor shall be entitled to recover from Assignor all reasonable and necessary attorneys fees, court costs and expenses, regardless of whether or not an action is commenced. In addition, Assignor hereby agrees to reimburse Factor for all reasonable attorneys fees, court costs and expenses associated with this debtor-in-possession financing arrangement.

## **SECTION 10. GOVERNING LAW AND CONSENT TO JURISDICTION**

10.1 This Agreement is accepted and made in the state of Kansas and this Agreement and the rights of the parties hereunder shall be interpreted under and governed as to construction, enforcement and validity by the laws of the state of Kansas.

10.2 Factor and Assignor agree that any legal suit, action or proceeding arising out of or related to this Agreement shall be instituted, heard and resolved solely and exclusively in the Court. Factor and Assignor submit to the jurisdiction of the Court for purpose of deciding any questions, disputes or causes, arising under this Agreement.

## **SECTION 11. TERMINATION**

11.1 This Agreement shall have an initial term of twenty-four (24) months from the Effective Date hereof (the "Original Term"), and shall automatically renew for successive periods of twelve (12) months ("Renewal Periods"), unless sooner terminated as hereinafter provided. Assignor may terminate this Agreement as of the expiration of the Original Term or any Renewal Term by giving Factor prior written notice of its intention to so terminate. Such notice shall be given by Assignor to Factor at least sixty (60) days, but not more than ninety (90) days, prior to the expiration of the Original Term or any Renewal Term. Factor may terminate this Agreement at any time upon ninety (90) days prior written notice to Assignor. During the ninety (90) day period (after Factor's notice of termination), Factor shall continue to purchase Accounts from Assignor in a manner that is consistent with its purchases prior to the termination notice.

11.2 All of the Assignor's covenants, warranties and agreements under this Agreement made to Factor, and all rights and remedies of the Factor under this Agreement, shall survive the termination of this Agreement and shall continue in full force and effect until all Accounts purchased hereunder are paid in full and all debts and obligations to of Assignor to Factor hereunder have been satisfied in full. Upon termination Assignor shall remain liable to Factor for any and all unpaid Accounts, and for all other amounts and monies as may be owed to Factor under the terms and conditions of this Agreement. Upon termination, any security reserve and any other funds or monies from any source whatsoever which would otherwise be owing to Assignor by Factor may be retained by Factor until such time as all obligations and debts of Assignor to Factor have been fully satisfied, and Factor's security interest provided in Section 4 hereof shall continue until all obligations of Assignor to Factor are paid in full. Factor shall have the right, in its sole discretion, to set off against the security reserve and any other sums owing to Assignor by Factor all obligations and debts of Assignor to Factor.

## **SECTION 12. MODIFICATION, SEVERABILITY, SUCCESSORS AND ASSIGNS, ETC.**

This Agreement may be modified only by written instrument signed by the parties hereto. In the event that any one or more of the provisions contained in this Agreement should be held by any court of competent jurisdiction to be unenforceable, the holding or decision shall not affect or impair any of the other provisions of this Agreement. This Agreement supersedes all prior agreements between the parties, and shall bind the successors and assigns of Assignor and shall inure to the benefit of the successors and assigns of Factor. As used in this Agreement, the singular shall be deemed to include the plural and vice versa, and the neuter shall be deemed to include the masculine or feminine, and vice versa.

## **SECTION 13. NO DELAY**

13.1 No delay or omission on the part of Factor in enforcing or exercising any right hereunder shall operate as a waiver of such right or any other right. The waiver by Factor of the breach by Assignor of any provision of this

Agreement, or of Assignor's compliance with such provisions, shall not be construed as a waiver of any other breach or of the provision itself. No waiver or modification of the Agreement shall be chargeable against Factor unless in writing, signed by Factor and delivered by Factor to Assignor.

13.2 The waiver, compromise, discharge, extension or release by Factor, of any duty or obligation of any Account Debtor shall not reduce, diminish, limit, or restrict in any way Assignor's obligations and liabilities to Factor.

#### SECTION 14. NOTICE

Notices under this Agreement shall be in writing and mailed postage prepaid, registered or certified mail, return receipt requested, or sent by overnight delivery service, or by FAX transmission to the recipient's FAX machine, addressed to the addressees set forth below, or to such other address as either party notifies the other in writing. All such notices shall be effective upon receipt if delivered by hand or FAX or overnight delivery service; otherwise upon five (5) business days after the notice is placed in the U.S. Mail. Addresses for notices are as follows:

In the case of Assignor, to:

**HPE TRANSPORTATION LLC**  
**13547 Warwick Blvd.**  
**Newport News, VA 23606**  
**Tel: 757-357-3215**  
**Fax: 757-357-3847**

Crowley, Liberatore, Ryan & Brogan, PC  
c/o Joseph T. Liberatore and Joshua D. Stiff, Esq.  
150 Boush St – Ste 300  
Norfolk, VA 23510  
Tel: 757-333-4500  
Fax 757-333-4501

In the case of Factor, to:

**RTS FINANCIAL SERVICE, INC.**  
**9300 METCALF AVENUE**  
**OVERLAND PARK, KANSAS 66212**  
**TEL: (800) 860-7926**  
**FAX: (913) 492-1998**

Wolcott Rivers Gates  
c/o Carl A. Eason and Cullen D. Speckhart  
200 Bendix Road, Suite 300  
Virginia Beach, VA 23455  
Tel: (757) 497-6633  
[eason@wolriv.com](mailto:eason@wolriv.com); [cspeckhart@wolriv.com](mailto:cspeckhart@wolriv.com)

#### SECTION 15. COUNTERPARTS; FACSIMILE SIGNATURES

This Agreement may be executed in one or more counterparts and by different signatories thereto, all of which counterparts, when taken together, shall constitute but one agreement. This Agreement may be validly executed and delivered by facsimile or other electronic transmission and any such execution or delivery shall be fully effective as if executed and delivered in person.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers, as of May \_\_\_, 2017.

