

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

FLEXSHOPPER, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-12554 (LSS)

Joint Administration Requested

DEBTORS' MOTION FOR (I) AN ORDER PURSUANT TO SECTIONS 105, 363, 364, 365 AND 541 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND DEL. BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL THE DEBTORS' ASSETS; (B) APPROVING THE DEBTORS' ENTRY INTO STALKING HORSE AGREEMENT AND RELATED BID PROTECTIONS; (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) APPROVING FORMS AND MANNER OF NOTICE OF RESPECTIVE DATES, TIMES, AND PLACES IN CONNECTION THEREWITH; AND (F) GRANTING RELATED RELIEF; (II) AN ORDER (A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES; AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) CERTAIN RELATED RELIEF

The above-captioned debtors and debtors in possession (the “Debtors”) hereby move (this “Motion”) for entry of an order, in the form attached hereto as **Exhibit A** (the “Bid Procedures Order”), (a) approving the bid procedures (the “Bid Procedures”) attached as **Exhibit 1** to the Bid Procedures Order in connection with the sale of all or substantially all of the Debtors’ assets; (b) approving various forms and the manner of notice of respective dates, times and places in connection therewith; (c) authorizing the Debtors to enter into and perform under an asset purchase agreement attached hereto as **Exhibit B** (the “Stalking Horse Agreement”) between the Debtors and ReadySett LLC (the “Stalking Horse Bidder”), subject to the solicitation of higher

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal EIN, are FlexShopper, Inc. (6087); FlexShopper, LLC (0385); FlexLending, LLC (5373); FlexRevolution, LLC (4102); FlexRetail, LLC (5129); Flex TX, LLC (6818); Flex TX Funding, LLC (2754); and Flex TX CAB, LLC (3656). The Debtors’ mailing address is 901 W Yamato Road, Suite 260 Boca Raton, FL 33431.

and otherwise better offers for the Debtors' assets (the "Purchased Assets"); (d) approving the Bid Protections (defined below) granted to the Stalking Horse Bidder; (e) approving procedures for the assumption and assignment of designated executory contracts and unexpired leases (the "Designation Procedures"); (f) scheduling the auction (the "Auction") and the date and time of the hearing to approve the sale (the "Sale Hearing") of the Purchased Assets and assumption of certain liabilities of the Debtors (the "Assumed Liabilities"); and (g) granting related relief. The Debtors further request that at the Sale Hearing, the Court enter an order, in the form attached hereto as **Exhibit C** (the "Sale Order"), (i) authorizing the Sale of the Purchased Assets (the "Sale") free and clear of all liens, claims, interests and other encumbrances (collectively, the "Liens"); (ii) authorizing the assumption and assignment of certain Contracts and Leases; and (iii) granting related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Matthew Doheny in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith.

As discussed herein, the Debtors propose the following timeline for conducting the Sale process:

Event	Deadline
Bid Procedures Hearing	Wednesday, January 14, 2025 [subject to Court availability]
Deadline for Debtors to file Notice of Proposed Cure Amounts and Adequate Assurance and serve adequate assurance of future performance	One (1) business day after entry of the Bid Procedures Order
Sale Objection Deadline	Friday, January 30, 2026
Contract Objection Deadline (cure/adequate assurance/assumption & assignment)	Friday, January 30, 2026
Bid Deadline	Friday, January 30, 2026
Deadline to Designate Qualified Bids	Monday, February 2, 2026
Auction	Thursday, February 5, 2026
Deadline to Serve Notice of Winning Bidder and Supplemental Cure Notice	One (1) business day after the close of the Auction

Event	Deadline
Deadline to File Supplemental Sale Objection Solely Related to Conduct at the Auction and Objection to Assumption or Cure Amount (if Winning Bidder is Different than Stalking Horse Bidder)	Tuesday, February 10, 2026, at 12:00 p.m. (noon) (ET)
Sale Hearing	Wednesday, February 11, 2026, subject to Court availability

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these chapter 11 cases and this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and the Motion is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Debtors consent pursuant to rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. The statutory bases for the relief requested in this Motion are sections 105, 363, 364, 365, and 541 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 6004-1.

BACKGROUND

4. On December 22, 2025 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors

continue to manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed in these cases.

5. Beginning in August 2025, the Debtors' management, including their Chief Restructuring Officer, began exploring restructuring alternatives, including the possibility of a sale of the Debtors' assets. The Debtors also worked with Raymond James, the Warehouse Lender's financial advisor, to help solicit, facilitate, and evaluate potential restructuring options available to the Debtors.

6. Beginning in early August through mid-September, the Company engaged in extensive negotiations with the Warehouse Agent to restructure the debt arising under the 2024 Warehouse Facility that would have kept the Warehouse Lender in place, with adjusted borrowing base mechanics to provide for ongoing borrowings and a revised timeline for repayment of the existing debt. Despite over six weeks of negotiations, execution of a non-binding term sheet, and exchanged drafts of new loan documentation, the parties were unable to execute a final agreement.

7. Concurrently with these negotiations, Raymond James and members of the Company's board of directors separately explored the possibility of a third-party sale of the Company's assets. In connection with these efforts, Raymond James contacted a select set of parties believed to be potentially interested in pursuing a transaction with the Company and capable of doing so on a timeline that the Warehouse Lender would be willing to support. From these discussions only two parties delivered a term sheet to Raymond James expressing an interest in acquiring the Company's assets: Snap U.S. Holdings, LLC, whose affiliate, ReadySett LLC, ultimately became the stalking horse purchaser in the Debtors' sale process and a financial industry participant ("Party B").

8. The Company received a preliminary term sheet from Party B on or around October 7, 2025. The Company, along with the Warehouse Agent's advisors, engaged in negotiations with Party B throughout the month. However, on October 28, 2025, Party B withdrew its interest in acquiring the Company.

9. Following the collapse of negotiations with Party B, the Company reverted to the Stalking Horse Purchaser, who had submitted an initial term sheet on October 17, 2025, that the Company and its advisors had deemed inferior to the deal it was negotiating with Party B. Between October 28 and November 14, 2025, the parties (including the Warehouse Agent) negotiated the terms of a sale of substantially all of the Debtors' assets to the Stalking Horse Purchaser, together with debtor-in-possession financing to be funded by the Stalking Horse Purchaser (in such capacity, the "DIP Lender").

10. After several weeks, the Debtors reached an agreement with the Stalking Horse Bidder, setting the floor for other potential bids to acquire certain assets during these chapter 11 cases. Under the proposed asset purchase agreement between the Debtors and the Stalking Horse Bidder (as modified from time to time, the "Stalking Horse Agreement") the Stalking Horse Bidder has committed, subject to Court approval, to acquire substantially all of the assets of the Debtors in exchange for the following consideration:

- a. A payment to the Debtors in the amount of \$8,000,000, subject to the Katapult Reduction (as defined in the Stalking Horse Agreement),
- b. A cash payment to the Administrative Agent in the amount of a cash payment to the Administrative Agent equal to \$7.5 million (the "Warehouse Amendment Transaction Payment"), subject to adjustment pursuant to Section 2.5(a)(ii) of the Stalking Horse Agreement, and
- c. The assumption of the Assumed Liabilities, including Cure Amounts (each as defined in the Stalking Horse Agreement), by the Stalking Horse Bidder (such consideration collectively, the "Stalking Horse Bid").

11. The Acquired Assets include, among other things, Debtor FlexShopper, LLC's 100% equity interest in non-Debtor FlexShopper 1, LLC, which is the owner of 100% of the equity interests in FlexShopper 2, LLC (the "SPV Borrower"), the borrower under the Debtors' Securitization Program. The Stalking Horse Bidder's acquisition of indirect ownership of SPV Borrower will give the Stalking Horse Bidder continued access to the Securitization Program, which will minimize disruption to the post-Sale operation of the Debtors' business and provide additional liquidity. In connection with the Stalking Horse Agreement, and as conditions to the consummation of the Sale, the Stalking Horse Bidder has agreed to (a) enter into an amendment to the Warehouse Credit Agreement, effective as of closing of the Sale, to provide for the going-forward rights and obligations of the parties and, if agreed by the parties, the continued origination and acquisition of Lease Receivables funded by the Warehouse Lenders; (b) enter into a servicing agreement pursuant to which the Stalking Horse Bidder will agree to service the Lease Receivables and other assets owned by SPV Borrower in exchange for a servicing fee; and (c) pay the Warehouse Amendment Transaction Payment.

12. The Stalking Horse Bid documented in the binding Stalking Horse Agreement will serve the critical function of setting a "floor" for recoveries to creditors and a structure for further competitive bidding. While negotiating with the Stalking Horse Bidder, the Debtors continued facilitating diligence and engaging in discussions with the other potential buyers to further develop their interest in anticipation of the filing of these chapter 11 cases and the competitive process the Debtors intend to conduct pursuant to the Bid Procedures.

13. The Debtors were teetering on the brink of a chapter 7 filing until receiving the Stalking Horse Bid, which allows for a going-concern sale for the benefit of the Debtors' stakeholders. Due to continuing operational losses, a sale to Stalking Horse Bidder must be

completed quickly so that the value of the Purchased Assets does not further erode thereby jeopardizing the proposed sale transaction, and because the Debtors do not have sufficient liquidity or DIP financing commitments to continue operating through a protracted sale process.

14. Thus, it is essential that the Debtors be allowed to proceed as expeditiously as possible to consummate a Sale with the Stalking Horse Bidder or another Qualified Bidder (as defined below) at the conclusion of the Auction. The Bid Procedures proposed herein ensure that the Debtors' assets will be subject to a competitive bidding and auction process without unduly delaying the progress of these cases. The process contemplated by the Bid Procedures will leave no doubt that, at the conclusion of that process, the Debtors will have explored all available alternatives and identified the highest acceptable offer for the Purchased Assets.

15. The Debtors believe, in an exercise of their business judgment, that approval of the Stalking Horse Agreement (including the Bid Protections) and the Bid Procedures will set these cases on a positive trajectory and are essential to the Debtors' ability to identify and consummate the sale offering the greatest value to their creditors. Accordingly, the Debtors respectfully submit that the Court should grant the relief requested herein.

THE PROPOSED SALE AND BID PROCEDURES

A. Summary of Key Terms of the Stalking Horse Bid

16. By this Motion, the Debtors are requesting approval of the designation of the Stalking Horse Bidder and the Stalking Horse Bid on the terms provided in the Stalking Horse Agreement, as well as approval of reasonable and customary Bid Protections. Specifically, the Bid Protections consist of a break-up fee in the amount of \$620,000 (the "Break-Up Fee") and a reimbursement of the Stalking Horse Bidder's actual, reasonable, documented out-of-pocket expenses up to an amount not to exceed 2% of the Purchase Price (the "Expense Reimbursement,"

together with the Break-Up Fee, the “Bid Protections”). Given the Debtors’ need to maximize the value of the Purchased Assets through a timely and efficient marketing and sale process, the ability to designate a Stalking Horse Bid and offer Bid Protections is justified, appropriate and essential.

17. In accordance with Local Rule 6004-1(b), the pertinent terms of the Stalking Horse Agreement are summarized in the following table.² The Debtors respectfully submit that all terms of the Stalking Horse Agreement, including those required to be highlighted under Local Rule 6004-1(b), are fair, reasonable, and appropriate under the circumstances in light of the parties’ extensive good faith, arm’s-length negotiation of the Stalking Horse Bid, the support of the Debtors’ key creditor constituencies for the Debtors’ entry into such agreement, and the substantial benefits the Debtors and their estates will realize as a result thereof, including the establishment of a baseline price for the Debtors’ assets.

<u>Term</u>	<u>Description</u>
Sellers:	FlexShopper, Inc., a Delaware corporation, FlexShopper, LLC, a North Carolina limited liability company, and FlexLending, LLC, a Delaware limited liability company
Stalking Horse Bidder:	ReadySett LLC (together with its permitted successors, designees and assigns)
Transaction Consideration:	As consideration for the sale and transfer of the Purchased Assets, in addition to the assumption by Buyer of the Assumed Liabilities, Buyer shall, at Closing: i. make a payment to Sellers equal to \$8 million (the “<u>Closing Payment</u>”); provided; however, that to the extent that the Katapult Litigation is dismissed, settled or compromised prior to the Closing Date, the Closing Payment shall be reduced by \$2 million so that the adjusted Closing Payment equals \$6 million (the “<u>Katapult Reduction</u>”); provided further, that to the extent the Closing Payment is reduced by the Katapult Reduction, the Sellers shall be entitled to retain cash in an amount equal to the Katapult Reduction; provided further, that to the extent the Sellers are unable to sell the Purchased Assets to the Buyer free and clear of any license or right of first refusal granted to Acima pursuant to the Acima

² This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse Agreement, the latter governs in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Stalking Horse Agreement.

<u>Term</u>	<u>Description</u>
	Settlement, the Closing Payment shall be reduced by \$350,000 so that the adjusted Closing Payment equals \$7,650,000, in the event there is no Katapult Reduction, or \$5,650,000, in the event there is a Katapult Reduction (the “<u>Acima Reduction</u>”). For the avoidance of doubt, but subject to Section 2.2(a), to the extent that the Katapult Litigation is dismissed, settled or compromised prior to the Closing Date, any proceeds of such settlement in excess of \$2 million shall be retained by Sellers and to the extent that the Katapult Litigation is dismissed, settled or compromised after the Closing Date, all proceeds of such settlement shall be retained by Buyer. ii. make a cash payment to the Administrative Agent equal to \$7.5 million (the “<u>Warehouse Amendment Transaction Payment</u>”). In the event that that the DIP Lender, in the exercise of its sole and absolute discretion and with the consent of the Administrative Agent in accordance with Section 2.1 of the DIP Agreement, which shall not be unreasonably withheld, makes advances to the Sellers under the DIP Agreement in excess of \$8 million (exclusive of the amount of Warehouse Interim Advances (as defined in the DIP Agreement) reimbursed to the Administrative Agent) (any such excess advances, the “<u>Excess DIP Amounts</u>”), Buyer will be entitled to deduct 50% of the amount of Excess DIP Amounts, up to a maximum deduction of \$1.5 million, from its obligation to pay the Warehouse Amendment Transaction Payment. The Warehouse Amendment Transaction Payment shall be a fee payable to the Administrative Agent, for the benefit of the Warehouse Lenders, as consideration for their agreement to the transactions contemplated herein, and not as payment of any accrued, outstanding amounts under the Warehouse Credit Agreement or any other documents related to the Warehouse Facility. Except as otherwise expressly agreed at Closing, notwithstanding anything to the contrary in this Agreement, Buyer does not assume, and shall not be deemed to have assumed, and shall have no Liability in respect of the Warehouse Facility, the Warehouse Credit Agreement, the Warehouse Debt, or any Liabilities arising thereunder or relating thereto, other than the Warehouse Amendment Transaction Payment expressly set forth in this <u>Section 2.5(a)</u>.
Purchased Assets:	“<u>Purchased Assets</u>” shall mean all of the, direct or indirect, right, title and interest of any Seller in and to the tangible and intangible assets, properties, rights, claims and Contracts used, useful, or held for use in, or related to, the Business (but excluding Excluded Assets) as of the Closing, including:

<u>Term</u>	<u>Description</u>
	(a) except for the Wind Down Cash; proceeds from the Acima Settlement; cash equal to the amount of the Katapult Reduction (if any); and any cash received in connection with any of the Excluded Assets, all cash, cash equivalents, bank deposits and similar cash items of any Seller to the extent such amounts exceed the amount of Sellers' operational expenses, accrued or incurred between the Petition Date and the Closing Date, that remain unpaid following the Closing Date) (such amounts that exceed the amount of such accrued or incurred operating expenses, the "<u>Excess Cash</u>"); (b) subject to j) and the right of any Seller to retain copies, all Purchased Business Information in the possession or control of any Seller, including their professionals, agents, contractors, or advisors, and whether in hard or electronic format; (c) all prepaid expenses of any Seller relating to any of the Purchased Assets; (d) without duplication, all deposits (including deposits in transit, but excluding any retainers held by advisors to any Seller, any professional fee escrow established pursuant to the DIP Order and deposits that constitute Excluded Utility Deposits) and other prepaid charges and expenses, credits, advance payments, charges and fees of any Seller that relate to the Purchased Assets; (e) all computers and related equipment, servers, machinery, furniture, supplies and other tangible personal property (wherever located, whether held at any location or facility of any Seller) (including rights, if any, in any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person); (f) all Assumed Contracts that have been assumed by and assigned to Buyer pursuant to <u>Error! Reference source not found.</u>; (g) all Seller Intellectual Property; (h) all Equity Interests in Intermediate Seller; (i) subject to j), all Records (<u>provided</u> that Sellers are entitled to retain copies of all Records and Buyer will make all such Records available to Sellers upon reasonable request and at no charge), but excluding (i) personnel files for Current Employees and Former Employees after the Closing Date and (ii) any materials exclusively related to any Excluded Assets and copies of all information relating solely to the Taxes and Tax Returns of the Business or the Purchased Assets in the possession of Sellers;

<u>Term</u>	<u>Description</u>
	(j) all subscriber and customer data, information, including customer PII, analysis and modeling derived from any customer and other similar information including personal information (such as name, address, telephone number, e-mail address, website and any other database information), customer consents and opt-in/opt-outs, product hierarchy, segmentation (life cycle), customer lifetime value, application activity, IP logs, browser metadata, channel attribution, flags of inactive or fraudulent accounts and protects against chargeback disputes, chat transcripts, call logs, case histories, complaint records, soft-pull credit scores, decisioning flags, fraud screening results, session lengths, abandonment behavior, heatmap, do-not-email, do-not-contact, blocked IPs or device identifications, internal matching keys or hashed linkages across emails, phones, cookies, or devices, predictive modeling scores and models used, offers, coupons and discount information and data, and customer purchase and transaction history at a transaction level (including dollar amounts, dates, and items purchased) relating to customers of, or collected through or used in the operation of (i) the Business, and (ii) any customer lists; (k) to the extent transferrable, the registrations and rights to any social media, e-commerce and other online, mobile or digital accounts and handles of Sellers (the “<u>Online Accounts</u>”), together with all content stored thereon; provided, that, to the extent transfer is not permissible, the Parties shall enter into such alternative arrangement so as to allow Buyer to access, control and use such Online Accounts (including in connection with any commercial or marketing activities conducted therewith) to the extent administratively feasible; (l) all goodwill associated with the Business or the Purchased Assets, including all goodwill associated with the Seller Intellectual Property and all rights under any non-disclosure and confidentiality, noncompete, or nonsolicitation agreements with current or former employees, directors, officers, managers, consultants or other service providers of any Seller or with third parties for the benefit of any Seller, in each case to the extent relating to the Business, the Purchased Assets and/or the Assumed Liabilities (or any portion thereof); (m) all of the Assumed Permits or all of the rights and benefits accruing under any Permits relating to the Business to the extent transferrable and held by Sellers; (n) the amount of, and all rights to any, insurance proceeds received by any of Sellers after the date hereof in respect of (i) the loss, destruction or condemnation of any Purchased

<u>Term</u>	<u>Description</u>
	Assets occurring prior to, on or after the Closing or (ii) any Assumed Liabilities; (o) all other rights, demands, claims, credits, allowances, royalties, rebates, refunds and other rights in respect of promotional allowances or rights of setoff and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), other than against any Seller, arising out of or relating to the Business, the Purchased Assets or Assumed Liabilities; (p) all Purchased Actions at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent; (q) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the extent relating to equipment purchased, products sold, or services provided, to any Seller or to the extent affecting the Business, any Purchased Assets or Assumed Liabilities; (r) all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names any of Seller related to the Business; (s) the Customer Accounts; (t) the assets listed on <u>Schedule 2.1(t)</u>; and (u) all other assets that are related to, used in or which could be used in connection with the Purchased Assets or the Business (but excluding all of the Excluded Assets).
Excluded Assets:	Notwithstanding <u>Error! Reference source not found.</u>, Buyer expressly understands and agrees that Buyer is not purchasing or acquiring, and Seller is not selling or assigning, any of the following assets, properties and rights of Sellers (the “<u>Excluded Assets</u>”): a) any cash received in connection with any of the Excluded Assets, the Wind Down Cash, the proceeds from the Acima Settlement and, solely to the extent there is a reduced Closing Payment in connection with the Katapult Litigation, cash in an amount equal to the Katapult Reduction and any Tax refund; b) all Lease Receivables; c) all bank accounts of Sellers; d) all Excluded Utility Deposits;

<u>Term</u>	<u>Description</u>
	e) all of Sellers' certificates of formation or certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, unit certificates and other documents relating to the organization, maintenance and existence of any Seller as a limited liability company, corporation or other entity; f) all equity securities of any Seller or securities convertible into, exchangeable, or exercisable for any such equity securities and all net operating losses of any Seller; g) all Leases (and related Leased Real Property) and Contracts, in each case, other than the Assumed Contracts; h) the Excluded Claims; i) any loans or notes payable to any Seller or any of its Affiliates from any employee of any Seller or any of its Affiliates; j) any (1) Records containing confidential personal private information, including confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent the disclosure of such information to Buyer is prohibited by applicable Law, (2) other Records that Sellers are required by Law to retain, including pursuant to <u>Section 6.11</u>, and (3) any Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; <u>provided</u> that, subject to <u>Section 6.11</u>, Buyer shall have the right to make copies of any portions of such retained Records (other than the Records referenced in subsection (3)) to the extent that such portions relate to the Business or any Purchased Asset; k) all Permits other than the Assumed Permits; l) all directors' and officers' liability insurance policies, including any tail insurance policies, and all rights of any nature with respect to any such insurance policies, including any recoveries thereunder, proceeds thereof, and any rights to assess claims seeking any such recoveries; m) except as provided in <u>c)</u>, all assets, rights and claims arising from or with respect to Taxes of any Seller that are Excluded Liabilities;

<u>Term</u>	<u>Description</u>
	n) all Insurance Policies and any prepaid premiums with respect thereto; o) any assets expressly excluded from Purchased Assets pursuant to <u>Error! Reference source not found.</u>; p) all Employee Benefit Plans and trusts, Insurance Policies, rights and other assets set aside and specifically reserved solely to fund benefits payable under the applicable Employee Benefit Plan; q) all warranties, representations, and guarantees to the extent relating to any Excluded Asset, or rights and defenses related to any Excluded Liability; r) any attorney client privilege with respect to Sellers and any counsel; provided that for the avoidance of doubt, the applicable Seller shall be the sole holder of such attorney-client privilege and notwithstanding anything set forth herein, no Seller has, and shall not be deemed to have, waived any such privilege; s) the assets listed on <u>Schedule 2.2(s)</u>; and t) the rights of Sellers under this Agreement and the Related Agreements and all cash and non-cash consideration payable or deliverable to Sellers under this Agreement.

