

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Roanoke Division**

<b>In re:</b>	)	
	)	
<b>WL MECHANICAL CORPORATION TRADING AS</b>	)	
<b>WESTLAKE HEATING AND AIR CONDITIONING</b>	)	
	)	
<b>Debtor.</b>	)	<b>Chapter 11 Case No. 17-70312</b>

**MOTION FOR AN ORDER ALLOWING USE OF CASH COLLATERAL**

The above-captioned debtor and debtor in possession (the “Debtor”) hereby files this Motion (the “Motion”) for entry of an order, under sections 361 and 363 of Title 11 of the United States Code (the “Bankruptcy Code”), authorizing the Debtor to use cash collateral and to grant a certain lien as adequate protection. In support of this Motion, the Debtor respectfully states as follows:

**Jurisdiction**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363, 1107 and 1108 of the Bankruptcy Code.

**Bankruptcy**

3. On March 9, 2017 Debtor commenced this case by filing a Voluntary Petition for relief under Chapter 11 of the Code.

4. The Debtor has remained in possession of its property and continues as debtor-in-possession pursuant to Section 1107(a) and 1108 of the Code.

5. No request has been made for the appointment of a Trustee or an examiner in this case, and no official committee has been appointed by The Office of The United States Trustee.

6. Debtor is in the business of selling and installing Carrier heating and air conditioning equipment and systems for both residential and commercial customers. It also provides maintenance service and repairs for heating and air conditioning equipment. Debtor has been in business for over 13 years.

7. At the commencement of this case debtor had entered into a financing agreement with Pearl Capital Business Funding, LLC, a New York Limited Liability Company, (Pearl). The arrangement with Pearl involved the sale of receivables to be generated in exchange for cash advances. In the agreement Debtor pledged its receivables to secure payment of the amounts advanced. The repayment terms under each agreement provided for a daily amount to be withdrawn from Debtor's checking account at BB&T. A copy of the Pearl Capital agreement and UCC-1 are attached.

8. As of the date of the filing of the Petition the balance owed Pearl was \$60,325.00.

9. The Debtor requires the use of its accounts receivables and contract rights in order to continue operating.

#### **Authorization for Requested Relief**

10. Section 363 of the Bankruptcy Code prohibits the use of Cash Collateral unless the party with an interest in the Cash Collateral consents or the Court authorizes such use. Specifically, the Bankruptcy Code provides:

The Trustee may not use, sell or lease cash collateral ... unless –

(A) Each entity that has an interest in such cash collateral consents; or

(B) The court, after notice and hearing, authorizes such use, sale or lease in accordance with the provisions in this section.

11 U.S.C. §363(b)(2).

11. Section 361 of the Bankruptcy Code provides:

When adequate protection is required under section 362, 363 or 364 of this title of an interest of an entity in property, such adequate protection may be provided by

—

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity's interest in such property...

12. To the extent that Pearl has an interest in cash collateral Debtor proposes to provide a replacement lien post-petition to such entity in the same asset categories in which each of these creditors had a secured interest prior to the date of the filing of the Debtors bankruptcy petition. The replacement liens shall be perfected, enforceable, choate, and effective to the same extent and priority as such lien had at the time of the filing of this bankruptcy without the necessity of such creditor taking any other action, including the filing of any additional security documents with respect thereto. The Debtor proposes the replacement liens shall be granted only to secure any amount equal to the actual amount of cash collateral used by the Debtor.

13. In addition to the replacement lien Debtor will make as Adequate Protection payments the following monthly payments to Pearl as set out below. Monthly payments shall be made in equal installments on the 1<sup>st</sup> and 15<sup>th</sup> of each month.

April: \$4,000.00

May: \$6,000.00

June: \$7,000.00

July: \$9,000.00

August: \$9,000.00

September: \$9,000.00

October: \$9,000.00

November: Remaining Balance

14. Attached as Exhibit B are the projected receivables that Debtor will generate in the months April through October 2017. The receivables of Debtor as of the date of filing its Petition were approximately \$119,782.65.

15. Attached as Exhibit C is the Pro-forma budget of Debtor for Debtor for the Period April – October 2017.

16. The proposed replacement liens and proposed payments to each creditor will adequately protect their respective interest. Debtor does not contemplate any additional borrowing from either creditor.

17. Pearl has Agreed to the Debtor's use of cash collateral under the terms and conditions herein set out.

WHEREFORE Debtor respectfully requests an Order granting the relief requested in this Motion and such other and further relief as may be necessary and proper.

Date: April 6, 2017

Respectfully submitted,

WL Mechanical Corporation Trading as  
Westlake Heating and Air Conditioning

By: /s/ Richard E.B. Foster  
Of Counsel

Richard E.B. Foster (VSB #16142)  
Richard E.B. Foster, PLLC  
30 West Franklin Road, Suite 302  
Roanoke, VA 24011  
Telephone (540) 777-4838  
Facsimile (540) 777-5595  
[rfoster@rebflaw.com](mailto:rfoster@rebflaw.com)

Certificate of Notice to Creditors and other parties in interest

This is to certify that on April 6th 2017, I caused the foregoing to be electronically filed with the United States Bankruptcy Court for the Western District of Virginia which caused electronic notification of filing to be served on the office of the United States Trustee and all the registered users of CM/ECF system that have appeared in this Case and on all creditors and parties in interest by USPS first class mail postage prepaid.

/s/ Richard E.B. Foster

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

**CT Lien Solutions**

Representation of filing

**This filing is Completed**

File Number : 17012060637

File Date : 20-Jan-2017

A. NAME & PHONE OF CONTACT AT FILER (optional) Phone: 800-833-5778 Fax:	
B. E-MAIL CONTACT AT FILER (optional)	
C. SEND ACKNOWLEDGMENT TO: (Name and Address)	
CT Lien Solutions 330 N Brand Blvd Suite 700 Glendale, CA 91203	57313148  <b>VAVA</b>
File with: State Corporation Commission, VA	

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME Westlake Heating & Air Conditioning, Inc.					
OR	1b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 1637 Scruggs Rd		CITY Wirtz	STATE VA	POSTAL CODE 24184	COUNTRY USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME All Seasons Mechanical Contracting Company					
OR	2b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS 1637 Scruggs Rd		CITY Wirtz	STATE VA	POSTAL CODE 24184	COUNTRY USA

