

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

SALON SUPPLY STORE, LLC,

Debtor.

CASE NO.: 17-24768-EPK

Chapter 11

**EMERGENCY MOTION FOR ORDER  
AUTHORIZING USE OF CASH COLLATERAL**

**EMERGENCY HEARING REQUESTED**

Debtor seeks immediate authority for the relief requested herein as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Debtor-in-possession, Salon Supply Store, LLC (“Debtor” or “Salon Supply”), through counsel and pursuant to Sections 361, 362 and 363, Rules 2002, 4001, 6003 and 9014, and Local Rules 4001-2 and 9013-1,<sup>1</sup> files this emergency motion (“Motion”) seeking entry of interim and final orders: (a) authorizing use of cash collateral, as defined in Section 363(a) (“Cash Collateral”); while granting adequate protection, and other related relief. In support, Debtor states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of this case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Sections 361, 362 and 363, Rules 2002, 4001, 6003 and 9014, and Local Rules 4001-2 and 9013-1.

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<sup>1</sup> All references to “Chapter” and “Section” refer to the Bankruptcy Code appearing in Title 11 of the United States Code; all references to a “Rule” refer to the Federal Rules of Bankruptcy Procedure; and all references to a “Local Rule” refer to the Local Rules of the U.S. Bankruptcy Court for the Southern District of Florida.

## PRELIMINARY STATEMENT

2. Salon Supply and its sister-company, FUNKYTOWNMALL.COM, INC., (“FTM”), are wholly-owned subsidiaries of THINK TRADING, INC. (“Think Trading,” and together with FTM and Salon Supply, the “Debtors”), all of which filed voluntary petitions under Chapter 11 on December 12, 2017. *See* Case Nos. 17-24767-EPK through 17-24769-EPK. Substantially all of Salon Supply’s assets are subject to perfected security interests held by two creditors: (A) JP Morgan Chase Bank, NA (“Chase”), in connection with an SBA Business Line of Credit of \$100,000.00, obtained on or about February 3, 2014 (the “SBA Loan”); and (B) Celtic Bank, d/b/a “Kabbage” (“Kabbage”), in connection with a business loan in the amount of \$75,000.00, obtained on or about August 9, 2017 (the “Kabbage Loan”). Chase’s security interest was perfected pursuant to a UCC-1 recorded on February 7, 2014, while Kabbage’s security interest was perfected pursuant to a UCC-1 recorded on August 15, 2017. Salon Supply therefore seeks an order authorizing the use of cash collateral and granting related relief.<sup>2</sup>

## BACKGROUND AND BUSINESS OPERATIONS

### A. Debtors’ Business Operations and Cash Collateral.

3. The Debtors operate a retail internet sales business. Their product lines primarily consist of nail salon supplies, tattoo ink and supplies, and body jewelry. Debtors sell such products through online “marketplaces” (*i.e.*, Amazon.com, etc.), and through their own internet websites. Think Trading owns and operates both FTM and Salon Supply. Think Trading is 100% owned and operated by Gus and Mariela Mitchell, who are longtime residents of Palm Beach County.

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<sup>2</sup> The assets of Debtor’s sister-affiliate, FTM, are also subject to perfected security interests and FTM is seeking similar relief to that requested herein. Accordingly, the “Background and Business Operations” section hereof is substantially the same as the one set forth in the FTM cash collateral motion. [Case No. 17-24768; ECF 9]. Moreover, as Think Trading manages FTM and Salon Supply (as well as another non-debtor entity), and pays substantially all operational costs/expenses on behalf of such entities (*i.e.*, payroll, rent, utilities, insurance, etc.), the FTM and Salon Supply budgets each provide for payment to Think Trading to cover their respective portion of such necessary operational costs, but they may not accurately reflect the Debtors’ consolidated net income.

4. The Mitchells successfully operated the businesses for several years, operating out of a 10,000 square-foot facility in Palm Beach Gardens, Florida. Flushed with success, in May of 2014, they decided to expand operations and moved into to a newly-built 61,000-square foot warehouse facility at 350 Hiatt Drive, Palm Beach Gardens, Florida (the “Warehouse”). In relocating to the larger facility, they also expanded their product lines significantly, purchasing a large amount of new inventory (and infrastructure to house same).

5. Unfortunately, the expansion was too much, too soon. The Debtors were unable to sell much of their new inventory, and having invested heavily in the expansion, their cash-flow was insufficient to meet the increased operating expenses. They attempted to scale back their operations and staff, with mixed success. The Debtors reduced their workforce from seventy (70) down to its present number of only seventeen (17) employees, while Mr. and Mrs. Mitchell reduced and/or stopped taking salaries.

6. Additionally, in early 2017, Think Trading was able to negotiate concessions with its landlord, reducing the Warehouse space from 61,000 to 41,000 square feet, and eventually down to 10,000 square feet. Think Trading is current on its lease and maintains a good working relationship with its landlord. However, the Debtors have been unable to sell a large portion of their “expansion” inventory, even after substantially reducing the retail cost to consumers. As such, a considerable amount of that inventory now sits gathering dust.

7. Despite their best efforts, the Debtors were eventually forced to rely on outside credit facilities to meet operational shortfalls. As several of these loans were obtained from lending institutions affiliated with the online marketplaces where they conduct business (i.e., Amazon Lending), income was automatically “debited” from the Debtors’ “vendor accounts” before the money ever reached their bank accounts. Thus, while the Debtors were able to restructure and stabilize operations, repayment of such credit (plus interest at rates between 29.9% to 36% per

annum) reduced their cashflow to a minimum, which prevented them from purchasing new inventory of their successful product lines, which further reduced cashflow, which led to further financial distress.

8. Until just recently, FTM and the other Debtors were able to remain current on their financial obligations, and it is believed they still maintain good relationships with most of their major creditors. Accordingly, the primary focus of these bankruptcy proceedings is utilizing the automatic stay to regain control of income being withheld by vendors to pay loans from their affiliated entities, while working with secured creditors to ensure the orderly liquidation of “non-performing” inventory, and utilizing a post-petition line of credit from Mr. and Mrs. Mitchell to purchase new inventory of “performing” product lines to increase cash-flow moving forward.

9. Given the informal reorganization efforts leading up to the commencement of these proceedings and the planned infusion of additional working capital by Mr. and Mrs. Mitchell in the coming months, Salon Supply believes the relief requested in this Motion is reasonable and appropriate to ensure a successful reorganization and the highest distribution possible for creditors.

**B. The Bankruptcy Cases, Prepetition Collateral and Proposed Adequate Protection.**

10. On December 12, 2017 (the “Petition Date”), Salon Supply and the other Debtors filed voluntary petitions under Chapter 11. Salon Supply is operating as a debtor-in-possession pursuant to Sections 1107 and 1108. No trustee or examiner has been appointed in this case, and no committees have been appointed or designated.

11. Prepetition, on or about February 3, 2014, Salon Supply obtained the SBA Loan from Chase, evidenced by a Promissory Note (“Chase Note”) and secured by substantially all its inventory and assets (the “Prepetition Collateral”). On February 7, 2014, Chase recorded a UCC1 financing statement perfecting its security interest in the Prepetition Collateral. As of the Petition Date, it is estimated that \$89,193.47 is still owed to Chase on account of the SBA Loan. A copy

of the Chase Note and financing statement are attached as **Composite Exhibit A**.

12. On or about August 9, 2017, pursuant to a Business Loan Agreement, Kabbage provided a loan that was also secured by the Prepetition Collateral. On August 15, 2017, Kabbage recorded a UCC1 financing statement perfecting its security interest in the Prepetition Collateral. As of the Petition Date, it is estimated that \$66,250.00 is still owed on account of the Kabbage Loan. A copy of the Kabbage Loan Agreement and financing statement are attached hereto as **Composite Exhibit B**.

13. Although there has been no formal appraisal of the fair market value of the Secured Collateral, it is believed the value of same is less than the remaining balance due on account of the Chase Loan and the Kabbage Loan.

#### **RELIEF REQUESTED**

14. In the normal course of business, the Debtor uses cash on hand and cash flow from the sale of inventory to fund working capital and for general operating purposes. Such cash is necessary for, among other things, to continue business operations, to maintain business relationships with vendors, suppliers and customers, and to satisfy other working capital needs – all of which are necessary to preserve and maintain going-concern value of the Debtor and the Prepetition Collateral, and, ultimately, to effectuate a successful reorganization.

15. It is anticipated that, in the coming months, the Debtors will seek authorization to obtain post-petition financing from Mr. and Mrs. Mitchell. At present, however, the Debtor has no alternative borrowing source from which it can secure funding, and the failure to obtain authorization to use cash collateral would be fatal to the Debtor and disastrous to its creditors, both unsecured and secured. Accordingly, by this Motion, the Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit C** (the “Cash Collateral Order”) authorizing the use of Cash Collateral, granting adequate protection to Chase with respect to, *inter alia*, use of

such Cash Collateral and any potential diminution in the value, and granting related relief.

16. Pursuant to the proposed Cash Collateral Order, to adequately protect Chase (and/or any other putative secured creditors) in connection with the use of any possible Prepetition Collateral, FTM proposes to grant, assign and pledge a post-petition security interest and lien (only to the same validity, extent, and priority of such pre-petition security interests, if any exist) in the secured Prepetition Collateral in and to (a) all proceeds from the disposition of any of the cash collateral, and (b) any and all of its goods, property, assets and interests in property in which Chase (and/or any other putative secured creditors) held a valid lien or security interest prior to the Petition Date. The replacement lien shall not apply to any funds recovered by the Estate pursuant to avoidance actions arising under Sections 542 through 550 of the Bankruptcy Code.

17. Attached as **Exhibit D** is a projected monthly budget (the “Budget”), based on the Debtor’s pre-petition monthly operating budget providing for receipt of income generated from ongoing operations, and represents realistic operational expenses, as well as necessary management, legal and accounting services, subject to no more than a 20% deviation.<sup>3</sup> The Budget provides for the use of such operating funds to make all necessary payments of rent, taxes, insurance, utilities, management and accounting fees in connection with business operations (the “Necessary Expenses”). The Budget also provides for payment of any fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930 (collectively, the “UST Carve Out”), as well as professional fees and administrative expenses (the “Professional Carve-Out”), including legal fees and costs of undersigned counsel, which will remain subject to Sections 330 and 331.