<u>Term</u>	<u>Description</u>
Assumed Liabilities:	On the terms and subject to the conditions of this Agreement, at the Closing (or, with respect to Assumed Liabilities under Assumed Contracts or Assumed Permits that are assumed by Buyer after the Closing, such later date of assumption as provided in <u>Error! Reference source not found.</u>), Buyer shall assume from the applicable Sellers (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and the applicable Sellers shall irrevocably convey, transfer, and assign to Buyer, the following Liabilities, without duplication and only to the extent not paid prior to the Closing and no other Liabilities (collectively, the “<u>Assumed Liabilities</u>”): a) the Cure Amounts under any and all Assumed Contracts, as set forth on <u>Schedule 2.3(a)</u>; b) Liabilities under the Assumed Contracts and the Assumed Permits first arising from and after the Closing Date; c) any Transfer Taxes that are the responsibility of Sellers pursuant to <u>Error! Reference source not found.</u>; d) all Liabilities arising out of Buyer’s ownership, possession or use of the Purchased Assets first arising from and after the Closing Date; and e) any personal property Taxes with respect to the Purchased Assets to the extent that they are not otherwise satisfied under DIP Agreement.
Excluded Liabilities:	Notwithstanding anything herein to the contrary, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Sellers, whether existing on the Closing Date or arising thereafter, other than the Assumed Liabilities (all such Liabilities that Buyer is not assuming being referred to collectively as the “<u>Excluded Liabilities</u>”).
<u>Rule</u>	<u>Disclosure/Location</u>
Sale to Insider <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(A)</i>	Not applicable.
Agreements with Management or Key Employees <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(B)</i> Term Sheet, “Access to Information and Employees.”	The Stalking Horse Bidder shall have the option to make offers of employment to the Debtors’ employees.

<u>Term</u>	<u>Description</u>
Releases <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(C)</i> Stalking Horse Agreement § 6.7.	Effective upon the Closing, Sellers, on behalf of themselves, their bankruptcy estates, and their respective successors and assigns (collectively, the “<u>Seller Releasing Parties</u>”), hereby release, remise, acquit and forever discharge (i) Buyer and its past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns, and each of its and their respective directors, managers, officers, employees, attorneys, contractors, subcontractors, independent contractors, owners and insurance companies (collectively, the “<u>Buyer Released Parties</u>”), from any and all claims, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys’ fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses arising on or prior to the Closing Date, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description, including, without limitation as to any of the foregoing, any claim by way of indemnity or contribution, which any Seller Releasing Party has, may have had or may hereafter assert against any Buyer Released Party and (ii) any claim, right or interest of Sellers or their bankruptcy estates (whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description) in the Purchased Assets; <u>provided</u>, that notwithstanding the foregoing, Seller Releasing Parties do not in any event release Buyer (i) from its obligations under this Agreement, including the Assumed Liabilities, or from acts or omissions constituting gross negligence or willful misconduct, (ii) with respect to any rights of Sellers under this Agreement, any of the Related Agreements, the DIP Agreement and any other agreement between the Parties entered after the date hereof, and (iii) with respect to any indemnification or similar protection set forth in the constituent documents of the Intermediate Seller and the SPV Borrower. The foregoing release shall only be effective following approval of the Sale Order. Effective upon the Closing, Buyer, on behalf of itself and its successors and assigns (collectively, the “<u>Buyer Releasing Parties</u>”), hereby release, remise, acquit and forever discharge Sellers and their past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns, and each of their respective directors, managers, officers, employees, attorneys, independent contractors, owners and insurance companies (collectively, the “<u>Seller Released Parties</u>”), from any and all claims, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys’ fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses arising on or prior to the Closing Date, whether known or unknown,

<u>Term</u>	<u>Description</u>
	whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description, including, without limitation as to any of the foregoing, any claim by way of indemnity or contribution, which any Buyer Releasing Party has, may have had or may hereafter assert against any Seller Released Party; <u>provided</u> , that notwithstanding the foregoing, Buyer Releasing Parties do not in any event release Sellers (i) from their obligations under this Agreement or from acts or omissions constituting gross negligence or willful misconduct and (ii) with respect to any rights of Buyer under this Agreement, any of the Related Agreements, the DIP Agreement, the DIP Order and any other agreement between the Parties entered after the date hereof
Private Sale/No Competitive Bid <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(D)</i>	The Sale to the Stalking Horse Bidder is subject to the Auction and the Bid Procedures.
Closing and Other Deadlines <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(E)</i> Stalking Horse Agreement § 8.1(c).	The Debtors' proposed timeline for the sale process in these chapter 11 cases is set forth on pages 2-3, <i>supra</i> . The Closing of the sale of the Purchased Assets shall occur by not later than 80 days following the Petition Date.
Good Faith Deposit <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(F)</i> Term Sheet, "Bidder Protections."	Competing bidders must post a good faith deposit of at least 10% of the Stalking Horse Bid.
Interim Arrangements with Stalking Horse Bidder <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(G)</i>	Other than the debtor-in-possession financing provided by the Stalking Horse Bidder, for which the Debtors are seeking separate Court approval, the Debtors are not entering into any interim arrangements with the Stalking Horse Bidder.
Use of Proceeds <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(H)</i>	Not Applicable.
Tax Exemption <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(I)</i>	Not Applicable.
Record Retention <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(J)</i> Stalking Horse Agreement § 6.3.	From and after the Closing, Buyer shall promptly provide to Sellers and their respective Representatives (after reasonable notice and during normal business hours and without charge to Sellers) access to all Records included in the Purchased Assets for periods prior to the Closing and reasonable access to Transferred Employees to the extent such access is necessary in order for Sellers (as applicable) to comply with applicable Law or any contract to which it is a party, for

<u>Term</u>	<u>Description</u>
	liquidation, winding up, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (i) seven (7) years after the Closing Date, (ii) the required retention period for all government contact information, records or documents, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases or (iv) in the case of Records related to Taxes, the expiration of the statute of limitation applicable to such Taxes.
Sale of Avoidance Actions <i>Bankr. D. Del. L.R. 6004-1(b)(iv)(K)</i> Stalking Horse Agreement, Art. I.	“ <u>Purchased Actions</u> ” means all Litigation, judgments, refunds, rights of recovery, rights of set-off, recoupment, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller or Seller’s bankruptcy estate, in each case, relating to or arising from the Business or Purchased Assets, including, without limitation: (a) Avoidance Actions (but only to the extent (A) relating to or arising from Assumed Contracts or Purchased Assets, and/or (B) against Ongoing Trade Parties), (b) the Katapult Litigation, and (c) those arising from, relating to or comprising Intellectual Property. For the avoidance of doubt, “Purchased Actions” excludes Excluded Actions.
Successor Liability <i>Local Bankr. R. 6004-1(b)(iv)(L)</i>	The Sale Order will provide that the parties intend that the Stalking Horse Bidder is not a mere continuation of the Debtors or their estates, and that the Stalking Horse Bidder shall not have any successor liability of any kind or character.
Sale Free and Clear of Unexpired Leases <i>Local Bankr. R. 6004-1(b)(iv)(M)</i> Stalking Horse Agreement § 2.2(g).	Leases (and related Leased Real Property), other than the Assumed Contracts, are Excluded Assets.
Credit Bid <i>Local Bankr. R. 6004-1(b)(iv)(N)</i> Stalking Horse Agreement § 2.5(b).	The Closing Payment shall be paid by Buyer to the extent of amounts owed by Sellers under the DIP Agreement, as a credit bid of such amounts, and if the Closing Payment exceeds amounts owed under the DIP Agreement, then such remaining balance shall be paid in the manner set forth in <u>Section 2.8(b)(i)</u> .
Relief from Bankruptcy Rule 6004(h) <i>Local Bankr. R. 6004-1(b)(iv)(O)</i>	The Debtors seek a waiver of the 14-day stay under Bankruptcy Rules 6006(d) and 6004(h), as described in more detail below.

B. Bid Procedures Order

18. By this Motion, as set more fully below, the Debtors seek entry of the Bid Procedures Order: (i) approving the Bid Procedures; (ii) approving various forms and the manner

of notice of respective dates, times and places in connection therewith; (iii) approving Snap as the Stalking Horse Bidder and the Bid Protections; (iv) establishing the Designation Procedures; and (v) scheduling the Auction and a Sale Hearing.

(i) The Bid Procedures

19. To maximize the value of the Purchased Assets for the benefit of the Debtors' estates and stakeholders, the Debtors, together with their advisors, seek to continue their competitive marketing process by implementing a process for soliciting higher and otherwise better bids than the bid set forth in the Stalking Horse Agreement. The Debtors, in consultation with their advisors, entered into the Stalking Horse Agreement to provide a floor for a bid on the Debtors' assets. The Bid Procedures would provide [40] days between the filing of this Motion and the Bid Deadline, which the Debtors believe will be sufficient to allow other potential bidders to conduct diligence and formulate competing bids given the extensive marketing process that occurred prepetition. Following the Petition Date, the Debtors will continue the marketing process as described herein and in more detail in the First Day Declaration.

20. As described more fully in the Bid Procedures and the Bid Procedures Order, the Debtors seek approval to sell the Purchased Assets to a Qualified Bidder, determined in accordance with the Bid Procedures and Bid Procedures Order, that makes the highest acceptable offer for the Purchased Assets. The Debtors request that competing bids for the Purchased Assets be governed by the Bid Procedures and Bid Procedures Order, which provide:

- the requirements a Potential Bidder must satisfy to be entitled to participate in the bidding process and become a Qualified Bidder;
- the requirements for Qualified Bidders to submit bids and the method and criteria by which such bids become Qualified Bids;
- the deadline by which bids must be submitted;

- the procedures for conducting the Auction;
- the assumption and assignment procedures for Contracts and Leases; and
- various other matters relating to the sale process generally, the Sale Hearing, return of any Good Faith Deposits, and designation of a Back-Up Bidder.

21. Local Rules 6004-1(c)(i)(A) and (B) further provide that a bid procedures motion must highlight “[a]ny provision governing an entity becoming a qualified bidder” and “[a]ny provision governing a bid being a qualified bid.” Local Rule 6004-1(c)(i)(A) and (B). The Bid Procedures provide as follows with respect to qualifying bids³:

- a. **Participation Requirements.** To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an “Interested Party”) must deliver to the Debtors, Morris Nichols Arsht & Tunnell, LLP (“Morris Nichols”), the Debtors’ proposed legal counsel, and Two Roads Advisors LLC the following documents (the “Preliminary Bid Documents”):
 - 1) an executed confidentiality agreement (each, a “Confidentiality Agreement”).
 - 2) a statement and other factual support demonstrating to the Debtors’ satisfaction in the exercise of its reasonable business judgment that the Interested Party has a bona fide interest in purchasing the Purchased Assets; and
 - 3) preliminary verbal or written proof by the Interested Party of its financial capacity to close a proposed transaction at the Purchase Price (as defined below), which may include (a) current unaudited or verified financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), or (b) sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases

³ To the extent any inconsistencies exist between the summary provided in this Motion and the actual terms of the Bid Procedures, the Bid Procedures shall control. Capitalized terms used but not otherwise defined in connection with this summary shall have the meanings ascribed to such terms in the Bid Procedures.

to be assumed by the Debtors and assigned to the Potential Bidder in connection with the proposed transaction.

- b. **Due Diligence.** Such person or entity that has delivered an executed Confidentiality Agreement shall be considered a potential bidder (a “Potential Bidder”). After the Debtors determine that a Potential Bidder has provided satisfactory Preliminary Bid Documents, the Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Potential Bidder any trade secrets, proprietary information, or other commercially sensitive information unless, under the Debtors’ business judgment, in consultation with the Consultation Parties, the Confidentiality Agreement executed by such Potential Bidder (i) sufficiently protects the Debtors’ estates, and (ii) contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used by such Potential Bidder or its Affiliates for an improper purpose or to gain an unfair competitive advantage. Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated transaction. If the Debtors determine at any time in their reasonable discretion, in consultation with the Consultation Parties, that a Potential Bidder is not reasonably likely to be a Qualified Bidder (as defined below), then the Debtors’ obligation to provide due diligence information to such Potential Bidder will terminate and all information provided by the Debtors prior to such time shall be returned to the Debtors or destroyed in accordance with the terms of the applicable Confidentiality Agreement.
- c. **Bid Requirements.** To be eligible to participate in the Auction, each Potential Bidder must submit a proposal (a “Bid”) to purchase some or all of the Debtors’ assets by January 30, 2026, at 4:00 p.m. (ET) (the “Bid Deadline”) which must:
 - 1) state that the applicable Potential Bidder offers to purchase the Purchased Assets upon terms and conditions no less favorable to the Debtors’ estates, as the Debtors may reasonably determine, in consultation with the Consultation Parties³, than the transactions contemplated in the Stalking Horse Agreement;

³ “Consultation Parties” means the Administrative Agent, the DIP Lender and any statutory committee appointed in this case; provided, that to the extent that any Consultation Party, including any member of any statutory committee, submits a bid, including the Stalking Horse Bid or an alternative credit bid or otherwise, for any Purchased Assets in connection with these Bidding Procedures, or is a participant in any active or prospective Bid with respect to any Purchased Asset(s), such applicable Consultation Party shall immediately no longer be a Consultation Party unless and until such party unequivocally revokes its Bid and waives its right to continue in the bidding process. For the avoidance of doubt, the DIP Lender/Stalking Horse Bidder will not be a Consultation Party unless and until it unequivocally revokes the Stalking Horse Bid and waives its right to continue in the bidding process.

- 2) be accompanied by a deposit (each, a “Good Faith Deposit”) in the form of a wire transfer or certified check or such other form acceptable to the Debtors in their sole discretion, payable to the order of an escrow agent (the “Escrow Agent”), in an amount equal to 10% of the cash portion of the Purchase Price being bid;
- 3) specify the amount of cash or other consideration offered by the Potential Bidder (the “Purchase Price”), which Purchase Price must, except for a Partial Bid (defined below): (a) exceed the aggregate sum of (i) the Closing Payment set forth in the Stalking Horse Agreement; (ii) the Assumed Liabilities set forth in the Stalking Horse Agreement; (iii) the Bid Protections, (iv) the full amount of any Excess DIP; and (v) the minimum bid increment of \$250,000; and (b) include an amount of cash consideration at closing that exceeds the aggregate sum of (i), (iii), (iv) and (v) (such aggregate sum specified in (a) and (b), the “Minimum Purchase Price”); provided, however, that the Debtors, in their business judgment and in consultation with the Consultation Parties and the DIP Lender, shall have the right to modify the Assumed Liabilities component in the calculation of the Minimum Purchase Price, and if any such modification to the Minimum Purchase Price is made, the Debtors will provide notice to any interested parties within two (2) days of the Bid Deadline;
- 4) unless otherwise agreed by the Administrative Agent in writing, in its sole and absolute discretion, provide for (a) payment of the Warehouse Amendment Transaction Payment, without reduction on account of any Excess DIP Amounts, and (b) if the Bid includes Debtors’ equity interest in Flexshopper 1 LLC, the assumption of servicing of the assets of SPV Borrower by Potential Bidder or its designee, in each case, together with information sufficient to demonstrate to the Administrative Agent that such entity is capable of servicing the assets of the SPV Borrower consistent with customary market practices, on terms satisfactory to Administrative Agent;
- 5) include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction at the Purchase Price (the “Transaction Documents”), which Transaction Documents must include a copy of the proposed asset purchase agreement marked against the Stalking Horse Agreement to show all changes requested by the Potential Bidder including, but not limited to, treatment of any assumed liabilities;
- 6) be irrevocable by the Potential Bidder until the selection of the Successful Bid in accordance with the terms of these Bid Procedures; *provided* that if such Potential Bidder is selected as the Successful Bidder or Back-Up Bidder and is required to be a Back-Up Bidder hereunder, its Bid must remain irrevocable until the earlier of (i) the

Debtors' consummation of a sale with the Successful Bidder, or (ii) the date that is ninety (90) days following the Petition Date;

- 7) include a list which specifies in detail which of the Debtors' Leases and Contracts are to be assumed by the Debtors and assigned to the Potential Bidder in connection with the consummation of the proposed transaction and an agreement that the Potential Bidder will pay any related cure costs;
- 8) contain a description of how the Potential Bidder intends to treat the Debtors' current employees;
- 9) provide a commitment to close by the date that is eighty (80) days following the Petition Date;
- 10) not be conditioned on any contingency, including unperformed due diligence, obtaining financing, obtaining third-party consents, or any internal approval;
- 11) include an acknowledgement that the sale or transfer of the Purchased Assets will be on an "as is, where is" basis and without representations or warranties of any kind by Debtors or their agents other than as set forth in the Stalking Horse Agreement;
- 12) include a description of all governmental, licensing, regulatory or other filings, approvals or consents, including all filings required under the HSR Act, that are required to be made or obtained to close the proposed transaction, together with evidence of the ability to make any applicable filings or submissions within three (3) business days of being declared the Successful Bidder;
- 13) contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction at the Purchase Price (including sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any Contracts and Leases to be assumed by the Debtors and assigned to the Potential Bidder in connection with the proposed transaction), satisfactory to the Debtors in their reasonable discretion with appropriate contact information for such financing sources;
- 14) contain written evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and the transaction(s) contemplated therein and any Overbid(s) (as defined below), and related Transaction Documents;
- 15) not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment;

- 16) fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid (a “Participating Party”), and the complete terms of any such sponsorship, participation, financing or benefit;
- 17) expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Purchased Assets and/or otherwise participating in the Auction or the Sale process;
- 18) constitute a good faith, bona fide offer to effectuate the proposed transaction;
- 19) include a written acknowledgement by such Potential Bidder that it agrees to all of the terms for sale set forth in the Bid Procedures;
- 20) include an agreement to provide any other information reasonably requested by the Debtors; and
- 21) be received by the Bid Deadline.

d. **Qualified Bidder.** A qualified bidder (“Qualified Bidder”) is a Potential Bidder that, in the Debtors’ reasonable determination, in consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the requirements listed above in the section entitled “Bid Requirements” and (ii) is able to consummate the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a “Qualified Bid”); *provided* that the Debtors reserve the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. Within one (1) business day after a Potential Bidder delivers all of the documents described above (the “Qualified Bid Designation Deadline”), the Debtors will determine in their reasonable discretion, in consultation with the Consultation Parties, whether such Potential Bidder is a Qualified Bidder and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Agreement is a Qualified Bid and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

22. If the Debtors receive one or more Qualified Bids (in addition to the Stalking Horse Bid), the Debtors will conduct the Auction to determine the highest acceptable

Qualified Bid with respect to the Purchased Assets. If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, then the Auction will be cancelled, the Stalking Horse Bidder will be deemed the Successful Bidder, the Stalking Horse Agreement will be the Successful Bid, and, at the Sale Hearing, the Debtors will seek final Court approval of the Sale of the Purchased Assets to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement.

