

Assigned for all purposes to: Chatsworth Courthouse, Judicial Officer: Bernie LaForteza

1 COLLECTION AT LAW, INC.  
2 A PROFESSIONAL LAW CORPORATION  
3 Jon O. Blanda (State Bar No. 217222)  
4 Angela A. Velen (State Bar No. 217292)  
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3835 East Thousand Oaks Blvd., Suite R349  
Westlake Village, California 91362  
Phone Number (818) 716-7630  
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6 Attorneys for Plaintiff  
FORWARDLINE FINANCIAL, LLC., a California Limited Liability Company

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**  
**NORTH VALLEY DISTRICT - LIMITED JURISDICTION**

11 FORWARDLINE FINANCIAL, LLC, a ) CASE NO. 22CHLC05197  
12 California Limited Liability Company, )  
13 Plaintiff, ) Amount of Demand is under \$25,000.00,  
14 v. ) LIMITED JURISDICTION)  
15 NIP, INC., an Arizona Corporation dba ) COMPLAINT FOR MONEY  
16 NEW INNOVATIVE PRODUCTS; )  
17 CHRISTOPHER MAY, an individual; and )  
18 DOES 1 through 100, inclusive, )  
19 Defendant(s). )

## DEFINITIONS AND PRELIMINARY ALLEGATIONS:

- 21       1. As used herein, the term "PLAINTIFF" refers to FORWARDLINE FINANCIAL,  
22 LLC., a California Limited Liability Company;

23       2. As used herein, the term "DEFENDANTS" refers to NIP, INC., an Arizona  
24 Corporation dba NEW INNOVATIVE PRODUCTS; CHRISTOPHER MAY, an individual;

25       3. As used herein, the term "DEBT" and "said DEBT" refers to the following sum:  
26 \$9,018.56;

27       4. As used herein, the term "Due Date" refers to the following date: April 1, 2020;

5. Plaintiff is a limited liability company, duly organized and existing under and by virtue of the laws of the State of California, and licensed and operating under and pursuant to the laws of the State of California;

6. Plaintiff is informed, believes, and thereon alleges that Defendant, NIP, INC., is a company, duly organized under and pursuant to the laws of the State of Arizona and is doing business as NEW INNOVATIVE PRODUCTS;

7. Plaintiff is informed, believes, and thereon alleges that Defendant, CHRISTOPHER MAY, is an individual of competent age and mental capacity residing in the State of Arizona;

8. [INTENTIONALLY LEFT BLANK];

9. The true names and capacities of Defendants named herein as DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues Defendants by fictitious names. Plaintiff will amend this complaint to show their true names and capacities when they have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each of said named Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries and damages herein alleged were proximately caused thereby. Each reference in this complaint to "Defendant," "Defendants," or specifically named Defendant refers also to all Defendants sued under fictitious names;

10. The obligations and claims sued upon herein were made and entered into and are due and payable in the above-mentioned Judicial District and County, State of California, and are not subject to the provisions of Sections 1812.10 and 2984.4 of the California Civil Code, and Section 395(b) of the California Code of Civil Procedure;

11. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, each Defendant was the agent, servant, employee, joint venturer, partner, representative and/or alter ego of the remaining Defendants; and in doing the things hereinafter mentioned, each Defendant was acting within said course, scope and authority as an agent,

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servant, employee, joint venturer, partner, representative and/or alter ego, whether such capacity was actual or apparent, with the knowledge and consent of each other Defendant, and as authorized and/or ratified by each of the remaining Defendants;

4 12. The cause of action which is subject to this lawsuit arose in this judicial district;

## **FIRST CAUSE OF ACTION**

(OPEN BOOK ACCOUNT as to ALL DEFENDANTS)

7       13. Plaintiff repeats, re-alleges and incorporates herein by reference paragraphs 1  
8 through 12 as though fully set forth herein;

9       14. Within four years preceding the commencement of this action, Defendants  
10      became indebted to Plaintiff in the amount of "the DEBT" for a balance due on a book account  
11      for services rendered by Plaintiff to Defendants, at Defendants' request. Said DEBT has not been  
12      paid although payment has been demanded, and said DEBT is now due, owing and unpaid,  
13      together with interest thereon at the rate of ten percent (10%) per annum since demanded on the  
14      DUE DATE;

15       15. The DEBT sued upon herein was incurred on or after January 1, 1987 and is  
16 subject to the provisions of the California Civil Code Section 1717.5 and that Plaintiff is entitled  
17 to be awarded attorney's fees pursuant to said section;

## **SECOND CAUSE OF ACTION**

(ACCOUNT STATED as to ALL DEFENDANTS)

20       16. Plaintiff repeats, re-alleges and incorporates herein by reference paragraphs 1  
21 through 15 as though fully set forth herein;

22       17. Within four years preceding the commencement of this action, an account was  
23 stated by and between Plaintiff and Defendants, wherein it was ascertained and agreed that said  
24 Defendants owed said DEBT to Plaintiff, together with interest thereon at the rate of ten percent  
25 (10%) per annum from the DUE DATE;

18. The DEBT sued upon herein was incurred on or after January 1, 1987 and is

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1 subject to the provisions of the California Civil Code Section 1717.5 and that Plaintiff is entitled  
2 to be awarded attorney's fees pursuant to said section;

### **THIRD CAUSE OF ACTION**

(REASONABLE VALUE as to ALL DEFENDANTS)

5 19. Plaintiff repeats, re-alleges and incorporates herein by reference paragraphs 1  
6 through 18 as though fully set forth herein;

7       20. Within two years preceding the commencement of this action Defendants became  
8 indebted to Plaintiff for the reasonable value of services rendered by Plaintiff to said Defendants,  
9 at said Defendants' request, the DEBT was and is the reasonable value of said services. No part  
10 of said DEBT has been paid although payment has been demanded, and said DEBT is now due,  
11 owing and unpaid together with interest at the rate of ten percent (10%) per annum since  
12 demanded on the DUE DATE;

13       21. The DEBT sued upon herein was incurred on or after January 1, 1987, and is  
14 subject to the provisions of the California Civil Code Section 1717.5 and that Plaintiff is entitled  
15 to be awarded attorney's fees pursuant to said section;

## **FOURTH CAUSE OF ACTION**

(MONEY LENT as to ALL DEFENDANTS)

18       22. Plaintiff repeats, re-alleges and reincorporates herein by reference paragraphs 1  
19 through 21 as though fully set forth herein;

20       23. On or about April 1, 2020, the Defendants became indebted to Plaintiff in the sum  
21 of \$9,018.56. Said amount represents the balance on their account at the time of default. In  
22 equity and good conscience, the Defendants owe the Plaintiff this sum of money. Attached  
23 hereto as Exhibit "1" and incorporated herein by reference is a copy of the Statement of Account;

24       24. Plaintiff has demanded that the Defendants pay Plaintiff the money they have  
25 received. The most recent demand was made on or about November 10, 2020. The Defendants  
26 have not made payment on any part of the money they were lent and there is now due and owing

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the sum of \$9,018.56, together with interest of 10%;

## **FIFTH CAUSE OF ACTION**

(BREACH OF WRITTEN CONTRACT as to NIP, INC., an Arizona Corporation dba NEW  
INNOVATIVE PRODUCTS)

25. Plaintiff repeats and re-alleges and reincorporates herein by reference paragraphs 1 through 24 as though fully set forth herein;

26. On or about September 20, 2019, Defendant, NIP, INC., an Arizona Corporation dba NEW INNOVATIVE PRODUCTS received a loan from Plaintiff, pursuant to the Loan and Security Agreement (“Agreement”) attached hereto and incorporated by reference herein as Exhibit “2”;

27. The terms of the agreement provided that, Plaintiff would loan Defendant \$15,000.00 ("the Principal Amount") in consideration for the Defendant's repayment of this principal plus interest in accordance with the Agreement;