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME C T CORPORATION SYSTEM, AS REPRESENTATIVE					
OR	3b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 330 N Brand Blvd, Suite 700; Attn: SPRS		CITY Glendale	STATE CA	POSTAL CODE 91203	COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

Receivables - All assets now owned or hereafter acquired and wherever located, including but not limited to, the following subcategories of assets: a. Accounts, including but not limited to, credit card receivables; b. Chattel Paper; c. Inventory; d. Equipment; e. Instruments, including but not limited to, Promissory Notes; f. Investment Property; g. Documents; h. Deposit Accounts; i. Letter of Credit Rights; j. General Intangibles; k. Supporting Obligations; and i. Proceeds and Products of the foregoing. NOTICE PURSUANT TO AN AGREEMENT BETWEEN DEBTOR AND SECURED PARTY, DEBTOR HAS AGREED NOT TO FURTHER ENCUMBER THE COLLATERAL DESCRIBED HEREIN. THE FURTHER ENCUMBERING OF WHICH MAY CONSTITUTE THE TORTIOUS INTERFERENCE WITH THE SECURED PARTY'S RIGHT BY SUCH ENCUMBRANCES IN THE EVENT THAT ANY ENTITY IS GRANTED A SECURITY INTEREST IN DEBTOR'S ACCOUNTS, CHATTEL PAPER OR GENERAL INTANGIBLES CONTRARY TO THE ABOVE, THE SECURED PARTY ASSERTS A CLAIM TO ANY PROCEEDS THEREOF RECEIVED BY SUCH ENTITY.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

57313148

**UCC FINANCING STATEMENT ADDITIONAL PARTY**

## FOLLOW INSTRUCTIONS

18. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement, if line 1b was left blank because Individual Debtor name did not fit, check here ☐

18a. ORGANIZATION'S NAME

Westlake Heating &amp; Air Conditioning, Inc.

OR

18b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

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19. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (19a or 19b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

19a. ORGANIZATION'S NAME

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OR

19b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

19c. MAILING ADDRESS

1637 Scruggs Rd

CITY

Wirtz

STATE

VA

POSTAL CODE

24184

COUNTRY

USA

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22a. ORGANIZATION'S NAME

OR

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CITY

STATE

POSTAL CODE

COUNTRY

24. MISCELLANEOUS: 57313148-VA-0

C T CORPORATION SYSTEM, AS

File with: State Corporation Commission, VA

SCC-CLERK'S OFFICE  
UCC

2017 JAN 20 PM 2:49

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Phone: (800) 331-3282 Fax: (818) 662-4141	
B. E-MAIL CONTACT AT FILER (optional) CLS-CTLS_Glendale_Customer_Service@wolterskluwer.com	
C. SEND ACKNOWLEDGMENT TO: (Name and Address)	
CT Lien Solutions P.O. Box 29071 Glendale, CA 91209-9071	57313148 VAVA
File with: State Corporation Commission, VA	

170120 6063-7

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8. OPTIONAL FILER REFERENCE DATA:

57313148





COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

Office of the Clerk

January 27, 2017

CT LIEN SOLUTIONS  
CT LIEN SOLUTIONS  
P.O. BOX 29071  
GLENDALE, CA 91209-9071

RECEIPT

RE: WESTLAKE HEATING & AIR CONDITIONING, INC.

DCN/FILE NO: 17-01-20-6063-7

Dear Customer:

This is your receipt for \$20.00 covering the fees for filing an original financing statement with this office.

The effective date of the filing is January 20, 2017 at 02:49 PM.

If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Sincerely,

A handwritten signature in black ink that reads "Joel H. Peck".

Joel H. Peck  
Clerk of the Commission

FSACCEPT  
FSO  
CIS0509

## UCC FINANCING STATEMENT ADDITIONAL PARTY

## FOLLOW INSTRUCTIONS

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COUNTRY

24. MISCELLANEOUS: 37313148-VA-0

C T CORPORATION SYSTEM, AS

File with: State Corporation Commission, VA



**MERCHANT AGREEMENT**

Agreement dated 1/13/2017 between Pearl Gamma Funding, LLC ("PGF") and the Merchant listed below ("MERCHANT")  
(Month) (Day) (Year)

**MERCHANT INFORMATION**

Merchant's Legal Name: WESTLAKE HEATING AND AIR CONDITIONING, INC  
D/B/A: WESTLAKE HEATING AND AIR CONDITIONING State of Incorporation / Organization: VA  
Type of (check one) Entity ☐ Corporation ☒ Limited Liability Company ☐ Limited Partnership ☐ Limited Liability Partnership ☐ Sole Proprietorship ☐ Other  
Physical Address: 1637 Scruggs Rd City: Wirtz State: VA Zip: 24184  
Contact Name: CLYDE ALLEN BUTLER Contact Number: (540) 721-9117  
Mailing Address: SAME City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**PURCHASE AND SALE OF FUTURE RECEIVABLES**

Merchant hereby sells, assigns and transfers to PGF (making PGF the absolute owner) in consideration of the "Purchase Price" specified below, the "Specified Percentage" of all of Merchant's future accounts, contract rights and other entitlements arising from or relating to the payment of monies from Merchant's customers' and/or other third party payors (the "Receipts" defined as all payments made by cash, check, electronic transfer or other form of monetary payment in the ordinary course of the Merchant's business), for the payments due to Merchant as a result of Merchant's sale of goods or services (the "Transactions") until the amount specified below (the "Purchased Amount") has been delivered by or on behalf of Merchant to PGF.

Purchase Price: \$ 62,089.00 Specified Percentage: 10 % Specific: DAILY Amount: \$ 635.00 Purchased Amount: \$ 83,820.00

**Merchant may use the Purchase Price solely for business purposes and not for personal, family or household purposes.** Merchant is selling a portion of a future revenue stream to PGF at a discount, not borrowing money from PGF. There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by PGF. Merchant going bankrupt or going out of business, in and of itself, does not constitute a breach of this Agreement. PGF is entering into this Agreement knowing the risks that Merchant's business may slow down or fail, and PGF assumes these risks based on Merchant's representations, warranties and covenants in this Agreement, which are designed to give PGF a reasonable and fair opportunity to receive the benefit of its bargain.