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<sup>3</sup> The Salon Supply Budget admittedly projects a net loss moving forward. However, it is for this very reason that Salon Supply anticipates seeking authority to liquidate its remaining inventory pursuant to a Section 363 sale, after which it is anticipated that Salon Supply will cease doing business and substantively consolidate its assets and liabilities with the other Debtors pursuant to a plan of reorganization. However, to the extent there are minimal sales of Salon Supply’s inventory during the course of these bankruptcy proceedings, such income is needed to facilitate ongoing operations.

### **BASIS FOR RELIEF**

18. Section 363(e) requires that a debtor adequately protect a secured creditor's interest in property to be used by a debtor against any diminution in value of such interest resulting from the debtor's use of the property during the chapter 11 cases. By adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Hubbard Power & Light*, 202 B.R. 680 (Bankr. E.D.N.Y. 1996). What constitutes sufficient adequate protection is decided on a case-by-case basis. *See In re Martin*, 761 F.2d 472 (8th Cir. 1985). Adequate protection can thus come in various forms.

19. In this case, to the extent the Debtor may use Cash Collateral of Chase, it is submitted that Chase will be adequately protected from any such use and diminution in value by avoiding the likely adverse impact to the Prepetition Collateral that would occur if the Debtor was forced to liquidate its assets wholesale. The proposed use of Cash Collateral would prejudice no parties; rather, it would affirmatively and directly benefit the Debtor's estate and creditors by enhancing the prospects of a successful outcome for this case, as opposed to a haphazard liquidation of assets in a Chapter 7. *In re Holley Garden Apartments, Ltd.*, 238 B.R. 488, 495 (Bankr. M.D.Fla. 1999) (finding that "reorganization plan is usually preferable to a liquidation"). Moreover, Chase has not yet objected to the proposed use of Cash Collateral. *See In re Oxford Royal Mushroom Prods., Inc.*, 19 B.R. 974 (Bankr. E.D. Pa. 1982) (despite Section 363(e), unless creditor formally objects, it impliedly consents to debtor's use of cash collateral).

20. By this Motion, the Debtor is only currently seeking authority to use Cash Collateral to the extent necessary, subject to the Budget, to fund ongoing operations and this bankruptcy case while the Debtor attempts to negotiate and finalize additional funding sources and prepare a definitive plan of reorganization. The Debtor does not have any other currently-available

sources of funds other than Cash Collateral, and any interruption in operations could have a devastating impact upon the value of the Prepetition Collateral, among other things. Moreover, the uncertainty concerning the Debtor's financial condition could also greatly reduce its' ability to procure goods and services from essential vendors and suppliers.

21. For the reasons set forth above, the proposed use of Cash Collateral is fair, reasonable and sufficient to satisfy the requirements of Sections 363(c) and (e). Accordingly, the requested relief is in the best interests of the Debtor, the estate and its creditors and should therefore be granted.

#### **LOCAL RULE 4001-2**

22. This Motion complies with Local Rule 4001-2 and the proposed use of Cash Collateral does not involve any of the prohibited provisions set forth in ¶¶II(B)(2) - (8) of the local "Guidelines for Motions Seeking Authority to Use Cash Collateral and Motion Seeking Approval of Postpetition Financing."

#### **CONCLUSION**

WHEREFORE, Debtor, Salon Supply Store, LLC, through undersigned counsel, hereby seeks the entry of an Order authorizing use of Cash Collateral in accordance with the proposed form of Order attached hereto as **Exhibit C** and consistent with the Budget attached hereto as **Exhibit D**, and for any other further relief this Court deems Court deems just and proper.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

Dated: December 12, 2017.

Respectfully submitted:

LUBLINER KISH, PLLC

/s/ Matthew S. Kish  
Matthew S. Kish, Esq.  
Fla. Bar No. 491640



1645 Palm Beach Lakes Blvd., Suite 1200  
West Palm Beach, FL 33401  
Phone: 561-207-2018  
Fax: 561-207-2001  
Email: [matt@lubliner-law.com](mailto:matt@lubliner-law.com)  
*Attorneys for Debtor*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this December 12, 2017, a true copy of the foregoing has been furnished by regular mail or electronically where available to all appearances, interested parties and to the 20 largest creditors on the attached service list.

s/ Matthew S. Kish  
Matthew S. Kish

SERVICE LIST:

- Office of the US Trustee: [USTPRegion21.MM.ECF@usdoj.gov](mailto:USTPRegion21.MM.ECF@usdoj.gov)

Via U.S. Mail: Mailing Matrix attached following exhibit(s)

## PROMISSORY NOTE

**Borrower:**

**Salon Supply Store, LLC**  
**3710 Buckeye St Ste 120**  
**Palm Beach Gardens, FL 33410-429**  
**Reference Number: 05FL1879520-1**

**Lender:**

**JPMorgan Chase Bank, NA**  
**RM - Broward LPO**  
**350 E Las Olas Blvd, Flr 12**  
**Fort Lauderdale, FL 33301**

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Principal Amount: \$100,000.00

Date of Note: 02/03/2014

**PROMISE TO PAY:** Salon Supply Store, LLC ("Borrower") promises to pay to JPMorgan Chase Bank, NA, its successors and assigns ("Lender") or order, in lawful money of the United States of America, the total principal amount of \$100,000.00 or so much as may be outstanding, together with interest on the unpaid outstanding principal balance from the date advanced until paid in full at the rate or rates referenced in this Note.

**LOAN TYPE.** This Note evidences a SBA Business Line of Credit.

**PAYMENT TERMS.** Borrower will pay this loan in accordance with the following payment schedule(s):

Accrued interest or \$100.00, whichever is greater, but not to exceed the then outstanding balance of this Note, shall be payable monthly, beginning on March 15, 2014, and on the same calendar day monthly thereafter until the Final Availability Date. As of the Final Availability Date (as defined in the Additional Terms), no further advances under this line of credit will be available. Thereafter, 47 consecutive monthly payments shall be due on the same calendar day as payments were due prior to the Final Availability Date, with each payment equal to the greater amount of (1) \$250.00, or (2) the aggregate sum of (a) accrued interest, plus (b) 1/84th of the unpaid principal balance immediately following the Final Availability Date. A final payment shall be due and payable on the same calendar day in the 48th month following the Final Availability Date in the amount of the outstanding principal balance of this Note, plus all accrued but unpaid interest and any other unpaid amounts due under this Note.

Payments and any other credits shall be allocated among principal, interest, late charges, collection costs, fees and other charges at the discretion of Lender, unless otherwise required by applicable law. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding.

**INTEREST RATE.**

The unpaid principal balance of this Note shall accrue interest at a variable rate equal to the sum of the Prime Rate in effect from time to time plus 2.800 percentage point(s), except as otherwise provided herein. "Prime Rate" means a fluctuating interest rate announced by Lender as its prime rate (which rate may not be the lowest, best or most favorable rate of interest which Lender may charge on loans to its customers). Each change in the interest rate to be charged on the Note will become effective on the same day as the Prime Rate changes. The interest rate change will not occur more often than once each Business Day.

**PREPAYMENT PREMIUM.** Borrower may pay without fee all or any portion of the loan evidenced by this Note at any time. All prepayments shall be applied in such order and manner as Lender may from time to time determine in its sole discretion.

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged a late charge of 5.00% of the payment due or \$25.00, whichever is greater, up to the maximum amount of \$250.00 per late charge.

**DEFAULT RATE.** Upon the occurrence of any Event of Default, including, but not limited to, (i) any material adverse change in the business assets, affairs, prospects or financial condition of Borrower or any Guarantor,

**PROMISSORY NOTE**

(ii) failing to provide financial statements, copies of Federal tax returns and other information relating to the financial condition, properties and affairs of any Obligor, as provided for in the Note and/or any Related Document or as Lender requests from time to time, or (iii) failure to pay upon final maturity, at Lender's option and if permitted by applicable law, Lender may (A) add any unpaid accrued interest to principal and such sum will bear interest there from until paid at the rate provided in this Note, including any increased rate, and/or (B) increase the interest rate on this Note by 3.000 percentage points (the "Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change, if any, that would have applied had there been no Event of Default.

**ANNUAL FEE.** A non-refundable annual fee of \$150.00, or such other amount as advised by Lender, may be charged to your line of credit for each year that advances are available under this Note or for each year there remains a principal amount outstanding on this Note. No refund of any part of the annual fee will be made in the event of cancellation of the line of credit for any reason. The annual fee for the first year will be \$0.00. If the annual fee has been waived by Lender based on any promotional offer made in connection with Borrower's Chase business checking account, the annual fee may be reinstated by Lender if such account is closed for any reason whatsoever.

**FEE(S):** In addition to all other obligations under this Note, Borrower shall pay the following fees together with all other fees described in this Note:

Vendor Fee	Paid At Closing	\$15.00
Recording Fee	Paid At Closing	\$35.00
SBA Packaging Fee	Waived	\$0.00
Small Business Administration(SBA) Fee	Paid At Closing	\$0.00
SBA Tax Transcript	Paid At Closing	\$5.49
Documentary Stamp Fee	Paid At Closing	\$350.00
	<b>Total:</b>	<b>TBD</b>

**SECURITY AGREEMENT.** Borrower hereby grants, pledges and assigns to Lender, as security for repayment of the Indebtedness, a security interest in the following property, together with any substitutions and replacements therefor, and all products and proceeds thereof:

all business assets, inventory, equipment, accounts, general intangibles, chattel paper, documents, instruments, and letter of credit rights

Such property, together with any property described in any Related Document, is referred to in this Note as the "Collateral".

