

SETTLEMENT AGREEMENT and RELEASE

Effective Date: [REDACTED]

This Settlement Agreement and Release (this "**Settlement Agreement**") dated as of the Effective Date, is entered into by and among [REDACTED] ("**Secured Party**"), an entity duly organized and existing under the laws of the State of New York, with an address at [REDACTED], United States, and Merchant and Guarantor (as such terms are defined below).

As used herein, the following terms shall have the following meanings:

"**Merchant**" shall mean [REDACTED] an entity duly organized and existing under the laws of the [REDACTED] with an address at [REDACTED]

"**Guarantor**" shall mean [REDACTED] an individual domiciled in the [REDACTED] with an address at [REDACTED]

"**Secured Agreement**" shall mean that certain future receivables sale and purchase agreement between Secured Party and Merchant, dated as of [REDACTED] whereby Secured Party purchased from Merchant \$139,200.00 of Merchant's future accounts-receivable for the purchase price of \$96,000.00;

WHEREAS, as contemplated and permitted by the Secured Agreement, Secured Party filed a UCC-1 financing statement in accordance with Article 9 of the Uniform Commercial Code, whereby Secured Party obtained a perfected security interest in the assets of Merchant;

WHEREAS, Guarantor is the owner, principal, shareholder, member, officer and/or manager of Merchant and has executed a personal guaranty of performance, personally guaranteeing performance of Merchant's obligations to Secured Party under the Secured Agreement;

WHEREAS, Guarantor has executed an Affidavit of Confession of Judgment (the "**Affidavit**"), confessing judgment personally, and on behalf of Merchant, in the event of default under the Secured Agreement, and has delivered said Affidavit into Secured Party's possession;

WHEREAS, Merchant has failed to perform its obligations under the Secured Agreement and accordingly has defaulted thereunder;

WHEREAS, [REDACTED] has been retained by Secured Party to resolve the outstanding liability owed to Secured Party by Merchant and Guarantor;

WHEREAS, Secured Party has commenced an action in the Supreme Court of the State of New York, in and for the County of BROOME, captioned [REDACTED] wherein Secured Party entered judgment against Merchant and Guarantor, jointly and severally, in the amount of \$85,540.72 on [REDACTED] (the "**Judgment**");

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WHEREAS in accordance with C.P.L.R. 5222 and/or Art. 9 of the Uniform Commercial Code (UCC), [REDACTED] restrained Merchant's, and/or Guarantor's bank, processing and/or other account(s) at, etc., where funds are/were restrained (collectively, the "Frozen Funds");

WHEREAS in the interest of avoiding the risk of further litigation and expense to the parties, the parties wish to settle, compromise, and amicably resolve all claims against each other which they now have, had, or may have.

NOW THEREFORE, it is hereby agreed, by and between Merchant and Guarantor (individually and collectively, jointly and severally, "Debtor") and Secured Party that Secured Party's claims against Debtor are settled upon the following terms and conditions:

1. Payment. In consideration of Secured Party staying further legal and/or enforcement action, as well as the release of the balance of the Frozen Funds, Debtor agrees to pay to Secured Party, and Secured Party agrees to accept Forty Thousand Dollars and 00/100 (\$40,000.00), exclusive of any and all applicable poundage fee(s) due to a marshal or sheriff herein involved in the enforcement of the Judgment, if any (the "Settlement Sum"), as settlement in full of all of the Secured Party's claims against Merchant and Guarantor, payable as follows:

a. On or before [REDACTED], Debtor shall pay to [REDACTED] in trust for Secured Party, One Thousand Dollars Eight Hundred Fifty Dollars and 00/100 (\$1,850.00), the "Deposit") via wire, electronic transfer, or direct deposit to the bank account of [REDACTED] with simultaneous email confirmation to [REDACTED]

[REDACTED]

b. Commencing on [REDACTED] and on the immediately following consecutive business days until the Settlement Sum is remitted in full, Merchant and/or Guarantor shall pay to Secured Party, and/or its agent(s) [REDACTED] the amount of \$1,850.00 per month (each, an "Installment Payment"), payable on or before the Twenty-Sixth (26th) day of each calendar month, via wire, electronic transfer, or direct deposit to the bank account of [REDACTED] with simultaneous email confirmation to [REDACTED]

2. Terms and Conditions.

a. Merchant and Guarantor each acknowledges that **TIME IS OF THE ESSENCE** with respect to Debtor's obligations to comply with all of the terms and conditions of this Settlement Agreement including without limitation timely remittance of the Release Amount, the Deposit and/or the Installment Payments, as required herein.

b. Merchant and Guarantor each acknowledge that Secured Party has already proceeded with enforcement action for default under the Secured Agreement and acknowledge that an account(s) may be placed on hold pursuant to legal action taken prior to the Effective Date hereof. In that instance(s), any funds captured after the date of this Agreement shall be released by Debtor to Secured Party and shall be applied to the Settlement Sum herein.