ASSIGNOR:  
**HPE TRANSPORTATION LLC,**  
**as Debtor-in-Possession**  
**MC# 667209**

ATTEST:

By: \_\_\_\_\_

WITNESS (REQUIRED)

Title: WITNESS

ATTEST:

By: \_\_\_\_\_

Title: KEN BOWMAN  
VICE-PRESIDENT

By: \_\_\_\_\_

XXXXXXXXXXXXXXXXXX

Title: XXXXXXXXXXXXXXXXXXXX

FACTOR:  
**RTS FINANCIAL SERVICE, INC.**

By: \_\_\_\_\_

Title: MARTIN J. RYAN  
VICE-PRESIDENT



**EXHIBIT A**

**ADDENDUM TO:**

**“SECTION 3 PURCHASE PRICE AND FACTORING CHARGE; SECURITY RESERVES”**

**SPECIAL STIPULATION:**

Factor, upon review of the proceeding calendar month (“Review Period”) from the effective date hereof, shall at its sole discretion determine if the combined balance of Accounts purchased from **HPE TRANSPORTATION LLC and PE TRANSPORTATION LLC** meets or exceeds a corresponding monthly minimum per calendar month (“Monthly Minimum”). If it is determined that the total combined balance of Accounts purchased is below a corresponding Monthly Minimum at the completion of the Review Period, the corresponding Factor’s Fee in Section 3.1 shall be as follows in the table below, and such rate shall remain the effective rate for the duration of the following Review Period until Factor evaluates the Assignor’s Monthly Minimum at the completion of any Review Period.

<b>Monthly Minimum Factor Amount</b>	<b>Factor’s Fee</b>
\$0.01 – \$300,000.00	2.00%
\$300,000.01 -	1.50%

If it is determined at the completion of any Review Period that the total combined balance is below \$300,000.00 the Factor’s Fee in Section 3.1 shall either remain or be adjusted to 2.0% and such rate shall remain the effective rates for the duration of the following Review Period until Factor evaluates the Assignor’s Monthly Minimum at the completion of any Review Period.

This Exhibit “A” is hereby incorporated and made part of the Factoring Agreement dated **MAY \_\_\_\_\_, 2017** between Factor and Assignor as of June 1, 2017 (the “Effective Date”).

**HPE TRANSPORTATION LLC**

**RTS FINANCIAL SERVICE, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: PAUL MEISELES  
Title: MEMBER / MANAGER

Name: MARTIN J. RYAN  
Title: VICE-PRESIDENT

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**GUARANTY**

For valuable consideration and to induce **RTS FINANCIAL SERVICE, INC. (“RTS”)** to enter into the Factoring Agreement dated **MAY \_\_, 2017** (“the Factoring Agreement”) with **HPE TRANSPORTATION LLC (“ASSIGNOR”)**, I the undersigned, do hereby guarantee to **RTS**, its successors and assigns the full, prompt and complete performance by **ASSIGNOR** of all of the provisions, conditions, covenants and agreements contained in the Factoring Agreement, including the full and complete payment of all monies that become due thereunder to **RTS** by **ASSIGNOR** and do hereby waive all notice of default by **ASSIGNOR** and notice of acceptance of this guaranty by **RTS**, and do hereby consent to any extension of time that may be given by **RTS** to **ASSIGNOR** of time of payment or performance. This guaranty is not limited to any particular period of time, but shall continue until all of the terms, covenants, and conditions of the Factoring Agreement have been fully and completely performed by **ASSIGNOR** and the undersigned shall not be released of any obligation or liability hereunder so long as there is any claim of **RTS** against **ASSIGNOR** arising out of the Factoring Agreement that has not been settled or discharged in full. The undersigned waives any right to require **RTS** to proceed against **ASSIGNOR**, the account debtors or customers of **ASSIGNOR** or any other person, or to proceed against or exhaust any security or pursue any other remedy in **RTS’** power. Whether or not suit be initiated, the undersigned agrees to pay reasonable attorneys’ fees and all other costs and expenses incurred by **RTS** in enforcing this guaranty and in any actions or proceedings arising out of or relating to the guaranty. This guaranty shall be governed and construed in accordance with the laws of the state of Kansas. The undersigned hereby consents to the sole and exclusive jurisdiction of any state or Federal court within the state of Kansas in connection with the enforcement of this guaranty.

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PAUL MEISELES  
167 REYNOLDS DRIVE  
NEWPORT NEWS, VA 23606