PGF will debit the Specific Amount each business day from only one depositing bank account, which account must be acceptable to, and pre-approved by, PGF (the "Account") into which Merchant and Merchant's customers shall remit the Receipts from each Transaction, until such time as PGF receives payment in full of the Purchased Amount. If Merchant's bank is closed on a business day, then PGF will debit the Specific Amount for that day on the next business day in addition to the regularly scheduled debit. Merchant hereby authorizes PGF to ACH debit the Specific Amount from the Account on a daily basis. PGF's payment of the Purchase Price shall be deemed the acceptance and performance by PGF of this Agreement. Merchant understands that it is responsible for ensuring that the Specific Amount to be debited by PGF remains in the Account and will be held responsible for any fees incurred by PGF resulting from a rejected ACH attempt or an Event of Default. PGF is not responsible for any overdrafts or rejected transactions that may result from PGF's ACH debiting the Specific Amount under the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between PGF and Merchant, upon the occurrence of an Event of Default under Section 3 of the MERCHANT AGREEMENT TERMS AND CONDITIONS the Specified Percentage shall equal 100%. A list of all fees applicable under this Agreement is contained in Appendix A.

**THE MERCHANT AGREEMENT "TERMS AND CONDITIONS", THE "SECURITY AGREEMENT AND GUARANTY" AND THE "ADMINISTRATIVE FORM HEREOF, ARE ALL HEREBY INCORPORATED IN AND MADE A PART OF THIS MERCHANT AGREEMENT."**

**FOR THE MERCHANT (#1) By:** CLYDE ALLEN BUTLER  
(Print Name and Title)

Signed by:  
  
99777126CA734AA

(Signature)

**FOR THE MERCHANT (#2) By:** \_\_\_\_\_  
(Print Name and Title)

(Signature)

**BY OWNER (#1) By:** CLYDE ALLEN BUTLER  
(Print Name and Title)

DocuSigned by:  
  
99777126CA734AA

(Signature)

**BY OWNER (#2) By:** \_\_\_\_\_  
(Print Name and Title)

(Signature)

## **MERCHANT AGREEMENT TERMS AND CONDITIONS**

### **I. TERMS OF ENROLLMENT IN PROGRAM**

**1.1 Merchant Deposit Agreement and Processor.** Merchant shall (A) execute an agreement acceptable to PGF with a Bank acceptable to PGF to obtain electronic fund transfer services for the Account, and (B) execute an agreement acceptable to PGF with a credit and debit card processor (the "Processor") instructing the Processor to deposit all Receipts into the Account. Merchant shall provide PGF and/or its authorized agent(s) with all of the information, authorizations and passwords necessary for verifying Merchant's receivables, receipts, deposits and withdrawals into and from the Account. Merchant hereby authorizes PGF and/or its agent(s) to withdraw from the Account via ACH debit the amounts owed to PGF for the receipts as specified herein and to pay such amounts to PGF. These authorizations apply not only to the approved Account but also to any subsequent or alternate account used by the Merchant for these deposits, whether pre-approved by PGF or not. This additional authorization is not a waiver of PGF's entitlement to declare this Agreement breached by Merchant as a result of its usage of an account which PGF did not first pre-approve in writing prior to Merchant's usage thereof. The aforementioned authorizations shall be irrevocable without the written consent of PGF. **1.2 Term of Agreement.** This Agreement shall remain in full force and effect until the entire Purchased Amount and any other amounts due are received by PGF as per the terms of this Agreement.

**1.3 Future Purchase of Increments.** Subject to the terms of this Agreement, PGF offers to purchase additional Receipts in the "Increments" stated in on Page 1 of this Agreement, if any. PGF reserves the right to delay or rescind the offer to purchase any Increment or any additional Receipts, in its sole and absolute discretion.

**1.4 Adjustments to the Specific Amount.** The Specific Amount is intended to represent the Specified Percentage of Merchant's Receipts each calendar month. At any time, PGF may adjust the Specific Amount so that the amount received by PGF in the future more closely represents the Specified Percentage. Also, once each calendar month Merchant may request that PGF reconcile Merchant's actual receipts and adjust the Specific Amount so that the amount received by PGF in the future more closely represents the Specified Percentage. Upon receipt of a written reconciliation request from Merchant, PGF may request any and all information from Merchant that PGF, in its sole judgment, believes is necessary to accurately reconcile the amount PGF has received from Merchant with the actual Specified Percentage. PGF shall not be required to adjust the Specific Amount until such time as it has received all such requested information.

**1.5 Financial Condition.** Merchant and Guarantor(s) (as hereinafter defined and limited) authorize PGF and its agents to investigate their financial responsibility and history, and will provide to PGF any authorizations, bank or financial statements, tax returns, etc., as PGF deems necessary in its sole and absolute discretion prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable as an authorization for release of financial and credit information. PGF is authorized to update such information and financial and credit profiles from time to time as it deems appropriate.

**1.6 Transactional History.** Merchant authorizes all of its banks, brokers and processors to provide PGF with Merchant's banking, brokerage and/or processing history to determine qualification or continuation in this program and for collections purposes. Merchant shall provide PGF with copies of any documents related to Merchant's card processing activity or financial and banking affairs within five days after a request from PGF.

**1.7 Indemnification.** Merchant and Guarantor(s) jointly and severally indemnify and hold harmless Processor, its officers, directors and shareholders against all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) incurred by Processor resulting from (a) claims asserted by PGF for monies owed to PGF from Merchant and (b) actions taken by Processor in reliance upon any fraudulent, misleading or deceptive information or instructions provided by PGF.


**1.8 No Liability.** In no event will PGF be liable for any claims asserted by Merchant or Guarantors under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by both Merchant and Guarantor(s). In the event these claims are nonetheless raised, Merchant and Guarantors will be jointly liable for all of PGF's attorney's fees and expenses resulting therefrom.

#### **1.9 Reliance on Terms.**

Section 1.1, 1.6, 1.7, 1.8 and 2.5 of this Agreement are agreed to for the benefit of Merchant, PGF, Processor, and Merchant's bank and notwithstanding the fact that Processor and the bank is not a party of this Agreement, Processor and the bank may rely upon their terms and raise them as a defense in any action. **1.10 Sale of Receipts.** Merchant and PGF agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount, and that such Purchase Price is not intended to be, nor shall it be construed as a loan from PGF to Merchant. Merchant agrees that the Purchase Price is in exchange for the Receipts pursuant to this Agreement, and that it equals the fair market value of such Receipts. PGF has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created. Payments made to PGF in respect to the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services, and the payment therefore by Merchant's customers. In no event shall the aggregate of all amounts or any portion thereof be deemed as interest hereunder, and in the event it is found to be interest despite the parties hereto specifically representing that it is NOT interest, it shall be found that no sum charged or collected hereunder shall exceed the highest rate permissible at law. In the event that a court nonetheless determines that PGF has charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and PGF shall promptly refund to Merchant any interest received by PGF in excess of the maximum lawful rate, it being intended that Merchant not pay or contract to pay, and that PGF not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Merchant under applicable law. As a result thereof, Merchant knowingly and willingly waives the defense of Usury in any action or proceeding.