23. The Debtors propose that the following procedures govern any Auction:

- a. **Baseline Bid.** No later than one (1) day prior to the commencement of the Auction, the Debtors will provide all Notice Parties and Consultation Parties with complete copies of all Transaction Documents and all other bid materials submitted by each other Qualified Bidder, subject to the redaction of any confidential financial information as determined by the Debtors in their reasonable discretion or which has been so designated by the applicable Qualified Bidder; provided, however that no part of any Transaction Document shall be excluded. At the commencement of the Auction, the Debtors will notify all Qualified Bidders and Notice Parties of the highest acceptable Qualified Bid, as determined by the Debtors in their reasonable discretion, in consultation with the Consultation Parties (the “Baseline Bid”). The Debtors’ determination, in consultation with the Consultation Parties, of which Qualified Bid constitutes the Baseline Bid shall take into account factors such as the projected percentage recovery to general unsecured creditors pursuant to such Qualified Bid and the certainty of such recovery, whether all administrative, priority and secured claims will be paid in full under such Qualified Bid and any other factors the Debtors, in consultation with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to the estates. No later than the day prior to the commencement of the Auction, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; *provided* that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder’s Qualified Bid will nevertheless remain fully enforceable against such Qualified Bidder.
- b. **Auction Date and Location.** The Auction will commence on or before February 5, 2026, at 10:00 a.m. (Prevailing Eastern Time) at the offices of **Morris Nichols Arsht & Tunnell, LLP, 1201 N. Market Street, Wilmington, Delaware, 19801**, or on such other date and/or at such other location as determined by the Debtors, in consultation with the Consultation Parties.

- c. **Participation Requirements.** Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. The authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder), the Debtors, and the Consultation Parties will be permitted to attend the Auction. In addition, pursuant to Local Rule 6004-1, all creditors of the Debtors who have not submitted Bids may attend the Auction as observers, provided that they send an email to Debtors' counsel indicating that they intend to attend the Auction no less than one (1) Business Day prior to the Auction, provided further that the Debtors' right to object on an emergency basis to any such creditor's proposed attendance at the Auction is reserved.

- d. **Auction Procedures.** The Debtors and their professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the Baseline Bid. All Bids made thereafter must be Overbids (as defined below) and will be made and received on an open or closed basis, as determined by Debtors, in consultation with the Consultation Parties, and all material terms of each Bid will be fully disclosed to all other Qualified Bidders. The Debtors will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, the Successful Bid and the Back-Up Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the Purchased Assets. The Debtors, in their reasonable discretion, in consultation with the Consultation Parties, reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received.

During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least \$250,000 (each, an "Overbid"). For the avoidance of doubt, if the Baseline Bid is the Stalking Horse Bid, then the initial overbid must include amounts, in addition to the Overbid, sufficient to equal the Break-Up Fee and Expense Reimbursement. The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with the Bid Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid (except in the event of a round of closed, final bidding). Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other consideration acceptable to the Debtors, in consultation with the Consultation Parties, in accordance with the Bid Procedures.

To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Transaction Documents or the Stalking Horse Agreement, the Debtors will provide notice to each participant of the value ascribed by the

Debtors, in consultation with the Consultation Parties, to any such added, deleted, or modified provision or provisions, with such value being determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties.

Any Overbid made from time to time by a Qualified Bidder (excluding the Stalking Horse Bidder unless it elects to serve as Backup Bidder) must remain open and binding on the Qualified Bidder unless and until (i) the Debtors accept a higher and otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit at the Debtors' request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Consultation Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.

24. As set forth in more detail in the Bid Procedures and subject to the conditions provided for therein, at the conclusion of the Auction, the Debtors, in the exercise of their reasonable business judgment will select as the Successful Bid the highest acceptable bid submitted by a Qualified Bidder during the Auction, and the Debtors may, in their discretion, select a Back-Up Bid as set forth in the Bid Procedures. The Successful Bidder and Back-Up Bidder, following the completion of the Auction, must increase their Good Faith Deposit so that they equal 10% of such Successful Bid or Back-Up Bid, as applicable.

(ii) Partial Bids

25. If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all the Debtors' assets (each such bid, a "Partial Bid"), the Debtors may conduct separate auctions at the Auction for each lot of assets (each, an "Auction Lot") subject to a Partial Bid. Any Partial Bid must meet all the requirements of a Qualified Bid, unless otherwise modified herein, including without limitation, the Good Faith Deposit. The

Debtors may also combine multiple Partial Bids into an Auction Lot to compete against Qualified Bids for all the Debtors' assets.

(iii) Designation Procedures

26. The Debtors are seeking approval of the Designation Procedures for notifying counterparties to Contracts and Leases of proposed Cure Amounts (as defined below) and the timing of assumption and assignment or rejection with respect to those Contracts and Leases that the Debtors propose to assume and assign to the Successful Bidder. The following is a summary of the Designation Procedures:

- a. **Cure Notice.** Within one (1) business day from the entry of the Bid Procedures Order, the Debtors shall file and serve by email or, if email is unavailable, by first class mail, on all non-Debtor counterparties to Contracts and Leases, and their respective known counsel, a notice, substantially in the form attached as **Exhibit 2** to the Bid Procedures Order (the "Cure Notice"); provided, however, that the Debtors need not serve the Cure Notice on any party for whom the Debtors are unable to obtain, after reasonable diligence, an email or address as of the entry of the Bid Procedures Order; provided, further that the Debtors shall not be obligated to provide supplemental service of the Cure Notice with respect to any Cure Notice that is returned to the Debtors as undeliverable so long as the Debtors have confirmed that any such Cure Notice was sent to the applicable email or physical address on file in the Debtors' books and records and no other email or physical address could be obtained after reasonable diligence. The Cure Notice shall inform each recipient that its respective Contract or Lease may be designated by the Contract Party (as defined below) as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent practicable (i) the title of the Contract or Lease, (ii) the name of the counterparty to the Contract or Lease, (iii) the Debtors' good faith estimates of the cure amounts required in connection with such Contract or Lease (the "**Cure Amount**"), (iv) the identity of the Contract Party and (v) the deadline by which any such Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto; provided, however, that service of a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease. If the Debtors identify additional Contracts or Leases that might be assumed by the Debtors and assigned to the Contract Party, the Debtors will promptly send a supplemental Cure Notice to the applicable counterparties to such Contract or Lease.

- b. **Adequate Assurance.** Upon a counterparty's request to the Debtor's counsel, the Debtors shall promptly provide evidence of adequate assurance of future performance under any Contracts and Leases that may be assumed by the applicable Qualified Bidder, including the Stalking Horse Bidder, including the legal name of the proposed assignee, the proposed use of any leased premises, general information about the proposed assignee's financial wherewithal and a contact person with the proposed assignee whom counterparties may contact if they wish to obtain further information regarding the proposed assignee.
- c. **Objections.** Objections, if any, to the proposed assumption and assignment of any Contract or Lease or to the cure amount proposed with respect thereto must: (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any other orders of the Court, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served so as to be actually received by the Notice Parties before the Sale Objection Deadline.

Following the Debtors' selection of the Successful Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Successful Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Successful Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Successful Bidder for the Purchased Assets, counterparties to the Debtors' Contracts and Leases shall have until February 10, 2026, at 12:00 p.m. (noon) (ET) (the "Supplemental Adequate Assurance Objection Deadline") to object to the assumption and assignment of a Contract or Lease (a "Supplemental Adequate Assurance Objection") solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

- d. **Dispute Resolution.** Any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the proposed sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing or such later hearing if the objection is not resolved and the Debtors determine that an adjournment is appropriate. To the extent any such objection is resolved or determined unfavorably to the applicable Debtor, the Debtors may, subject to the terms of an agreement with the Successful Bidder, seek to reject the applicable Contract or Lease after such determination.

27. Any party who fails to timely file an objection to its scheduled cure amount listed on the Cure Notice or to the assumption and assignment of a Contract or Lease (i) shall be forever barred, estopped and enjoined from objecting thereto, including (a) making any demands for additional cure amounts or monetary compensation on account of any alleged defaults for the period prior to the applicable objection deadline against the Debtors, their estates or the Contract Party or the Stalking Horse Bidder or other Successful Bidder selected at the Auction, if any, with respect to any such Contract or Lease and (b) asserting that the Contract Party or the Successful Bidder has not provided adequate assurance of future performance as of the date of the Sale Order; (ii) shall be deemed to consent to (a) the sale of the Purchased Assets as approved by the Sale Order and (b) the assumption and assignment of the Contracts and Leases; and (iii) shall be forever barred and estopped from asserting or claiming against the Debtors or the assignee of the relevant Contract or Lease that any conditions to assumption and assignment of such Contract or Lease must be satisfied (pursuant to section 365(b)(1) of the Bankruptcy Code or otherwise).

B. Scheduling and Notice

28. Given the marketing and diligence period to be established by the Bid Procedures, the proposed timeline is sufficient to complete a fair and open sale process that will maximize the value received for the Debtors' assets. If new bidders emerge, the proposed timeline will provide them with sufficient time to perform due diligence given that the process is well understood at this juncture. Thus, the schedule is sufficient, while respecting the necessity to consummate the Sale as quickly as possible to maximize the value received for the Purchased Assets.

29. **Notice of Sale Hearing.** Within one (1) business day following entry of the Bid Procedures Order, or as soon thereafter as practicable, the Debtors shall cause to be served,

by first-class mail, postage prepaid, a sale notice (the “Sale Notice”) setting forth, among other things, the proposed dates established for submission of Qualified Bids, the Auction, and the Sale Hearing, substantially in the form attached to the Bid Procedures Order as **Exhibit 3**, upon: (a) the United States Trustee for the District of Delaware (b) all known material creditors of the Debtors, including contingent, unliquidated and disputed creditors, as well as each creditor listed on the Debtors’ consolidated list of thirty (30) largest unsecured creditors, as filed with the Debtors’ chapter 11 petitions, (c) any official committee appointed in the Debtors’ cases; (d) all parties asserting a security interest in the Purchased Assets to the extent any such interest is reasonably known to the Debtors; (e) applicable federal, state, county and city tax and regulatory authorities; (f) all entities known to have expressed a written interest in a transaction with respect to the Purchased Assets or that have been identified by the Debtors or their advisors as a potential purchaser of the Purchased Assets; (g) local, state and federal authorities and agencies that have issued licenses or permits to the Debtors with respect to the operation and use of the Purchased Assets; (h) each counterparty to the Debtors’ Contracts and Leases; and (i) all parties entitled to notice pursuant to Bankruptcy Rule 2002 (collectively, the “Sale Notice Parties”).

30. **Bid Requirements.** No less than three (3) days prior to the Bid Deadline, the Debtors will provide notice to all known potential bidders of the amount of the Excess DIP.

31. **Post-Auction Supplement.** Following the Auction, the Debtors will promptly file with the Court a supplement (the “Supplement”) that will inform the Court of the results of the Auction. The Supplement will identify, among other things, (i) the Successful Bidder as the proposed purchaser of the Purchased Assets, (ii) the amount and form of consideration to be paid by the Successful Bidder for the Purchased Assets, (iii) the Assumed Liabilities to be assumed by the Successful Bidder, and (iv) the Contracts and Leases that may be assumed by the Debtors

and assigned to the Successful Bidder, or the Debtors' rights and interests therein sold and transferred to the Successful Bidder, as the case may be, in connection with the Sale. The Supplement will also include similar information relating to the Back-Up Bidder and the Back-Up Bid. In addition, the Debtors will file as soon as practicable (i) any revised proposed Sale Order approving the Sale to the Successful Bidder, (ii) a copy of the purchase agreement entered into by the Debtors and the Successful Bidder following the Auction, and (iii) any additional information or documentation relevant to the Successful Bid. The Debtors will file the Supplement on the docket for the chapter 11 cases as promptly as is reasonably practicable prior to the Sale Hearing but will not be required to serve the same on any parties-in-interest in the chapter 11 cases.

C. Sale Order

32. The Debtors request that this Court set the Sale Hearing for a date that is not later than February 11, 2026. At the Sale Hearing, the Debtors intend to seek entry of the Sale Order approving the Sale free and clear of all Liens to the fullest extent possible pursuant to Bankruptcy Code section 363(f), including without limitation, successor liability or similar theories (except for those Assumed Liabilities and obligations expressly assumed by the Successful Bidder) and providing that the Successful Bidder will be protected from liability for any claims owed by the Debtors. The Sale Order will, among other things, contain findings that: (a) the Debtor demonstrated good, sufficient, and sound business purposes and justifications for, and compelling circumstances to promptly consummate the Sale; (b) the Sale is not a fraudulent conveyance; (c) the Buyer is purchasing the Purchased Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, is entitled to and granted the full rights, benefits, privileges, and protections of that provision, and has otherwise proceeded in good faith in all respects in connection with the Sale; (d) the Buyer is not, and shall not be

deemed to, as a result of the Sale or any action taken in connection with the Sale, be a successor or continuation of the Debtor or its estates or to have de facto or otherwise, merged or consolidated with or into the Debtor; (e) the Sale does not constitute a de facto plan of reorganization or liquidation; and (f) the Bidding Procedures provide proper and adequate notice for these and the other terms and conditions of the bidding, Auction and Sale processes.

BASIS FOR RELIEF REQUESTED

- (i) **Approval of the Sale is warranted under Bankruptcy Code section 363(b), and the Bid Procedures, including entry into the Stalking Horse Agreement, are appropriate and in the best interests of the Debtors' estates and creditors.**

33. Section 363(b)(1) of the Bankruptcy Code provides that, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Bankruptcy Code section 105(a) further provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105.

34. A debtor should be authorized to sell assets out of the ordinary course of business pursuant to Bankruptcy Code section 363 if it demonstrates a sound business purpose for doing so. *See In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003) (finding that a court should approve a debtor’s use of assets outside ordinary course of business if debtor can demonstrate a sound business justification for proposed transaction); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 154 (Bankr. D. Del. 1999) (finding that the debtor’s sound business purpose justified its sale of the assets outside of the ordinary course of business).

35. Indeed, the paramount goal of a chapter 11 process is to maximize the proceeds received by the estate. *See Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997) (“[A] primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”); *In re Abbotts Dairies of Penn., Inc.*, 788

F.2d 143, 149 (3d Cir. 1986) (noting the fairness and reasonableness of prices); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the . . . debtor’s duty . . . is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *Cello Bag Co. v. Champion Intl Corp. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)); *In re Summit Global Logistics, Inc.*, No. 08-11566, 2008 WL 819934, at *14 (Bankr. D.N.J. Mar. 26, 2008) (describing a proposed transaction as one that “maximize[d] value and return to interested parties.”). To that end, courts have recognized that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate of a debtor and therefore are appropriate. *See Integrated*, 147 B.R. at 659 (providing that such procedures “encourage bidding . . . to maximize the value of the debtor’s assets”); *In re Fin. News Network Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991) (“[C]ourt-imposed rules for the disposition of assets [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estate.”).

36. With this in mind, courts defer to a debtor’s business judgment in the context of bidding and auction procedures. *See In re Trans World Airlines Inc.*, No. 01-0056, 2001 WL 1820326, at *10 (Bankr. D. Del. Apr. 2, 2001) (“It is not the function of a bankruptcy court to independently exercise a business judgment as to which proposal among competing proposals should be adopted by the debtor in effecting a § 363(b) sale.”).

37. In exercising their fiduciary duties and in the sound exercise of the Debtors’ business judgment, the Debtors have determined that the Bid Procedures, including entry into the Stalking Horse Agreement, are the most appropriate method for encouraging competing bids that

will maximize creditor recoveries and that will ensure the value received for the Purchased Assets is the highest and best the market can generate.

38. The Bid Procedures provide a framework to facilitate and entertain bids for the Purchased Assets and, if such bids are received, to conduct an Auction in an orderly yet competitive fashion, thereby encouraging bids that maximize the value realized from a sale of the Purchased Assets. In particular, the Bid Procedures contemplate an open and fair auction process with minimum barriers to entry and provide Potential Bidders with sufficient time to perform due diligence, many of whom will have likely performed due diligence in the very recent past, and acquire the information necessary to submit a timely and well-informed bid. *See In re Federal Mogul*, 293 B.R. 124, at 126.

39. The Bid Procedures provide the Debtors with an adequate opportunity to consider competing bids and select the highest acceptable offer for the purchase of substantially all the Debtors' assets. The Debtors therefore believe that submitting the purchase of the Purchased Assets to a market-based test will ensure maximum recovery for all stakeholders. Accordingly, the Debtors and their stakeholders can be assured that the consideration obtained will be fair and reasonable and at or above market. *In re Summit Global Logistics*, 2008 WL 819934, at *14.

40. If the Debtors do not receive any Qualified Bids (other than the Stalking Horse Bid), the Debtors will (i) notify all Potential Bidders and the Court in writing that (a) the Auction is cancelled and (b) the Stalking Horse Bid is the Successful Bid, and (ii) seek authority at the Sale Hearing to consummate the Sale transactions with the Stalking Horse Bidder contemplated by its Stalking Horse Agreement.

41. Similar bidding, auction and notice procedures have been previously approved by this Court in other chapter 11 cases. *See, e.g., In re Royal Interco, LLC*, Case No. 25-10674 (TMH) (Bankr. D. Del. May 6, 2025); *In re Coach USA, Inc.*, Case No. 24-11258 (MFW) (Bankr. D. Del. July 16, 2024); *In re Dermitech, Inc.*, Case No. 24-11378 (JTD) (Bankr. D. Del. July 15, 2024); *In re Vyair Medical, Inc.*, 24-11217 (BLS) (Bankr. D. Del. July 11, 2024); *In re MRRC Hold Co.*, Case No. 24-11164 (CTG) (Bankr. D. Del. July 10, 2024); *In re Ambri Inc.*, Case No. 24-10952 (LSS) (Bankr. D. Del. June 12, 2024); *In re Near Intelligence, Inc.*, Case No. 23-11962 (TMH) (Bankr. D. Del. Jan. 23, 2024).

42. In sum, the Debtors believe that the proposed Bid Procedures, including entry into the Stalking Horse Agreement, create an appropriate framework for expeditiously establishing that the Debtors are receiving the best and highest offer for the Purchased Assets. Accordingly, the proposed Bid Procedures and the Stalking Horse Agreement are reasonable, appropriate, and within the Debtors' sound business judgment under the circumstances.

(ii) Approval of the Bid Protections is appropriate.