**CREDIT HOLDS.** Notwithstanding anything to the contrary in this Note, Lender may apply all payments and credits in accordance with the standard operating procedures of Lender and with the requirements of applicable law. For billing and interest accrual purposes, credit for the payment is given on the Business Day the payment is processed and posted to the account. Nevertheless, after processing Lender may elect to verify the receipt of good funds or otherwise elect to place a "credit hold" on such payments before releasing any payment amount as available credit for additional advances on the line of credit.

Lender makes the following line of credit payments available for readvance the next Business Day after processing: (a) electronic payments, (b) payments made on Chase.com, and (c) payments made at any branch office of Lender if made (i) by check drawn upon a deposit account with Lender or (ii) in cash. Lender currently

## PROMISSORY NOTE

places a credit hold on most other payments for a period of seven days commencing on the Business Day the payment is processed; provided that when the day following the seventh day of the credit hold period is not a Business Day, then the payment amount will not be available for additional advances until the next Business Day.

Lender may change its credit hold policy from time to time and will advise Borrower, including by inclusion of a message on the billing statement for this Note. To preclude an overdraft during the credit hold period Borrower must remember the portion of each payment intended to reduce the principal balance may not be immediately available for additional advances on the line of credit. The balance available for advances can be verified by contacting the Lender on-line, by telephone or in person at a branch location.

### REDUCTIONS IN CREDIT AVAILABLE; FUTURE MODIFICATIONS; AND AMENDMENTS TO THIS NOTE

**Reductions in Credit Available.** As described further in the Additional Terms of this Note, Lender may reduce the maximum amount of principal available under the revolving line of credit evidenced by this Note, at any time prior to the Final Availability Date, for any reason, and at the sole option and discretion of Lender, to the amount set forth in a Line Reduction Date notice (which amount will not be less than the principal balance outstanding on this Note as of the close of business on the Line Reduction Date). Such reduction in the maximum amount of principal available shall become effective as of close of business on the Line Reduction Date. Notwithstanding any such reduction, all other provisions of this Note shall remain in full force and effect, including the payment terms as set forth in this Note, and including Lender's right to elect to make future further reductions in the available credit.

**Future Modifications.** Lender shall have the right, from time to time, to renew, modify and/or extend this Note in its sole discretion (each a "Future Modification"), including, without limitation, the right to (a) increase the principal amount of this Note, (b) extend the Maturity Date, (c) reduce the interest rate temporarily and then increase the rate to no more than the amount provided for herein, (d) permanently reduce the interest rate, (e) modify the periodic payment terms, and/or (f) change fees and time frames for imposition of fees. Lender will inform Borrower of any such Future Modification by written notice, which may take the form of inclusion of such Future Modification in the periodic loan account statement sent to the Borrower. Any use of the principal amount or any other feature of this Note after such notice shall constitute Borrower's acceptance of such Future Modification.

**Amendments to this Note.** Lender reserves the right to amend or modify the provisions of this Note at any time by mailing or delivering a copy of such amendment or modification to the Borrower. Such amendment or modification shall be binding on the Borrower thirty days after it is mailed or delivered.


**ADDITIONAL LOAN TERMS.** Certain definitions and other additional terms and conditions of the Note, are attached to this Note and are incorporated herein by reference (the "Additional Terms"). This Note represents the final agreement between Lender and Borrower and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreement of the parties. There are no unwritten agreements between Lender and Borrower or Guarantors. Borrower agrees to be bound by all terms of this Note, including but not limited to the jury waiver provisions (where not prohibited by applicable law). Borrower agrees that Lender may record or file this Note if Lender deems it necessary to protect its interest. Borrower acknowledges receipt of the important Additional Terms which are part of this Note and the Security Agreement included in this Note. **BORROWER AGREES THIS SECURITY AGREEMENT SECURES ALL INDEBTEDNESS OF BORROWER AND IS NOT LIMITED TO A SPECIFIC LOAN.** "Indebtedness" is more fully defined in the Additional Terms, is used in its most comprehensive sense to mean any and all obligations of every kind and character of Borrower, or any one or more of them, to Lender, now existing or hereinafter incurred, and includes obligations owing after payment in full of the specific term loan or line of credit described in this Note.

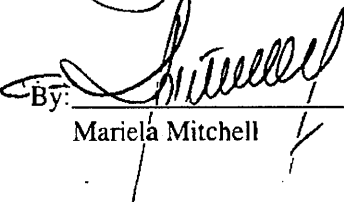
**PROMISSORY NOTE**

Borrower agrees that a facsimile of the signature(s) of the signer(s) of this Note, in any capacity, may be used to evidence the Borrower's acceptance of the terms of this Note. Any use of the principal amount or any other feature of this Note may be used as evidence of the foregoing authorizations, acceptances and agreements.

**CONDITIONS FOR FUNDING.** IN ADDITION TO THE OTHER REMEDIES UNDER THIS NOTE, WITHOUT THE CONSENT OF BORROWER OR NOTICE TO ANYONE, LENDER HAS NO OBLIGATION TO MAKE THE INITIAL ADVANCE OR ANY ADVANCE UNDER THIS NOTE IF LENDER DETERMINES, IN ITS SOLE DISCRETION, THAT (A) BORROWER'S NAME ON THIS NOTE OR ANY GUARANTOR'S NAME ON THE GUARANTY IS INCORRECT OR INCOMPLETE; (B) LENDER'S LIEN ON THE COLLATERAL WILL NOT BE THE FIRST LIEN, FREE AND CLEAR OF ALL OTHER LIENS, SECURITY INTERESTS OR ENCUMBRANCES; OR (C) ANY OTHER EVENT OF DEFAULT PROVIDED FOR IN THIS NOTE HAS OCCURRED. ADVANCING FUNDS ON THIS LOAN DOES NOT WAIVE ANY OF LENDER'S RIGHTS AND REMEDIES UNDER THIS NOTE.

Salon Supply Store, LLC

By:  Gustavo Mitchell Date: 02/04/14  
Gustavo A Mitchell Print Title: mgr

By:  MARIELA MITCHELL Date: 02/04/14  
Mariela Mitchell Print Title: mgr

**FLORIDA DOCUMENTARY STAMP TAX**

Florida documentary stamp tax required by law in the amount of \$350.00 has been paid or will be paid directly to the Department of Revenue.

**FILED**

2014 Feb 07 10:06 AM

\*\*\*\*\* 201400711612 \*\*\*\*\*

**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) 8644 - JPMORGAN	
CT Lien Solutions P.O. Box 29071 Glendale, CA 91209-9071	41930547  FLFL
File with: Department of State, FL	

**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 Salon Supply Store, LLC				
OR	1b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS				
3710 Buckeye St Ste 120		CITY Palm Beach Gardens	STATE FL	POSTAL CODE 33410
				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				
OR	2b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS				
		CITY	STATE	POSTAL CODE
				COUNTRY

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 JPMorgan Chase Bank, NA				
OR	3b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS				
Collateral Mgmt Small business, P.O. Box 33035		CITY Louisville	STATE KY	POSTAL CODE 40232-9891
				COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:  
All Inventory, Chattel Paper, Accounts, Equipment and General Intangibles; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds)

All documentary stamps due and payable or to become due and payable pursuant to s. 201.22,F.S. have been paid

Florida documentary stamp tax is not required

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/Licenser

8. OPTIONAL FILER REFERENCE DATA:

41930547 0000469331

Salon Supply Store, LLC

# Kabbage® Business Loan Agreement

Loan Amount: \$75,000.00

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Document Creation Date/Time: Aug 09, 2017 12:01 PM Eastern

## Merchant Information

Account Number: 125726

Merchant: Salon Supply Store, LLC

Merchant Address: 350 Hiatt Drive Palm Beach Gardens FL 33418

Owner: Gustavo Mitchell

Marketplaces: Chase - Bank - \*1587, Chase - Bank - \*9660,

A3LGDD5X3235JN, salonsupplystore,

salonsupplystore.myshopify.com, paypal@salonsupplystore.com,

Chase - Bank - \*0750, paypal@funkytownmall.com,

paypal@piercingpros.com, monstersteel.myshopify.com,

A1FALD9D8UHXZY, piercingpros

Financial Transaction Channels: ACH Account: Chase - Bank - \*1587,

ACH Account: Chase - Bank - \*9660, PayPal Account:

paypal@salonsupplystore.com, ACH Account: Chase - Bank - \*0750,

PayPal Account: paypal@funkytownmall.com, PayPal Account:

paypal@piercingpros.com

**Lender:** Celtic Bank

Salt Lake City, Utah

## Fees

Late Fee: Up to \$100

Returned Payment Fee: \$20

**This tool is provided to help you understand and assess the cost of your small business financing.**



Capital Comparison Tool

The calculations below involve certain key assumptions about this Loan, including that the Loan is paid off in its entirety according to the agreed payment schedule and that no repayments are missed.

<b>Loan Amount</b>	<b>Disbursement Amount</b> (minus fees withheld) <sup>1</sup>	<b>Repayment Amount</b>	<b>Term</b>  (repaid monthly)
<b>\$75,000.00</b>	<b>\$75,000.00</b>	<b>\$91,875.00</b>	<b>12 Months</b>
<b>METRIC</b>	<b>METRIC CALCULATION</b>		<b>METRIC EXPLANATION</b>
<b>Total Cost of Capital</b>  \$16,875.00	Interest Expense: <b>\$0.00</b> Loan Fee: <b>\$16,875.00</b> Origination Fee: <b>\$0.00</b> Other Fees: <b>\$0.00</b> <b>Total Cost of Capital: \$16,875.00</b>		This is the total amount that you will pay in interest or Loan Fees and other fees for the Loan.  The amount does not include fees and other charges you can avoid, such as late payment fees and returned payment fees. <sup>2</sup>
<b>Annual Percentage Rate (APR)<sup>3</sup></b>  36.89 %	Your loan will have monthly payments of:  APR: <b>36.89 %</b>		This is the cost of the Loan - including total interest or Loan Fees and other fees - expressed as a yearly rate. APR takes into account the amount and timing of capital you receive, fees you pay, and the periodic payments you make.  While APR can be used for comparison purposes, it is not an interest rate and is not used to calculate your interest expense or Loan Fee.
<b>Average Monthly Payment</b>  \$7,656.25	Repayment Amount: <b>\$91,875.00</b> Term (in months): <b>÷12 Months</b> <b>Average Monthly Payment: \$7,656.25</b>  Specific Monthly Schedule (if available): Months 1-6: <b>\$8,125.00</b> Months 7-12: <b>\$7,187.50</b>		This is the average monthly repayment amount of the Loan, which does not include fees and other charges you can avoid, such as late payment fees and returned payment fees. <sup>2</sup> This is an estimate for comparison purposes only.
<b>Cents on the Dollar (excluding fees)</b>  22.50¢	Interest Expense or Loan Fee: <b>\$16,875.00</b> Loan Amount: <b>÷\$75,000.00</b>  <b>Cents on the Dollar (excluding fees): 22.50¢</b>		This is the total amount of interest or Loan Fee paid per dollar borrowed. This amount is exclusive of fees.