**1.11 Power of Attorney.** Merchant irrevocably appoints PGF as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to PGF from Processor, or in the case of a violation by Merchant of Section 1 or the occurrence of an Event of Default under Section 3 hereof, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral; (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to PGF; and (v) to contact Merchant's banks and financial institutions using Merchant and Guarantor(s) personal information to verify the existence of an account and obtain account balances (vi) to file any claims or take any action or institute any proceeding which PGF may deem necessary for the collection of any of the unpaid Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount. In connection therewith, all costs, expenses and fees, including legal fees, shall be payable by and

**1.12 Protections against Default.** The following Protections 1 through 8 may be invoked by PGF immediately and without notice to Merchant in the event: (a) Merchant takes any action to discourage the use of electronic check processing that are settled through Processor, or permits any event to occur that could have an adverse effect on the use, acceptance, or authorization of checks or other payments or deposits for the purchase of Merchant's services and products including but not limited to direct deposit of any checks into a bank account without scanning into the PGF electronic check processor; (b) Merchant changes its arrangements with Processor or the Bank in any way that is adverse or unacceptable to PGF; (c) Merchant changes the electronic check processor through which the Receipts are settled from Processor to another electronic check processor, or permits any event to occur that could cause diversion of any of Merchant's check or deposit transactions to another processor; (d) Merchant intentionally interrupts the operation of this business transfers, moves, sells, disposes, or otherwise conveys its business and/or assets without (i) the express prior written consent of PGF, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to PGF; (e) Merchant takes any action, fails to take any action, or offers any incentive—economic or otherwise—the result of which will be to induce any customer or customers to pay for Merchant's services with any means other than payments, checks or deposits that are settled through Processor; or (f) Merchant fails to provide PGF with copies of any documents related to Merchant's card processing activity of financial and banking affairs within five days after a request from PGF. These protections are in addition to any other remedies available to PGF at law, in equity or otherwise pursuant to this Agreement.

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**Protection 1.** The full uncollected Purchased Amount plus all fees (including reasonable attorney's fees) due under this Agreement and the attached Security Agreement become due and payable in full immediately.

**Protection 2.** PGF may enforce the provisions of the Personal Guaranty of Performance against the Guarantor(s).

**Protection 3.** Merchant hereby authorizes PGF to execute in the name of the Merchant a Confession of Judgment in favor of PGF in the amount of Purchased Amount stated in the Agreement. Upon an Event of Default, PGF may enter that Confession of Judgment as a Judgment with the Clerk of any Court and execute thereon.

**Protection 4.** PGF may enforce its security interest in the Collateral.

**Protection 5.** The entire Purchased Amount and all fee (including reasonable attorney's fees) shall become immediately payable to PGF from Merchant.

**Protection 6.** PGF may proceed to protect and enforce its right and remedies by lawsuit. In any such lawsuit, if PGF recovers a Judgment against Merchant, Merchant shall be liable for all of PGF's costs of the lawsuit, including but not limited to all reasonable attorneys' fees and court costs.

**Protection 7.** This Agreement shall be deemed Merchant's Assignment of Merchant's Lease of Merchant's business premises to PGF. Upon breach of any provision in this Agreement, PGF may exercise its rights under this Assignment of Lease without prior Notice to Merchant.

**Protection 8.** PGF may debit Merchant's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account or otherwise for all sums due to PGF.

**1.13 Protection of Information.** Merchant and each person signing this Agreement on behalf of Merchant and/or as Owner or Guarantor, in respect of himself or herself personally, authorizes PGF to disclose information concerning Merchant's and each Owner's and each Guarantor's credit standing (including credit bureau reports that PGF obtains) and business conduct only to agents, affiliates, subsidiaries, and credit reporting bureaus. Merchant and each Owner and each Guarantor hereby and each waives to the maximum extent permitted by law any claim for damages against PGF or any of its affiliates relating to any (i) investigation undertaken by or on behalf of PGF as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement.

**1.14 Confidentiality.** Merchant understands and agrees that the terms and conditions of the products and services offered by PGF, including this Agreement and any other PGF documents (collectively, "Confidential Information") are proprietary and confidential information of PGF. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information of PGF to any person other than an attorney, accountant, financial advisor or employee of Merchant who needs to know such information for the purpose of advising Merchant ("Advisor"), provided such Advisor uses such information solely for the purpose of advising Merchant and first agrees in writing to be bound by the terms of this section. A breach hereof entitles PGF to not only damages and reasonable attorney's fees but also to both a Temporary Restraining Order and a Preliminary Injunction without Bond or Security.

**1.15 Publicity.** Merchant and each of Merchant's Owners and all Guarantors hereto all

hereby authorizes PGF to use its, his or her name in listings of clients and in advertising and marketing materials.

**1.16 D/B/A's.** Merchant hereby acknowledges and agrees that PGF may be using "doing business as" or "d/b/a" names in connection with various matters relating to the transaction between PGF and Merchant, including the filing of UCC-1 financing statements and other notices or filings.

## **II. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Merchant represents warrants and covenants that, as of this date and during the term of this Agreement:

**2.1 Financial Condition and Financial Information.** Merchant's and Guarantors' bank and financial statements, copies of which have been furnished to PGF, and future statements which will be furnished hereafter at the discretion of PGF, fairly represent the financial condition of Merchant at such dates, and since those dates there has been no material adverse changes, financial or otherwise, in such condition, operation or ownership of Merchant. Merchant and Guarantors have a continuing, affirmative obligation to advise PGF of any material adverse change in their financial condition, operation or ownership. PGF may request statements at any time during the performance of this Agreement and the Merchant and Guarantors shall provide them to PGF within five business days after request from PGF. Merchant's or Guarantors' failure to do so is a material breach of this Agreement.

**2.1 Governmental Approvals.** Merchant is in compliance and shall comply with all laws and has valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged and/or will engage in hereafter.

**2.2 Authorization.** Merchant, and the person(s) signing this Agreement on behalf of Merchant, have full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized.