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c. To the extent that Merchant and Guarantor timely remit receivables as provided for in this Settlement Agreement, and are not in breach thereof, Secured Party shall not take any further legal action to enforce its rights as a secured creditor under the Secured Agreement, or enforce the Judgment, except as provided for in Section 3 hereof.

d. Upon Debtor's full and timely compliance with its obligations to remit the Settlement Sum, as provided for herein, Secured Party shall promptly file a Satisfaction of Judgment with the New York State Supreme Court, BROOME County, and shall release any and all liens or UCC security interest(s).

e. If for any reason (within or outside Debtor's reasonable control) the full Settlement Sum is not paid in full and/or timely, or if Debtor defaults in performance of any of the terms of this Settlement Agreement, then Secured Party shall be under no obligation to accept the Settlement Sum in full satisfaction of the Judgment and the unpaid balance of the Judgment becomes outstanding and immediately due to Secured Party.

f. Secured Party shall be under no obligation to invoice or bill Debtor for the amounts due under this Settlement Agreement or to provide Debtor with any form of accounting concerning satisfaction of the Judgment.

g. The parties agree that the amount of the Settlement Sum to which they have agreed in Section 1 above, is not, nor shall it be construed as, a penalty imposed upon Debtor.

3. Default.

a. If Debtor shall fail to timely and in full make any and all payments that are required under Section 1 of this Settlement Agreement and/or if any wires, ACH payments, or other payments due to Secured Party hereunder are reversed, fail to clear, are dishonored by a bank or financial institution, or are otherwise not timely remitted to Secured Party as provided for herein, then each Merchant and Guarantor shall be deemed to have defaulted under the terms of this Settlement Agreement. In the event of such default, Secured Party shall have the following rights:

i. Continue enforcing the Judgment as against Merchant and/or Guarantor, jointly and severally;

ii. Bring any and all additional claims Secured Party may have against Merchant and/or Guarantor, without any prejudice to any other rights, claims or defenses that Secured Party may have against Merchant and/or Guarantor.

4. Merchant and Guarantor's Representations and Warranties. Merchant and Guarantor each hereby warrants and represents that:

a. Merchant and Guarantor each expressly consents, acquiesces and acknowledges to legality of the Secured Agreement, and the Judgment, and hereby expressly waives any and all claims, defenses, counterclaims, appeals, and rights to resist any and all actions and/or enforcement measures taken or to be taken by Secured Party and/or its attorneys, agents, or assigns;

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b. As of the date hereof and throughout the term of this Settlement Agreement, neither Merchant nor Guarantor anticipate filing for protection under the United States Bankruptcy Code or under any similar bankruptcy or insolvency statute of the United States or any State, or any assignment for the benefit of creditors; and

c. As of the date hereof and throughout the term of this Settlement Agreement, Merchant and Guarantor each have and will have, the financial means and ability to perform their obligations set forth in Section 1 of this Settlement Agreement;

d. Merchant and/or Guarantor each acknowledges that Secured Party is placing significant reliance on the foregoing representations and warranties, and furthermore, Secured Party would not enter into this Settlement Agreement but for its reliance on the accuracy of the foregoing representations and warranties made by Merchant and Guarantor.

5. Release.

a. Release of Secured Party. For good and valuable consideration, Merchant and Guarantor, its/their successors, assigns, officers, directors, stockholders, members, trustees, affiliates (including, but not limited to, parent, subsidiary and affiliated corporations and business entities), agents, servants and employees shall and hereby do fully and forever release and discharge Secured Party, its successors, assigns, officers, directors, stockholders, members, trustees, affiliates (including, but not limited to, a parent, subsidiary and affiliated business entities), agents, servants, attorneys and employees from all claims, liabilities, debts, demands, causes of action, costs, expenses, attorneys fees, damages and obligations of every kind and nature, in law, in equity, or otherwise, whether now known or unknown, accrued or not accrued, asserted or unasserted, disclosed or undisclosed, that Merchant and/or Guarantor now has or ever had, from the beginning of time to the Effective Date of this Settlement Agreement, against Secured Party, arising out of or in any way related to the Secured Agreement, or the Judgment.

b. Release of Merchant and Guarantor. Subject to the terms hereof, and upon timely remittance of the full Settlement Sum as provided for herein, Secured Party, its/their successors, assigns, officers, directors, stockholders, members, trustees, affiliates (including, but not limited to, parent, subsidiary and affiliated corporations and business entities), agents, servants and employees shall and hereby do fully and forever release and discharge Merchant and Guarantor, its/their successors, assigns, officers, directors, stockholders, members, trustees, affiliates (including, but not limited to, a parent, subsidiary and affiliated business entities), agents, servants, attorneys and employees from all claims, liabilities, debts, demands, causes of action, costs, expenses, attorneys fees, damages and obligations of every kind and nature, in law, in equity, or otherwise, whether now known or unknown, accrued or not accrued, asserted or unasserted, disclosed or undisclosed, that Secured Party now has or ever had, from the beginning of time to the Effective Date of this Settlement Agreement, against Merchant and/or Guarantor, arising out of or in any way related to the Secured Agreement, or the Judgment.

c. No Disparagement or Misappropriation. At no time (i.e., indefinitely) following the Effective Date of this Settlement Agreement shall Debtor, either individually or through any third party (i) make any statements, or take any other actions whatsoever, to disparage, defame,

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sully or compromise the goodwill, name, brand or reputation of Secured Party or any of its affiliates and agents, including [REDACTED] (collectively, the "Goodwill") or (ii) commit any other action that could likely injure, hinder or interfere with the business relationships or Goodwill of Secured Party or its affiliates and/or agents.

d. The provisions of this Section 5 shall survive the expiration of this Settlement Agreement, shall not be effected by, and shall remain intact irrespective of whether or not the Debtor shall have complied with, or shall have failed to comply with, its obligations set forth in this Settlement Agreement.