## EXHIBIT B

Does prepayment of this Loan result in any new fees or charges?

**No**

(see Section 1.5)

Does prepayment of this loan decrease the total interest on the loan?  
Fees owed?

(see Section 1.5 for the interest or fee reduction amount)

<sup>1</sup>The Disbursement Amount is the amount of capital that a business receives and may be different from the Loan Amount. The Disbursement Amount is net of fees withheld from the Loan Amount. A portion of the Disbursement Amount may be used to pay off any amounts owed from a prior loan or an amount owed to a third party.

<sup>2</sup>Your business may incur other fees that are not a condition of borrowing, such as late payment fees, returned payment fees, or monthly maintenance fees. Those fees are not reflected here. See the agreement for details on these fees (see Sections 1.7 and 1.3).

<sup>3</sup>APR should be considered in conjunction with the Total Cost of Capital. APR may be most useful when comparing financing solutions of similar expected duration. APR is calculated here according to the principles of 12 C.F.R. § 1026 (Regulation Z), using twelve (12) payment periods per year.

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This Business Loan Agreement ("Agreement") is made by and between **Celtic Bank**, its successors, assigns and representatives ("we," "us," "our" or "Bank") and merchant ("you" or "Merchant"), along with the principal shareholder, partner, member or other owner of Merchant who submitted the Application on behalf of Merchant ("Owner"), as of the date specified above. Celtic Bank, Merchant and Owner may be referred to as a "Party" or collectively as "Parties" herein.

By checking this box Merchant or Owner understands that it has the responsibility to read this Agreement and have had an opportunity to do so.

By checking this box Merchant or Owner also agrees that the parties included in this Agreement intend to authenticate this writing, agree to all its terms, and electronically sign this Agreement with the same force and effect as a manual signature.

### **Consent to Electronic Disclosure.**

**By checking this box** you confirm that you can access transaction information by visiting [www.kabbage.com](http://www.kabbage.com) and logging in and You agree to receive this Agreement and subsequent disclosures and notices (collectively, "Subsequent Disclosures") electronically. Kabbage will provide electronic copies of periodic statements and Subsequent Disclosures on Kabbage's web site. To access, view and retain electronic disclosures on Kabbage's web site, you must have a computer with Internet access and either a printer connected to your computer to print disclosures/notices or sufficient hard drive space available to save the information. The minimum software requirements include browser software that supports 128-bit security encryption and Adobe Reader® version 9.0 or higher. By clicking the "Submit" button on your application, you acknowledge that you are able to access Kabbage's website ([www.kabbage.com](http://www.kabbage.com)) and print, or otherwise retain, electronic disclosures. You may request a paper copy of any legally required disclosure by contacting Kabbage at Kabbage Business Loan-Paper Disclosure Request, P.O. Box 77081, Atlanta, GA 30357. You may also withdraw your consent to electronic disclosures by contacting Kabbage in the same manner. If you withdraw your consent to electronic disclosures, Kabbage may elect to terminate the relationship with you. You agree to provide Kabbage with your current e-mail address for notices. If your e-mail address changes, you must send Kabbage a notice of the new address by writing to Kabbage at least five days before the effective date of the change at Kabbage Email Address Change, P.O. Box 77081, Atlanta, GA 30357.

We are not a party to any purchase transaction between you and either a recipient of the proceeds of a Loan or a merchant accepting a payment card onto which the proceeds of a Loan was loaded (either, a "Recipient"). Consequently, any disputes or concerns you have regarding your purchases from/transactions with or the amounts you owe to the Recipient are to be solely resolved between you and the Recipient alone, and you understand and agree that (a) the Recipient's actions or omissions have no bearing on, and will not give rise to any defense under, your agreement with us, and (b) we will have no liability to you in connection with such purchases or transactions.

### **THIS IS A COMMERCIAL LOAN. YOU AGREE NOT TO USE ANY PORTION OF THE AMOUNT LOANED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES AND NOT TO REPAY US FROM ANY CONSUMER ACCOUNT.**

#### **I. BUSINESS LOAN**

**1.1. Business Loan.** You agree to borrow, and we agree to lend to you, the amount set forth above. You promise to repay this Loan to us or our order, plus Costs (as defined in Section 1.4 below), plus all other amounts that may become due us under this Agreement, according to the payment schedule set forth below. You will provide us, at all times during this Agreement, with sufficient access to view the activity in (a) your commercial transaction account(s), including, but not limited to, (i) your PayPal business account, the details of which you have provided to us (individually and collectively, as appropriate, your "Business Payment Account"), (ii) one or more designated business checking accounts, the details of which you have provided to us (individually and collectively, as appropriate, your "Bank Account"), (b) the marketplace(s) where you do business, and (c) such other accounts and sales and shipping data as we deem necessary and appropriate, for the purpose of monitoring your business activity and finances. You agree to repay us in U.S. dollars.

Merchant and Owner each understand, acknowledge and agree that Merchant is entering into this Agreement as a commercial transaction and that your agreement not to use any portion of the amount loaned for personal, family or household purposes and not to repay us from any consumer account means that certain important duties imposed upon transactions and communications for consumer purposes, and certain important rights conferred upon consumers, pursuant to federal or state law, will not apply to any aspect of this transaction. Merchant and Owner also understand, acknowledge, and agree that we may be unable to confirm whether, for example, any particular use of any amount loaned or any particular payment conforms to this section. Merchant and Owner understand, acknowledge, and agree that a breach by Merchant of the provisions of this section will not affect our right to (i) enforce this Agreement, regardless of the purpose for which any amount loaned is in fact used, or (ii) use any remedy legally available to us in a commercial transaction, even if that remedy would not have been available had any amount loaned been disbursed for consumer purposes or payment delivered from a consumer account.

## **EXHIBIT B**

You agree to notify us within five (5) business days if (i) the details of your Business Payment Account or Bank Account change, (ii) you open any new account that is similar or (iii) you close your Business Payment Account or Bank Account or any similar account. Furthermore, with regard to



**1.2. Distribution of Proceeds.** Proceeds of the Loan can be distributed to you in one of five methods that you hereby elect:

- a. via automated clearing house in one-to-three business days to a Bank Account, as defined in Section 1.1, registered on your established Kabbage profile;
- b. to a Business Payment Account, as defined in Section 1.1, registered on your established Kabbage profile;
- c. via a valid, non-expired debit card registered on your established Kabbage profile that is linked to your Bank Account, as defined in Section 1.1, **subject to a Debit Card Express Fee of up to \$24.95 per disbursement** payable in full with your next Minimum Monthly Payment under Section 1.5 below;
- d. onto a prepaid debit card ("Card") issued pursuant to the Kabbage Card Program. Terms and Conditions found at <https://app.kabbage.com/CardRegistration/TermsAndConditions>. You must elect and qualify to participate in the Kabbage Card Program and, if approved, disbursement of Loan proceeds via the Card will be subject to additional terms and conditions as set forth in the Kabbage Card Program Terms and Conditions by and among you, Kabbage and the Bank that issues the Card. In addition, participants in the Kabbage Card Program will be subject to additional terms and conditions imposed by Kabbage as set forth on Kabbage's website. Each disbursement via a transaction under the Kabbage Card Program will constitute a separate extension of credit, with each disbursement constituting a Loan for a separate six (6) month Term. Disbursements shall be, in the aggregate, limited to the total amount of the line of credit for which you are approved; or
- e. via a wire transfer to your Bank Account, as defined in Section 1.1, subject to the prior approval of Kabbage. **This type of transaction is subject to a Wire Transfer Fee of \$45.00**, payable in full with your next Minimum Monthly Payment under Section 1.5 below

**1.3. Term.** This Loan has a twelve (12) month term. Monthly payments are due as set forth in the payment schedule below.

**1.4. Cost.**

We will impose a fee ("Cost") for each month or partial month that any portion of Loan proceeds remains outstanding until maturity. The portion of Loan proceeds deemed to be outstanding is the amount of proceeds disbursed: (i) through ACH, (ii) PayPal, (iii) via a debit card, (iv), via the prepaid debit card issued under the Kabbage Card Program, or (v) via a wire transfer. You may avoid additional Costs by repaying your outstanding Loan balance in full at any time without penalty. We may continue to impose additional Costs at the rate in effect immediately before maturity if any portion of the Loan remains unpaid.

**1.5. Cost Schedule.**

If you pay the outstanding balance of your Loan before the Anniversary Date, then, as a prepayment benefit, fees for the subsequent months are forgiven. The Anniversary Date is the date of the month on which you take the Loan and occurs monthly thereafter on the same date. However, if your Anniversary Date occurs on date which does not repeat every month (e.g., the 31st), your Anniversary Date for that month will be the last day of that month.