28. Plaintiff performed all promises, covenants, and conditions under the Agreement and lent the monies to Defendants;

29. On or about April 1, 2020, the Defendant failed to fulfill its obligations under paragraph 6 of the Agreement, and thus has materially breached the contract between the parties;

30. As a direct and proximate cause of the Defendant's breach, the Plaintiff is entitled to the balance under the Agreement, which is, \$9,018.56;

31. The Agreement further provides for costs, interest and attorney's fees;

## SIXTH CAUSE OF ACTION

(BREACH OF WRITTEN GUARANTEE as to CHRISTOPHER MAY, an individual)

32. Plaintiff repeats and re-alleges and reincorporates herein by reference paragraphs 1 through 31 as though fully set forth herein;

33. On or about September 20, 2019, Defendant, CHRISTOPHER MAY, executed a Personal Guarantee in favor of Plaintiff, whereby, if NIP, INC., an Arizona Corporation dba

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1 NEW INNOVATIVE PRODUCTS defaulted upon the loan, he would be personally and  
2 unconditionally responsible to Plaintiff. Attached hereto as Exhibit "2" and incorporated herein  
3 by reference is a copy of the Personal Guarantee, ("Guarantee");

4       34. A material basis for the loan to NIP, INC., an Arizona Corporation dba NEW  
5 INNOVATIVE PRODUCTS was Defendant CHRISTOPHER MAY's personal guarantee.

6       35. Under the terms of the Guarantee, Plaintiff may pursue the Defendant at anytime;

7       36. The Guarantee has been breached, in that Defendant CHRISTOPHER MAY has  
8 failed to and continues to refuse to pay any amounts due to the Plaintiff;

9       37. Plaintiff performed all promises, covenants, and conditions under the agreement;

10       38. As a direct and proximate cause of the Defendant's breach, the Plaintiff is  
11 entitled to \$9,018.56, the amount due under the Agreement, plus interest, costs, and attorneys  
12 fees.

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1 WHEREFORE, as to the FIRST, SECOND, THIRD, and FOURTH CAUSES OF  
2 ACTION, Plaintiff prays judgment against Defendants as follows:

- 3 1. For the sum of \$9,018.56, together with interest thereon at the rate of ten percent  
4 (10%) the legal rate, from April 1, 2020;
- 5 2. For costs of suit incurred herein;
- 6 3. For attorney's fees pursuant to California Civil Code Section 1717.5 and pursuant  
7 to the Agreement(s);
- 8 4. For such other and further relief as the Court may deem just and proper.

9 WHEREFORE, as to the FIFTH CAUSE OF ACTION, Plaintiff prays for judgment  
10 against Defendant as follows:

- 11 1. For the sum of \$9,018.56, together with interest thereon at the rate of ten percent  
12 (10%) per annum from April 1, 2020;
- 13 2. For costs of suit incurred herein;
- 14 3. For attorney's fees pursuant to the agreement;
- 15 4. For such other and further relief as the Court may deem just and proper.

16 WHEREFORE, as to the SIXTH CAUSE OF ACTION, Plaintiff prays for judgment  
17 against Defendant as follows:

- 18 1. For the sum of \$9,018.56 together with interest thereon at the rate of ten percent  
19 (10%) per annum from April 1, 2020;
- 20 2. For costs of suit incurred herein;
- 21 3. For attorney's fees pursuant to the agreement;
- 22 4. For such other and further relief as the Court may deem just and proper.

23 DATED: ~~February 18, 2021~~  
24 *3/2/22*

25 COLLECTION AT LAW, INC.  
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26 By:  
27

*[Signature]*  
28 JON O. BLANDA  
Attorney for Plaintiff

COLLECTION AT LAW, INC.  
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# Exhibit “1”



21700 Oxnard Blvd. Suite 1400  
Woodland Hills, CA 91367

Any questions regarding your loan or to speak with one of our trained  
Funding Consultants please call 888-978-1753

## Account Statement

New Innovative Products  
2055 S Power Road  
SCOTTSDALE, AZ 85209

Statement Date: 11/2/2020  
Statement Period: November 2020  
Holdback %: 0

Date	Location ID	Transaction Desc.	Notes	Amount	Balance
9/21/2019		Balance forward		0.00	\$0.00
9/23/2019		Funding		15000.00	\$15,000.00
9/23/2019		Financing Cost and Processing Fee		3758.00	\$18,758.00
9/25/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$18,397.28
10/2/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$18,036.56
10/9/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$17,675.84
10/16/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$17,315.12
10/23/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$16,954.40
10/30/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$16,593.68
11/6/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$16,232.96
11/13/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$15,872.24
11/20/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$15,511.52
11/27/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$15,150.80
12/4/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$14,790.08

12/11/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$14,429.36
12/18/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$14,068.64
12/26/2019	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$13,707.92
1/2/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$13,347.20
1/8/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$12,986.48
1/15/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$12,625.76
1/22/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$12,265.04
1/29/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$11,904.32
2/5/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$11,543.60
2/12/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$11,182.88
2/19/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$10,822.16
2/26/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$10,461.44
3/4/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$10,100.72
3/11/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$9,740.00
3/18/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$9,379.28
3/25/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-360.72	\$9,018.56

6/2/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-72.14	\$8,946.42
6/3/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-72.14	\$8,874.28
6/4/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-72.14	\$8,802.14
6/5/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	ACH Payment		-72.14	\$8,730.00
6/5/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	Rejected Payment	R03	72.14	\$8,802.14
6/5/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	Rejected Payment	R03	72.14	\$8,874.28
6/8/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	Rejected Payment	R03	72.14	\$8,946.42
6/8/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	Rejected Payment	R03	72.14	\$9,018.56
9/8/2020	New Innovative Products-3370 N Hayden Road, Suite 123-117	Charge Off	09-08-2020- Charge-Off	-9018.56	\$0.00
Ending Balance					\$0.00

We appreciate your business! If you have any questions, please contact us toll-free at (888) 978-1753.  
 ForwardLine Financial, LLC \* 21700 Oxnard Blvd. Suite 1400 \* Woodland Hills, CA 91367

# Exhibit “2”



## LOAN AND SECURITY AGREEMENT, PAGE 1 of 8

LOAN AND SECURITY AGREEMENT

<b>Merchant:</b>	NIP, INC.
<b>Address:</b>	2055 S Power Road Mesa, AZ 85209
<b>Telephone:</b>	(480) 385-9922
<b>Faxsimile:</b>	
<b>Federal Tax ID (EIN):</b>	47-3996646
<b>Contract Date:</b>	09/20/2019
<b>Maturity Date:</b>	09/19/2020
<b>Principal Amount:</b>	\$15,000.00
<b>Includes Rollover Balance:</b>	\$0.00
<b>Total Repayment Amount:</b>	\$18,758.00
<b>Early Payoff Discount:</b>	Per section 5.4, up to 25% of remaining interest at time of early payoff request
<b>Weekly Repayment Amount:</b>	\$360.72
<b>Merchant Bank:</b>	Bank Of America
<b>Primary Business Checking Account Number:</b>	[REDACTED]
<b>Primary Business Checking Account Routing Number:</b>	[REDACTED]
<b>Average Monthly Gross Sales:</b>	\$14,414.92
<b>Average Monthly Payment Card Volume:</b>	\$10,000.00
<b>Weekly Repayment Day</b>	Wednesday

This Loan and Security Agreement is entered into on the above date between **ForwardLine Financial, LLC, a California limited liability company** ("Lender"), whose address is 21700 Oxnard Street, Suite 1450, Woodland Hills, California 91367 and the merchant named above ("Merchant"), whose chief executive office is located at the above address. Definitions of certain capitalized terms used in this Agreement have the meanings set forth in Section 7 of this Agreement and also as such meanings are set forth and identified above in the heading to this Agreement. Merchant agrees to be bound by all the terms and conditions of this Agreement when Merchant signs this Agreement. This Agreement shall not become effective until Lender accepts this Agreement in California.