43. The Debtors believe that the Bid Protections are fair and reasonable under the circumstances. The Bid Protections provided for in the Stalking Horse Agreement were negotiated at arm's-length and in good faith and were a necessary inducement to Stalking Horse Bidder's participation in the proposed sale transaction and willingness to subject its bid to a competitive auction process. As discussed below, the Stalking Horse Bid sets a "floor" value for the Purchased Assets that maximizes the likelihood that the Debtors will receive the highest acceptable offer for the Purchased Assets to the benefit of the Debtors' estates.

44. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. In *O'Brien*, the Third Circuit

reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award bid protections:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a “sale configuration mode” to attract other bidders to the auction;
- e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;
- f. the correlation of the fee to a maximum value of the debtor’s estate;
- g. the support of the principal secured creditors and creditors’ committees of the break-up fee;
- h. the benefits of the safeguards to the debtor’s estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See In re O’Brien Envtl. Energy, Inc., 181 F.3d at 536.

45. Although none of the factors is dispositive, an application of the facts to several of such factors supports the approval of the Bid Protections. In particular, the Bid Protections are necessary to preserve the value of the Debtors’ estates because they will enable the Debtors to establish an adequate floor value for the Purchased Assets and to therefore insist that competing bids be materially higher or otherwise better than the Stalking Horse Bid—a clear benefit to the Debtors’ estates. The Stalking Horse Bidder would not agree to act as a stalking horse without the Bid Protections given the substantial time and expense it has incurred in connection with negotiating definitive documentation and the risk that it will be outbid at the Auction. Without the Bid Protections, the Debtors might lose the opportunity to obtain the highest acceptable offer for the Purchased Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. As discussed in the First Day

Declaration, the purchase price contemplated by the Stalking Horse Bid is the only bid received as of filing and represents a superior recovery for the estate to the alternatives, including the sizable risk of a chapter 7 liquidation. The bid of the Stalking Horse Bidder sends a message to all potential bidders that the Purchased Assets are at least worth the Purchase Price and puts pressure on potential competing bidders to “put their best foot forward” in formulating their bids. Therefore, without the benefit of the bid of the Stalking Horse Bidder, the bids received at the Auction for the Purchased Assets could be substantially lower than the bid offered by the Stalking Horse Bidder.

46. In addition, the Bid Protections were the product of hard-fought negotiations between the Debtors and the Stalking Horse Bidder, in which the Debtors sought to both minimize the magnitude of Bid Protections payable and limit the circumstances under which they are payable. The resulting Bid Protections—a break-up fee of \$620,000 and expense reimbursement up to 2% of the Purchase Price—fall within the range of stalking horse bid protections regularly approved in this District and others. *In re iSun, Inc.*, 24-11144 (TMH) (Bankr. D. Del. 2024) (approving a 5% Break-Up Fee); *In re PlastiQ Inc.*, 23-10671 (BLS) (Bankr. D. Del. 2023) (same); *In re Orexigen Therapeutics, Inc.*, 18-10518 (JTC) (Bankr. D. Del. 2018) (same); *In re ATopTech, Inc.*, 17-10111 (MFW) (Bankr. D. Del. 2017) (same).

47. Finally, payment of the Bid Protections in the context of a sale to another purchaser will not diminish the Debtors’ estates to the extent they become payable, as the Bid Procedures require that any competing bid must exceed the Stalking Horse Bid by an amount in excess of the Bid Protections. Accordingly, based on the foregoing, the Debtors submit that the Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances, and should be approved.

(iii) The Purchased Assets should be sold free and clear of claims, liens and encumbrances under 11 U.S.C. § 363(f).

48. In the interest of attracting the best offers, the Debtors request authorization to sell the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, and other interests attaching to the proceeds of the sale of the Purchased Assets and distributed as provided for in a further order of the Court.

49. Under section 363(f) of the Bankruptcy Code, a debtor may sell estate property free and clear of liens, claims, encumbrances, and other interests if one of the following conditions is satisfied:

- i. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- ii. such entity consents;
- iii. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- iv. such interest is in bona fide dispute; or
- v. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) of the Bankruptcy Code is written in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Purchased Assets “free and clear” of liens, claims, encumbrances, and other interests. *See, e.g., In re Dura Automotive Sys., Inc.*, 2007 WL 7728109, at *6 n.32 (Bankr. D. Del. Aug. 15, 2007).

50. Furthermore, section 105(a) of the Bankruptcy Code grants the Court broad discretionary powers, providing that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). This equitable power may be utilized to effectuate the provisions of section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *6–7 (Bankr. D. Del. Mar. 27, 2001)

(highlighting bankruptcy courts' equitable authority to authorize sale of estate assets free and clear).

51. The Debtors will present evidence at the Sale Hearing that the Sale satisfies the requirements of section 363(f). Accordingly, the Debtors request authorization to sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests.

(iv) A Successful Bidder should be entitled to the protections of Bankruptcy Code section 363(m).

52. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Abbotts Dairies of Penn.*, 788 F.2d at 147; *Miami Ctr. Ltd. P'ship v. Bank of New York*, 838 F.2d 1547, 1554 (11th Cir. 1988); *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, Case No. 03-51524, 2007 WL 1428477 (Bankr. D.N.J. May 11, 2007); *In re Temtechco, Inc.*, 1998 WL 887256, at *4 (D. Del. 1998).

53. As noted above, any asset purchase agreement executed by a Successful Bidder (including the Stalking Horse Agreement) will have been negotiated at arm's-length and in good faith in accordance with the Bid Procedures, with each of the parties represented by its own advisors and counsel. Accordingly, the Debtors request that the Sale Order include a provision that any Successful Bidder for the Purchased Assets is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors maintain that providing the Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Purchased Assets.

(v) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases should be authorized.

54. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). A debtor may assume or reject an executory contract or unexpired lease if its reasonable business judgment supports assumption or rejection. See *In re Stable Mews Assoc., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984); see also *Grp. of Institutional Investors v. Chicago M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989). The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting *Stable Mews*). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially. See *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

55. Pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default which is required to be cured, including compensating or providing adequate assurance of prompt compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1). The Designation Procedures are appropriate and reasonably tailored to provide counterparties to Contracts and Leases with adequate notice of the proposed assumption and assignment of their Contracts and Leases, as well as proposed cure amounts, if any. Such counterparties will then be given an opportunity to object to such cure amounts and

assumption and assignment of their Contracts and Leases. The Designation Procedures further provide that, in the event an objection is not resolved, the Court will determine the disputed issues. Therefore, the Debtors submit that implementation of the Designation Procedures is appropriate under the facts and circumstances of the chapter 11 cases and the proposed Sale.

56. Once an executory contract is assumed, the trustee or debtor in possession may elect to assign such contract. *See In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor’s estate.”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist a trustee in realizing the full value of the debtor’s assets). Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned.

57. The Debtors submit that the assumption and assignment of Contracts and Leases to the Stalking Horse or any other Successful Bidder (as applicable), as of the Closing Date is necessary to the consummation of the Sale and is well within the Debtors’ sound business judgment. Those Contracts and Leases are essential to inducing the highest acceptable offer for

the Purchased Assets because they are necessary to run the Debtors' business. It is unlikely that any purchaser would want to acquire any company on a going-concern basis unless a significant number of the Contracts and Leases needed to conduct the business and manage the day-to-day operations are included in the transaction. In addition, the Stalking Horse Agreement and Sale Order provide that the Stalking Horse Bidder will have (i) cured and/or provided adequate assurance of cure of any default required to be cured and existing prior to the assumption and assignment; and (ii) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from such default.

58. Counterparties to the Debtors' Contracts and Leases will be provided with a Cure Notice and will have an opportunity to object to the potential assumption and assignment of their Contracts and Leases prior to the entry of the Sale Order. The Debtors propose that any counterparty that fails to object to the proposed assumption and assignment of its contract or lease will be deemed to consent to that assumption and assignment pursuant to section 365 of the Bankruptcy Code on the terms set forth in the proposed Bid Procedures Order and Sale Order, and to the cure amounts identified in the Cure Notice. *See, e.g., In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor was deemed to have consented to sale by not objecting to sale motion).

59. Accordingly, the Debtors submit that the assumption and assignment to the Stalking Horse Bidder or other Successful Bidder of the Debtors' Contracts and Leases should be approved as an exercise of the Debtors' sound business judgment.

E. No Consumer Privacy Ombudsman Need Be Appointed

60. Pursuant to section 363(b)(1) of the Bankruptcy Code, the Debtors may not sell personally identifiable information if the Debtors, in connection with offering their products or services, have a policy prohibiting the transfer of such information and if such policy is in effect

on the day of the commencement of the case, unless “such sale or such lease is consistent with such policy.” 11 U.S.C. § 363(b)(1).

61. The Debtors’ privacy policy specifically allows the Debtors to disclose their customer’s information if the Debtors were to undergo a business transition, like a merger, acquisition, or sale of all or a portion of their assets.⁴ Moreover, the Stalking Horse Bidder has agreed to assume and honor the Debtors’ current privacy policy. Accordingly, no consumer privacy ombudsman need be appointed. *See, e.g., In re Crucible Materials Corp.*, 2009 Bankr. LEXIS 4893, at *16 (Bankr. D. Del. Aug. 31, 2009) (no appointment of consumer privacy ombudsman required where sale assets complied with debtors’ privacy policy); *In re Penn Traffic Co.*, 2010 Bankr. LEXIS 5399, at *14 (Bankr. D. Del. Jan. 8, 2010) (same).

F. The Proposed Notice is Appropriate Under Bankruptcy Rule 2002.

57. The notices contemplated by the Bid Procedures give notice of the proposed Sale including a disclosure of the time and place of an Auction, the terms and conditions of the Sale, and the deadline for filing any objections. The Debtors submit that the notice procedures comply with Bankruptcy Rule 2002 and include information regarding the Bid Procedures necessary to enable interested bidders to participate in the Auction, and constitute good and adequate notice of the Bid Procedures and the other components of the Auction. Therefore, the Debtors respectfully request this Court approve the proposed notice procedures.

F. Relief from Bankruptcy Rules 6004(h) and 6006(d) is Appropriate.

58. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of

⁴ *See FlexShopper Privacy Policy*, last updated May, 7, 2025, available at <https://www.flexshopper.com/privacy> (“We also may disclose PII to third parties... (c) in the event of a merger, acquisition, consolidation, change of control, or sale of all or a portion of our assets or if we undergo bankruptcy or liquidation; or (d) for any other legitimate business purposes not otherwise prohibited by applicable law.”)

property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). To preserve the value of the Debtors’ estates and limit the costs of administering and preserving the Purchased Assets, it is critical that the Debtors close the sale of the Purchased Assets as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

59. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the ReadySett LLC; (c) counsel to the Powerscourt Investments 50, LP; (d) the parties included on the Debtors’ consolidated list of their 30 largest unsecured creditors; (e) the Internal Revenue Service; (f) the United States Department of Justice; (g) entities known to have expressed a bona fide interest in a transaction with respect to the Purchased Assets; (h) all entities known to have asserted any lien, claim or encumbrance in or upon any of the Purchased Assets; (i) all federal, state and local environmental, regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; and (j) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

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CONCLUSION

WHEREFORE, the Debtors request this Court to enter the Bid Procedures Order, the Sale Order and further relief as the Court may deem just and appropriate.

Dated: December 22, 2025
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Sophie Rogers Churchill

Robert J. Dehney, Sr. (No. 3578)

Matthew O. Talmo (No. 6333)

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Bid Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

FLEXSHOPPER, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-12554 (LSS)

Joint Administration Requested

**ORDER PURSUANT TO SECTIONS 105, 363, 364, 365 AND 541 OF THE
BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND
DEL. BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BID PROCEDURES FOR
THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B)
APPROVING THE DEBTORS' ENTRY INTO STALKING HORSE AGREEMENT AND
RELATED BID PROTECTIONS; (C) APPROVING PROCEDURES FOR THE
ASSUMPTION AND ASSIGNMENT OR REJECTION OF DESIGNATED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) SCHEDULING AN
AUCTION AND SALE HEARING; (E) APPROVING FORMS AND MANNER OF
NOTICE OF RESPECTIVE DATES, TIMES, AND PLACES IN CONNECTION
THEREWITH; AND (F) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the debtors and debtors in possession (the “Debtors”) in the above-captioned jointly administered chapter 11 cases, for entry of an order (the “Order”), pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 6004-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) authorizing and approving certain proposed bid procedures (as attached hereto as **Exhibit 1**, the “Bid Procedures”) governing the submission of competing proposals to purchase the Purchased Assets pursuant to section 363 of the Bankruptcy Code, authorizing and approving the Debtors’ entry into (but not consummation of) the Asset Purchase Agreement (substantially in the form attached to the Motion as **Exhibit B**

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal EIN, are FlexShopper, Inc. (6087); FlexShopper, LLC (0385); FlexLending, LLC (5373); FlexRevolution, LLC (4102); FlexRetail, LLC (5129); Flex TX, LLC (6818); Flex TX Funding, LLC (2754); and Flex TX CAB, LLC (3656). The Debtors’ mailing address is 901 W Yamato Road, Suite 260 Boca Raton, FL 33431.

² Capitalized terms not defined herein are defined in the Motion.

and, together with all exhibits and schedules thereto, the “Stalking Horse Agreement”), by and among the Debtors and ReadySett LLC (the “Stalking Horse Bidder”), pursuant to which the Debtors have agreed to sell the Purchased Assets to the Stalking Horse Bidder, subject to the terms and conditions contained in the Stalking Horse Agreement, (iii) approving the form and manner of notice of the sale of the Purchased Assets (the “Sale Notice”), (iv) scheduling a hearing for approval of the sale of the Purchased Assets (the “Sale Hearing”) and setting other related dates and deadlines and (v) approving procedures for the assumption and assignment of the Debtors’ executory contracts (the “Contracts”) and unexpired leases (the “Leases”) and the form of and manner of notice of proposed cure amounts; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and all other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1.

D. Good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the

relief granted by this Order has been afforded to those parties entitled to notice pursuant to Local Rule 2002-1(b) and all other interested parties.

E. The Debtors have articulated good and sufficient reasons for the Court to approve the Bid Procedures. Such good and sufficient reasons were set forth in the Motion, are incorporated by reference herein, and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

F. The Bid Procedures are fair, reasonable, and appropriate, and are designed to maximize the value to be received by the Debtors' estates and creditors. The Bid Procedures and all such steps taken by the Debtors in connection with the implementation of the Bid Procedures and this Order shall be deemed reasonable and appropriate and within the sound business judgment of the Debtors pursuant to section 363(b) of the Bankruptcy Code.

G. The Stalking Horse Agreement was entered into in good faith by the Debtors and the Stalking Horse Bidder, and is the result of extensive, good faith, arm's-length negotiation between the parties that are each represented by sophisticated legal counsel.

H. The Debtors have demonstrated compelling and sound business justifications for entering into the Stalking Horse Agreement and incurring the administrative obligations arising thereunder or in connection therewith, and the timing and procedures set forth therein.

J. The Sale Notice, substantially in the form attached hereto as **Exhibit 3**, is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale, including: (i) the date, time and place of the Auction (if one is held), (ii) the Bid Procedures and certain dates and deadlines related thereto, (iii) the objection deadline for the sale motion and the date, time and place of the Sale Hearing, (iv) instructions for promptly obtaining a copy of the

Stalking Horse Agreement, (v) representations describing the proposed sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the sale proceeds, and (vi) notice of the proposed assumption and assignment of Contracts and Leases to either an affiliate of the Stalking Horse Bidder or an affiliate of any designee of the Stalking Horse Bidder (such party, the “Contract Party”) pursuant to the Stalking Horse Agreement (or to another Successful Bidder selected at the Auction, if any) and the procedures and deadlines for objecting thereto. No other or further notice of the proposed Sale shall be required.

K. The Cure Notice attached hereto as **Exhibit 2** is reasonably calculated to provide all non-Debtor counterparties to the Debtors’ Contracts and Leases with proper notice of the potential assumption and assignment of their Contract or Lease, the proposed cure amounts relating thereto and the related assumption and assignment procedures; provided that the mere listing of any Contract or Lease on the Cure Notice does not require or guarantee that such Contract or Lease will be assumed and assigned, and all rights of the Debtors with respect to such Contracts and Leases are reserved.

L. The Bid Procedures comply with the requirements of Local Rule 6004-1.

M. The appointment of a consumer privacy ombudsman pursuant to section 363(b)(1) or section 332 of the Bankruptcy Code is not required with respect to the Sale of the Purchased Assets.

N. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors’ estates, their creditors and all other interested parties.

O. To the extent payable under this Order and in accordance with the Stalking Horse Agreement, the Bid Protections: (i)(a) are actual and necessary costs of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (b) shall be treated as an allowed superpriority administrative claim status in the chapter 11 cases pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code; (ii) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) are reasonably tailored to encourage, rather than chill, bidding for the Purchased Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Purchased Assets; (iv) are a material inducement for, and condition necessary to, ensure that the Stalking Horse Bidder will continue to pursue the transaction contemplated by the Stalking Horse Agreement; and (v) are reasonable in relation to the Stalking Horse Bidder's efforts and to the magnitude of the proposed transaction and the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing such transaction. Unless it is assured that the Bid Protections are available, the Stalking Horse Bidder is unwilling to remain obligated to consummate the transaction or otherwise be bound by the Stalking Horse Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is hereby **GRANTED** as set forth herein.
2. All objections filed, if any, in response to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or specifically addressed in this Order, and all reservations of rights included in such objections, are specifically overruled in all respects on the merits.

The Bid Procedures

3. The Bid Procedures attached hereto as **Exhibit 1** are approved, and the Debtors are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures. To the extent of any conflict between the Bid Procedures and this Order, the Bid Procedures shall govern.

4. The Bid Procedures shall govern the submission, receipt and analysis of all Bids, and any party desiring to submit a higher acceptable offer shall do so strictly in accordance with the terms of this Order and the Bid Procedures.

5. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bid Procedures):

a. **Bid Deadline: January 30, 2026, at 4:00 p.m. (Prevailing Eastern Time)**

is the deadline by which all Qualified Bids must be actually received by the parties specified in the Bid Procedures (the “Bid Deadline”).

b. **Auction: February 5, 2026, at 10:00 a.m. (Prevailing Eastern Time)** is

the date and time of the Auction, if one is needed, which will be held at the offices of Morris Nichols Arsht & Tunnell LLP, 1201 North Market Street, 16th floor, Wilmington, DE 19801; *provided, however*, that the Debtors in their discretion, in consultation with the Consultation Parties, shall have the right to hold the Auction at another place or virtually, with instructions for Qualified Bidders to participate to be provided prior to the Auction, with notice to all Qualified Bidders and any other invitees.

6. Only a Qualified Bidder that has submitted a Qualified Bid by the Bid Deadline will be eligible to participate at the Auction. As described in the Bid Procedures, if the

Debtors do not receive any Qualified Bids other than from the Stalking Horse Bidder, the Debtors may cancel the Auction, name the Stalking Horse Bidder as the Successful Bidder, and seek final approval at the Sale Hearing of the sale of the Purchased Assets to the Stalking Horse Bidder, in accordance with the terms of the Stalking Horse Agreement.

7. If the Auction is conducted, (i) each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the sale, (ii) each Qualified Bidder participating in the Auction shall be required to confirm that its Qualified Bid is a good faith, bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder, and (iii) the Auction shall be conducted openly and shall be transcribed or videotaped.

Approval of Debtors' Entry into the Stalking Horse Agreement

8. The Debtors are hereby authorized to designate ReadySett LLC, together with any designated affiliate thereof, as the Stalking Horse Bidder.

9. The Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into and perform under the Stalking Horse Agreement, subject to the solicitation of higher or otherwise better offers for the Purchased Assets (as defined in the Stalking Horse Agreement) and entry of the Sale Order. Subject to entry of the Sale Order, the Stalking Horse Agreement shall be binding and enforceable on the Debtors' estates, the Stalking Horse Bidder and any other parties thereto in accordance with and subject to its terms, including as they relate to the Bid Procedures and related termination provisions.

10. The Stalking Horse Agreement is authorized and approved in the form attached to the Bid Procedures Motion as **Exhibit B** as the stalking horse bid for the Purchased Assets (the "Stalking Horse Bid").

11. The Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid, for all purposes under the Bid Procedures Order and Bid Procedures.