If you repay your loan in full before:	Your anticipated (total) Cost will be:
First Monthly Anniversary Date	\$1,875.00
Second Monthly Anniversary Date	\$3,750.00
Third Monthly Anniversary Date	\$5,625.00
Fourth Monthly Anniversary Date	\$7,500.00
Fifth Monthly Anniversary Date	\$9,375.00
Sixth Monthly Anniversary Date	\$11,250.00
Seventh Monthly Anniversary Date	\$12,187.50
Eighth Monthly Anniversary Date	\$13,125.00
Ninth Monthly Anniversary Date	\$14,062.50
Tenth Monthly Anniversary Date	\$15,000.00
Eleventh Monthly Anniversary Date	\$15,937.50
Twelfth Monthly Anniversary Date	\$16,875.00

**1.6. Minimum Monthly Payments.** You agree to make minimum monthly payments (each a "Minimum Monthly Payment") in the amounts specified below on each scheduled monthly payment due date ("Payment Due Date") shown on your monthly statement(s). The Minimum Monthly Payment for this Loan will be:

Payment Due Date	Scheduled Minimum Monthly Payment:	Monthly Fee %
First Payment Due Date	\$8,125.00*	2.50 %
Second Payment Due Date	\$8,125.00*	2.50 %
Third Payment Due Date	\$8,125.00*	2.50 %
Fourth Payment Due Date	\$8,125.00*	2.50 %
Fifth Payment Due Date	\$8,125.00*	2.50 %
Sixth Payment Due Date	\$8,125.00*	2.50 %
Seventh Payment Due Date	\$7,187.50*	1.25 %
Eighth Payment Due Date	\$7,187.50*	1.25 %
Ninth Payment Due Date	\$7,187.50*	1.25 %
Tenth Payment Due Date	\$7,187.50*	1.25 %
Eleventh Payment Due Date	\$7,187.50*	1.25 %
Twelfth Payment Due Date	\$7,187.50*	1.25 %

\*Or all amounts due under this Agreement if less than the amount shown

You may at any time pay more than the Minimum Monthly Payment without penalty. Any amounts due under this Agreement and remaining unpaid on the final scheduled Payment Due Date are due on that date.

**1.7. Total Minimum Monthly Payment.** At least 10 calendar days in advance of each Payment Due Date, we will notify you of the following for the Loan(s) listed on your monthly statements(s): (i) the current Minimum Monthly Payment, plus (ii) any previous Minimum Monthly Payment remaining unpaid, in whole or in part, plus (iii) any billed but unpaid fees [collectively, (i) through (iii) are your "Total Minimum Monthly Payment for each monthly statement"]. See Section 1.12 (Payments) below. You may receive more than one monthly statement from us. You are responsible for paying the "Total Minimum Monthly Payment" on each monthly statement on time.

**Late Fee.** If you fail to pay the Total Minimum Monthly Payment amount on time, you agree that we may assess a Late Fee of:

- **\$10** if the aggregate outstanding balance of the Loans listed on the monthly statement is equal to or greater than \$35 but less than \$500;
- **\$35** if the aggregate outstanding balance of the Loans listed on the monthly statement is equal to or greater than \$500 but less than \$5,000;
- **\$100** if the aggregate outstanding balance of the Loans listed on the monthly statement is equal to or greater than \$5,000.

**1.8. Application of Payments.** With regard to all loans listed on your monthly statement, payments received will be applied first to Late Fees, Returned Payment Fees, and Wire Transfer Fees, to the extent included in your Total Minimum Monthly Payment due, then to Loans listed on your monthly statement, in order of the oldest Loan first, then the second oldest Loan, and so on; provided, however, that if one or more of your Loans is delinquent, we may apply payments first to delinquent Loans at our sole discretion. With respect to any particular loan, payment will be applied first to any fees associated with that particular loan, then to Cost, and finally to principal, each to the extent included in your Total Minimum Monthly Payment due. Payments will be applied based on fees and Costs posted as of the day of payment application which may be different from the fees and Costs listed on your monthly statement. Any amount received in excess of your Total Minimum Payment due will be applied in the same order as your Total Minimum Monthly Payment. Any payment in excess of the Total Minimum Monthly Payment due does not relieve you of your obligation to make your next scheduled Total Minimum Monthly Payment.

**1.9. Merchant's Contractual Covenants.** You agree:

- i. Not to use any amount loaned for personal, family or household purposes and not to repay us from any consumer account;
- ii. Not to materially change the nature of the business that you conduct from the type of business originally disclosed to us in connection with this Agreement and, unless we are adequately notified in advance, to conduct your business substantially in accordance with past practices;
- iii. To take all steps necessary to provide us with access to view the activity in your Business Payment Account, Bank Account and marketplaces where you do business and to such other accounts and sales and shipping data as we deem necessary and appropriate, for the purpose of monitoring your business activity and finances;
- iv. Not to reduce or remove, or cause anyone to reduce or remove, our access, once granted, to your Business Payment Account, Bank Account, marketplaces where you do business and such other accounts and sales and shipping data as we have deemed necessary and appropriate;
- v. With regard to information about any marketplace or other service provider that you provided to us to determine the amount of your Loan, to notify us promptly if the details of your account with such marketplace or other service provider changes, you open a new account or you close your account
- vi. To use your Business Payment Account in a volume consistent with the level of transactions you processed through such account(s) when you received your Loan, or otherwise ensure that funds sufficient to satisfy your obligations under this Agreement are deposited into your Business Payment Account or Bank Account;
- vii. To maintain a minimum balance in your Business Payment Account or Bank Account, as appropriate (as required by Section 1.12 below);
- viii. To collect on your sales promptly, in compliance with all applicable federal, state and local laws, rules and regulations and consistent with your past collection practices;
- ix. To make payments to us (in U.S. dollars) on the applicable "Payment Due Date";
- x. Not to take any action to discourage the use of your Business Payment Account and not to permit any event to occur that could have an adverse effect on the use, acceptance or authorization of your Business Payment Account for the purchase of services and/or products by your customers;
- xi. Not to open a new account other than the Business Payment Account or Bank Account (collectively, the "Accounts") into which your sales will be deposited and not to take any action to cause future sales to be settled or paid to any account other than the Accounts;
- xii. Not to sell, dispose, convey or otherwise transfer your business or assets without our express prior written consent and the prior payment or assumption of all of your obligations under this Agreement pursuant to documentation reasonably satisfactory to us;
- xiii. Not to take any intentional action that would substantially impair or reduce your generation or collection of accounts receivable adequate to satisfy your obligations under this Agreement without our prior written permission;
- xiv. Not to terminate your authorization of scheduled debits in Section 1.12, stop payment on any debit authorized pursuant to Section 1.12, claim that a debit transaction pursuant to Section 1.12 is unauthorized, or seek a refund, return, chargeback or dispute of a credit card transaction related to a payment under Section 1.12; and
- xv. To notify us promptly if, with regard to any Business Payment Account or Bank Account, the details of your account change, you open a new account or you close your account.

Collectively, the preceding items (i) through (xv) are your "Merchant Contractual Covenants".

**1.10. Further Inquiries.** Merchant and Owner authorize Bank, its agents and representatives, and any credit reporting agency engaged by Bank, to (i) request information about and investigate Merchant and Owner and any references given or any other statements or data obtained from or about Merchant or Owner for the purpose of this Agreement and (ii) pull credit reports, whether in connection with Merchant's application for a loan or at any time thereafter for so long as Merchant and/or Owner continue to have any obligation owed to Bank.

**1.11. Owner's Personal Guarantee of Merchant's Performance of Merchant Contractual Covenants and Payment of Outstanding Loan Amounts.** Owner personally and unconditionally guarantees the performance of all of the covenants of Merchant in this Agreement, specifically including the Merchant Contractual Covenants above and Merchant's payment obligations herein. Specifically, Owner guarantees payment of all amounts owed by Merchant and that such payments will be made strictly in accordance with the terms of any and all Loans of Merchants. Owner's guarantee of payment hereunder is independent of the Merchant's obligation of payment and a separate Claim may be brought against the Owner to enforce this Loan, whether or not any Claim is made against Merchant. **The liability of Owner hereunder is irrevocable, continuing, absolute and unconditional.**

**1.12. Payments.**

- i. Automatic Payment Authorization. You authorize us to initiate, on each Payment Due Date, an automatic electronic debit from your Business Payment Account or Bank Account, as appropriate, in the amount of the Total Minimum Monthly Payment; provided, however, that if a Payment Due Date falls on a Saturday, Sunday or holiday, then the debit may be initiated on the next business day. Any separate payments that you make on or before a Payment Due Date will not affect this authorization. You understand that your Total Minimum Monthly Payment may vary from time to time but will in no event exceed the total outstanding Loans. We will not be liable for any fees or Costs that you may incur if we are unable to debit your Total Minimum Monthly Payment under this authorization. We also are not responsible for any fees imposed on you by the provider of any Business Payment Account or Bank Account as the result of any authorized debit or any payments made directly by you under this Agreement. You agree that Automated Clearing House transactions must comply with the provisions of U.S. law and you agree to be bound by the National Automated Clearing House Association Operating Rules, as in effect from time to time and to the extent applicable, in connection with all such transactions.
- ii. Payment Failure. If a debit is rejected or if you otherwise fail to pay your Total Minimum Monthly Payment when due, you agree that we may (A) terminate further automatic debits, in which case you will be responsible for making all further payments directly and in a timely manner, (B) debit your Business Payment Account and Bank Account, at any time and from time to time, for any amounts due us until paid in full, (C) subject to any right to notice of default and right to cure required by state law (which you agree to waive to the greatest extent possible), declare all outstanding Loans immediately due and payable and (D) pursue any and all other remedies available to us.
- iii. Account Maintenance. You agree to maintain in your Business Payment Account or Bank Account, as appropriate, sufficient funds to meet each Total Minimum Monthly Payment obligation. We may initiate a debit at any time on a Payment Due Date, including prior to the time that we open for business on any business day. Consequently, you understand that the funds must be available by the end of the business day prior to the applicable Payment Due Date and maintained in your Business Payment Account or Bank Account until the debit is processed.