6. Mutual Representations and Warranties. Secured Party, Merchant and Guarantor each represents and warrants: (1) in entering into this Settlement Agreement each party has been represented by counsel of its own choosing, and if not represented by counsel, has chosen not to be represented by counsel; (2) it has read this Settlement Agreement or had it read to it at length by its counsel, if any; (3) it understands and fully agrees to each, all, and every provision of this Settlement Agreement; (4) there are no understandings outside of this Settlement Agreement; (5) all prior negotiations, discussions, proposals, understandings, or further discussions among counsels that lead to this Settlement Agreement are merged and integrated herein and superseded hereby; (6) in construing and interpreting this Settlement Agreement it shall be deemed to have been drafted jointly by all the parties and the rule that ambiguity shall be construed against the drafter shall be inapplicable; (7) as of the date of its execution of this Settlement Agreement, such party is not aware of any other claim, cause of action, or facts that might give rise to any claims or causes of action, whether related or unrelated to the issues in the Settlement Agreement, that any party to this Settlement Agreement could assert against the other, save for as already disclosed by Merchant and/or Guarantor to Secured Party; (8) there has been no assignment, transfer, pledge, mortgage, lien, or other encumbrance of any kind made or placed on any of the claims or causes of action described in this Settlement Agreement; (9) there are no covenants, representations, or understandings with respect to this Settlement Agreement other than those expressly set forth herein; (10) No officer, representative or any other person purporting to act on behalf of the party shall have the authority to subsequently change or alter this Settlement Agreement, except through a written modification to it, properly executed by all parties; (11) any party hereto may waive any of its rights or benefits hereunder, but shall not be deemed to have done so absent a writing signed by it expressing a clear intent to waive such a right or benefit; and (12) the person acting on behalf of the party to this Settlement Agreement, if such party is a corporation or other business entity has the complete and full authority/authorization to execute this Settlement Agreement on behalf of the respective entity.

7. Term of this Settlement Agreement. The term of this Settlement Agreement shall commence on the Effective Date hereof and shall expire on the date when the Settlement Sum is paid to Secured Party in full. The representations and warranties contained herein shall survive the expiration or early termination of this Settlement Agreement and shall be enforceable in any Court located in the State of New York.

8. Choice of Law and Venue. This Settlement Agreement is entered into in the State of New York and shall be construed and interpreted in accordance with the laws of the State of New York without regard to any conflict of law principles. Any disputes or litigation arising under or out of this Settlement Agreement shall be brought in the Supreme Court of the State of New York or a Federal District Court located in the State in New York.

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9. Successors and Assigns. Secured Party shall have the right to assign its rights under this Secured Agreement to a third party. Merchant and/or Guarantor shall have no right to assign their obligations under this Agreement to any third party and any purported assignment shall be deemed null and void *ab initio*. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, estates, and permitted assigns.

10. Severability. The provisions of this Settlement Agreement are severable and the invalidity or unenforceability of any provision of this Settlement Agreement shall not affect the validity or enforceability of any other provision. In the event that any provision of this Settlement Agreement (or portion thereof) is determined by a court of competent jurisdiction to be unenforceable, void, voidable or unenforceable, as drafted by virtue of the scope, duration, extent, or character of any obligation contained therein, the parties acknowledge that such provisions (or portion thereof) shall not affect any other term or provision of this Settlement Agreement.

11. Additional Documents/Further Assurances. The parties agree to cooperate fully in the execution and delivery of any additional documents and to take all additional further actions that may be necessary, appropriate or desirable to fully carry out the provisions, and intent of this Settlement Agreement.

12. Amendments. This Settlement Agreement may not be modified, supplemented or amended except by writing that is executed by all of the parties to this Settlement Agreement.

13. Execution. This Settlement Agreement may be executed in multiple counterparts, and each of such counterparts so executed shall be deemed an original. All such counterparts together shall be deemed to constitute one final Settlement Agreement as if signed by all parties hereto. A telecopy or facsimile or electronic transmission of a signed counterpart of this Settlement Agreement shall be sufficient to bind the parties whose signatures appear thereon.

14. Confidentiality. This Settlement Agreement, its terms and information contained herein is confidential. The parties therefore agree not to disclose the terms contained herein to any third party unless required to do so under applicable law and/or in the event of a default hereunder by Merchant and/or Guarantor.

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IN WITNESS WHEREOF the parties have executed this Settlement Agreement as of the Effective Date set forth above.

AGREED AND ACCEPTED:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]