12. The failure to describe specifically or include any provision of the Stalking Horse Agreement or related documents in the Motion or herein shall not diminish or impair the effectiveness of such provision as to such parties. The Stalking Horse Agreement and any related agreements, documents, or other instruments may be modified, amended or supplemented by the parties thereto, solely in accordance with the terms thereof, without further order of the Court.

13. The Bid Protections are approved in their entirety and (i) shall, to the extent payable under the terms of the Stalking Horse Agreement, constitute an administrative expense of the Debtors under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code that shall be indefeasibly paid to the Stalking Horse Bidder from the proceeds of an Alternate Transaction at and as a condition to closing of any such Alternate Transaction; (ii) shall not be subject to any bar date in these chapter 11 cases or any requirement to file any request for allowance of an administrative expense claim or proof of claim; (iii) shall be payable in accordance with the terms of and subject to the conditions set forth in the Stalking Horse Agreement without the need for any further approval of this Court; and (iv) shall survive the termination of the Stalking Horse Agreement and dismissal or conversion of these chapter 11 cases pursuant to the terms in the Stalking Horse Agreement. The Debtors shall file a notice on the docket of these chapter 11 cases in the event that the Bid Protections are paid by the Debtors or their estates.

14. Subject to the Bid Procedures and entry of the Sale Order, the Debtors, the Warehouse Secured Parties, and Stalking Horse Bidder are granted all rights and remedies

provided to them under the Stalking Horse Agreement, including, without limitation, the right to specifically enforce the Stalking Horse Agreement (including with respect to the Bid Protections) in accordance with its terms.

15. The Stalking Horse Bidder is authorized, pursuant to section 363(k) of the Bankruptcy Code, to credit bid all amounts owed by Debtors under the DIP Agreement (including accrued interest and fees and expenses associated with the DIP Facility), the Break -Up Fee, and Expense Reimbursement at each round of bidding at the Auction.

16. The Debtors are authorized to perform all of their respective pre-closing obligations under the Stalking Horse Agreement, and such obligations shall be binding upon the Debtors; *provided that*, for the avoidance of doubt, consummation of the transactions contemplated by the Stalking Horse Agreement shall be subject to entry of an order approving the sale of the Purchased Assets (the “Sale Order”) and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

17. This Order, and the claims granted hereunder in favor of the Stalking Horse Bidder on account of the Bid Protections, shall be binding upon the Debtors’ estates, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtors’ estates.

18. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtors to the extent necessary, without further order of the Court, to allow the Stalking Horse Bidder to (i) deliver any notice provided for in the Stalking Horse Agreement, including, without limitation, a notice terminating the Stalking Horse Agreement in accordance with the terms thereof and (ii) take any actions permitted under the Stalking Horse Agreement to terminate the Stalking Horse Agreement, solely to the extent permitted by the Stalking Horse Agreement and applicable law, and assert any claims with respect

to the Bid Protections. All rights of the Debtors' and their estates with respect to the foregoing shall be preserved.

Hearing and Objection Deadline

19. The Sale Hearing shall take place in this Court on **February 11, 2026, at _:00 _m. (Prevailing Eastern Time)**; *provided* that the Sale Hearing may be adjourned without further notice other than announcement in open Court or by the filing of a notice on the docket of these Cases or a notice of agenda. Any obligations of the Debtors set forth in the Stalking Horse Agreement that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the Stalking Horse Agreement are authorized as set forth herein and are fully enforceable as of the date of entry of this Order.

20. The deadline to file objections, if any, to the transactions contemplated by the Stalking Horse Agreement or to entry of the Sale Order is **January 30, 2026, at 4:00 p.m. (Prevailing Eastern Time)** (the "Sale Objection Deadline"). Objections, if any, **must**: (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (iv) be filed with the Court and served so as to be **actually received** no later than the Sale Objection Deadline, as applicable, by the following parties (the "Notice Parties"): (i) counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Robert J. Dehney, Sr., Esq. (rdehney@morrisnichols.com), Matthew O. Talmo, Esq. (mtalmo@morrisnichols.com), Sophie Rogers Churchill, Esq. (srchurchill@morrisnichols.com), and Luke Brzozowski, Esq. (lbrzozowski@morrisnichols.com); (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey,

Esq. (linda.casey@usdoj.gov); (iii) counsel to ReadySett LLC, Troutman Pepper Locke LLP, 875 Third Avenue, New York, NY 10022, Attn: Matthew R. Brooks, Esq. (matthew.brooks@troutman.com) David Fournier, Esq. (David.fournier@Troutman.com), James Stevens, Esq. (james.stevens@troutman.com) and Sean A. Feener, Esq. (sean.feener@troutman.com); (iv) counsel to Powerscourt Investments 50, LP, (a) Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Suite 5400, Wilmington, Delaware 19801, Attn: William E. Chipman (chipman@chipmanbrown.com), and (b) Mayer Brown LLP, 71 South Wacker Drive, Chicago, Illinois 60606, Attn: Sean T. Scott, Esq. (STScott@mayerbrown.com) and Joshua R. Gross (JGross@mayerbrown.com); and (v) counsel to any statutory committee appointed in these chapter 11 cases.

Sale Notice and Related Relief

21. The Sale Notice, substantially in the form attached hereto as **Exhibit 3**, is hereby approved. The Sale Notice shall be served upon: (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtors' consolidated list of thirty 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions, (c) any official committee appointed in the Debtors' cases; (d) all parties asserting a security interest in the Purchased Assets to the extent any such interest is reasonably known to the Debtors; (e) applicable federal, state, county and city tax and regulatory authorities; (f) all entities known to have expressed a written interest in a transaction with respect to the Purchased Assets or that have been identified by the Debtors or their advisors as a potential purchaser of the Purchased Assets; (g) local, state and federal authorities and agencies that have issued licenses or permits to the Debtors with respect to the operation and use of the Purchased Assets; (h) each counterparty to the Debtors' Contracts and

Leases; (i) all parties entitled to notice pursuant to Bankruptcy Rule 2002-1; and (j) all parties listed in the Debtors' creditor matrix.

Designation and Assumption Procedures

22. The procedures set forth below (the "Designation Procedures") regarding the proposed assumption and assignment of certain Contracts and Leases that may be designated to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or the Successful Bidder selected at the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code (as defined in the Stalking Horse Agreement, collectively, the "Assigned Contracts and Leases") in connection with the sale of the Purchased Assets are hereby approved.

23. These Designation Procedures, as may be modified or supplemented by the Sale Order, shall govern the assumption and assignment of all Assigned Contracts and Leases:

- a. **Cure Notice.** Within one (1) business day from the entry of the Bid Procedures Order, the Debtors shall file and serve by email or, if email is unavailable, by first class mail, on all non-Debtor counterparties to Contracts and Leases, and their respective known counsel, a notice, substantially in the form attached as **Exhibit 2** to the Bid Procedures Order (the "Cure Notice"); provided, however, that the Debtors need not serve the Cure Notice on any party for whom the Debtors are unable to obtain, after reasonable diligence, an email or address as of the entry of the Bid Procedures Order; provided, further that the Debtors shall not be obligated to provide supplemental service of the Cure Notice with respect to any Cure Notice that is returned to the Debtors as undeliverable so long as the Debtors have confirmed that any such Cure Notice was sent to the applicable email or physical address on file in the Debtors' books and records and no other email or physical address could be obtained after reasonable diligence. The Cure Notice shall inform each recipient that its respective Contract or Lease may be designated by the Contract Party (as defined below) as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent practicable (i) the title of the Contract or Lease, (ii) the name of the counterparty to the Contract or Lease, (iii) the Debtors' good faith estimates of the cure amounts required in connection with such Contract or Lease (the "Cure Amount"), (iv) the identity of the Contract Party and (v) the deadline by which any such Contract or Lease counterparty may file an objection to

the proposed assumption and assignment and/or cure amount, and the procedures relating thereto; provided, however, that service of a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease. If the Debtors identify additional Contracts or Leases that might be assumed by the Debtors and assigned to the Contract Party, the Debtors will promptly send a supplemental Cure Notice to the applicable counterparties to such Contract or Lease.

- b. **Adequate Assurance.** Upon a counterparty's request to the Debtor's counsel, the Debtors shall promptly provide evidence of adequate assurance of future performance under any Contracts and Leases that may be assumed by the applicable Qualified Bidder, including the Stalking Horse Bidder, including the legal name of the proposed assignee, the proposed use of any leased premises, general information about the proposed assignee's financial wherewithal and a contact person with the proposed assignee whom counterparties may contact if they wish to obtain further information regarding the proposed assignee.
- c. **Objections.** Objections, if any, to the proposed assumption and assignment of any Contract or Lease or to the cure amount proposed with respect thereto must: (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any other orders of the Court, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served so as to be actually received by the Notice Parties before the Sale Objection Deadline.

Following the Debtors' selection of the Successful Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Successful Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Successful Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Successful Bidder for the Purchased Assets, counterparties to the Debtors' Contracts and Leases shall have until February 10, 2026, at 12:00 p.m. (noon) (ET) (the "Supplemental Adequate Assurance Objection Deadline") to object to the assumption and assignment of a Contract or Lease (a "Supplemental Adequate Assurance Objection") solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

- d. **Dispute Resolution.** Any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the proposed sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing or such later hearing if the objection is not resolved and

the Debtors determine that an adjournment is appropriate. To the extent any such objection is resolved or determined unfavorably to the applicable Debtor, the Debtors may, subject to the terms of an agreement with the Successful Bidder, seek to reject the applicable Contract or Lease after such determination.

24. Any party who fails to timely file an objection to its scheduled cure amount listed on the Cure Notice or to the assumption and assignment of a Contract or Lease (i) shall be forever barred and estopped from objecting thereto, including (a) making any demands for additional cure amounts or monetary compensation on account of any alleged defaults for the period prior to the applicable objection deadline against the Debtors, their estates or the Contract Party or the Stalking Horse Bidder or other Successful Bidder selected at the Auction, if any, with respect to any such Contract or Lease, and (b) asserting that the Contract Party or the Successful Bidder has not provided adequate assurance of future performance as of the date of the Sale Order; (ii) shall be deemed to consent to (a) the sale of the Purchased Assets as approved by the Sale Order and (b) the assumption and assignment of the Contracts and Leases; and (iii) shall be forever barred and estopped from asserting or claiming against the Debtors or the assignee of the relevant Contract or Lease that any conditions to assumption and assignment of such Contract or Lease must be satisfied (pursuant to section 365(b)(1) of the Bankruptcy Code or otherwise).

25. The proposed assumption and assignment of the Assigned Contracts and Leases and the Auction shall be conducted solely in accordance with the provisions of this Order, the Bid Procedures, and the Designation Procedures, as applicable.

26. Nothing in this Order shall be construed to modify the requirements and provisions of sections 365(b), 365(d)(3), 365(d)(4), or 365(f) of the Bankruptcy Code, or to determine the effective date of rejection for any Contract or Lease which the Debtors may seek to reject.

Other Relief Granted

27. After giving due consideration to the facts, circumstances and conditions of the Stalking Horse Agreement, the Sale of the Purchased Assets is consistent with the Debtors' privacy policies concerning personally identifiable information and no showing was made that the sale of any personally identifiable information contemplated in the Stalking Horse Agreement, subject to the terms of this Order, would violate applicable non-bankruptcy law. Thus, the appointment of a consumer privacy ombudsman pursuant to section 363(b)(1) or section 332 of the Bankruptcy Code is not required with respect to the Sale of the Purchased Assets.

28. The Debtors are authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

29. The requirements set forth in Local Rule 9013-1 are satisfied by the contents of the Motion.

30. The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

31. To the extent any provisions of this Order shall be inconsistent with the Motion, the terms of this Order shall control.

32. This Order shall be immediately effective and enforceable upon entry hereof.

33. This Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

EXHIBIT 1 To Bid Procedures Order
Bid Procedures

BID PROCEDURES

On December 22, 2025, FlexShopper, Inc.; FlexShopper, LLC; FlexLending, LLC; FlexRevolution, LLC; FlexRetail, LLC; Flex TX, LLC; Flex TX Funding, LLC; and Flex TX CAB, LLC, debtors and debtors in possession (collectively, the “Debtors”) in the chapter 11 cases (the “Cases”) pending in the United States Bankruptcy Court for the District of Delaware (“Court”) and jointly administered under Case No. 25-12254 (LSS), filed a motion [D.I. [___]] (the “Sale Motion”), seeking, among other things, authorization for the Debtors to perform their obligations under that certain Asset Purchase Agreement (together with all exhibits thereto, the “Stalking Horse Agreement”)¹ entered into by and among the Debtors and ReadySett LLC (the “Stalking Horse Bidder”), substantially in the form attached to the Sale Motion as Exhibit B, subject to higher and better bids for the Purchased Assets as described below. As described in the Sale Motion, the Stalking Horse Agreement contemplates, pursuant to the terms and subject to the conditions contained therein, the sale of the Purchased Assets in exchange for cash consideration equal to the sum of: (A) eight million dollars (\$8,000,000.00) in the form of a credit bid, subject to Section 2.5 of the Stalking Horse Agreement, *plus* (B) the assumption of the Assumed Liabilities by the Stalking Horse Bidder.

The Stalking Horse Agreement provides for payment of bid protections in the form of a break-up fee in the amount of \$620,000 (the “Break-Up Fee”) and a reimbursement of the Stalking Horse Bidder’s actual, reasonable, documented out-of-pocket expenses up to an amount not to exceed 2% of the Purchase Price (the “Expense Reimbursement,” together with the Break-Up Fee, the “Bid Protections”).

On [●], 2025, the Court entered the *Order (A) Authorizing and Approving Bid Procedures, (B) Authorizing and Approving the Debtors’ Entry Into the Stalking Horse Agreement, (C) Approving Notice Procedures, (D) Scheduling a Sale Hearing and (E) Approving Procedures for Assumption and Assignment and Determining Cure Amounts* [D.I. [___]] (the “Bid Procedures Order”), which, among other things, (i) authorized the Debtors to perform their pre-closing obligations under the Stalking Horse Agreement and (ii) approved the bidding procedures set forth herein (the “Bid Procedures”) governing the submission of competing proposals to purchase the Purchased Assets pursuant to section 363 of the Bankruptcy Code. The sale of the Purchased Assets will be implemented pursuant to the terms and conditions of the Bid Procedures Order and the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, subject to the Debtors’ selection in their reasonable discretion, of a higher and otherwise better bid as the Successful Bid (as defined below) in accordance with these Bid Procedures.

Notice Parties

Information required to be provided under these Bid Procedures must be provided to the following parties (collectively, the “Notice Parties”): (a) the Debtors, FlexShopper, Inc., 901 W Yamato Road, Suite 260 Boca Raton, FL 33431, Attn: Matthew Doheny (mdoheny@gmail.com); (b) counsel to the Debtors: Morris, Nichols, Arsht & Tunnell LLP (“Morris Nichols”), 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Robert J. Dehney, Sr., Esq. (rdehney@morrisnichols.com); Matthew O. Talmo, Esq. (mtalmo@morrisnichols.com); Sophie Rogers Churchill, Esq. (srchurchill@morrisnichols.com);

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse Agreement.

and Luke Brzozowski, Esq. (lbrzozowski@morrisnichols.com); (c) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey, Esq. (linda.casey@usdoj.gov); (d) counsel to ReadySett LLC, Troutman Pepper Locke LLP, 875 Third Avenue, New York, NY 10022, Attn: Matthew R. Brooks, Esq. (matthew.brooks@troutman.com) David Fournier, Esq. (David.fournier@Troutman.com), James Stevens, Esq. (james.stevens@troutman.com) and Sean A. Feener, Esq. (sean.feener@troutman.com); (e) counsel to Powerscourt Investments 50, LP, (a) Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Suite 5400, Wilmington, Delaware 19801, Attn: William E. Chipman (chipman@chipmanbrown.com), and (b) Mayer Brown LLP, 71 South Wacker Drive, Chicago, Illinois 60606, Attn: Sean T. Scott, Esq. (STScott@mayerbrown.com) and Joshua R. Gross (JGross@mayerbrown.com); and (f) counsel to any statutory committee appointed in these chapter 11 cases.

Key Dates

Event	Deadline
Bid Procedures Hearing	Wednesday, January 14, 2026 [subject to Court availability]
Deadline for Debtors to file Notice of Proposed Cure Amounts and Adequate Assurance and serve adequate assurance of future performance	One (1) business day after entry of the Bid Procedures Order
Sale Objection Deadline	Friday, January 30, 2026
Contract Objection Deadline (cure/adequate assurance/assumption & assignment)	Friday, January 30, 2026
Bid Deadline	Friday, January 30, 2026
Deadline to Designate Qualified Bids	Monday, February 2, 2026
Auction	Thursday, February 5, 2026
Deadline to Serve Notice of Winning Bidder and Supplemental Cure Notice	One (1) business day after the close of the Auction
Deadline to File Supplemental Sale Objection Solely Related to Conduct at the Auction and Objection to Assumption or Cure Amount (if Winning Bidder is Different than Stalking Horse Bidder)	Tuesday, February 10, 2026, at 12:00 p.m. (noon) (ET)
Sale Hearing	Wednesday, February 11, 2026, subject to Court availability

Participation Requirements

To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an “Interested Party”) must deliver to the Debtors and Morris Nichols an executed confidentiality agreement (each, a “Confidentiality Agreement”). Such person or entity that has delivered an executed Confidentiality Agreement shall be considered a potential bidder (a “Potential Bidder”).

Due Diligence

The Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Potential Bidder any trade secrets, proprietary information, or other commercially sensitive information unless, under the Debtors' business judgment, in consultation with the Consultation Parties, the Confidentiality Agreement executed by such Potential Bidder (i) sufficiently protects the Debtors' estates, and (ii) contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used by such Potential Bidder or its Affiliates for an improper purpose or to gain an unfair competitive advantage. Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated transaction. If the Debtors determine at any time in their reasonable discretion, in consultation with the Consultation Parties, that a Potential Bidder is not reasonably likely to be a Qualified Bidder (as defined below), then the Debtors' obligation to provide due diligence information to such Potential Bidder will terminate and all information provided by the Debtors prior to such time shall be returned to the Debtors or destroyed in accordance with the terms of the applicable Confidentiality Agreement.