**EXHIBIT B**

iv. Terminating or Disputing Authorization; Stopping Payment. Stopping Payment. You may terminate your automatic electronic debit authorization by notifying us in writing at least three (3) or more business days before a scheduled Payment Due Date, and your termination will be effective three (3) business days after the date your notice is received by us. If you call us, we may ask you to send your request in writing to us within 14 calendar days of your call. Terminating this automatic debit authorization, stopping payment on a scheduled debit, or claiming that a debit transaction pursuant to this Section 1.11 is unauthorized, is an event of default under this Agreement; as a result, we may initiate manually one or more debits to your Business Payment Account or Bank Account, at any time and from time to time, for all amounts due us. We may modify or terminate automatic debiting for any reason by notifying you in writing at your last known address in our records, or by email at the address associated with your Kabbage profile. Following the date of any termination of automatic debits by you or by us, you will be responsible for making all further payments directly and in a timely manner.

- v. Alternative Payment. If for any reason we are unable to initiate an electronic debit, you agree that we may prepare and deposit a remotely created check in the same amount.
- vi. Credit Card Transactions. We do not accept payments from consumer accounts. If you choose to provide a credit card number as back-up funding for your Business Payment Account, you agree to waive any right of chargeback or dispute as to any commercial transaction involving us and your Business Payment Account. You agree that your obligation to pay under this Agreement is not related to any consumer transaction. There can be no ground for any refund or return. All payments to us are final. You agree that we may apply any credit balance to any outstanding Loan or other obligation you have with us or issue a check to you.
- vii. Other Payments. You may make additional or alternative payments at any time. Payments by postal mail should be sent, postage paid, to the following address: Kabbage Business Loan Payments, P.O. Box 77073, Atlanta, GA 30357. You may also call Customer Service to arrange payments by overnight delivery, telephone, or other acceptable method. Payments made to any other address than as specified by us may result in a delay in processing and/or crediting for which we will not be responsible. All payments must be made in good funds by check, money order, automatic payment from an account at a U.S. institution offering such service, or other instrument, in U.S. dollars. You are solely responsible for any costs associated with a payment. Payments received after 5:00 p.m. (ET) on any day will be credited on the next day. Credit to your account may be delayed up to five (5) calendar days if a payment (a) is not received at the above address, (b) is not made in U.S. dollars drawn on a U.S. financial institution located in the U.S., (c) contains more than one payment, or (d) includes staples, paper clips, tape, a folded check, or correspondence of any type.
- viii. Acceptance of Late and Partial Payments; Disputed Amounts. We may accept late or partial payments without losing any of our rights under this Agreement. You agree not to send us partial payments marked "paid in full," "without recourse," or similar language. If you send such a payment, we may accept it as an accommodation to you without losing or waiving any of our rights under this Agreement. **All written communications concerning disputed amounts, including any check or other instrument that indicates that the payment constitutes "payment in full" of your payment or fee obligations or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount, must be mailed or delivered to Kabbage Business Loan Dispute Resolution, P.O. Box 77081, Atlanta, GA 30357.**

**1.13. Returned Payment Fee.** If a payment is rejected, returned or dishonored, for any reason, we may assess a **Returned Payment Fee** in the amount of **\$20**, which fee will be in addition to any Late Fee that may be due.

**1.14. Events of Default.** You will be in default if any of the following happen: (i) you fail to make any payment under this Agreement when due; (ii) you break any promise you have made to us, or you fail to comply with or to perform any term, obligation, covenant, or condition under this Agreement; (iii) you terminate your automatic scheduled debit authorization, stop payment on any authorized debit pursuant to Section 1.12 or claim that a debit transaction pursuant to Section 1.12 is unauthorized; (iv) you are in default under any loan, security agreement, or any other agreement, in favor of any other party to whom you owe debt; (v) any representation or statement made or furnished to us by you or on your behalf is false or misleading either now or at the time made or furnished; (vi) a material change occurs in your ownership or organizational structure (acknowledging that any change in ownership will be deemed material when ownership is closely held); (vii) you liquidate or dissolve, or enter into any consolidation merger, partnership, joint venture, or other combination without our prior written consent; (viii) you sell any assets except in the ordinary course of your business as now conducted, or sell, lease, assign, or transfer any substantial part of your business or fixed assets or any property or other assets necessary for the continuance of your business as now conducted, including, without limitation, the selling of any property or other assets accompanied by the leasing back of the same; (ix) any guaranty of performance given to us ceases to be in full force and effect or is declared to be null and void; or the validity or enforceability thereof is contested in a judicial proceeding; or Owner denies that Owner has any further liability under such guaranty; or Owner defaults in any provision of any guaranty, or any financial information provided by Owner is false or misleading; (x) if you are a sole proprietorship, the Owner dies; if you are a trust, a trustor dies; if you are a partnership, any general or managing partner dies; if you are a corporation, any principal officer or 10.00% or greater shareholder dies; if you are a limited liability company, any managing member dies; if you are any other form of business entity, any person(s) directly or indirectly controlling ten percent (10.00%) or more of the ownership interests of such entity dies; (xi) any creditor tries to take, by foreclosure, seizure, repossession, receivership, or otherwise, any of your property on or in which we have a lien or security interest; (xii) a judgment is entered against you or Owner in the aggregate amount of \$250 or more that is not satisfied within thirty (30) days or stayed pending appeal; (xiii) an involuntary lien is attached to any of your or Owner's assets or property and not satisfied within thirty (30) days or stayed pending appeal; or (xiv) any of the events described in this default section occurs with respect to Owner. Collectively, the preceding items (i) through (xiv) are "**Events of Default.**"

**1.15. Our Rights upon Default.** Upon default, we may demand the immediate payment of all amounts owed us, suspend your ability to obtain further Loans, and initiate a Claim against Merchant and Owner. We may also initiate one or more debits to your Business Payment Account or Bank Account, at any time and from time to time, for all amounts due us.

**1.16. Attorneys' Fees and Collection Costs.** To the extent not prohibited by applicable law, Merchant or Owner shall pay us, on demand, any and all expenses, including, but not limited to, arbitration filing and other fees, collection costs, attorneys' fees, and all other expenses of a like or unlike nature, which may be expended by us to obtain or enforce payment obligations of Merchant or guarantee obligations of Owner.

**1.17. Limitation of Liability.** In no event shall our aggregate liability for any Claim arising under this Agreement (whether in contract, tort, warranty or otherwise) exceed the total of Fees paid by Merchant in the twelve (12) months preceding the date that the most recent Claim arose. Notwithstanding anything contained in this Agreement to the contrary, and except as expressly prohibited by applicable law, no Party to this Agreement shall be liable to another Party for any indirect, special, incidental, consequential, punitive, or exemplary damages of any kind (including without limitation, lost revenues, loss of profits, or loss of business), arising from this Agreement or relating to the obligations hereunder, even if advised of such potential damages.

**1.18. Notice of Merchant or Owner Default.** You agree to furnish to us, immediately upon becoming aware of the existence of any condition or event which with the lapse of time or failure to give notice would constitute an event of default under this Agreement, written notice specifying the nature and period of the existence of such condition or event and any action which you are taking or propose to take with respect thereto.

**II. CLAIMS RESOLUTION, AGREEMENT TO ARBITRATE**

**2.1. SIGNIFICANCE OF ARBITRATION; LIMITATIONS AND RESTRICTIONS IN ARBITRATION, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO (i) HAVE A COURT OR JURY DECIDE THE CLAIM BEING ARBITRATED, (ii) ENGAGE IN PRE ARBITRATION DISCOVERY (THAT IS,**

**EXHIBIT B**

THE RIGHT TO OBTAIN INFORMATION FROM THE OTHER PARTY) TO THE SAME EXTENT THAT YOU OR WE COULD IN COURT, (iii) PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS IN A CLASS ACTION, IN COURT OR IN ARBITRATION, RELATING TO ANY CLAIM SUBJECT TO ARBITRATION OR (iv) JOIN OR CONSOLIDATE CLAIMS OTHER THAN YOUR OWN OR OUR OWN. OTHER RIGHTS AVAILABLE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

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**2.2. Broad Meaning of "Claims."** The term "Claims" in this Agreement is to be given the broadest possible meaning and includes (by way of example and without limitation) Claims arising from or relating to (i) this Agreement based upon contract, tort, fraud, statute, regulation, common law and equity, (ii) any transactions effected pursuant to this Agreement, (iii) terms of or change or addition of terms to this Agreement, (iv) collection of any obligation arising from this Agreement, (v) advertisements, promotions or oral or written statements relating to this Agreement or any transactions between us pursuant to this Agreement, including any Claims regarding information obtained by us from, or reported by us to, credit reporting agencies or others, (vi) Claims between you and us or our parent corporations, wholly or majority owned subsidiaries, affiliates, predecessors, successors, assigns, agents, independent contractors, employees, officers, directors or representatives arising from any transaction between us pursuant to this Agreement and (vii) Claims regarding the validity, enforceability or scope of this Arbitration section or this Agreement including but not limited to whether a given claim or dispute is subject to arbitration.

**2.3. Arbitration.** All Claims shall be resolved through arbitration pursuant to this section rather than by litigation. Claims will be decided by a neutral arbitrator. **No Party will have the right to participate in a representative capacity or as a member of any class pertaining to any Claim subject to arbitration.** Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights you or we would have in court may also not be available in arbitration. The arbitrator's authority is limited to Claims between the Parties to this Agreement. Claims may not be consolidated unless all Parties agree, in writing. Any arbitration award and any judgment confirming it will apply only to a specific Claim and cannot be used in any other case except to enforce the award.