**1. LOANS.** Lender will make a loan to Merchant (the "Loan") in the Principal Amount, provided no Event of Default has occurred and is continuing. Merchant shall repay the Loan to Lender by paying, in accordance with the terms and conditions of this Agreement, the Principal Amount plus an additional amount, which aggregate sum equals the Total Repayment Amount; provided, that after the occurrence of an Event of Default, Merchant shall also pay to Lender interest on any portion of the Total Repayment Amount

then outstanding at a per diem rate of up to 0.083%, as determined by Lender in its sole and absolute discretion. Notwithstanding the foregoing, in the event a condition to funding remains outstanding, Lender shall have the right, in its sole and absolute discretion, to make the Loan to Merchant in an amount less than the Principal Amount ("Partial Funding") with the remainder of the Principal Amount to be funded when Lender determines, in its sole and absolute discretion, that all conditions to funding have been met ("Final Funding"). If after Partial Funding, but prior to Final Funding, an Event of Default occurs, Merchant shall be deemed to be in material breach of this Agreement and Lender shall have no further obligation whatsoever to Merchant to provide Final Funding ("Partial Funding Event of Default"). In the event of a Partial Funding Event of Default, the Principal Amount shall be deemed to be the actual amount funded and the Total Repayment Amount shall be adjusted according to Lender's formula for calculating total repayment amounts to such amount as would have constituted the Total Repayment Amount pursuant to such formula had the amount actually funded been the original Principal Amount and all other terms and conditions of this Agreement, including, without limitation, all of Lender's rights and remedies under this Agreement, shall apply to such Loan.

**2. SECURITY INTEREST.** To secure the prompt payment and performance of the Obligations when due, Merchant hereby grants to Lender a security interest in all of Merchant's interest in the Collateral. Merchant hereby authorizes Lender or Lender's representatives to file one or more financing statements, lien entry forms, or other documents Lender or Lender's representative requires to perfect such security interest. Merchant hereby acknowledges and agrees that Lender may be using "doing business as" or "d/b/a" names or a third party representative in connection with various matters relating to the Loan, including, without limitation, the filing of any financing statement in connection with this Agreement. Lender shall have the right to pay a portion of the Principal Amount directly to a third party on behalf of Merchant in order to satisfy an existing debt of Merchant and secure the release of an existing security interest in the Collateral or Payment Card Receivables, provided Lender shall inform Merchant of such payoff.

**3. MERCHANT'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Merchant represents and warrants to Lender as follows, and Merchant covenants that the following representations will continue to be true, and that Merchant will at all times comply with all of the following covenants:

**3.1 Corporate Existence and Authority.** If a legal entity, Merchant is and will continue to be duly authorized, validly existing, and in good standing under the laws of the jurisdiction of its organization. Merchant is entering into this Loan strictly for commercial purposes and not for personal or household expenses. The execution, delivery, and performance by Merchant of this Agreement and all other documents contemplated by this Agreement have been duly and validly authorized under all applicable organizational documentation relating to Merchant, and do not violate any law or any provision of, and are not grounds for acceleration under, any agreement or instrument that is binding upon, or otherwise applicable to, Merchant.

**3.2 Name; Location.** The name of Merchant, the business address of Merchant, and the other information regarding



## LOAN AND SECURITY AGREEMENT, PAGE 2 of 8

Merchant, as set forth in this Agreement, are true and correct. Merchant shall give Lender fifteen (15) days' prior written notice before changing its name or its business address.

**3.3 Title to Collateral.** Except for any purchase money security interests in specific items of equipment, Lender has and will at all times continue to have a perfected security interest in all of the Collateral. Merchant will immediately advise Lender in writing of any material loss or damage to the Collateral. Merchant is now, and will at all times in the future be, the sole owner of all the Collateral.

**3.4 Financial Condition, Statements, and Reports.** All financial statements, applications, statements, reports, and other documents now or in the future delivered to Lender, or any third party in connection with this Loan, have and will completely and fairly reflect the financial condition of Merchant at the times and for the periods therein stated and will be truthful in all other respects. All information provided to Lender, or any third party in connection with this Loan, by Merchant regarding Merchant's Payment Card transaction history, historical Gross Sales Receipts, and the financial condition of Merchant in general is true and accurate. Merchant is now solvent and has no reason to believe it will not continue to be solvent for at least the next twelve (12) months from the Contract Date.

**3.5 Tax Returns and Payments.** Merchant has timely filed and will timely file all tax returns and reports required by applicable law, and Merchant has timely paid and will timely pay all applicable taxes, assessments, deposits, and contributions now or in the future owed by Merchant.

**3.6 Compliance with Law.** Merchant has complied and will comply with all provisions of all applicable laws and regulations and all applicable rules, regulations, orders, and agreements pertaining to the conduct of Merchant's business and promises to hold Lender harmless from any damages, liabilities, costs, expenses (including reasonable attorneys' fees), or other harm arising out of any violation thereof.

**3.7 Litigation.** There is no claim, suit, litigation, proceeding, or investigation pending or threatened against or affecting Merchant involving a dollar amount that is equal to or greater than fifty percent (50%) of the Principal Amount. Merchant will promptly inform Lender in writing of any such item in the future threatened or instituted by or against Merchant involving fifty percent (50%) of the Principal Amount or more.

**3.8 Payment Card Receivables.** Merchant's Payment Card accounts receivables, if any, (the "Payment Card Receivables") are and will continue to be *bona fide* Payment Card transactions with Merchant's customers arising out of the sale/rental of goods and/or the rendition of services in the ordinary course of Merchant's business. Merchant has now with respect to the Payment Card Receivables, if any, and will have when submitting Payment Card sales drafts to Merchant's credit card processor in the future, no knowledge or notice of any fact, circumstances, or defense that would indicate that the actual Payment Card transactions represented by such sales drafts are/were fraudulent or not authorized by the true cardholder or that would otherwise impair the validity or collectability of the true cardholder's obligation arising from such Payment Card transaction or relieve the true cardholder from liability with respect thereto. Merchant represents

and covenants that its business is and will continue to be of the same type and nature as represented to Lender in Merchant's loan application. Merchant is solvent and the Payment Card Receivables, if any, are owned by and owing to Merchant and are free and clear of all liens, security interests, and encumbrances except as permitted by Section 3.3 of this Agreement.

**3.9 Use of Proceeds.** The proceeds of the Loan shall be used exclusively for business purposes and shall not be used for personal, family, or household purposes. Merchant understands and agrees that Merchant's representation and promise not to use any proceeds of the Loan for personal, family, or household purposes means that certain important duties imposed upon entities making loans for consumer/personal purposes, and certain important rights conferred upon consumers pursuant to federal or state law will not apply to the Loan or the Agreement. Merchant also understands that Lender will be unable to confirm whether the use of the Loan conforms to this Section 3.9. Merchant agrees that a breach by Merchant of the provisions of this Section 3.9 will not affect Lender's right to (i) enforce Merchant's promise to pay for all amounts owed under this Agreement, regardless of the purpose for which the Loan was in fact obtained or (ii) use any remedy legally available to Lender, even if that remedy would not have been available had the Loan been made for consumer purposes.

### 4. MERCHANT'S ADDITIONAL DUTIES.

**4.1 Insurance.** Merchant shall at all times insure all of the tangible personal property Collateral and carry such other business insurance as is reasonable and/or customary. Merchant shall show proof of such insurance upon the request of Lender.