**2.3 Insurance.** Merchant will maintain business-interruption insurance naming PGF as loss payee and additional insured in amounts and against risks as are satisfactory to PGF and shall provide PGF proof of such insurance upon request.

**2.4 Electronic Check Processing Agreement.** Merchant will not change its Processor, add terminals, change its financial institution or bank account(s) or take any other action that could have any adverse effect upon Merchant's obligations under this Agreement, without PGF's prior written consent. Any such changes shall be a material breach of this Agreement.

**2.5 Change of Name or Location.** Merchant will not conduct Merchant's businesses under any name other than as disclosed to the Processor and PGF, nor shall Merchant change any of its places of business without prior written consent by PGF.

**2.6 Daily Batch Out.** Merchant will batch out receipts with the Processor on a daily basis.

**2.8 Estoppel Certificate.** Merchant will at every and all times, and from time to time, upon at least one (1) day's prior notice from PGF to Merchant, execute, acknowledge and deliver to PGF and/or to any other person, firm or corporation specified by PGF, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating the dates which the Purchased Amount or any portion thereof has been repaid.

**2.9 No Bankruptcy.** As of the date of this Agreement, Merchant is not insolvent and does not contemplate filing for bankruptcy in the next

six months and has not consulted with a bankruptcy attorney or filed any petition for bankruptcy protection under Title 11 of the United States Code and there has been no involuntary petition brought or pending against Merchant. Merchant further warrants that it does not anticipate filing any such bankruptcy petition and it does not anticipate that an involuntary petition will be filed against it.

**2.10 Unencumbered Receipts.** Merchant has good, complete, unencumbered and marketable title to all Receipts, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of PGF.

**2.11 Business Purpose.** Merchant is a valid business in good standing under the laws of the jurisdictions in which it is organized and/or operates, and Merchant is entering into this Agreement for business purposes and not as a consumer for personal, family or household purposes.

**2.12 Defaults under Other Contracts.** Merchant's execution of, and/or performance under this Agreement, will not cause or create an event of default by Merchant under any contract with another person or entity.


**2.13 Good Faith.** Merchant and Guarantors hereby affirm that Merchant is receiving the Purchase Price and selling PGF the Purchased Amount in good faith and will use the Purchase Price funds to maintain and grow Merchant's business.

## **III. EVENTS OF DEFAULT AND REMEDIES**

**3.1 Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" hereunder: (a) Merchant or Guarantor shall violate any term or covenant in this Agreement; (b) Any representation or warranty by Merchant in this Agreement shall prove to have been incorrect, false or misleading in any material respect when made; (c) the sending of notice of termination by Merchant;

(d) the Merchant fails to give PGF 24 hours advance notice that there will be insufficient funds in the account such that the ACH of the specific daily amount will not be honored by Merchant's bank, and Merchant fails to supply all requested documentation and allow for daily monitoring of its bank account; (e) Merchant shall transfer or sell all or substantially all of its assets; (f) Merchant shall make or send notice of any intended bulk sale or transfer by Merchant; (g) Merchant shall use multiple depository accounts without the prior written consent of PGF; (h) Merchant shall change its depositing account without the prior written consent of PGF; or (i) Merchant shall close its depositing account used for ACH debits without the prior written consent of PGF (j) Merchant's bank returns a code other than NSF cutting PGF from its collections (j) Merchant shall default under any of the terms, covenants and conditions of any other agreement with PGF.

**3.2 Personal Guaranty.** In the Event of a Default, PGF will enforce its rights against the Guarantors of this transaction. Said Guarantors will be jointly and severally liable to PGF for all of PGF's losses and damages, in addition to all costs and expenses and legal fees associated with such enforcement.

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3.3 **Remedies.** In case any Event of Default occurs and is not waived pursuant to Section 4.4. hereof, PGF may proceed to protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the discharge of Merchant's obligations hereunder (including the Guaranty) or any other legal or equitable right or remedy. All rights, powers and remedies of PGF in connection with this Agreement may be exercised at any time by PGF after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

3.4 **Costs.** Merchant shall pay to PGF all reasonable costs associated with (a) an Event of Default, (b) breach by Merchant of the Covenants in this Agreement and the enforcement thereof, and (c) the enforcement of PGF's remedies set forth in this Agreement, including but not limited to court costs and attorneys' fees.

3.5 **Required Notifications.** Merchant is required to give PGF written notice within 24 hours of any filing under Title 11 of the United States Code. Merchant is required to give PGF seven days' written notice prior to the closing of any sale of all or substantially all of the Merchant's assets or stock.

#### IV. MISCELLANEOUS

4.1 **Modifications; Agreements.** No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by PGF.

4.2 **Assignment.** PGF may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part.

4.3 **Notices.** All notices, requests, consents, demands and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement. Notices to PGF shall become effective only upon receipt by PGF. Notices to Merchant shall become effective three days after mailing.

4.4 **Waiver Remedies.** No failure on the part of PGF to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

4.5 **Binding Effect;** Governing Law, Venue and Jurisdiction. This Agreement shall be binding upon and inure to the benefit of Merchant, PGF and their respective successors and assigns, except that Merchant shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of PGF which consent may be withheld in PGF's sole discretion. PGF reserves the rights to assign this Agreement with or without prior written notice to Merchant. This Agreement shall be governed by and construed in accordance with the laws of the state of New York, without regards to any applicable principals of conflicts of law. Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if PGF so elects, be instituted in any court sitting in New York, (the "Acceptable Forums"). Merchant agrees that the Acceptable Forums are convenient to it, and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue. Should such proceeding be initiated in any other forum, Merchant waives any right to oppose any motion or application made by PGF to transfer such proceeding to an Acceptable Forum.

ADDITIONALLY, MERCHANT AGREES THAT ANY SUMMONS AND/OR COMPLAINT OR OTHER PROCESS TO COMMENCE ANY LITIGATION BY PGF WILL BE PROPERLY SERVED IF MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE MAILING ADDRESS(ES) LISTED ON PAGE 1 OF THIS AGREEMENT.

4.6 Survival of Representation, etc. All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

4.7 Interpretation. All Parties hereto have reviewed this Agreement with attorney of their own choosing and have relied only on their own attorneys' guidance and advice. No construction determinations shall be made against either Party hereto as drafter.

4.8 Severability. In case any of the provisions in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein shall not in any way be affected or impaired.

4.9 Entire Agreement. Any provision hereof prohibited by law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions hereof.