Arbitration herein is governed by the Federal Arbitration Act ("FAA") and the selected arbitration organization's rules in effect when the Claim is filed. Before beginning arbitration, the Party making a Claim shall send a Notice of Claim to the other. Claims will be referred to either JAMS ([www.jamsadr.com](http://www.jamsadr.com)) or American Arbitration Association ([www.adr.org](http://www.adr.org)) as selected by the party making the Claim. Claims may also be referred to another arbitration organization if you and we agree in writing or to an arbitrator appointed pursuant to section 5 of the FAA, 9 U.S.C. §§ 1-16. If a Claim is for \$10,000 or less, Merchant or Owner may choose whether the arbitration will be conducted solely based on documents, through a telephonic hearing, or by an in-person hearing. The arbitrator will give a brief written explanation of the award. The arbitrator's award will be final and binding except for any appeal right provided for the FAA. A Party will have 30 days to appeal the award by notifying the arbitration organization and all Parties in writing. The organization will appoint a three-arbitrator panel to decide, anew, by majority vote based on written submissions, any aspect of the decision objected to. Judgment upon any award may be entered in any court having jurisdiction. You will be responsible for paying your share of any initial arbitration fee (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees you would have incurred if you had brought the Claim in court. We will be responsible for advancing any additional arbitration fees for an original Claim. We may seek reimbursement of any fees advanced as a cost or fee under Section 1.16 in the event we obtain an award against you or Owner. Any costs of an Appeal will be borne by each Party with no advancement from us and we will seek reimbursement of those fees under Section 1.16.

### III. REPRESENTATIONS, WARRANTIES AND COVENANTS

Each of Merchant and Owner represents, warrants and covenants the following as of the date hereof and at all times during the term of this Agreement:

**3.1. Representations.** You represent that as of the date of this Agreement (i) you have no present intention to close or cease operating your business, in whole or in part, temporarily or permanently, (ii) you are solvent and not contemplating any insolvency or bankruptcy proceeding, (iii) during the four (4) months preceding the date hereof, neither Merchant nor any Owner has discussed with or among Merchant's management, counsel, or any other advisor or creditor, any potential insolvency, voluntary or involuntary bankruptcy, receivership, or assignment for the benefit of creditors with respect to Merchant and no such action or proceeding has been filed or is pending, and (iv) no eviction or foreclosure is pending or threatened against Merchant.

**3.2. Covenant Representation.** Merchant shall comply with each of the Merchant Contractual Covenants as set forth herein.

**3.3. Business Information.** All information (financial and other) provided by or on behalf of Merchant to Bank in connection with the execution of or pursuant to this Agreement and during the term of this Agreement is and will be true, accurate and complete in all respects. Merchant shall furnish Bank such information as Bank may request from time to time.

**3.4. Reliance on Information.** Merchant and Owner acknowledge and agree that all information (financial and other) provided by or on behalf of Merchant and Owner either as of the date hereof or hereafter has been and may continue to be relied upon by Bank in connection with any decision that Bank makes to extend additional time to repay or to loan you future funds.

**3.5. Compliance with Laws and Regulations.** Merchant is in compliance with any and all federal, state and local laws and regulations and rules and regulations relating to (i) the operation of Merchant's business, including the collection of accounts receivable, and (ii) the provider of the Business Payment Account and Bank Account and any online sales channels (e.g., eBay) applicable to Merchant's business. Merchant possesses and is in compliance with all permits, licenses, approvals, consents, registrations and other authorizations necessary to own, operate and lease its properties and to conduct the business in which it is presently engaged.

**3.6. Authorization.** Merchant and Owner have full power and authority to enter into and perform the obligations under this Agreement, all of which have been duly authorized by all necessary and proper actions.

**3.7. Insurance.** Merchant shall maintain insurance in such amounts and against such risks as are consistent with past practice and shall show proof of such insurance upon the request of Bank.

**3.8. Change in Name or Location.** Merchant does not and shall not conduct Merchant's business under any name other than as disclosed to Bank and shall not change its place of business.

**3.9. Owner.** Owner shall cause Merchant to fulfill each of Merchant's covenants hereunder.

**3.10. Working Capital Funding.** Merchant shall not enter into any arrangement, agreement or commitment that relates to or involves Merchant's accounts receivable, whether in the form of a purchase of, a loan against, or the sale or purchase of credits against, Merchant's accounts receivable or future credit card or online sales with any party other than Bank.

**3.11. Unencumbered Accounts Receivable.** Merchant has good, complete and marketable title to all of its accounts receivable, free and clear of any and all liabilities, liens, claims, charges, 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, Bank.

**3.12. 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 solely for business purposes and not as a consumer for personal, family or household purposes. Merchant's Business Payment Account and Bank Account are each specifically designated as business purpose accounts and are each used solely for sales of goods and or services sold or rendered by Merchant and not used for personal, family or household purposes.

EXHIBIT B

### IV. ADDITIONAL TERMS

**4.1. Security Interest.** Merchant grants to Bank, to secure Merchant's performance under this Agreement, a continuing security interest, unless otherwise agreed in writing by Bank, in the following property of Merchant, wherever found, that Merchant now owns or shall acquire: (a) all tangible and intangible personal property of Merchant, including, all accounts, deposit accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory, investment property (including certificated and uncertificated securities, securities accounts, securities entitlements, commodity contracts and commodity accounts), letter of credit rights, commercial tort claims and as-extracted collateral (as those terms are defined in Article 9 of the Uniform Commercial Code ("UCC") in effect from time-to-time in the State of Utah); (b) all patents, patent applications, trademarks, trade names, service marks, logos, copyrights, and other sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office ("USPTO") and U.S. Copyright Office and all renewals, reissues and extensions thereof (collectively "IP"), together with any written agreement granting any right to use any IP; and (c) all accessions, attachments, accessories, parts, supplies and replacements, products, proceeds and collections with respect to the items described in (a) and (b) above, as those terms are defined in Article 9 of the UCC and all records and data relating thereto.

**4.2. Financing Statements.** Merchant understands and agrees that Bank may at any time file one or more (i) UCC-1 financing statements, lien entry form or other document to perfect, amend, or continue any interest granted in Section 4.1 above and (ii) assignments with USPTO and/or U.S. Copyright Office to perfect any security interest in IP described above. Merchant agrees to cooperate with Bank as may be necessary to accomplish said filing and authorizes Bank to sign Merchant's name to affect the filing or continuation of any such filings.

**4.3. Remedies.** In the event that any representation or warranty of Merchant or Owner contained in this Agreement is not true, accurate and complete, or in the event of a breach of any of the covenants contained in this Agreement, including the Merchant Contractual Covenants, Bank shall be entitled to all remedies available under law. The obligation of Owner in Section 1.11 of this Agreement is primary, direct, and unconditional, and Owner waives any right to require Bank to proceed first against Merchant before recovering damages from Owner. Merchant and Owner hereby waive any and all defenses to liability under this Agreement other than payment in full.

**4.4. Protection of Information.** Except for Confidential Information (as defined below), Merchant and Owner each authorize Bank to disclose to any third party information concerning Merchant's and Owner's business conduct. Merchant and Owner hereby waive to the maximum extent permitted by law any claim for damages against Bank or any of its affiliates relating to any (i) investigation undertaken by or on behalf of Bank as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement.

**4.5. Confidentiality.** Merchant understands and agrees that the terms and conditions of the products and services offered by Bank, including this Agreement and any other Bank documentation (collectively, "Confidential Information") are proprietary and confidential information of Bank. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information 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 3.6. The foregoing covenants of Merchant shall exist for the duration of the relationship of the parties and, with respect to all Confidential Information, that comprises a Trade Secret (under Georgia law) for so long as such information continues to constitute a Trade Secret and, otherwise, for three (3) years after termination of the relationship between the parties.

**4.6. Transfer and Assignment.** We reserve the right to sell, transfer, or assign all or any portion of our interest in this Agreement to another entity or person and Merchant and Owner hereby knowingly consent to such sale, transfer, or assignment. This Agreement, and the rights and obligations under this Agreement, may not be assigned by Merchant or Owner (including by operation of law) without our prior written consent and any purported assignment in violation of the foregoing shall be void ab initio.

**4.7. Publicity.** Merchant and Owner authorize Bank to use Merchant's or Owner's name in a listing of clients and in advertising and marketing materials.

**V. MISCELLANEOUS**

**5.1. Modifications; Amendments; Construction.** No modification, amendment, or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the parties affected, such execution by all parties being an express prerequisite to enforceability. The headings of the sections and subsections herein are inserted for convenience only and under no circumstances shall they affect in any way the meaning or interpretation of this Agreement. For purposes of this Agreement, "including" shall mean "including, without limitation."

**5.2. Notices.** Except as otherwise provided in this Agreement, any notice provided under this Agreement must be in writing but may be provided electronically. Notices will be deemed given when properly addressed and deposited in the U.S. mail, postage prepaid, First Class mail; delivered in person; or sent by registered mail; by certified mail; by nationally recognized overnight courier; or by electronic mail. Notice to you will be sent to your last known physical address or electronic mail address in our records. Notice to any of you will be deemed notice to all of you. Notice to us may be sent to Kabbage, P.O. Box 77081, Atlanta, GA 30357. You agree to notify us immediately if you change your name, your postal or electronic mail address or other contact information, if there are any errors in the information regarding transactions on your account or information that you provide to us, or if any of you dies, is declared incompetent or is subject of a bankruptcy or insolvency proceeding. You agree that a notice of incompetence is not effective unless issued by a court having jurisdiction and we receive notice and instruction from the court. **Notwithstanding the above, we may, at our option, accept other evidence of incompetence acceptable to us. You agree to indemnify and hold us harmless from and against any and all claims relating to acceptance or non-acceptance of proof of incompetence in any transaction. This indemnity will survive termination of this Agreement.**

**5.3. Waiver; Remedies.** No delay on the part of Bank 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 of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

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

**5.5. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Merchant, Owner, Bank and their respective successors and permitted assigns.

**5.6. Governing Law Consent to Jurisdiction and Venue.** **With the exception of Section II above (which is to be governed exclusively by the FAA), this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Utah without regard to internal principles of conflict of laws.** Such laws will govern the legality, enforceability and interpretation of this Agreement. Merchant and Owner understand and agree that Bank is located in Utah and Loan is issued in Utah. Merchant and Owner agree that these laws apply no matter where Merchant or Owner lives, is domiciled, or made this Agreement.