Bid Requirements

To be eligible to participate in the Auction, each Potential Bidder must submit a proposal (a "Bid") to purchase some or all of the Debtors' assets by January 30, 2026, at 4:00 p.m. (ET) (the "Bid Deadline") which must:

- 1) state that the applicable Potential Bidder offers to purchase the Purchased Assets upon terms and conditions no less favorable to the Debtors' estates, as the Debtors may reasonably determine, in consultation with the Consultation Parties (as defined in the Bid Procedures), than the transactions contemplated in the Stalking Horse Agreement;
- 2) be accompanied by a deposit (each, a "Good Faith Deposit") in the form of a wire transfer or certified check or such other form acceptable to the Debtors in their sole discretion, payable to the order of [•] (the "Escrow Agent"), in an amount equal to 10% of the cash portion of the Purchase Price being bid;
- 3) specify the amount of cash or other consideration offered by the Potential Bidder (the "Purchase Price"), which Purchase Price must, except for a Partial Bid (defined below): (a) exceed the aggregate sum of (i) the Closing Payment set forth in the Stalking Horse Agreement; (ii) the Assumed Liabilities set forth in the Stalking Horse Agreement; (iii) the Bid Protections, (iv) the full amount of any Excess DIP; and (v) the minimum bid increment of \$250,000; and (b) include an amount of cash consideration at closing that exceeds the aggregate sum of (i), (iii), (iv) and (v) (such aggregate sum specified in (a) and (b), the "Minimum Purchase Price"); *provided, however*, that the Debtors, in their business judgment and in consultation with the

Consultation Parties and the DIP Lender, shall have the right to modify the Assumed Liabilities component in the calculation of the Minimum Purchase Price, and if any such modification to the Minimum Purchase Price is made, the Debtors will provide notice to any interested parties within two (2) days of the Bid Deadline;

- 4) unless otherwise agreed by the Administrative Agent in writing, in its sole and absolute discretion, provide for (a) payment of the Warehouse Amendment Transaction Payment, without reduction on account of any Excess DIP Amounts, and (b) if the Bid includes Debtors' equity interest in Flexshopper 1 LLC, the assumption of servicing of the assets of SPV Borrower by Potential Bidder or its designee, in each case, together with information sufficient to demonstrate to the Administrative Agent that such entity is capable of servicing the assets of the SPV Borrower consistent with customary market practices, on terms satisfactory to Administrative Agent;
- 5) include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction at the Purchase Price (the "Transaction Documents"), which Transaction Documents must include a copy of the proposed asset purchase agreement marked against the Stalking Horse Agreement to show all changes requested by the Potential Bidder including, but not limited to, treatment of any assumed liabilities;
- 6) be irrevocable by the Potential Bidder until the selection of the Successful Bid in accordance with the terms of these Bid Procedures; *provided* that if such Potential Bidder is selected as the Successful Bidder or Back-Up Bidder and is required to be a Back-Up Bidder hereunder, its Bid must remain irrevocable until the earlier of (i) the Debtors' consummation of a sale with the Successful Bidder, or (ii) the date that is ninety (90) days following the Petition Date;
- 7) include a list which specifies in detail which of the Debtors' Leases and Contracts are to be assumed by the Debtors and assigned to the Potential Bidder in connection with the consummation of the proposed transaction and an agreement that the Potential Bidder will pay any related cure costs;
- 8) contain a description of how the Potential Bidder intends to treat the Debtors' current employees;
- 9) provide a commitment to close by the date that is eighty (80) days following the Petition Date;
- 10) not be conditioned on any contingency, including unperformed due diligence, obtaining financing, obtaining third-party consents, or any internal approval;

- 11) include an acknowledgement that the sale or transfer of the Purchased Assets will be on an “as is, where is” basis and without representations or warranties of any kind by Debtors or their agents other than as set forth in the Stalking Horse Agreement;
- 12) include a description of all governmental, licensing, regulatory or other filings, approvals or consents, including all filings required under the HSR Act, that are required to be made or obtained to close the proposed transaction, together with evidence of the ability to make any applicable filings or submissions within three (3) business days of being declared the Successful Bidder;
- 13) contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction at the Purchase Price (including sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any Contracts and Leases to be assumed by the Debtors and assigned to the Potential Bidder in connection with the proposed transaction), satisfactory to the Debtors in their reasonable discretion with appropriate contact information for such financing sources;
- 14) contain written evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of authorization and approval from the Potential Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and the transaction(s) contemplated therein and any Overbid(s) (as defined below), and related Transaction Documents;
- 15) not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment (except to the extent consented to in writing by Debtors in consultation with the Consultation Parties);
- 16) fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid (a “Participating Party”), and the complete terms of any such sponsorship, participation, financing or benefit;
- 17) constitute a good faith, bona fide offer to effectuate the proposed transaction;
- 18) include a written acknowledgement by such Potential Bidder that it agrees to all of the terms for sale set forth in the Bid Procedures;

- 19) include an agreement to provide any other information reasonably requested by the Debtors; and
- 20) be received by the Bid Deadline.

Designation as Qualified Bidder

A qualified bidder (“Qualified Bidder”) is a Potential Bidder that, in the Debtors’ reasonable determination, in consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the requirements listed above in the section entitled “Bid Requirements” and (ii) is able to consummate the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a “Qualified Bid”); *provided* that the Debtors reserve the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. Within one (1) business day after a Potential Bidder delivers all of the documents described above (the “Qualified Bid Designation Deadline”), the Debtors will determine in their reasonable discretion, in consultation with the Consultation Parties, whether such Potential Bidder is a Qualified Bidder and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Agreement is a Qualified Bid and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

“As Is, Where Is”

Any sale or transfer of the Purchased Assets will be on an “as is, where is” basis and without representations or warranties of any kind by the Debtors and their agents, except and solely to the extent expressly set forth in a final purchase agreement. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Debtors’ assets that are the subject of the Auction prior to making its Bid and that it has relied solely upon its own independent review and investigation in making its Bid.

Auction

Auction. If the Debtors receive two or more Qualified Bids (including the Stalking Horse Bid), the Debtors may hold an Auction; *provided* that the Debtors in their discretion, in consultation with the Consultation Parties, may elect to forego an Auction and select a Qualified Bid as the Successful Bid.

If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, then the Auction shall be cancelled, the Stalking Horse Bidder will be deemed the Successful Bidder, the Stalking Horse Agreement will be the Successful Bid, and, at the Sale Hearing, the Debtors will seek final Court approval of the sale of the Purchased Assets to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement.

Auction Date and Location. If an Auction is held, it will commence on or before **February 5, 2026, at 10:00 a.m. (Prevailing Eastern Time)** at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N Market Street, 16th Floor, Wilmington, Delaware 19801, telephonically or by video via Zoom, or such later time or other place as determined by the Debtors in consultation with the Consultation Parties.

Baseline Bid. No later than one (1) day prior to the commencement of the Auction, the Debtors will provide all Notice Parties and Consultation Parties with complete copies of all

Transaction Documents and all other bid materials submitted by each other Qualified Bidder, subject to the redaction of any confidential financial information as determined by the Debtors in their reasonable discretion or which has been so designated by the applicable Qualified Bidder; provided, however that no part of any Transaction Document shall be excluded. At the commencement of the Auction, the Debtors will notify all Qualified Bidders and Notice Parties of the highest acceptable Qualified Bid, as determined by the Debtors in their reasonable discretion, in consultation with the Consultation Parties (the “Baseline Bid”). The Debtors’ determination, in consultation with the Consultation Parties, of which Qualified Bid constitutes the Baseline Bid shall take into account factors such as the projected percentage recovery to general unsecured creditors pursuant to such Qualified Bid and the certainty of such recovery, whether all administrative, priority and secured claims will be paid in full under such Qualified Bid and any other factors the Debtors, in consultation with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to the estates. No later than the day prior to the commencement of the Auction, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; *provided* that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder’s Qualified Bid will nevertheless remain fully enforceable against such Qualified Bidder.

Participation Requirements. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. The authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder), the Debtors, and the Consultation Parties will be permitted to attend the Auction. In addition, pursuant to Local Rule 6004-1, all creditors of the Debtors who have not submitted Bids may attend the Auction as observers, provided that they send an email to Debtors’ counsel indicating that they intend to attend the Auction no less than one (1) Business Day prior to the Auction, provided further that the Debtors’ right to object on an emergency basis to any such creditor’s proposed attendance at the Auction is reserved.

Auction Procedures. The Debtors and their professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the Baseline Bid. All Bids made thereafter must be Overbids (as defined below) and will be made and received on an open or closed basis, as determined by Debtors, in consultation with the Consultation Parties, and all material terms of each Bid will be fully disclosed to all other Qualified Bidders. The Debtors will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, the Successful Bid and the Back-Up Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the Purchased Assets. The Debtors, in their reasonable discretion, in consultation with the Consultation Parties, reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received.

During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least \$250,000 (each, an “Overbid”). For the avoidance of doubt, if the Baseline Bid is the Stalking Horse Bid, then the initial overbid must include amounts, in addition to the Overbid, sufficient to equal the Break-Up Fee and Expense Reimbursement. The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with the Bid Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid (except in the event of a round of closed, final

bidding). Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other consideration acceptable to the Debtors, in consultation with the Consultation Parties, in accordance with the Bid Procedures.

To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Transaction Documents or the Stalking Horse Agreement, the Debtors will provide notice to each participant of the value ascribed by the Debtors, in consultation with the Consultation Parties, to any such added, deleted, or modified provision or provisions, with such value being determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties.

Any Overbid made from time to time by a Qualified Bidder (excluding the Stalking Horse Bidder unless it elects to serve as Backup Bidder) must remain open and binding on the Qualified Bidder unless and until (i) the Debtors accept a higher and otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit at the Debtors' request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Consultation Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.

Partial Bids

If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all the Debtors' assets (each such bid, a "Partial Bid"), the Debtors may conduct separate auctions at the Auction for each lot of assets (each, an "Auction Lot") subject to a Partial Bid. Any Partial Bid must meet all the requirements of a Qualified Bid, unless otherwise modified herein, including without limitation, the Good Faith Deposit. The Debtors may also combine multiple Partial Bids into an Auction Lot to compete against Qualified Bids for all the Debtors' assets.

Selection of Successful Bid

At the conclusion of the Auction, the Debtors, in the exercise of their reasonable business judgment, in consultation with the Consultation Parties, will select (i) the highest acceptable Bid (the "Successful Bid") or collection of Bids (the "Successful Bids") submitted by a Qualified Bidder(s) during the Auction that the Debtors believe is most beneficial to the Debtors and their estates, and (ii) at the Debtors' discretion, the next highest acceptable Bid (the "Back-Up Bid") or collection of Bids (the "Back-Up Bids") after the Successful Bid(s). In selecting the Successful Bid(s) and the Back-Up Bid(s), if any, the Debtors, in consultation with the Consultation Parties, shall take into account the projected percentage recovery to general unsecured creditors and the certainty of such recovery and whether all administrative, priority and secured claims will be paid in full and may also consider, among other things: (i) the number, type and nature of any changes to the Stalking Horse Agreement which may delay closing of the contemplated transaction and the cost to the Debtors of such modifications or delay; (ii) the liabilities being assumed; (iii) the likelihood of the Qualified Bidder's ability to close its proposed transaction and the timing thereof; (iv) the expected net benefit of the transaction to the Debtors' estates; and (v) any other factors the Debtors may reasonably deem relevant. The Qualified Bidder

that submits a Successful Bid will be deemed a “Successful Bidder,” and the Qualified Bidder that submits a Back-Up Bid, if any, will be deemed a “Back-Up Bidder.” The Successful Bidder(s) and Back-Up Bidder(s), following the completion of the Auction, must increase their Good Faith Deposits so that they equal 10% of such Successful Bid or Back-Up Bid, as applicable.

The Auction will close when the Debtors announce that a Successful Bid(s) and, to the extent the Debtors, in consultation with the Consultation Parties, determine a Back-Up Bid(s), have been selected. Notwithstanding anything herein to the contrary, the Debtors are authorized, but not required, to select a Back-Up Bidder and a Back-Up Bid. For the avoidance of doubt, the Debtors will not consider or support any Bid for any of the Purchased Assets (whether or not such bid is made by a Qualified Bidder) received after the close of the Auction.

The Back-Up Bid(s), if any, will remain open and binding on the Back-Up Bidder(s) until consummation of the Successful Bid(s) with the Successful Bidder(s). If a Successful Bidder fails to consummate a Successful Bid within the time set forth therein, the Debtors will be authorized, but not required, to select, in consultation with the Consultation Parties, a Back-Up Bidder, if any, as the new Successful Bidder, and shall proceed to consummate the Successful Bid of the new Successful Bidder.

Implementation of the Sale

The hearing to authorize the sale of the Purchased Assets to the Successful Bidder(s) pursuant to the Successful Bid(s) (the “Sale Hearing”) will be held before the Court on February 11, 2026, at [__:___.m.] (prevailing Eastern Time). The Sale Hearing may be adjourned or rescheduled by the Debtors to a time and date consistent with the Court’s calendar, as set forth in notice on the docket of these chapter 11 cases, a notice of agenda or stated orally on the record at a hearing before the Court. Upon the Court’s approval of the Successful Bid(s), the Successful Bid(s) will be deemed accepted by the Debtors, and the Debtors will be bound to the terms of that Successful Bid(s) with no further opportunity for an auction or other process.

If a Successful Bidder or a Back-Up Bidder (if a Successful Bidder fails to consummate the proposed transaction) fails to enter into their respective asset purchase agreement as promptly as practicable or consummate the proposed transaction consistent with the Successful Bid or Back-Up Bid (if applicable), because of a breach or failure to perform on the part of the Successful Bidder or Back-Up Bidder (if applicable), all parties in interest reserve the right to seek all available damages from the defaulting Successful Bidder or Back-Up Bidder (if applicable), including specific performance and retention of the Good Faith Deposit.

Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to the Auction (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court) and waives any objection to the laying of venue of any such litigation in the Bankruptcy Court. To the extent the Bankruptcy Court declines, or is otherwise unable to, exercise jurisdiction, then the Qualified Bidders agree that the state or federal courts in the County of New Castle, State of Delaware, shall have jurisdiction.

Return of Good Faith Deposit

All Good Faith Deposits will be held by the Debtors in a non-interest-bearing escrow or trust account. Good Faith Deposits of Qualified Bidders, other than a Successful Bidder

and a Back-Up Bidder, if any, will be returned to the unsuccessful bidders within five (5) days after selection of a Successful Bidder and Back-Up Bidder, if any, in accordance with these Bid Procedures. A Successful Bidder's Good Faith Deposit will be applied to the Purchase Price of their Successful Bid at closing, and the Debtors will be entitled to retain such Good Faith Deposit as part of their damages if a Successful Bidder fails to meet their obligations to close the transaction contemplated by their Successful Bid. The Good Faith Deposit of a Back-Up Bidder, if any, will be returned to the Back-Up Bidder, if any, within five (5) days after the consummation of the sale with a relevant Successful Bidder.

Reservation of Rights

The Debtors reserve the right, in their reasonable discretion and subject to the exercise of their business judgment, in consultation with the Consultation Parties, to alter or modify any of the rules or procedures set forth herein, to waive terms and conditions set forth herein with respect to all potential bidders except in a manner adverse to the Stalking Horse Bidder, extend the deadlines set forth herein, alter the assumptions set forth herein, and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefor, in each case to the extent not inconsistent with the Bid Procedures Order or the Stalking Horse Agreement.

EXHIBIT 2 To Bid Procedures Order

Cure Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

FLEXSHOPPER, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-12554 (LSS)

Joint Administration Requested

**NOTICE OF (I) POSSIBLE TREATMENT OF CONTRACTS AND LEASES, (II)
FIXING OF CURE AMOUNTS, AND (III) DEADLINE TO OBJECT THERETO**

PLEASE TAKE NOTICE that, on December 22, 2025, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bid Procedures and Bid Protections for the Sale of Substantially All of the Debtors’ Assets; (B) Approving the Debtors’ Entry Into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places In Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief [D.I. ____] (the “Sale Motion”)*², with the United States Bankruptcy Court for the District of Delaware (the “Court”), seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale (the “Sale”) of certain assets (the “Purchased Assets”) free and clear of all liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds, to ReadySett LLC (the “Stalking Horse Bidder”), except as set forth in the Stalking Horse Agreement and subject to higher or otherwise better offers; (b) the Debtors’ bidding procedures (the “Bidding Procedures”) in connection with the proposed auction (the “Auction”) for the Sale of the Purchased Assets, and (c) certain procedures for the assumption and assignment of executory contracts (the “Contracts”) and unexpired leases (the “Leases”) in connection with the Sale (the “Designation Procedures”).

PLEASE TAKE FURTHER NOTICE that a hearing to consider the proposed Sale is currently scheduled for **February 11, 2026, at [•] [•].m. (ET)** before the Honorable Lori Selber Silverstein, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801 (the “Sale Hearing”). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal EIN, are FlexShopper, Inc. (6087); FlexShopper, LLC (0385); FlexLending, LLC (5373); FlexRevolution, LLC (4102); FlexRetail, LLC (5129); Flex TX, LLC (6818); Flex TX Funding, LLC (2754); and Flex TX CAB, LLC (3656). The Debtors’ mailing address is 901 W Yamato Road, Suite 260 Boca Raton, FL 33431.

² Capitalized terms not defined are defined in the Bid Procedures or Sale Motion.

agenda or other notice filed on the docket of these chapter 11 cases.

PLEASE TAKE FURTHER NOTICE that you are receiving this notice (the “**Cure Notice**”) because you or one of your affiliates may be a counterparty to one or more of the Contracts and Leases with one or more of the Debtors as set forth on **Exhibit A** attached hereto (the “**Contract and Lease Schedule**”).³ If the Court enters the Sale Order, the Debtors **may** assume and assign to the Stalking Horse Bidder (or to another Successful Bidder selected at the Auction, if any) or reject the Contract and/or Lease listed on the Contract and Lease Schedule, to which you are a counterparty, either as of the Closing Date or a later date pursuant to the Stalking Horse Agreement or the Successful Bidder Purchase Agreement, as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtors have determined that the cure amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Contracts and Leases (the “**Cure Amounts**”) are in the total amount as set forth on the Contract and Lease Schedule attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Amounts, object to the ability of the Debtors to provide adequate assurance of future performance with respect to the Contract or Lease, or otherwise object to the potential assumption and assignment of the Contract or Lease to the Stalking Horse Bidder or other Successful Bidder, as applicable, you must file with the Court and serve an objection (an “**Contract Objection**”) on the following parties so as to be actually received before **4:00 p.m. (prevailing Eastern Time) on January 30, 2026** (the “**Sale Objection Deadline**”): (a) the Debtors, FlexShopper, Inc., 901 W Yamato Road, Suite 260 Boca Raton, FL 33431, Attn: Matthew Doheny (mdoheny@gmail.com); (b) counsel to the Debtors: Morris, Nichols, Arsht & Tunnell LLP (“**Morris Nichols**”), 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Robert J. Dehney, Sr., Esq. (rdehney@morrisnichols.com); Matthew O. Talmo, Esq. (mtalmo@morrisnichols.com); Sophie Rogers Churchill, Esq. (srchurchill@morrisnichols.com); and Luke Brzozowski, Esq. (lbrzozowski@morrisnichols.com); (c) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey, Esq. (linda.casey@usdoj.gov); (d) counsel to ReadySett LLC, Troutman Pepper Locke LLP, 875 Third Avenue, New York, NY 10022, Attn: Matthew R. Brooks, Esq. (matthew.brooks@troutman.com) David Fournier, Esq. (David.fournier@Troutman.com), James Stevens, Esq. (james.stevens@troutman.com) and Sean A. Feener, Esq. (sean.feener@troutman.com); (e) counsel to Powerscourt Investments 50, LP, (a) Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Suite 5400, Wilmington, Delaware 19801, Attn: William E. Chipman (chipman@chipmanbrown.com), and (b) Mayer Brown LLP, 71 South Wacker Drive, Chicago, Illinois 60606, Attn: Sean T. Scott, Esq. (STScott@mayerbrown.com) and Joshua R. Gross (JGross@mayerbrown.com); and (f) counsel to any statutory committee appointed in these chapter 11 cases. All Objections must: (i) be in writing; (ii) comply with the

³ This Cure Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This Cure Notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

applicable provisions of the Bankruptcy Rules, Local Rules and any orders of the Court; and (iii) state with specificity the nature of the objection and, if the objection pertains to the Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof.

PLEASE TAKE FURTHER NOTICE that if and only if the Stalking Horse Bidder is **not** the Successful Bidder for the Purchased Assets, counterparties to the Contracts and Leases shall have until **February 10, 2026, at 12:00 p.m. (noon) (prevailing Eastern Time)** (the “Supplemental Adequate Assurance Objection Deadline”) to object to the assumption and assignment of the Contracts and Leases (a “Supplemental Adequate Assurance Objection”) **solely** on the issue of whether the Successful Bidder can provide adequate assurance of further performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance Objections must be filed by the Sale Objection Deadline.

PLEASE TAKE FURTHER NOTICE that any party that fails to timely file an Contract Objection shall be deemed to have consented to the assumption and assignment of the Contract or Lease to the Stalking Horse Bidder or Successful Bidder, as applicable, and the Cure Amounts proposed by the Debtors in this Cure Notice, and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtors’ cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates (except, to the extent applicable, with respect to matters arising after the Closing and that are not otherwise paid in the ordinary course).

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the Sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing (or at a later date as fixed by the Court) provided that any such objection may be adjourned, in full or in part, by the Debtors to a later date by listing such adjournment in a notice of agenda or other notice filed on the docket of the cases and served on the affected counterparty.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby reserve all rights to amend, revise or supplement any documents relating to the Sale and/or to be executed, delivered, assumed and/or performed in connection with the Sale or the Stalking Horse Agreement or Successful Bidder Purchase Agreement, as applicable, including the Contract and Lease Schedule.