This Agreement and the Security Agreement and Guaranty hereto embody the entire agreement


between Merchant and PGF and supersede all prior agreements and understandings relating to the subject matter hereof.

4.10 **JURY TRIAL WAIVER.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OR THE ENFORCEMENT HEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

#### 4.11 **CLASS ACTION WAIVER.**

THE PARTIES HERETO WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW AS AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES HEREBY AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

4.12 **Facsimile & Digital Acceptance.** Facsimile signatures and digital signatures hereon shall be deemed acceptable for all purposes.

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# PEARL CAPITAL

## SECURITY AGREEMENT AND GUARANTY

WESTLAKE HEATING AND AIR CONDITIONING, INC  
Merchant's Legal Name: \_\_\_\_\_  
D/B/A: WESTLAKE HEATING AND AIR CONDITIONING Federal ID#: 35-2224952  
Physical Address: 1637 Scruggs Rd City: Wirtz State: VA Zip: 24184

Additional Guarantor(s).

All Seasons Mechanical Contracting Company and a and H Air Conditioning and Heating

### SECURITY AGREEMENT

**Security Interest.** This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant and Guarantor(s) grants to PGF a security interest in and lien upon: (a) all accounts, chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are each defined in Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by Merchant and/or Guarantor(s), (b) all proceeds, as that term is defined in Article 9 of the UCC (c) all funds at any time in the Merchant's and/or Guarantor(s) Account, regardless of the source of such funds, (d) present and future Electronic Check Transactions, and (e) any amount which may be due to PGF under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Merchant agrees to provide other security to PGF upon request to secure Merchant's obligations under this Agreement. Merchant agrees that, if at any time there are insufficient funds in Merchant's Account to cover PGF's entitlements under this Agreement, PGF is granted a further security interest in all of Merchant's assets of any kind whatsoever, and such assets shall then become Secured Assets. These security interests and liens will secure all of PGF's entitlements under this Agreement and any other agreements now existing or later entered into between Merchant, PGF or an affiliate of PGF. PGF is authorized to file any and all notices or filings it deems necessary or appropriate to enforce its entitlements hereunder.

This security interest may be exercised by PGF without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets. PGF shall have the right to notify account debtors at any time. Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, PGF has control over and may direct the disposition of the Secured Assets, without further consent of Merchant. Merchant hereby represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, PGF will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from PGF written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant and Guarantor(s) agree(s) that this is a contract of recoupment and PGF is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, Merchant and Guarantor(s) agree(s) not to contest or object to any motion for relief from the automatic stay filed by PGF. Merchant and Guarantor(s) agree(s) to execute and deliver to PGF such instruments and documents PGF may reasonably request to perfect and confirm the lien, security interest and right of setoff set forth in this Agreement. PGF is authorized to execute all such instruments and documents in Merchant's and Guarantor(s) name.

Merchant and Guarantor(s) each acknowledge and agree that any security interest granted to PGF under any other agreement between Merchant or Guarantor(s) and PGF (the "Cross-Collateral") will secure the obligations hereunder and under the Merchant Agreement. Merchant and Guarantor(s) each agrees to execute any documents or take any action in connection with this Agreement as PGF deems necessary to perfect or maintain PGF's first priority security interest in the Collateral and the Additional Collateral, including the execution of any account control agreements. Merchant and Guarantor(s) each hereby authorizes PGF to file any financing statements deemed necessary by PGF to perfect or maintain PGF's security interest. Merchant and Guarantor(s) shall be liable for, and PGF may charge and collect, all costs and expenses, including but not limited to attorney's fees, which may be incurred by PGF in protecting, preserving and enforcing PGF's security interest and rights.

**Negative Pledge.** Merchant and Guarantor(s) each agrees not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral or the Additional Collateral, as applicable.

**Consent to Enter Premises and Assign Lease.** PGF shall have the right to cure Merchant's default in the payment of rent on the following terms. In the event Merchant is served with papers in an action against Merchant for nonpayment of rent or for summary eviction, PGF may execute its rights and remedies under the Assignment of Lease. Merchant also agrees that PGF may enter into an agreement with Merchant's landlord giving PGF the right: (a) to enter Merchant's premises and to take possession of the fixtures and equipment therein for the purpose of protecting and preserving same; and/or (b) to assign Merchant's lease to another qualified business capable of operating a business comparable to Merchant's at such premises.

**Remedies.** Upon any Event of Default, PGF may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce, or satisfy any obligations then owing to PGF, whether by acceleration or otherwise.

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## GUARANTY

**Personal Guaranty of Performance.** The undersigned Guarantor(s) hereby guarantees to PGF, Merchant's good faith, truthfulness and performance of all of the representations, warranties, covenants made by Merchant in the Merchant Agreement as each may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations").

Guarantor's obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in the Agreement.

**Guarantor Waivers.** In the event of a breach of the above, PGF may seek recovery from Guarantors for all of PGF's losses and damages by enforcement of PGF's rights under this Agreement without first seeking to obtain payment from Merchant, any other guarantor, or any Collateral or Additional Collateral PGF may hold pursuant to this Agreement or any other guaranty.

PGF does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under this Agreement if it is not notified of: (i) Merchant's failure to pay timely any amount required under the Merchant Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) PGF's acceptance of this Agreement; and (v) any renewal, extension or other modification of the Merchant Agreement or Merchant's other obligations to PGF. In addition, PGF may take any of the following actions without releasing Guarantor from any of its obligations under this Agreement: (i) renew, extend or otherwise modify the Merchant Agreement or Merchant's other obligations to PGF; (ii) release Merchant from its obligations to PGF; (iii) sell, release, impair, waive or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Agreement. Until the Purchased Amount and Merchant's other obligations to PGF under the Merchant Agreement and this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Agreement. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Agreement: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution. In the event that PGF must return any amount paid by Merchant or any other guarantor of the Guaranteed Obligations because that person has become subject to a proceeding under the United States Bankruptcy Code or any similar law, Guarantor's obligations under this Agreement shall include that amount.

**Guarantor Acknowledgement.** Guarantor acknowledges that: (i) He/She is bound by the Class Action Waiver provision in the Merchant Agreement Terms and Conditions; (ii) He/She understands the seriousness of the provisions of this Agreement; (ii) He/She has had a full opportunity to consult with counsel of his/her choice; and (iii) He/She has consulted with counsel of its choice or has decided not to avail himself/herself of that opportunity.

**Joint and Several Liability.** The obligations hereunder of the persons or entities constituting Guarantor under this Agreement are joint and several.

**THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "MERCHANT AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SECURITY AGREEMENT AND GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS SECURITY AGREEMENT AND GUARANTY, SHALL HAVE THE MEANING SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS AND CONDITIONS.**

**FOR THE MERCHANT (#1) By:** CLYDE ALLEN BUTLER  
(Print Name and Title)

SSN# 223-15-7636

DocuSigned by:

99777126CA734AA...

(Signature)

Driver's License Number \_\_\_\_\_

**FOR THE MERCHANT (#2) By:** \_\_\_\_\_  
(Print Name and Title)

SSN# \_\_\_\_\_

Driver's License Number \_\_\_\_\_

DocuSigned by:

99777126CA734AA...

(Signature)

Driver's License Number \_\_\_\_\_

**BY OWNER (#1) By:** CLYDE ALLEN BUTLER  
(Print Name and Title)

SSN# 223-15-7636

**BY OWNER (#2) By:** \_\_\_\_\_  
(Print Name and Title)

SSN# \_\_\_\_\_

Driver's License Number \_\_\_\_\_

DocuSigned by:

99777126CA734AA...

(Signature)

Driver's License Number \_\_\_\_\_

**FOR THE GUARANTOR(S) By:** CLYDE ALLEN BUTLER  
(Print Name and Title)

SSN# 223-15-7636

**FOR THE GUARANTOR(S) By:** \_\_\_\_\_  
(Print Name and Title)

SSN# \_\_\_\_\_

Driver's License Number \_\_\_\_\_





**APPENDIX A - THE FEE STRUCTURE:**

A. Underwriting Fee \$ 1,999.00 to cover underwriting and related expenses.

B. Origination Fee \$ 999.00 to cover cost of Origination and ACH Setup

C. NSF Fee (Standard) \$35.00 (each)

D. Rejected ACH / Blocked ACH / Default Fee \$2,500.00 When Merchant BLOCKS Account from our Debit ACH, or when Merchant directs the bank to reject our debit ACH, which places them in default (per contract). When Merchant changes bank Account cutting us off from our collections.

E. Bank Change Fee \$50.00 When Merchant requires a change of Bank Account to be Debited, requiring us to adjust our system.

F. Wire Fee - Each Merchant shall receive their funding electronically to their designated bank account and will be charged \$50.00 for a Fed Wire or \$0.00 for a bank ACH.

**FOR THE MERCHANT (#1) By:**

**CLYDE ALLEN BUTLER**

(Print Name and Title)

DocuSigned by:

A stylized black ink signature of Clyde Allen Butler.

90777126CA734AA...

(Signature)

**FOR THE MERCHANT (#2) By:**

(Print Name and Title)

(Signature)



**AUTHORIZATION AGREEMENT FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS  
(ACH DEBITS)**

**DEFINITIONS:**

**PGF:** Pearl Gamma Funding, LLC

**Seller:** WESTLAKE HEATING AND AIR CONDITIONING, INC  
(Merchant's Legal Name)

**Merchant Agreement:** Merchant Agreement between PGF and Seller, dated as of 1/13/2017

**Designated Checking Account:**

**Bank Name:** bbt **Branch:** hardy, va

**TaxID:** 35-2224952

**ABA: Routing:** 051503394 **DDA: Account:** 0005174961036

Capitalized terms used in this Authorization Agreement without definition shall have the meanings set forth in the Merchant Agreement. By signing below, Seller attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes. **This Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Merchant Agreement. Seller should keep a copy of this important legal document for Seller's records.** DISBURSMENT OF ADVANCE PROCEEDS. By signing below, Seller authorizes PGF to disburse the Advance proceeds less the amount of any applicable fees upon Advance approval by initiating ACH credits to the Designated Checking Account, in the amounts and at the times specified in the Merchant Agreement. **By signing below, Seller also authorizes PGF to collect amounts due from Seller under the Merchant Agreement by initiating ACH debits to the Designated Checking Account, as follows:**

In the amount of: \$ 635.00

(Or) Percentage of each Banking Deposit: 10 %

On the Following Days: MONDAY - FRIDAY

If any payment date falls on a weekend or holiday, I understand and agree that the payment may be executed on the next business day. If a payment is rejected by Seller's financial institution for any reason, including without limitation insufficient funds, Seller understands that PGF may, at its discretion, attempt to process the payment again as permitted under applicable ACH rules. Seller also authorizes PGF to initiate ACH entries to correct any erroneous payment transaction.

**MISCELLANEOUS.** PGF is not responsible for any fees charged by Seller's bank as the result of credits or debits initiated under this Authorization Agreement. The origination of ACH debits and credits to the Designated Checking Account must comply with applicable provisions of state and federal law, and the rules and operating guidelines of NACHA (formerly known as the National Automated Clearing House Association). This Authorization Agreement is to remain in full force and effect until PGF has received written notification from Seller at the address set forth below at least 5 banking days prior of its termination to afford PGF a reasonable opportunity to act on it. The individual signing below on behalf of Seller certifies that he/she is an authorized signer on the Designate Checking Account. Seller will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Seller requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

**Seller:** WESTLAKE HEATING AND AIR CONDITIONING, INC  
(Merchant's Legal Name)

**Date:** 1/13/2017  
(Month) (Day) (Year)

**Title:** DocuSigned by:

X 99777126CA734AA...  
(Signature)

**Print Name:** CLYDE ALLEN BUTLER



Dear Merchant,

Thank you for accepting an offer from Pearl Gamma Funding. We are looking forward to building a relationship with your business that allows you to reach and exceed your goals. Please note that prior to funding your account, our Underwriting department needs to see the most recent balance and activity information in real-time as a fraud countermeasure and in order to ensure the health of your business aligns with the terms of your offer. For your convenience, we have three secure options for you to choose from to complete this step. After being completed and executed, you can fax the agreement to 347-899-4064.

**Option 1) Please provide information required for read-only access\* to your business account.**

Bank portal website: \_\_\_\_\_

Username: \_\_\_\_\_

Password: \_\_\_\_\_

Security Question/Answer 1: \_\_\_\_\_

Security Question/Answer 2: \_\_\_\_\_

Security Question/Answer 3: \_\_\_\_\_

Any other information necessary to access your account: \_\_\_\_\_

**Option 2) Provide an email address which will receive a secure 3rd party link, allowing you to log in on your own machine through industry standard Decision Logic. (<https://www.decisionlogic.com/>)**

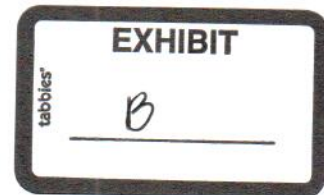
Your valid email address (please ensure correct spelling and case sensitivity):

\_\_\_\_\_

**Option 3) You may call into a secure line to complete this step with a live representative.**

**Secure Verification Number: 844-546-4722**

\* Read only access can be easily arranged by calling your Bank, allowing our Underwriters to view account information without being able to transfer, debit or otherwise access funds.