**4.2 Minimum Account Balance.** Merchant shall at all times maintain in the business checking account located at Merchant Bank having the Primary Business Checking Account Number and Primary Business Checking Account Routing Number (or such other bank account as Merchant may designate from time to time with Lender's prior written consent (the "Primary Business Checking Account")) the dollar amount that is necessary to ensure that Lender's debit of the Weekly Repayment Amount does not reject for insufficient funds or any other similar reason. If Lender's debit of the Primary Business Checking Account rejects for any reason other than Lender's error or omission, Merchant agrees to pay to Lender a fee of up to \$15 per such occurrence.

**4.3 Access to Collateral, Books, and Records; Information.** At reasonable times, Lender, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Merchant's books and records at Merchant's expense. Further, Merchant shall timely deliver to Lender such information and reports relating to Merchant's business and the Collateral, including, without limitation, Merchant's Primary Business Checking Account statements, any Payment Card statements, and any other reasonably related documentation as Lender may request from time to time in its sole discretion. Merchant also hereby authorizes Lender, or its agents, to contact, from time to time, any Payment Card processing or service company with which Merchant has contracted to inquire regarding Merchant's transaction history with such company. Merchant also hereby authorizes Lender, or its agents, to obtain, at any time and for any purpose, including, without limitation, marketing purposes, credit reports or investigative reports pertaining to Merchants and all Guarantors.



## LOAN AND SECURITY AGREEMENT, PAGE 3 of 8

**4.4 Negative Covenants.** Merchant shall not, without Lender's prior written consent, do any of the following: (i) enter into any transaction outside the ordinary course of business, including terminating operations or selling or assigning or borrowing against all or any part of the business or Collateral (except for the sale of finished inventory in the ordinary course of Merchant's business); (ii) switch or change the Primary Business Checking Account or open another checking account into which some or all of Merchant's Gross Sales Receipts, including, without limitation, Merchant's Payment Card Receivables are deposited; (iii) amend or terminate its authorization agreement with Lender for direct deposits and direct payments to and from the Primary Business Checking Account; (iv) permit any action or event to occur that would have an adverse or competitive effect on Merchant's Gross Sales Receipts; (v) sell, assign, or borrow against its Payment Card Receivables, if any, or its Gross Sales Receipts to or from any other Person; (vi) agree to do any of the foregoing.

**4.5 Indemnity.** Merchant hereby agrees to indemnify Lender and hold Lender harmless, as and when incurred, from and against any and all claims, debts, liabilities, demands, obligations, actions, causes of action, penalties, costs, and expenses (including reasonable attorneys' fees), of every nature, character, and description, that Lender may sustain or incur based upon or arising out of, in any manner whatsoever, this Agreement, any of the Obligations, or any other matter, fact, cause, or thing relating to or arising in connection with Merchant. Notwithstanding any provision in this Agreement to the contrary, the indemnity agreement set forth in this Section 4.5 shall survive any termination of this Agreement and shall for all purposes continue in full force and effect.

### 5. PAYMENT OF OBLIGATIONS.

**5.1 Repayment.** Merchant shall pay and perform in full all Obligations in favor of Lender, including, without limitation, the payment of the Total Repayment Amount and any and all interest thereon, as applicable, and such repayment shall be made weekly pursuant to the provisions set forth in Section 5.2 of this Agreement. Further, and notwithstanding the foregoing, on the Maturity Date or on any earlier effective date of termination of this Agreement, all Obligations under this Agreement shall be repaid in full. Notwithstanding any termination of this Agreement, all of Lender's security interests in all of the Collateral and all of the terms and provisions of this Agreement shall continue in full force and effect until all Obligations have been indefeasibly paid and performed in full. Merchant may prepay the Obligations at any time as long as such Obligations are prepaid in full in their entirety. Notwithstanding the foregoing, Merchant shall have a ninety (90) day grace period beyond the Maturity Date to pay and perform in full all Obligations without penalty, provided, however, that Merchant is not otherwise in default under this Agreement in Lender's sole and absolute discretion.

**5.2 ACH Debit.** All Weekly Repayment Amounts shall be due and payable by Merchant at Lender's principal place of business as designated in the first sentence of this Agreement or as hereinafter designated in writing by Lender. Merchant agrees that the Weekly Repayment Amount or other amount then due under this Agreement shall be paid weekly on the Weekly Repayment Day by an automatic bank account debit ("ACH") from the Primary Business Checking Account in the amount of the Weekly

Repayment Amount for credit to Lender's bank account in California. Merchant acknowledges and agrees that in the event that the Weekly Repayment Day is a holiday resulting in the closure of either Lender's bank account in California or Merchant Bank, then Lender shall debit such Weekly Repayment Amount on the next business day after the Weekly Repayment Day Merchant is concurrently providing Lender with a voided check drawn on the Primary Business Checking Account and this Agreement shall constitute Merchant's ACH payment instruction notice authorizing the weekly debits to the Primary Business Checking Account. Merchant warrants that the Primary Business Checking Account is a legitimate, open, and active account. Merchant agrees to maintain immediately available funds in the Primary Business Checking Account sufficient to pay each Weekly Repayment Amount on each Weekly Repayment Day until the Total Repayment Amount and all other Obligations are paid in full. Notwithstanding anything to the contrary contained in this Agreement, the obligation of Merchant to pay the Weekly Repayment Amount is absolute and unconditional, regardless of whether there are sufficient funds to pay the Weekly Repayment Amount in the Primary Business Checking Account and Lender shall have full recourse against Merchant (and/or the Guarantor(s)) to otherwise collect from Merchant and/or the Guarantor(s) the amounts due under this Agreement if there are insufficient funds in the Primary Business Checking Account. Notwithstanding any other provision of this Agreement, Lender agrees to attempt to contact Merchant by telephone or electronic mail in the event of three (3) consecutive days of returned payments prior to continuing to ACH debit the Primary Business Checking Account. If all or any Weekly Repayment Amounts are not paid when due, Lender is authorized in its sole discretion to debit the Primary Business Checking Account for a lesser or greater sum in Lender's sole and absolute discretion at any time. If Lender elects to debit for an amount that is less than the outstanding balance of the Total Repayment Amount then due, Lender may do so without waiver of any rights to collect the full amount due under this Agreement. Merchant hereby agrees to execute in a timely manner any and all documents, authorizations, forms, etc. that may be required by Lender or Merchant Bank in order to facilitate the provisions of this Agreement. This authorization shall remain in full force and effect until all Obligations under this Agreement have been paid in full, including, without limitation, the Total Repayment Amount and any and all interest thereon.

**5.3 Agreements Relating to Merchant Bank.** Merchant hereby irrevocably authorizes and instructs Merchant Bank to remit to Lender the cash amount equal to the Weekly Repayment Amount (as such amount may be adjusted in an Event of Default) until Merchant Bank receives written notice from Lender that Lender has received payment in full equal to the Obligations outstanding under this Agreement, provided that all Obligations are nevertheless required to be repaid in full on the Maturity Date. Merchant shall be solely responsible for all expenses of Merchant Bank in complying with any of Merchant's instructions and authorizations to Merchant Bank contained in this Agreement and in accommodating Merchant Bank in the performance of any of the Obligations. Merchant hereby agrees that Merchant Bank may follow the instructions of Lender consistent with this Agreement without any independent verification, instructions, or consents from Merchant. In no event shall Lender, its officers, directors, affiliates, employees, agents, or representatives be liable to Merchant for any losses, damages, claims, liabilities, and expenses



## LOAN AND SECURITY AGREEMENT, PAGE 4 of 8

(including reasonable attorneys' fees) suffered or incurred by Merchant, arising in connection with Merchant's banking agreement with Merchant Bank or any other agreement between Merchant and Merchant Bank. In no event will Lender be liable for any claims asserted by Merchant under any theory of law, including any tort or contract theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect, or consequential damages, each of which Merchant hereby expressly waives.