**5.7. Term and Survival.** This Agreement shall continue in full force and effect until all obligations hereunder have been satisfied in full; provided, however, that any Section that, by its terms suggests survival beyond termination hereof, shall so survive until the natural expiration thereof.

**5.8. Severability.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

**5.9. Entire Agreement.** This Agreement contains the entire agreement and understanding among Merchant, Owner and Bank and supersedes all prior agreements and understandings, whether oral or in writing, relating to the subject matter hereof unless otherwise specifically reaffirmed or restated herein.

**EXHIBIT B**

**5.10. 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 OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT HEREOF, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. 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.

**5.11. 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 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.

**5.12. Telephone Monitoring and Recording.** To ensure that you receive quality service and for training purposes, you agree that any phone call may be monitored and/or recorded.

**5.13. Communicating With You and Owner; Consent to Contact by Electronic and Other Means.** For purposes of this Section 5.13 "you" means Merchant, Owner and any agent or representative of Merchant or Owner, collectively and individually, for purposes of communications between you and Bank regarding this Agreement and related commercial transactions. You agree that we may contact you as provided in this paragraph. We may contact you for any lawful reason, including for the collection of amounts owed to us and for the offering of products or services to Merchant in compliance with our Bank Privacy Policy in effect from time to time. No such contact will be deemed unsolicited. You specifically agree that we may (i) contact you at any address (including email) or telephone number (including wireless cellular telephone, ported landline, facsimile or VoIP telephone number) as you may provide to us from time to time, even if you asked to have your number added to any state or federal do-not-call registry; (ii) use any means of communication, including, but not limited to, postal mail, electronic mail, telephone, facsimile or other technology, to reach you; (iii) use automatic dialing and announcing devices which may play recorded messages; and (iv) send text messages to your telephone. You may withdraw this express written consent at any time by contacting us at Kabbage Business Loan- Withdrawal of Express Consent, P.O. Box 77081, Atlanta, GA 30357 and telling us specifically what address or telephone number not to use.

**5.14. In Case of Errors or Questions about Your Monthly Statement**  
If you think your monthly statement is wrong, or if you need more information about an item on your monthly statement, write as soon as possible to: Kabbage Business Loan Account Inquiries, P.O. Box 77081, Atlanta, GA 30357. We must hear from you no later than 60 days after we sent you the first monthly statement on which the error or problem appeared.  
In your letter, please give us the following information:

- Your name and email address,
- The dollar amount of the suspected error,
- A description of the error, and
- An explanation of why you believe there is an error.

If you need more information, describe the item you are unsure about. **You remain obligated to make any remaining Total Minimum Monthly Payment while we investigate.**

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Corporation Service Company 1-800-858-5294	
B. E-MAIL CONTACT AT FILER (optional) SPRFiling@cscinfo.com	
C. SEND ACKNOWLEDGMENT TO: (Name and Address)	
1349 59126 Corporation Service Company 801 Adlai Stevenson Drive Springfield, IL 62703	Filed In: Florida (S.O.S.)

FLORIDA SECURED TRANSACTION REGISTRY

**FILED**

2017 Aug 15 01:40 PM

\*\*\*\*\* 201702168768 \*\*\*\*\*

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 Salon Supply Store, LLC				
OR	1b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
350 HIATT DRIVE	PALM BEACH GARDENS	FL	33418	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				
OR	2b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
713 VOYAGER LANE	NORTH PALM BEACH	FL	33410	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 CORPORATION SERVICE COMPANY, AS REPRESENTATIVE				
OR	3b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
P.O. Box 2576 uccsprep@cscinfo.com	Springfield	IL	62708	USA

4. COLLATERAL: This financing statement covers the following collateral:  
 Florida Documentary Stamp Tax is not required.  
 All personal property and general intangibles, including related accessions, accessories, replacements and proceeds, and certain future receivables, as detailed and defined in a loan agreement between secured party and debtor.

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and Instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative				
6a. Check <u>only</u> if applicable and check <u>only</u> one box:			6b. Check <u>only</u> if applicable and check <u>only</u> one box:	
<input type="checkbox"/> Public-Finance Transaction	<input type="checkbox"/> Manufactured-Home Transaction	<input type="checkbox"/> A Debtor is a Transmitting Utility	<input type="checkbox"/> Agricultural Lien	<input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensors				
8. OPTIONAL FILER REFERENCE DATA:				

1349 59126

**EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

SALON SUPPLY STORE, LLC,

Debtor.

\_\_\_\_\_ /

CASE NO.: \_\_\_\_\_

Chapter 11

**INTERIM / FINAL ORDER AUTHORIZING  
DEBTOR'S USE OF CASH COLLATERAL**

THIS MATTER came before the Court pursuant to Bankruptcy Rule 4001 and 11 U.S.C. § 363 upon the *Emergency Motion for Order Authorizing Use of Cash Collateral* [ECF \_\_\_\_] (the "Motion") filed by debtor-in-possession, Salon Supply Store, LLC (the "Debtor"), seeking entry of interim and final orders authorizing use of cash collateral as defined in Section 363(a), granting adequate protection and related relief. The Court, having reviewed the Motion and heard argument of counsel, after notice and a final hearing on \_\_\_\_\_, noting that no objections have been filed, finding good and sufficient cause having been shown, and otherwise being fully advised in the premises, it is accordingly:

**EXHIBIT C**



**ORDERED** that:

1. The Debtor is authorized to use Cash Collateral<sup>1</sup> for the line items detailed in the Budget attached to this Order as Exhibit “A.” The Debtor shall not exceed the budgeted line item amounts by more than 20%. The attached Budget provides for a limited carve out for administrative and general expenses, including: (a) Court approved attorney fees to the Debtor’s general counsel in this case, Lubliner Kish PLLC, and (b) estimated fees due to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930.

2. Pursuant to this Court’s Guidelines for Motions Seeking Authority to Use Cash Collateral and Motion Seeking Approval of Postpetition Financing, any adequate protection provided to creditors are subject and subordinate to fees due to the clerk of the court or the United States Trustee pursuant to 28 U.S.C. §1930.

3. To adequately protect Chase or Kabbage (as defined in the Motion), and/or any other potentially secured creditors in connection with the use by the Debtor of any Cash Collateral and other property upon which security interests and liens may have been previously granted by the Debtor to Chase, Kabbage, and/or any other potentially secured creditors, the Court hereby confirms the grant, assignment and pledge by the Debtor to any such secured creditors a post-petition security interest and lien (only to the same validity, extent, and priority of such pre-petition security interests, if any exist) in the secured creditor’s Pre-Petition Collateral, any of its goods, property, assets and interests in property in which the secured creditors may have held a lien or security interest prior to the Petition Date, and the proceeds from the disposition of any of such Prepetition Collateral.

4. Nothing in this Order shall be construed as an improvement of the security or

<sup>1</sup> Any capitalized terms not otherwise defined herein shall have the meanings ascribed them in the Motion.

security interests of Chase, Kabbage, and/or any other potentially secured creditors as of the Petition Date. The replacement lien shall not apply to any funds recovered by the estate pursuant to avoidance actions arising under Sections 542 through 550 of the Bankruptcy Code.

5. This is/is not a final Order.

# # #

Submitted by:

Matthew S. Kish, Esq.  
Lubliner Kish PLLC  
1645 Palm Beach Lakes Blvd., Suite 1200  
West Palm Beach, FL 33401  
Phone: 561-207-2018  
Fax: 561-207-2001  
Email: [matt@lubliner-law.com](mailto:matt@lubliner-law.com)  
*Attorneys for Debtor*

Copies to: Matthew Kish, Esq.  
(Attorney Kish is directed to mail a copy of this Order to all interested parties and to file a certificate of service).

EXHIBIT C



Label Matrix for local noticing  
113C-9  
Case 17-24769-EPK  
Southern District of Florida  
West Palm Beach  
Tue Dec 12 15:27:14 EST 2017

Salon Supply Store, LLC  
350 Hiatt Drive  
Palm Beach Gardens, FL 33418-7197

Adshi Electronic Equipment Co.  
#608 3 Building  
Chutian Homeland, Kingsh Town  
Changsha City, Hunan, China

Amazon Capital Lending  
410 Terry Ave. North  
Seattle, WA 98109-5210

Amazon Capital Services, Inc.  
PO Box 84837  
Seattle, WA 98124-6137

American Express  
American Express Tower  
200 Vesey Street  
New York, NY 10080-0001

Capital One  
PO Box 30285  
Salt Lake City, UT 84130-0285

FedEx  
3875 Airways, Module H3  
Department 4634  
Memphis, TN 38116

Fla. Dept. of Revenue  
5050 West Tennessee Street  
Tallahassee, FL 32399-0100

Health & Sun Research, Inc.  
3874 Tampa Road  
Oldsmar, FL 34677-3126

Internal Revenue Service  
Centralized Insolvency Operation  
Post Office Box 7346  
Philadelphia, PA 19101-7346

JP Morgan Chase Bank N.A.  
Collateral Mgmt Small Business  
PO Box 33035  
Louisville, KY 40232-3035

Jarden Consumer Solutions  
PO Box 774626  
Chicago, IL 60677-4006

Kabbage / Celtic Bank  
268 South State Street, Suite 300  
Salt Lake City, UT 84111-5314

Kabbage / Celtic Bank  
P.O. Box 77081  
Atlanta, GA 30357-1081

Office of the US Trustee  
51 S.W. 1st Ave.  
Suite 1204  
Miami, FL 33130-1614

Palm Beach County Tax Collector  
301 N. Olive Avenue  
West Palm Beach, FL 33401-4791

Sun Evolutions  
PO Box 202662  
Dallas, TX 75320-2622

Think Trading, Inc.  
350 Hiatt Drive  
Palm Beach Gardens, FL 33418-7197

Washington State Department of Revenue  
PO Box 47464  
Olympia, WA 98504-7464

Matthew S Kish  
1200 N. Federal Hwy, Suite 200  
Boca Raton, FL 33432-2813

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)West Palm Beach

End of Label Matrix	
Mailable recipients	20
Bypassed recipients	1
Total	21