**April Sales**-----\$140,000

Expenses:

Carrier---\$41,000  
Max Advance-\$4500  
Pearl-----\$4000  
Springlake---\$357  
Fuel-----\$5,000  
Payroll-----\$23,000  
Payroll tax---\$3500  
Rent-----\$2300  
Cell phones--\$900  
Office phones-\$350  
Utilities-----\$400  
Trash-----\$150  
Fleet costs--\$2500  
Other vendors-\$20,000  
Office Supplys-\$500  
Bank fees----\$350  
Finance fees-\$600  
Cranes-----\$3100  
Permits tax---\$1400  
Health ins---\$3290  
Business ins-\$1870  
Payment to creditors under chapter 11-\$2,812.50 for 48 months  
Misc-----\$2500  
Salary owner-\$9000

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Total-----\$133,779.50

Carry Over----\$6220.50

**May Sales**-----\$168000

Expenses:

Carrier-----\$50,000  
Max-----\$7000  
Pearl-----\$6000  
SPringlake-----\$357  
Fuel-----\$5500  
Payroll-----\$25000  
Payroll tax-----\$4000  
Rent-----\$2300

Cell Phone-----\$900  
Office phone----\$350  
Utilities-----\$500  
Trash-----\$150  
Fleet Cost-----\$2000  
Other Vendors-\$25000  
Cranes-----\$4000  
Franklin tax----\$3250  
Bedford tax----\$300  
Permit and tax-\$1500  
Health ins-----\$3290  
Business ins---\$1870  
Misc-----\$3000  
Payment to creditors-\$2812.50  
Salary owner---\$9000

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Total expenses--\$158,679.50

Carry over---\$9,320.50

**June Sales**-----\$200,000

Expenses:

Carrier-----\$65000  
Max-----\$8000  
Pearl-----\$7000  
Springlake-----\$357  
Fuel-----\$6000  
Payroll-----\$27000  
Payroll tax-----\$4200  
Rent-----\$2300  
Cell phones-----\$900  
Office phones---\$400  
Utilities-----\$600  
Trash-----\$200  
Fleet Cost-----\$2500  
Other Vendors---\$30000  
Office Supplys---\$600  
Bank Fees-----\$400  
Finance charges-\$800  
Cranes-----\$4800  
Permit and tax---\$1500  
Health Ins-----\$3290  
Business ins----\$1870  
Payment to creditors--\$2812.50  
Misc-----\$9000

Total expenses-----\$182,529.50

Carry over \$17,490.50

**July Sales**-----\$235000

Expenses:

Carrier-----\$85000  
Max-----\$11000  
Pearl-----\$9000  
Springlake-----\$357  
Fuel-----\$6500  
Payroll-----\$30000  
Payroll tax-----\$5000  
Rent-----\$2300  
Cell phones-----\$1000  
Office phones-----\$500  
Utilities-----\$700  
Trash-----\$225  
Fleet costs-----\$3000  
Other vendors-----\$35000  
Office supplys-----\$700  
Bank fees-----\$500  
Finances charges-----\$1000  
Cranes-----\$5600  
Permit and tax-----\$1500  
Health ins-----\$3290  
Business ins-----\$1870  
Payment to Creditors-----\$2812.50  
Misc-----\$4000  
Salary owner-----\$9000  
DMV-----\$1000

Total expenses-----\$220,854.50

Carry Over--\$14,145.50

**August Sales**-----\$240,000

Expenses:

Carrier-----\$90,000  
Max-----\$11,000  
Pearl-----\$9000



Springlake-----\$357  
Fuel-----\$6000  
Payroll-----\$30000  
Payroll tax-----\$5500  
Rent-----\$2300  
Cell phones-----\$1000  
Office Phones-----\$500  
Utilities-----\$700  
Trash-----\$200  
Fleet Costs-----\$3000  
Other Vendors-----\$35000  
Cranes-----\$5600  
Permit and tax-----\$1500  
Misc-----\$4500  
Health ins-----\$3290  
Business ins-----\$1870  
Payments to Creditors-----\$2812.50  
Salary owner-----\$9000

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Total Expenses-----\$223,109.50

Carry over-----\$16,890.50

**September Sales**-----\$200,000

Expenses:

Carrier-----80,000  
Max-----11,000  
Pearl-----9000  
SPringlake-----357  
Fuel-----4500  
Payroll-----25000  
Payroll Tax-----4500  
Rent-----2300  
Cell phones-----1000  
Office Phones-----300  
Trash-----200  
Fleet Costs-----2500  
Other Vendors-----25000  
Cranes-----\$4800  
Permit and tax-----\$1200  
Health Ins-----3290  
Business ins-----1870  
Misc-----3000  
Creditors payments-----\$2812.50  
owners salary-----\$9000

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Total Expenses-----\$196,629.50

Carry over---\$3370.50

**October Sales**-----\$135000

Expenses:

Carrier-----\$50,000  
Max-----\$11000  
Pearl-----\$9000  
Springlakes-----\$357  
Fuel-----\$4500  
Payroll-----\$22000  
Payroll tax-----\$3400  
Rent-----\$2300  
Cell phones-----\$900  
Office Phones-----\$350  
Utilities-----\$300  
Trash-----\$120  
Fleet costs-----\$500  
Other Vendors-----\$15000  
Office Supplys-----\$300  
Bank Fees-----\$300  
Credit fees-----\$400  
Cranes-----\$800  
Health Ins-----\$3290  
Business ins-----\$1870  
Misc-----\$1000  
Payments to creditors---\$2812.50  
Owner salary-----\$9000

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Total expense-----\$139,499.50  
\$4499.50

Take away from carry over funds--

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**Projected Receivables:**

April Projected Receivables are-\$145,200.

May Projected---\$175,000.

June-----\$200,000

July----\$250,000

August---\$250,000

September--\$225,000

October---\$200,000

November--\$165000

December--\$175,000.