**5.4 Application of Payments; Prepayment.** Subject to applicable law, Lender reserves the right to allocate and apply payments on Merchant's Loan among principal, interest, and fees in any manner Lender chooses in Lender's sole and absolute discretion; it being understood and agreed that payments made in the earlier portion of the term of the Loan will generally be applied to fees and interest more than payments made during the later portion of the term of the Loan. Provided no Event of Default has occurred, up until the day that is the last business day occurring within the first seventy-five percent (75%) of total days in the Loan term, Merchant may request in writing from Lender an early payoff letter ("**Early Payoff Letter**"), which shall include a discount of up to 25% of the remaining interest on the Loan as determined by Lender in its sole and absolute discretion. Subject to the terms and conditions set forth in the Early Payoff Letter, Merchant may prepay Merchant's Loan. In the event that Merchant does not comply with the terms and conditions set forth in the Early Payoff Letter, any attempt or further request to prepay the Loan shall be treated as a new request and shall be subject to the terms and conditions of this Agreement, including, without limitation, the issuance of a new Early Payoff Letter by Lender.

**6. EVENTS OF DEFAULT AND REMEDIES.** The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement: (A) any representation, statement, report, or certificate given to Lender by Merchant or any of its officers, employees, or agents, now or in the future, whether or not contained in this Agreement, and whether or not given orally or in writing, is untrue or misleading; or (B) Merchant fails to pay when due any Loan or any interest thereon or any other monetary Obligation; or (C) Merchant fails to perform any other non-monetary Obligation after the date due therefor; or (D) dissolution, termination of existence, insolvency, or business failure of Merchant; or appointment of a receiver, trustee, or custodian, for all or any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding by or against Merchant under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, now or in the future in effect; or (E) a material change in the ownership of Merchant or the Collateral, without the prior written consent of Lender; or (F) a material adverse change in the business, operations, or financial or other condition of Merchant; or (G) an "Event of Default" occurs under any guarantee delivered in connection with this Agreement or otherwise relating to this Agreement; or (H) Payment Card Receivables, if any, or Gross Sales Receipts for any four week period during the term of this Agreement are less than eighty percent (80.0%) of the Average Monthly Payment Card Volume or Average Monthly Gross Sales Receipts, respectively (unless such Payment Card Receivables or Gross Sales Receipts are equal to or above eighty percent (80.0%) of Merchant's documented Payment

Card Receivables or Gross Sales Receipts for the same period during the immediately preceding year); or (I) Merchant shall default in the performance or observance of any term, covenant, condition, or promise as provided in any agreement with Merchant Bank; or (J) Merchant shall default in the performance or observance of any term, covenant, condition, or promise as provided in this Agreement, including, without limitation any of the negative covenants set forth in Section 4.4 of this Agreement, or (K) Lender, for any reason, in good faith, determines itself insecure with respect to the prospect of repayment or performance of any of the Obligations, including, without limitation, if Merchant has less than sixty (60) days remaining in the term of Merchant's premise lease. If an Event of Default occurs, Lender shall have the right to accelerate and declare all of the Obligations to be immediately due and payable, and exercise all rights and remedies accorded it by applicable law and as otherwise are set forth in this Agreement. If an Event of Default occurs, then without limitation of the rights and remedies afforded Lender under this Agreement and under applicable law, Merchant hereby irrevocably authorizes and directs Lender, without any further Merchant verification, to pay to Lender one hundred percent (100%) of the remaining Total Repayment Amount and any other Obligations owing under this Agreement from the Primary Business Checking Account.

**7. DEFINITIONS.** As used in this Agreement, the following terms have the following meanings: (A) "**Collateral**" means and consists of all of Merchant's right, title, and interest in and to all of Merchant's personal property, now owned, or hereafter acquired, including, without limitation, the following: accounts, chattel paper, electronic chattel paper, equipment, inventory, goods, deposit accounts, documents, investment property, general intangibles (as such terms are defined in the UCC in effect in California), all books, records, files, and electronic data relating thereto, and all proceeds of the foregoing; (B) "**Event of Default**" means any of the events set forth in Section 6 of this Agreement; (C) "**Gross Sales Receipts**" means the total receipts received by Merchant arising out of the sale/rental of goods and/or the rendition of services in the ordinary course of Merchant's business, regardless of payment form of such receipts; (D) "**Merchant Bank**" means the depository financial institution identified in the heading to this Agreement or, in the event Merchant designates, with Lender's prior written consent, another checking account as the Primary Business Checking Account, the depository financial institution at which such Primary Business Checking Account is located; (E) "**Obligations**" means all present and future loans, advances, debts, liabilities, obligations, guaranties, covenants, duties, and indebtedness at any time owing by Merchant to Lender or any of its affiliates, whether evidenced by this Agreement or any note or other instrument or document, absolute or contingent, due or to become due, including, without limitation, all interest, charges, expenses, fees, attorney's fees, and any and all other sums chargeable to Merchant under this Agreement or otherwise, and shall include, without limitation, the obligation by Merchant to pay the Total Repayment Amount; (F) "**Payment Card**" means a credit card or debit card bearing the service mark of VISA or MasterCard, or, if applicable, Discover, or, if applicable, American Express, as well as, if applicable, any bank debit card; and (G) "**Person**" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, government, or any agency or political division thereof, or any other entity.



## LOAN AND SECURITY AGREEMENT, PAGE 5 of 8

**8. SOLICITATIONS, PUBLICITY, AND COMMUNICATION POLICY.** Merchant agrees that it has an established business relationship with Lender and that Merchant and its representatives may be contacted from time to time regarding this transaction or other services of Lender and its affiliates and contractors. Merchant further agrees that such contacts are not considered unsolicited or inconvenient and may be made using any contact information provided by Merchant or its representatives, including, but not limited to, cellular phone numbers, facsimile numbers, and email addresses. Merchant and each Guarantor authorize Lender to use its, his, or her name, city, and state in a listing of Lender's clients and in Lender's advertising and marketing materials. To ensure proper service, Lender may choose to monitor and/or record telephone calls between Lender and its customers or other third parties. Merchant agrees that any call between Lender and Merchant (or its representative) may be monitored and/or recorded for this purpose.

**9. USURY SAVINGS CLAUSE.** It is the intention of the parties to this Agreement to comply strictly with applicable usury laws and, accordingly, in no event and upon no contingency shall Lender ever be entitled to receive, collect, or apply as interest any interest, fees, charges, or other payments equivalent to interest, in excess of the maximum rate of interest that Lender may lawfully charge under applicable law (the "Maximum Rate"). In the event that Lender ever receives, collects, or applies as interest any such excess, such amount, which, but for this provision, would be excessive interest, shall be applied to the reduction of the principal balance owed under this Agreement; and if said principal balance, and all lawful interest thereon, is paid in full, any remaining excess shall forthwith be paid to Merchant or other party lawfully entitled thereto. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the Maximum Rate the parties shall, to the maximum extent permitted under applicable law, characterize any non-principal as a reasonable loan charge, rather than as interest. Any provision of this Agreement, or any other agreement between the parties that operates to bind, obligate, or compel Merchant to pay interest in excess of such Maximum Rate shall be construed to require payment of the Maximum Rate only. The provisions of this Section 9 shall be given precedence over any other provision contained in this Agreement or in any other agreement between the parties that is in conflict with the provisions of this Section 9.