PLEASE TAKE FURTHER NOTICE that notwithstanding anything herein, this Cure Notice shall not be deemed to be an assumption, rejection, or termination of any of the Contracts and Leases. Moreover, the Debtors explicitly reserve their rights to reject or assume any of the Contracts and Leases pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Contracts and Leases or the validity, priority, or amount of any claims of counterparties to the Contracts and Leases against the Debtors that may arise under such Contracts and Leases, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of counterparties to the Contracts and Leases against the Debtors that may arise under such Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that the above dates and deadlines governing the assumption of the Contracts may be modified or extended by the Debtors or the Court without any further notice.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion (and all exhibits thereto), the Bid Procedures Order, the Bid Procedures, and proposed Sale Order (and all exhibits thereto) are available for review free of charge by accessing [•].

Dated: December [•], 2025
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

Robert J. Dehney, Sr. (No. 3578)

Matthew O. Talmo (No. 6333)

Sophie Rogers Churchill (No. 6905)

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT 3 To Bid Procedures Order

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

FLEXSHOPPER, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-12554 (LSS)

Joint Administration Requested

NOTICE OF SALE, BID PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that, on December 22, 2025, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bid Procedures for the Sale of Substantially All Assets of Debtors; (B) Approving the Debtors’ Entry Into the Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling the Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places In Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens, and Encumbrances; (B) Approving the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief [D.I. ____] (the “Sale Motion”)*², with the United States Bankruptcy Court for the District of Delaware (the “Court”), seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale (the “Sale”) of certain assets (the “Purchased Assets”), to ReadySett LLC (the “Stalking Horse Bidder”), except as set forth in the Stalking Horse Agreement and subject to higher or otherwise better offers; and (b) certain procedures for the assumption and assignment of executory contracts (the “Contracts”) and unexpired leases (the “Leases”) in connection with the Sale.

PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS ARE PROPOSING TO SELL THE PURCHASED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS (OTHER THAN PERMITTED POST-CLOSING ENCUMBRANCES). IN CONNECTION WITH THE SALE, THE STALKING HORSE BIDDER AND OTHER PURCHASERS WILL ALSO BE SEEKING A FINDING FROM THE COURT THAT THEY ARE NOT LIABLE UNDER THEORIES OF “SUCCESSOR LIABILITY” FOR ANY LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS ARISING BEFORE THE CLOSING DATE.

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE IN ACCORDANCE

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal EIN, are FlexShopper, Inc. (6087); FlexShopper, LLC (0385); FlexLending, LLC (5373); FlexRevolution, LLC (4102); FlexRetail, LLC (5129); Flex TX, LLC (6818); Flex TX Funding, LLC (2754); and Flex TX CAB, LLC (3656). The Debtors’ mailing address is 901 W Yamato Road, Suite 260 Boca Raton, FL 33431.

² Capitalized terms not defined herein are defined in the Bid Procedures or Sale Motion.

WITH THE BID PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND THE ABSENCE OF SUCCESSOR LIABILITY.

PROPOSED DATES AND DEADLINES²

The following dates and deadlines govern the Debtors' bidding procedures and sale process.

1. **Bid Deadline.** The deadline to submit a Qualified Bid is **January 30, 2026, at 4:00 p.m. (prevailing Eastern Time).**

2. **Sale Objection Deadline.** The deadline to file an objection to (i) the Sale, including the sale of any Purchased Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code (a "Sale Objection") and/or (ii) the potential assumption or assumption and assignment of the Assigned Contracts and Cure Amounts related thereto (a "Contract Objection") (except as otherwise set forth in the Designation Procedures) is **January 30, 2026, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale and Contract Objections Deadline").

3. **Auction.** If one or more Qualified Bids is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Purchased Assets. The Auction will commence on **February 5, 2026, at 10:00 a.m. (prevailing Eastern Time)**, at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N Market Street, 16th Floor, Delaware, Wilmington 19801, telephonically or by video via Zoom, or such later time or other place as determined by the Debtors. The Debtors have the right to adjourn or cancel the Auction at or prior to the Auction. **All interested or potentially affected parties should carefully review the Bidding Procedures and the Bid Procedures Order.**

4. **Auction Objection Deadline.** If the Auction is held, the deadline to file an objection to the conduct of the Auction, the choice of Successful Bidder and/or Back-Up Bidder, other than the Stalking Horse Bidder, or on the basis of adequate assurance of future performance by a Successful Bidder and/or Back-Up Bidder other than the Stalking Horse Bidder (a "Supplemental Objection") is **February 10, 2026, at 12:00 p.m. (noon) (prevailing Eastern Time)** (the "Supplemental Sale Objection Deadline").

5. **Sale Hearing.** A hearing (the "Sale Hearing") to consider approval of the proposed Sale **free and clear of all liens, claims, interests and encumbrances** will be held on **February 11, 2026** before the Honorable Lori Selber Silverstein, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North,

² The following dates and deadlines may be modified or extended by the Debtors or the Court without any further notice.

Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders and all other parties entitled to attend the Auction.

The foregoing dates and deadlines may be extended or otherwise modified by the proposed Bid Procedures Order or other order of the Court. You should review the case website for any modifications at [•].

FILING OBJECTIONS

Sale Objections, Contract Objections, Auction Objections and Non-Stalking Horse Adequate Assurance Objections, if any, must: (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor and (iv) be filed with the Court and served so as to be actually received no later than the Sale Objection Deadline by the following parties: (a) the Debtors, FlexShopper, Inc., 901 W Yamato Road, Suite 260 Boca Raton, FL 33431, Attn: Matthew Doheny (mdoheny@gmail.com); (b) counsel to the Debtors: Morris, Nichols, Arsht & Tunnell LLP (“Morris Nichols”), 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Robert J. Dehney, Sr., Esq. (rdehney@morrisnichols.com); Matthew O. Talmo, Esq. (mtalmo@morrisnichols.com); Sophie Rogers Churchill, Esq. (srchurchill@morrisnichols.com); and Luke Brzozowski, Esq. (lbrzozowski@morrisnichols.com); (c) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey, Esq. (linda.casey@usdoj.gov); (d) counsel to ReadySett LLC: Troutman Pepper Locke LLP, 875 Third Avenue, New York, NY 10022, Attn: Matthew R. Brooks, Esq. (matthew.brooks@troutman.com) David Fournier, Esq. (David.fournier@Troutman.com), James Stevens, Esq. (james.stevens@troutman.com) and Sean A. Feener, Esq. (sean.feener@troutman.com); (e) counsel to Powerscourt Investments 50, LP, (a) Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Suite 5400, Wilmington, Delaware 19801, Attn: William E. Chipman (chipman@chipmanbrown.com), and (b) Mayer Brown LLP, 71 South Wacker Drive, Chicago, Illinois 60606, Attn: Sean T. Scott, Esq. (STScott@mayerbrown.com) and Joshua R. Gross (JGross@mayerbrown.com); and (f) counsel to any statutory committee appointed in these chapter 11 cases.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion (and all exhibits thereto), the Bid Procedures Order, the Bid Procedures, and proposed Sale Order (and all exhibits thereto) are available for review free of charge by accessing [•].

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bid Procedures Order, a separate notice will be provided to the counterparties to executory contracts and unexpired leases that may be assumed and assigned in connection with the Sale.

Dated: December [●], 2025
Wilmington, Delaware

Respectfully submitted,

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

Robert J. Dehney, Sr. (No. 3578)

Matthew O. Talmo (No. 6333)

Sophie Rogers Churchill (No. 6905)

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT B

Stalking Horse Agreement

ASSET PURCHASE AGREEMENT

by and among

FLEXSHOPPER, INC., FLEXSHOPPER, LLC, FLEXLENDING, LLC

and

READYSETT LLC

December [●], 2025

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ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “Agreement”) is entered into as of December [●], 2025, by and among **FLEXSHOPPER, INC.**, a Delaware corporation, **FLEXSHOPPER, LLC**, a North Carolina limited liability company, **FLEXLENDING, LLC**, a Delaware limited liability company, (each a “Seller” and collectively, “Sellers”), and **READYSETT LLC**, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Sellers and Buyer are referred to collectively herein as the “Parties.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in ARTICLE I.

WHEREAS, Sellers presently conduct a consumer products lease to own business and related activities (collectively, the “Business”);

WHEREAS, on or before December 21, 2025, Sellers intend to file voluntary petitions for relief (the “Chapter 11 Cases”) pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”);

WHEREAS, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Sellers, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Purchased Assets and the Assumed Liabilities upon the terms and subject to the conditions set forth herein;

WHEREAS, Sellers intend to seek the entry of the Sale Procedures Order by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) upon the terms and subject to the conditions set forth herein and in the Sale Procedures Order;

WHEREAS, Sellers intend to seek the entry of the Sale Order by the Bankruptcy Court approving this Agreement and authorizing Sellers to consummate the Contemplated Transactions upon the terms and subject to the conditions set forth herein and in the Sale Order;

WHEREAS, subject to terms hereof and of the Sale Procedures Order, Administrative Agent will support the Contemplated Transactions, cooperate with Buyer and other interested potential bidders, and release its Liens on the Purchased Assets;

WHEREAS, the applicable governing body of each Seller has determined that it is advisable and in the best interests of their respective estates and the beneficiaries of such estates to consummate the Contemplated Transactions provided for herein pursuant to the Sale Procedures Order and the Sale Order and has approved this Agreement, subject to higher and better offers as contemplated by the Sale Procedures Order; and

WHEREAS, the Contemplated Transactions are subject to the approval of the Bankruptcy Court, subject to higher and better offers as contemplated by the Sale Procedures Order, and will be consummated only pursuant to the Sale Order to be entered by the Bankruptcy Court;

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

ARTICLE I DEFINITIONS

“Accounts Receivable” means (a) all accounts, accounts receivable, contractual rights to payment, notes, notes receivable, negotiable instruments, chattel paper, and vendor and supplier rebates of Sellers in connection with the Business as conducted by Sellers, and (b) any security interest, claim, remedy or other right related to any of the foregoing.

“Acima Reduction” has the meaning set forth in Section 2.5(a)i.

“Acima Settlement” means the settlement agreement to be entered into by the Sellers, on the one hand, and Acima Holdings, LLC and certain of its affiliates (collectively, “Acima”), on the other hand, pursuant to that certain Confidential Settlement Agreement, resulting in the dismissal of Case No. 2:24-cv-00794-JRG previously pending before the United States District Court for the Eastern District of Texas.

“Administrative Agent” means Powerscourt Investments 50, LP, a Delaware limited partnership, as administrative agent under the Warehouse Credit Agreement.

“Administrative Claim” means a Claim against any Seller entitled to administrative expense priority under any of sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Allocation Dispute Notice” has the meaning set forth in Section 2.9.

“Allocation Resolution Period” has the meaning set forth in Section 2.9.

“Alternate Transaction” means a transaction or series of related transactions pursuant to which Sellers (a) accept a Qualified Bid, other than that of Buyer, as the highest and best offer, which is approved by order of the Bankruptcy Court and consummated, or (b) sell, transfer, lease or otherwise dispose of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Sellers or otherwise), including pursuant to a plan or refinancing, all or substantially all of the Purchased Assets in a transaction or series of transactions to a Person or Persons other than Buyer.

“Asset Taxes” means real property, personal property and similar ad valorem Taxes pertaining to the Purchased Assets, as well as any stamp Taxes or other non-income Taxes for which a buyer may have successor liability under applicable state Law.

“Assignable Contracts” has the meaning set forth in Section 2.5(a)i.

“Assignment and Assumption Agreement” has the meaning set forth in Section 2.8(a)ii.

“Assumed Contracts” means those Contracts that have been assumed by Sellers and assigned to Buyer pursuant to Section 2.6 and section 365 of the Bankruptcy Code, as designated by the Buyer on Schedule 2.6(b).

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Assumed Permits” means all Permits relating to the Business that are transferable in accordance with their terms and under applicable Law, but excluding all Permits to the extent related to any Excluded Asset.

“Auction” means the auction for the sale and assignment of the Purchased Assets as specified in the Sale Procedures Order.

“Avoidance Actions” means all Litigation arising under chapter 5 of the Bankruptcy Code or any applicable state fraudulent or voidable transfer statutes.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Bidding Procedures” has the meaning set forth in Section 5.3(a)(i).

“Bill of Sale” has the meaning set forth in Section 2.8(a)(i).

“Breakup Fee” has the meaning set forth in Section 8.3.

“Business” has the meaning set forth in the recitals.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks located in Salt Lake City, Utah shall be authorized or required by Law to close.

“Buyer” has the meaning set forth in the preamble, provided, however, that (i) Buyer reserves the right to designate a different entity or entities owned by or under common control with Buyer, whether currently existing or yet to be formed, to acquire title to any Purchased Assets or assume the Assumed Liabilities in the Contemplated Transactions at any time prior to Closing and (ii) in the event of any such designation Buyer shall remain liable for all obligations in respect of any such designee.

“Buyer Group” means Buyer, any Affiliate of Buyer and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, advisors, representatives, successors or permitted assigns.

“Buyer Released Parties” has the meaning set forth in Section 6.7(a).

“Buyer Releasing Parties” has the meaning set forth in Section 6.7(a).

“Chapter 11 Cases” has the meaning set forth in the recitals.

“Claim” means a “claim” as defined in section 101(5) of the Bankruptcy Code, whether arising before or after the Petition Date.

“Closing” has the meaning set forth in Section 2.7.

“Closing Date” has the meaning set forth in Section 2.7.

“Closing Payment” has the meaning set forth in Section 2.5(a)i.

“COBRA” means Part 6 of Subtitle B of Title I of ERISA, section 4980B of the IRC, and any similar state Law.

“Collective Bargaining Agreements” has the meaning set forth in Section 3.7(a).

“Committee” means any official committee of unsecured creditors appointed in the Chapter 11 Cases.

“Confidential Information” means any data or information of Sellers (including trade secrets, techniques, know-how, processes, equipment, algorithms, Seller Software, design details and specifications, financial information, customer lists, business forecasts, sales and marketing plans as well as all notes, analysis, reports, compilations, studies, interpretations, summaries or other documents) that are valuable to the operation of the Business and not generally known to the public or competitors.

“Consent” means any approval, consent, ratification, permission, clearance, designation, qualification, waiver or authorization, or an order of the Bankruptcy Court that deems or renders unnecessary the same.

“Contemplated Transactions” means the sale by Sellers to Buyer, and the purchase by Buyer from Sellers, of the Purchased Assets and the assumption by Buyer of the Assumed Liabilities contemplated hereby.

“Contract” means any written or oral agreement, contract, lease, sublease, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, sales order, sales agent agreement, supply agreement, development agreement, joint venture agreement, promotion agreement, license agreement, contribution agreement, partnership agreement or other arrangement, understanding, permission or commitment that, in each case, is legally binding.

“Contract Designation Period” has the meaning set forth in Section 2.6(g).

“Cure Amounts” means all amounts that must be paid and all obligations that otherwise must be satisfied by Buyer, pursuant to Sections 365 of the Bankruptcy Code, to cure all defaults, if any, in connection with the assumption and assignment of the Assumed Contracts to Buyer as provided herein, unless such other amounts are otherwise agreed upon by Buyer and the counterparty to such Assumed Contract or determined by the Bankruptcy Court.

“Cure Notice” has the meaning set forth in Section 5.3(h).

“Current Employees” means all individuals employed as common law employees by Sellers as of the Closing Date, including those on short-term disability, approved leave of absence, paid or unpaid, or long-term disability with, in each case, the legal right to return to employment, and listed on Schedule 3.7.

“Customer Account” has the meaning set forth in Section 3.24.

“Decree” means any judgment, decree, ruling, decision, opinion, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, judicial order, administrative order or any other order of any Governmental Entity.

“Designation Right Contract” has the meaning set forth in Section 2.6(g).

“DIP Agreement” means that certain Senior, Super-Priority Debtor-In-Possession Credit Agreement (including all exhibits and schedules attached thereto (including any budget)) to be entered into between Sellers and the DIP Lender as of even date herewith.

“DIP Order” means, collectively: (a) the Interim DIP Order; (b) the Final DIP Order; and (c) any other supplemental, interim, or final order entered by the Bankruptcy Court in respect of the post-petition financing that is the subject of the Interim DIP Order and/or the Final DIP Order.

“DIP Lender” means Buyer or its designee.

“Disclosure Schedule” has the meaning set forth in ARTICLE III.

“Disputed Amount Contract” has the meaning set forth in Section 2.6(h).

“Employee” means any individual who is employed as a common law employee by any Seller at the relevant time.

“Employee Benefit Plan” means each “employee benefit plan” (as such term is defined in section 3(3) of ERISA, whether or not subject to ERISA) and each other compensation, benefit, retirement, employment, consulting, incentive, bonus, stock option, restricted stock, restricted stock unit, stock appreciation right, phantom equity, equity-based award, change in control, severance, medical and hospitalization, prescription drug, dental, vision, insurance, life, disability (short and long-term), salary continuation, sick pay, vacation, paid time off, welfare, fringe-benefit or other compensation or benefit plan, program, policy, agreement or arrangement of any kind, in each case, (i) that are for the benefit of or relating to any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate, or any spouse, dependent or beneficiary thereof, or (ii) that are maintained, sponsored or contributed to or required to be contributed to, by any Seller or any ERISA Affiliate or in which any Seller or ERISA Affiliate participates or participated or (ii) under which any Seller or any ERISA Affiliate has or may have any liability, contingent or otherwise, including as a result of any previously-terminated plan, program, policy, agreement or arrangement or by contract, indemnity, guaranty or otherwise.

“Environmental Laws” all applicable Laws or Decrees of any Governmental Entity concerning pollution (or the cleanup thereof) or protection of the environment, human health, and natural resources.

“Environmental Permit” means any License or any other authorization, approval, registration or entitlement required by or issued pursuant to any Environmental Law.

“Equity Interest” means, if a Person is a corporation, shares of capital stock of such corporation and, if a Person is a form of entity other than a corporation, ownership interests in such form of entity, whether membership interests, partnership interests or other securities.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person or trade or business (whether or not incorporated) that, together with any Seller, would be deemed at any relevant time to be a “single employer” within the meaning of section 414 of the IRC or section 4001 of ERISA.

“Excess DIP Amounts” has the meaning set forth in Section 2.5(a)(ii).

“Excluded Actions” means (a) all Litigation, judgments, refunds, rights of recovery, rights of set-off, recoupment, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller or Seller’s bankruptcy estate in each case, to the extent (i) arising from or primarily related to any Excluded Asset, Excluded Liability, and/or the Warehouse Facility (including, without limitation, any such rights arising from any misrepresentations made to the Administrative Agent, Warehouse Lenders, or their respective predecessors in interest); (ii) against any current or former officer, director or employee of any Seller except to the extent such officer, director or employee of any Seller was in such position on or after the Petition Date and thereafter becomes an officer, director or employee of Buyer; or (iii) against any current or former accountant, attorney, investment banker, financial advisor or other professional engaged by Seller; and (b) Avoidance Actions that are not Purchased Assets.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Contracts” has the meaning set forth in Section 2.6(c).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Excluded Utility Deposits” means any utility deposits related exclusively to Excluded Assets.

“Expense Reimbursement” has the meaning set forth in Section 8.3.

“Final DIP Order” means the Bankruptcy Court’s Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507: (a) authorizing the Sellers to obtain senior secured superpriority postpetition term loan financing; (b) granting (i) liens and superpriority administrative expense claims and (ii) adequate protection to Administrative Agent and Warehouse Lenders; (c) modifying the automatic stay; and (d) granting related relief, in form and substance reasonably acceptable to DIP Lender and Administrative Agent.

“Final Order” means an order entered by the Bankruptcy Court, the implementation, operation, or effect of which has not been stayed and as to which order (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing or writ of certiorari has expired and as to which no appeal or petition for review or rehearing or certiorari has been taken and is pending; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Code, may be filed relating to such order, shall not cause such order not to be a Final Order.

“Former Employees” means all individuals who were employed as common law employees by Sellers (or any of their predecessors) prior to the Closing Date and who are not Current Employees.