**10. GENERAL PROVISIONS.** Merchant agrees, at its expense, on request by Lender, to execute all documents and take all actions as Lender may deem reasonably necessary or useful in order to perfect and maintain Lender's perfected security interest in the Collateral and in order to fully consummate the transactions contemplated by this Agreement. If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall still continue in full force and effect; provided, however, that to the full extent that the provisions of any such applicable law can be waived, they are hereby waived to the end that this Agreement will be deemed to be a valid and binding agreement enforceable in accordance with its terms. This Agreement and any other written agreements, documents, and instruments executed in connection with this Agreement are the complete agreement between Merchant and Lender and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and

integrated in this Agreement. There are no oral understandings, representations, or agreements between the parties that are not in this Agreement or in other written agreements signed by the parties in connection with this Agreement. The failure of Lender at any time to require Merchant to comply strictly with any of the provisions of this Agreement shall not waive Lender's right later to demand and receive strict compliance. Any waiver of an Event of Default shall not waive any other Event of Default. None of the provisions of this Agreement may be waived except by a specific written waiver signed by an officer of Lender and delivered to Merchant. The provisions of this Agreement may not be amended, except in a writing signed by Merchant and Lender. **Merchant shall reimburse Lender for all reasonable attorneys' fees (in the event lender utilizes a third party law firm specializing in debt collection in connection with the enforcement of this Agreement, such reasonable attorneys' fees shall constitute twenty-five percent (25%) of the Obligations then outstanding) and all other reasonable costs incurred by Lender arising from or in any way related to the enforcement of this Agreement or any term of this Agreement (whether or not a lawsuit is filed) and including, without limitation, any collection and/or post-judgment costs.** Merchant may not assign any rights under this Agreement without Lender's prior written consent. Paragraph headings are only used in this Agreement for convenience. Merchant and Lender acknowledge that the headings may not describe completely the subject matter of the applicable paragraph, and the headings shall not be used in any manner to construe, limit, define, or interpret any term or provision of this Agreement. Time is of the essence in the performance by Merchant of each and every obligation under this Agreement. Neither Lender, nor any of its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Lender shall be liable for any claims, demands, losses, or damages, of any kind whatsoever, made, claimed, incurred, or suffered by Merchant or any other party through the ordinary negligence of Lender, or any of its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Lender, but nothing in this Agreement shall relieve Lender from liability for its own gross negligence or willful misconduct. Lender reserves the right to syndicate all or a portion of the Obligations or sell, assign, transfer, negotiate, or grant participations in all or any part of, or any interest in Lender's rights and benefits under this Agreement. In connection with any such syndication, assignment, or participation, Lender may disclose all documents and information that Lender now or hereafter may have relating to Merchant or Merchant's business. Further, to the extent that Lender assigns its rights and obligations under this Agreement to a third Person, Lender thereafter shall be released from any and all such assigned rights and obligations to Merchant. Merchant shall not make, publish, or otherwise disseminate in any manner a copy of this Agreement or any public statement or description of the terms of this Agreement, except to its employees, advisors, and similar persons who have a legitimate need to know its contents. A fully executed facsimile or electronically signed copy of this Agreement shall be deemed an original and Lender and Merchant shall each be entitled to rely on the authenticity of the facsimile or electronically signed copy as though it were an original; in addition, this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



## LOAN AND SECURITY AGREEMENT, PAGE 6 of 8

**11. MANDATORY ARBITRATION.** TO THE EXTENT THAT A CLAIM OR DISPUTE IS BASED UPON, ARISES OUT OF, OR IN ANY WAY RELATES TO THIS AGREEMENT, ANY PRIOR OR FUTURE AGREEMENTS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE TRANSACTIONS, AND/OR ANY AND ALL OBLIGATIONS AND DUTIES THAT MAY EXIST NOW OR IN THE FUTURE BETWEEN LENDER AND MERCHANT BY VIRTUE OF THEIR BUSINESS DEALINGS, INCLUDING PRIOR OR FUTURE BUSINESS DEALINGS, OR ANY CONDUCT, ACTS, OR OMISSIONS OF LENDER OR MERCHANT OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR MERCHANT, IN ALL OF THE FOREGOING CASES, WHETHER BASED IN CONTRACT OR TORT OR OTHERWISE, THE PARTIES HEREBY AGREE THAT THE CLAIM OR DISPUTE SHALL BE RESOLVED BY MANDATORY BINDING ARBITRATION IN LOS ANGELES COUNTY, CALIFORNIA WITHIN A REASONABLE PERIOD NOT TO EXCEED ONE HUNDRED TWENTY (120) DAYS. THE PARTIES AGREE THAT THE ARBITRATION SHALL BE ADMINISTERED BY JAMS AND THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE EXPEDITED PROCEDURES OF THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES EXCEPT AS OTHERWISE AGREED IN THIS AGREEMENT. THE ARBITRATOR SHALL BE CHOSEN IN ACCORDANCE WITH THE PROCEDURES OF JAMS, AND SHALL BASE THE AWARD ON APPLICABLE CALIFORNIA LAW. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION, SUBJECT TO SECTION 12 BELOW. THE PARTIES FURTHER AGREE THAT THE COSTS OF THE ARBITRATION SHALL BE DIVIDED EQUALLY BETWEEN THEM. EACH PARTY MAY PURSUE ARBITRATION SOLELY IN AN INDIVIDUAL CAPACITY, AND NOT AS A REPRESENTATIVE OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S OR ENTITY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THIS ARBITRATION SECTION IS GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1-16.

**12. CALIFORNIA CHOICE-OF-LAW AND EXCLUSIVE FORUM SELECTION.** THIS AGREEMENT, ANY PRIOR OR FUTURE AGREEMENTS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE TRANSACTIONS, AND/OR ANY AND ALL OBLIGATIONS AND DUTIES THAT MAY EXIST NOW OR IN THE FUTURE BETWEEN LENDER AND MERCHANT BY VIRTUE OF THEIR BUSINESS DEALINGS, INCLUDING PRIOR OR FUTURE BUSINESS DEALINGS, OR ANY CONDUCT, ACTS, OR OMISSIONS OF LENDER OR MERCHANT OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR MERCHANT, IN ALL OF THE FOREGOING CASES, WHETHER BASED IN CONTRACT OR TORT OR OTHERWISE ARE GOVERNED EXCLUSIVELY BY THE LAWS OF THE STATE OF CALIFORNIA. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE LENDER AND MERCHANT AGREE THAT THE LAWS OF CALIFORNIA SHALL GOVERN THE ENTIRE RELATIONSHIP BETWEEN LENDER AND MERCHANT, INCLUDING, WITHOUT LIMITATION, ALL ISSUES, CLAIMS, AND CONTROVERSIES ARISING OUT OF, RELATING TO, IN CONNECTION WITH, OR INCIDENT TO THIS AGREEMENT, ANY PRIOR OR FUTURE AGREEMENTS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE TRANSACTIONS, AND/OR THE PARTIES' BUSINESS DEALINGS, INCLUDING PRIOR

OR FUTURE BUSINESS DEALINGS, OR ANY CONDUCT, ACTS, OR OMISSIONS OF LENDER OR MERCHANT OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR MERCHANT, IN ALL OF THE FOREGOING CASES, WHETHER BASED IN CONTRACT OR TORT OR OTHERWISE. VENUE AND JURISDICTION OVER ANY ACTION ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, ANY PRIOR OR FUTURE AGREEMENTS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE TRANSACTIONS, AND/OR THE PARTIES' BUSINESS DEALINGS, INCLUDING PRIOR OR FUTURE BUSINESS DEALINGS, OR ANY CONDUCT, ACTS, OR OMISSIONS OF LENDER OR MERCHANT OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR MERCHANT, IN ALL OF THE FOREGOING CASES, WHETHER BASED IN CONTRACT OR TORT OR OTHERWISE, SHALL LIE EXCLUSIVELY IN ARBITRATION PROCEEDINGS LOCATED IN THE COUNTY OF LOS ANGELES IN THE STATE OF CALIFORNIA. MERCHANT CONSENTS TO THE JURISDICTION OF ANY SUCH PROCEEDINGS AND CONSENTS TO THE SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING BY PERSONAL DELIVERY OR ANY OTHER METHOD PERMITTED BY LAW. MERCHANT WAIVES ANY AND ALL RIGHTS MERCHANT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY SUCH ACTION OR PROCEEDING. MERCHANT WAIVES ALL RIGHTS TO CONTEND THAT THE FORUM IS INCONVENIENT TO MERCHANT AND MERCHANT WAIVES ALL RIGHTS OF REMOVAL TO ANY OTHER LOCATION. MERCHANT AND LENDER FURTHER EXPRESSLY AGREE THAT THE SCOPE AND INTERPRETATION OF THIS CHOICE-OF-LAW AND EXCLUSIVE FORUM SELECTION PROVISION SHOULD BE GOVERNED BY CALIFORNIA LAW, AND THAT THE PARTIES' INTENT IN ENTERING INTO THIS PROVISION IS TO HAVE IT INTERPRETED AND APPLIED AS BROADLY AS PERMISSIBLE UNDER ANY APPLICABLE LAW.

**13. ACKNOWLEDGEMENT OF CALIFORNIA'S CONTACTS WITH AGREEMENT.** BOTH MERCHANT AND LENDER ACKNOWLEDGE CALIFORNIA'S SUBSTANTIAL CONNECTION TO THIS AGREEMENT AND THE PARTIES' RELATIONSHIP. THIS AGREEMENT SHALL HAVE NO FORCE AND EFFECT UNLESS AND UNTIL ACCEPTED BY AN OFFICER OF LENDER AT ITS PRINCIPAL OFFICES IN LOS ANGELES COUNTY, CALIFORNIA. MERCHANT UNDERSTANDS AND AGREES THAT (I) LENDER IS LOCATED IN CALIFORNIA, (II) LENDER MAKES ALL CREDIT DECISIONS FROM LENDER'S OFFICE IN CALIFORNIA, (III) THE LOAN IS MADE IN CALIFORNIA (THAT IS, NO BINDING CONTRACT WILL BE FORMED UNTIL LENDER RECEIVES AND ACCEPTS MERCHANT'S SIGNED AGREEMENT IN CALIFORNIA), AND (IV) MERCHANT'S PAYMENTS UNDER THIS AGREEMENT ARE NOT ACCEPTED UNTIL RECEIVED BY LENDER IN CALIFORNIA.

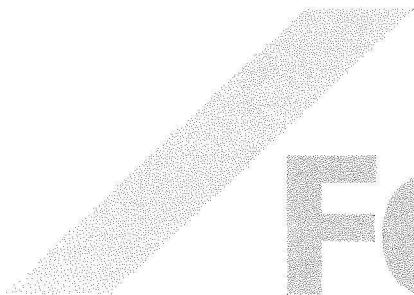
**14. MERCHANT'S ACKNOWLEDGEMENT THAT LENDER IS A CALIFORNIA LICENSED LENDER NOT SUBJECT TO USURY LAWS IN THE STATE OF CALIFORNIA.** MERCHANT UNDERSTANDS, AGREES, AND EXPRESSLY ACKNOWLEDGES THAT LENDER IS A CALIFORNIA LICENSED LENDER PURSUANT TO CALIFORNIA FINANCE CODE SECTION 22002, WHICH EXEMPTS LENDER FROM CALIFORNIA'S LAW RELATING TO USURY. MERCHANT EXPRESSLY WAIVES THE RIGHT TO CHALLENGE ANY ASPECT OF THIS AGREEMENT, ANY PRIOR OR FUTURE AGREEMENTS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE



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TRANSACTIONS, AND/OR THE PARTIES' BUSINESS DEALINGS,  
INCLUDING PRIOR OR FUTURE BUSINESS DEALINGS, OR ANY  
CONDUCT, ACTS, OR OMISSIONS OF LENDER OR MERCHANT OR  
ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS,  
ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER  
AS USURIOUS AND/OR AN UNFAIR BUSINESS PRACTICE UNDER  
THE LAWS OF CALIFORNIA OR ANY OTHER STATE.

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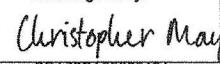
**ForwardLine**

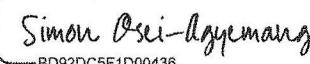
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## LOAN AND SECURITY AGREEMENT, PAGE 8 of 8

In witness whereof, the parties have executed this Agreement by their authorized officers as of the contract date first written above.

<b>Merchant:</b>	NIP, INC.			
Company	Federal Tax ID:	Guarantor Name	Title	Signature
NIP, INC.	47-3996646	Christopher May	Owner	<p>DocuSigned by:    <small>CBA72CA08395424...</small></p>

<b>Lender:</b>	ForwardLine Financial, LLC	<b>Telephone:</b>	866-623-4900	<b>Fax:</b>	888-236-2549
<b>ForwardLine Representative</b>	<b>Title</b>		<b>Signature</b>		
Simon Osei-Agyemang	Risk & Underwriting		<p>DocuSigned by:    <small>BD92DC5F1D00436...</small></p>		

# ForwardLine



**PERSONAL GUARANTEE, PAGE 1 of 2**

For good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned (each a "Guarantor"), hereby jointly and severally (if there be more than one Guarantor) unconditionally guarantee the full and prompt payment by Merchant to Lender, its successors and assigns, of all sums due or becoming due under the Loan and Security Agreement, as amended from time to time (the "LSA"), and the full performance of all other Obligations of Merchant under the LSA. This Personal Guarantee ("PG") is absolute, complete, and continuing, and acceptance and notice of acceptance hereof by Lender are unnecessary and are hereby expressly waived by Guarantor. Guarantor hereby waives all rights of revocation and of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to Guarantor or other surety by reason of California Civil Code Sections 2787 to 2855, inclusive. This PG shall continue in full force until the payment and performance in full by Merchant of all Obligations under the LSA, including any extensions or renewals thereof. This obligation and liability on the part of each Guarantor shall be a primary and not a secondary obligation and liability, due immediately upon demand without recourse first having been had by Lender against Merchant. The Guarantors hereby authorize Lender and/or Merchant, without notice to or consent by Guarantors, from time to time, to (i) compromise with, or release any Guarantor under this PG; (ii) waive any rights of Lender under the LSA; and (iii) make demand for payment on, or bring suit against, Merchant or any one or more of the Guarantors, jointly or severally, all without hereby impairing the rights of Lender in any respect to demand, sue, and collect all unpaid amounts from the Guarantors. Guarantor hereby authorizes Lender, or its agents, to obtain, at any time and for any reason, credit reports or investigative reports pertaining to Guarantor. **Whether or not suit is instituted, Guarantor agrees to reimburse Lender on demand for all reasonable attorneys' fees (in the event Lender utilizes a third party law firm specializing in debt collection in connection with the enforcement of this PG, such reasonable attorney's fees shall constitute twenty-five percent (25%) of the Obligations then outstanding under the LSA) and all other reasonable costs and expenses incurred by Lender (including post-judgment costs) in enforcing this PG, or arising out of or relating in any way to this PG, or in enforcing and/or collecting any of Merchant's indebtedness under the LSA.** If any provision of this PG or the application thereof to any party or circumstance is held invalid, void, inoperative, or unenforceable, the remainder of this PG and the application of such provision to other parties or circumstances shall not be affected thereby, the provisions of this PG being severable in any such instance. This PG is the entire and only agreement between Guarantor and Lender with respect to the PG of Merchant's Obligations to Lender. Guarantor acknowledges that Guarantor has had the opportunity to consult with an attorney with respect to all terms and conditions set forth in this PG. **THIS PG, ANY PRIOR OR FUTURE PGS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE TRANSACTIONS, AND/OR ANY AND ALL OBLIGATIONS AND DUTIES THAT MAY EXIST BETWEEN LENDER AND GUARANTOR BY VIRTUE OF THEIR BUSINESS DEALINGS, INCLUDING PRIOR OR FUTURE BUSINESS DEALINGS, OR ANY CONDUCT, ACTS, OR OMISSIONS OF LENDER OR GUARANTOR OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR GUARANTOR, IN ALL OF THE FOREGOING CASES, WHETHER BASED IN CONTRACT OR TORT OR OTHERWISE, ARE GOVERNED EXCLUSIVELY BY THE LAWS OF THE STATE OF CALIFORNIA. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE LENDER AND GUARANTOR AGREE THAT THE LAWS OF CALIFORNIA SHALL GOVERN THE ENTIRE RELATIONSHIP BETWEEN LENDER AND GUARANTOR, INCLUDING, WITHOUT LIMITATION, ALL ISSUES, CLAIMS, AND CONTROVERSYES ARISING OUT OF, RELATING TO, IN CONNECTION WITH, OR INCIDENT TO THIS PG, ANY PRIOR OR FUTURE PGS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE TRANSACTIONS, AND/OR THE PARTIES' BUSINESS DEALINGS, INCLUDING PRIOR OR FUTURE BUSINESS DEALINGS, OR ANY CONDUCT, ACTS, OR OMISSIONS OF LENDER OR GUARANTOR OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR GUARANTOR, IN ALL OF THE FOREGOING CASES, WHETHER BASED IN CONTRACT OR TORT OR OTHERWISE. TO THE EXTENT THAT A CLAIM OR DISPUTE IS BASED UPON, ARISES OUT OF, OR IN ANY WAY RELATED TO, THIS PG, ANY PRIOR OR FUTURE PGS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE TRANSACTIONS,**



## PERSONAL GUARANTEE, PAGE 2 of 2

AND/OR THE PARTIES' BUSINESS DEALINGS, INCLUDING PRIOR OR FUTURE BUSINESS DEALINGS, OR ANY CONDUCT, ACTS, OR OMISSIONS OF LENDER OR GUARANTOR OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR GUARANTOR, IN ALL OF THE FOREGOING CASES, WHETHER BASED IN CONTRACT OR TORT OR OTHERWISE, THE PARTIES HEREBY AGREE THAT THE CLAIM OR DISPUTE SHALL BE RESOLVED BY MANDATORY BINDING ARBITRATION IN LOS ANGELES COUNTY, CALIFORNIA WITHIN A REASONABLE PERIOD NOT TO EXCEED ONE HUNDRED TWENTY (120) DAYS. THE PARTIES AGREE THAT THE ARBITRATION SHALL BE ADMINISTERED BY JAMS AND THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE EXPEDITED PROCEDURES OF THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES EXCEPT AS OTHERWISE AGREED IN THIS PG. THE ARBITRATOR SHALL BE CHOSEN IN ACCORDANCE WITH THE PROCEDURES OF JAMS, AND SHALL BASE THE AWARD ON APPLICABLE CALIFORNIA LAW. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION, SUBJECT TO THE PROVISION BELOW. THE PARTIES FURTHER AGREE THAT THE COSTS OF THE ARBITRATION SHALL BE DIVIDED EQUALLY BETWEEN THEM. EACH PARTY MAY PURSUE ARBITRATION SOLELY IN AN INDIVIDUAL CAPACITY, AND NOT AS A REPRESENTATIVE OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S OR ENTITY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THIS ARBITRATION PROVISION IS GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1-16. VENUE AND JURISDICTION OVER ANY ACTION ARISING OUT OF OR IN ANY WAY RELATING TO THIS PG, ANY PRIOR OR FUTURE PGS, THE UNDERLYING TRANSACTION, ANY PRIOR OR FUTURE TRANSACTIONS, AND/OR THE PARTIES' BUSINESS DEALINGS, INCLUDING PRIOR OR FUTURE BUSINESS DEALINGS, OR ANY CONDUCT, ACT, OR OMISSIONS OF LENDER OR GUARANTOR OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR GUARANTOR, IN ALL OF THE FOREGOING CASES, WHETHER BASED IN CONTRACT OR TORT OR OTHERWISE, SHALL LIE EXCLUSIVELY IN ARBITRATION PROCEEDINGS LOCATED IN THE COUNTY OF LOS ANGELES IN THE STATE OF CALIFORNIA. GUARANTOR CONSENTS TO THE JURISDICTION OF ANY SUCH PROCEEDINGS AND CONSENTS TO THE SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING BY PERSONAL DELIVERY OR ANY OTHER METHOD PERMITTED BY LAW. GUARANTOR WAIVES ANY AND ALL RIGHTS GUARANTOR MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY SUCH ACTION OR PROCEEDING. GUARANTOR WAIVES ALL RIGHTS TO CONTEND THAT THE FORUM IS INCONVENIENT TO GUARANTOR AND WAIVES ALL RIGHTS OF REMOVAL TO ANY OTHER LOCATION. GUARANTOR AND LENDER FURTHER EXPRESSLY AGREE THAT THE SCOPE AND INTERPRETATION OF THIS CHOICE-OF-LAW AND EXCLUSIVE FORUM SELECTION PROVISION SHOULD BE GOVERNED BY CALIFORNIA LAW, AND THAT THE PARTIES' INTENT IN ENTERING INTO THIS PROVISION IS TO HAVE IT INTERPRETED AND APPLIED AS BROADLY AS PERMISSIBLE UNDER ANY APPLICABLE LAW. A fully executed facsimile or electronically signed copy of this PG shall be deemed an original and the parties shall each be entitled to rely on the authenticity of the facsimile or electronically signed copy as though it were an original.

Guarantor Name	Signature
Christopher May	<p>DocuSigned by:</p> <div style="border: 1px solid black; padding: 2px; display: inline-block;"> </div> <p>Christopher May CBA72CA06395424...</p>



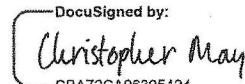
## LOAN REPRESENTATIONS

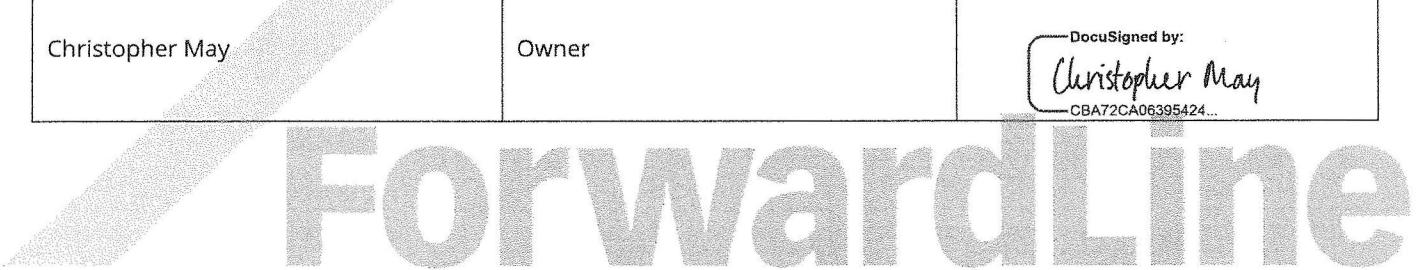
Date: September 20, 2019

Re: NIP, INC.

In connection with the Loan and Security Agreement of even date herewith, I/we hereby make the following representations to the best of our knowledge.

- (1) NIP, INC. is not past due on any bills or other obligations to third parties, except any past due amounts about which we have accurately informed ForwardLine in writing.
- (2) NIP, INC. is not past due on any tax obligations.
- (3) I/we have no plans or intentions to close the business of NIP, INC. or file for bankruptcy protection and we do not have any reason to believe that the closure of the business of NIP, INC. or the filing of bankruptcy protection is likely to occur during the next twelve (12) months.
- (4) The proceeds of the Loan shall at all times be used exclusively for business purposes and shall not at any time be used for personal, family, or household purposes.

Guarantor Name	Title	Signature
Christopher May	Owner	<p>DocuSigned by:  CBA72CA06395424...</p>



**ForwardLine**