“Governmental Entity” means any United States federal, state or local or non-United States governmental or regulatory authority, agency, commission, court, body or other governmental entity.

“Hazardous Substance” means any material, substance, chemical, petroleum or petroleum-derived products, radon, radioactive materials or wastes, lead or lead-containing materials, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is defined as hazardous, acutely hazardous, or toxic under Environmental Laws, or that is a per- or polyfluoroalkyl substance.

“Inbound IP License” means each Contract pursuant to which Sellers obtain any right or license to any Intellectual Property owned by a third party.

“Indebtedness” means, with respect to any Seller at any applicable time of determination, without duplication: (i) all obligations for borrowed money (whether or not contingent); (ii) all obligations evidenced by bonds, debentures, notes, or other similar instruments or debt securities; (iii) all obligations under swaps, hedges or similar instruments; (iv) all obligations in respect of letters of credit, Surety Bonds, or bankers’ acceptances; (v) all Liabilities and obligations, contingent or otherwise, arising from deferred compensation arrangements, severance, termination or bonus plans, retention incentives, change in control or sale bonuses, Employee Benefit Plans, employment agreements, or other compensation or benefit arrangements payable as a result of the consummation of the transactions contemplated hereby (regardless of whether any additional event, in addition to the consummation of the transactions contemplated hereby, is required to give rise to such obligations), plus the employer portion of any Taxes to be remitted in connection with such payments; (vii) all Transfer Taxes that the responsibility of any Seller pursuant to Section 6.6(a); (viii) all obligations secured by a Lien; (ix) all obligations recorded or required to be recorded as capital leases in accordance with GAAP as of the date of determination thereof; (x) all obligations for the acquisition of debt or equity securities or interests or the deferred purchase price of property or services or the acquisition of a business or portion thereof, whether contingent or otherwise, as obligor or otherwise, at the maximum amount payable in respect thereof, regardless of whether such amount is contingent on future performance; (xi) all obligations created or arising under any conditional sale or other title retention; (xii) all obligations related to inventory purchases and any other trade credit secured by Sellers; and (xiii) all Liabilities and obligations, contingent or otherwise (whether or not recorded) related to Sellers’ operation of the Business.

“Insurance Policy” has the meaning set forth in Section 3.9.

“Intellectual Property” means all intellectual property and proprietary rights in any and all jurisdictions worldwide (whether arising under statutory, common, or civil law), together with all rights to sue for, recover and retain past, present and future damages, profits, royalties, attorneys’ fees, costs and other remedies for infringement, misappropriation, dilution or other violations thereof, and all income, royalties and proceeds arising from or relating to any of the foregoing, including, without limitation: (a) patents and patent applications, including design patents, utility models, plant patents, certificates of invention, design rights, industrial design registrations and applications therefor, divisions, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, reexaminations, extensions and any provisional applications, together with all rights to claim priority (including under the Paris Convention and the Patent Cooperation Treaty), invention disclosures and improvements related thereto, and all foreign or international equivalents, counterparts and extensions of any of the foregoing; (b) marks, trademarks (whether registered, unregistered or applied-for), service marks, trade names, trade dress, domain names and registrations, social media accounts and pages, social media identifiers (such as a Twitter® handle), corporate legal entity names, brand names, logos, product names, slogans, URLs, web sites, works of authorship, together with the goodwill of the business symbolized by the marks, and all applications, registrations, renewals and foreign equivalents, and all associated content, administrative rights, credentials and DNS settings; (c) copyrights, mask works, and database rights (including sui generis database rights), including copyrights in computer software and in databases, website content, documentation, user interfaces, graphics, audiovisual works and derivative works, moral rights and renewals in connection therewith, together with moral rights to the extent assignable and waivers/consents to the extent moral rights are not assignable under applicable law, and any reversions or termination interests to the extent transferable, and all applications, registrations, renewals and foreign equivalents related thereto; (d) rights of publicity and persona rights (i.e., the right to commercially use the name, likeness, image, voice, or identity of individuals), to the extent transferable under applicable law, together with any required waivers, consents and assignments; (e) trade secrets, confidential information and know how (including negative know how), algorithms, application programming interfaces, apparatus, circuit designs and assemblies, databases and data collections, diagrams, flowcharts, formulae, gate arrays, IP cores, network configurations and architectures, net lists, photomasks, semiconductor mask work and

topography rights, processes, inventions (whether or not patentable), know-how, and rights in know-how or confidential and proprietary information, including rights in formulae, methods, techniques, policies, processes, assembly procedures, software, software code (in any form, including source code and executable or object code), repositories, build scripts, compilers, plug ins and libraries, subroutines, test results, test vectors, user interfaces, protocols, schematics, specifications, drawings, prototypes, molds and models, machine learning and AI models (including model architectures, weights and checkpoints), training data and datasets, and other forms of technology and technical information (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing), together with all rights to restrict, prevent or recover for unauthorized use or disclosure; (f) industrial designs, plant variety rights, semiconductor topography rights, and any similar, equivalent or analogous rights recognized in any jurisdiction; and (g) all causes of action and rights to sue for, and to recover and retain, past, present and future damages, profits, royalties, attorneys' fees, costs and other remedies for infringement, misappropriation, dilution or other violations of any of the foregoing; and all income, royalties and proceeds arising from or relating to any of the foregoing. For the avoidance of doubt, "Intellectual Property" includes unregistered rights and applications, and all foreign and international counterparts and equivalents of any of the foregoing.

"Intellectual Property Assignments" has the meaning set forth in Section 2.8(a)(iii).

"Intellectual Property License" means each Inbound IP License and each Outbound IP License.

"Interim DIP Order" means the Bankruptcy Court's Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507: (a) authorizing the Sellers to obtain senior secured superpriority postpetition term loan financing; (b) granting (i) Liens and superpriority administrative expense claims; (ii) adequate protection to Administrative Agent and Warehouse Lenders]; (c) modifying the automatic stay; (e) scheduling a final hearing; and (f) granting related relief, in form and substance reasonably acceptable to the DIP Lender and Administrative Agent.

"Intermediate Seller" means FlexShopper 1, LLC.

"Inventory" means all leased merchandise inventory associated with or relating to a Lease Receivable, Customer Account and/or any Lease-Purchase Agreement, as well as any other inventories of any Seller.

"IRC" means the United States Internal Revenue Code of 1986, as amended.

"IT Systems" has the meaning set forth in Section 3.11(f).

"Katapult Litigation" means Flexshopper, Inc. v. Katapult Holdings, Inc. Case No. 2:24-CV-00795-JRG, all proceeds thereof, and all legal privileges of Sellers related thereto.

"Katapult Reduction" has the meaning set forth in Section 2.5(a)i.

"Law" means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

“Leased Real Property” means all leasehold or sub-leasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property of Sellers which is used in the Business.

“Leases” means all leases, subleases, licenses, concessions and other Contracts, including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, in each case pursuant to which any Seller holds any Leased Real Property.

“Lease-Purchase Agreements” has the meaning set forth in Section 3.24.

“Lease Receivables” has the meaning set forth in Section 3.24.

“Liability” means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred, or asserted or when the relevant events occurred or circumstances existed.

“License” means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

“Lien” means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, obligation, Indebtedness, claim (as defined in section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, rights of use, encroachments, judgments, rights of setoff, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

“Litigation” means any action, cause of action, suit, claim, investigation, mediation, audit, grievance, demand, hearing or proceeding, whether civil, criminal, administrative or arbitral, whether at law or in equity and whether before any Governmental Entity or arbitrator.

“Material Adverse Effect” means any change, event, effect, development, condition, circumstance or occurrence (when taken together with all other changes, events, effects, developments, conditions, circumstances or occurrences), that (a) is materially adverse to the financial condition or results of operations of the Purchased Assets (taken as a whole); provided, however, that no change, event, effect, development, condition, circumstance or occurrence related to any of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: (i) national or international business, economic, political or social conditions, including the engagement by the United States of America in hostilities, affecting (directly or indirectly) the industry in which the Business operates, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military, cyber or terrorist attack upon the United States of America or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America, except to the extent that such change has a materially disproportionate adverse effect on the Business relative to the adverse effect that such changes have on other companies in the industry in which the Business operates; (ii) financial, banking or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index), except to the extent that such change has a materially disproportionate adverse effect on the Business relative to the adverse effect that such changes have on other companies in the industry in

which the Business operates; (iii) compliance with this Agreement or any Related Agreement, including the taking of any action required hereby or thereby or the failure to take any action that is not permitted hereby or thereby; (iv) any changes attributable to or arising from or relating to (A) the taking of any action permitted or contemplated by this Agreement or at the request of Buyer or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, or (C) the negotiation, announcement or pendency of this Agreement or the transactions contemplated hereby or the identity, nature or ownership of Buyer, including the impact thereof on the relationships, contractual or otherwise, of the business of Sellers with employees, customers, lessors, suppliers, vendors or other commercial partners; (v) arising from or relating to any existing event, occurrence, or circumstance with respect to which Buyer has knowledge as of the date hereof, including any matter set forth in the schedules hereto, (vi) arising from or relating to changes in Laws or other binding directives or determinations issued or made by or agreements with or consents of any Governmental Entity, (vii) resulting from any act of God or other force majeure event (including natural disasters, disease, epidemics, pandemics or famine); (viii) in the case of Sellers or the Business, (A) the failure to meet or exceed any projection or forecast, (B) changes in the business or operations of Sellers or any of their respective Affiliates (including changes in credit terms offered by suppliers or financing sources) resulting from the announcement, filing or pendency of the Chapter 11 Cases or Sellers' and their respective Affiliates' financial condition or Sellers' and certain of their respective Affiliates' status as debtors under Chapter 11 of the Bankruptcy Code or (C) changes in the business or operations of Sellers or any of the respective Affiliates resulting from any reductions in workforce at Sellers prior to the date of this Agreement; (ix) changes in Law or in GAAP or interpretations thereof; or (x) inaction by Sellers due to Buyer's refusal to consent to a request for consent by Seller under Section 5.4 hereof; or (b) would reasonably be expected to prevent or materially delay the ability of Sellers to consummate the transactions contemplated by this Agreement or the Related Agreements on the terms set forth herein and therein.

"Material Contract" has the meaning set forth in Section 3.12(a).

"Material Partner" has the meaning set forth in Section 3.18.

"Non-Real Property Contracts" means the Contracts to which any Seller is a party other than the Leases.

"Ongoing Trade Party" means any Person that (i) has provided goods or services to any of the Sellers on or after the Petition Date, or (ii) is identified on a schedule provided by Buyer to Sellers prior to Closing as a Person from whom Buyer may obtain goods or services relating to the Business after Closing, and is not (A) a current or former officer, director or employee of any Seller (in their capacity as such), or (B) any current or former accountant, attorney, investment banker, financial advisor or other professional engaged by any Seller.

"Online Accounts" has the meaning set forth in Section 2.1(k).

"Open Source License" shall mean any "free software" license, "software libre" license, "public" license, or open-source software license, including the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Apache license, the MIT license, the BSD and any BSD-like license, and any other license that meets the "Open Source Definition" promulgated by the Open Source Initiative.

"Open Source Software" shall mean any Software that is subject to the terms and conditions of an Open Source License.

“Order” means any administrative decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling, or writ of any federal, state local or foreign or other court, arbitrator, mediator, tribunal, administrative agency, or regulatory authority.

“Ordinary Course of Business” means the ordinary course of business of Sellers taken as a whole consistent with past custom and practice and taking into account the commencement of the Chapter 11 Cases.

“Outbound IP License” means each Contract pursuant to which Sellers have granted to any Person any right or license to any Seller Intellectual Property.

“Outside Date” has the meaning set forth in Section 8.1(c).

“Parties” has the meaning set forth in the preamble.

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance, Consent, exemption or similar right issued, granted, given or otherwise obtained from or by any Governmental Entity, under the authority thereof or pursuant to any applicable Law.

“Permitted Liens” means (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; (b) with respect to leased or licensed personal property, the terms and conditions of the lease or license applicable thereto to the extent constituting an Assumed Contract; (c) mechanics liens and similar liens for labor, materials or supplies provided with respect to real property incurred in the Ordinary Course of Business for amounts which are not delinquent and which are not material or which are being contested in good faith by appropriate proceedings; (d) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the Business, except where any such violation would not, individually or in the aggregate, materially impair the use, operation or transfer of the affected property or the conduct of the Business thereon as it is currently being conducted; and (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not materially impair value or the use or occupancy of such real property or materially interfere with the operation of the Business at such real property.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any other entity, including any Governmental Entity or any group or syndicate of any of the foregoing.

“Petition Date” means the date of the filing of the Chapter 11 Cases.

“PII” means all information (in any form, including paper, electronic and other forms) regarding or capable of being associated with an individual, consumer, household or device, including: (a) information that identifies, could be used to identify or is otherwise identifiable with an individual, including name, physical address, telephone number, email address, financial account number, government-issued identifier (including Social Security number and driver’s license number), medical, health or insurance information, gender, date of birth, educational or employment information, religious or political views or affiliations, marital or other status, photograph, face geometry, or biometric information, and any other data used or intended to be used to identify, contact or precisely locate an individual and (b) any other information that is considered “personally identifiable information,” “personal information,” “personal data,” and/or similar expressions under applicable Law.

“Post-Closing Tax Period” means (a) any Tax period ending after the Closing Date and (b) with respect to a Tax period that commences before but ends after the Closing Date, the portion of such period beginning on the Closing Date until such period end.

“Pre-Closing Tax Period” means (a) any Tax period ending on or before the Closing Date and (b) with respect to a Tax period that commences before but ends after the Closing Date, the portion of such period ending on the Closing Date.

“Privacy Laws” means all applicable Laws relating to: privacy, data security, or the processing, storage, use or transfer of PII (including applicable Laws of jurisdictions where PII was collected, to the extent applicable), data-breach notification, consumer protection, advertising requirements for website and mobile application privacy policies and practices, Social Security number protection, email, text message, or telephone communications, including, as applicable the Federal Trade Commission Act, the Telephone Consumer Protection Act, the CAN-SPAM Act, the Children’s Online Privacy Protection Act, the California Consumer Privacy Act, the Gramm-Leach-Bliley Act and all other similar international, federal, state, provincial, and local laws, in each case as applicable.

“Proposed Allocation Schedule” has the meaning set forth in Section 2.9.

“Purchased Actions” means all Litigation, judgments, refunds, rights of recovery, rights of set-off, recoupment, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller or Seller’s bankruptcy estate, in each case, relating to or arising from the Business or Purchased Assets, including, without limitation: (a) Avoidance Actions (but only to the extent (A) relating to or arising from Assumed Contracts or Purchased Assets, and/or (B) against Ongoing Trade Parties), (b) the Katapult Litigation, and (c) those arising from, relating to or comprising Intellectual Property. For the avoidance of doubt, “Purchased Actions” excludes Excluded Actions.

“Purchased Assets” has the meaning set forth in Section 2.1.

“Purchased Business Information” means all books, financial information and other information, customer lists and customer data, including customer PII, customer contact information, mailing lists, correspondence, correspondence (in any format, including emails) with customers, research and development reports, records, files, ledgers, documentation, instruments, research, papers, data, advertising, promotion and marketing materials and information, sales or technical literature or similar information, all cybersecurity protocols, breach logs, insurance coverage disclosures, incident response plans, operational guides, employee handbooks, workflow checklists, forms of contracts, proposals, pricing models, or historical vendor quotes, source code, architecture documentation, software deployment protocols, system logs, operating manuals, procedures, process documentation, compliance records, audit working papers, IT system documentation, standard forms, and any other Business information (in any format) used in, related to, or necessary for the continued operation of the Business, in any format, that, in each case, is in the possession or control of any Seller; provided, that, if for any reason Buyer is prohibited from obtaining possession of any of the foregoing, Buyer shall have the right to make copies of such Purchased Business Information unless prohibited by applicable Law.

“Qualified Bid” means a competing bid qualified for the Auction in accordance with the Sale Procedures Order.

“Records” means the books, records, information, ledgers, files, invoices, documents, work papers, correspondence, plans, drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, data, and other similar materials related to the Business

(whether written, electronic or in any other medium), including customer lists, supplier lists, manuals, price lists, mailing lists, distributor lists, customer lists, purchasing materials, documents evidencing intangible rights or obligations, personnel records, financial, accounting and Tax records, and legal proceeding files.

“Registered” means issued by, registered with, renewed by or the subject of a pending application before any Governmental Entity or domain name registrar.

“Registered IP” has the meaning set forth in Section 3.11(a).

“Related Agreements” means the Bill of Sale, the Assignment and Assumption Agreement and the Intellectual Property Assignments and any other instruments of transfer and conveyance as may be required under applicable Law to convey valid title of the Purchased Assets to Buyer.

“Representative” of a Person means such Person’s Subsidiaries and the officers, directors, managers, employees, advisors, representatives (including its legal counsel and its accountants) and agents of such Person or its Subsidiaries.

“Sale Hearing” means the hearing conducted in the Bankruptcy Court to consider approval of the Sale Motion and the Contemplated Transactions.

“Sale Motion” means a combined motion filed by Sellers with the Bankruptcy Court in connection with the Chapter 11 Cases requesting the entry of the Sale Order.

“Sale Order” has the meaning set forth in Section 5.3(a)(ii).

“Sale Order Deadline” means February 13, 2026.

“Sale Procedures Motion” means a combined motion filed by Sellers with the Bankruptcy Court in connection with the Chapter 11 Cases requesting the entry of the Sale Procedures Order.

“Sale Procedures Order” has the meaning set forth in Section 5.3(a)(i).

“Sale Procedures Order Deadline” means January 14, 2026.

“Seller” or “Sellers” has the meaning set forth in the preamble.

“Seller Intellectual Property” means all Intellectual Property owned or purported to be owned by, or developed by or on behalf of, any Seller, including all Seller Software.

“Seller Litigation” has the meaning set forth in 0.

“Seller Released Parties” has the meaning set forth in Section 6.7(a).

“Seller Releasing Parties” has the meaning set forth in Section 6.7(a).

“Seller Software” means all Software owned or purported to be owned by, or developed by or on behalf of any Seller, including all Software subject to an Outbound IP License.

“Sellers’ Knowledge” (or words of similar import) means the actual knowledge of Matt Doheny, Navin Anand, Ellen Chikarova, Dennis Owcarz, Inette Perez, Carlos Sanchez, Takisha Williams, Marshall Glade and Howard S. Dvorkin.

“Servicing Agreement” means an agreement among the Administrative Agent, Buyer, and SPV Borrower, effective as of Closing, in form and substance acceptable to Administrative Agent and Buyer, pursuant to which Buyer will have the right to collect Lease Receivables for the benefit of Administrative Agent and the Warehouse Lenders in exchange for a fee commensurate with current market terms charged by third-party collections firms.

“Software” means all computer programs (including all software implementations of algorithms, models and methodologies, firmware, software design and maintenance tools and all object codes, source codes, versions, releases updates, upgrades, modifications, enhancements, improvements and derivations of the foregoing), databases and compilations, including all data and collections of data, technology supporting the foregoing, and all documentation, including user manuals and training materials, relating to any of the foregoing.

“Straddle Period” means any Tax period beginning before and ending on or after the Closing Date.

“SPV Borrower” means FlexShopper 2, LLC.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or other persons performing similar functions with respect to such corporation) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity’s gains or losses or shall be or control any managing director, managing member, or general partner of such business entity (other than a corporation). The term “Subsidiary” shall include all Subsidiaries of such Subsidiary.

“Successful Bidder” means the prevailing party at the conclusion of the Auction, if an Auction is conducted.

“Surety Bonds” has the meaning set forth in Section 3.20(a).

“Tax” or “Taxes” means any United States federal, state or local or non-United States income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), social services, national insurance, unemployment, real property, personal property, ad valorem, sales, use, liquor, cigarette, transfer, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether or not disputed.

“Tax Authority” means any Governmental Entity having jurisdiction over the assessment, determination, collection or other imposition of any Taxes.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transaction Consideration” has the meaning set forth in Section 2.5(a)ii.

“Transfer Tax” has the meaning set forth in Section 6.6.

“Transferred Employee” has the meaning set forth in Section 6.4(a).

“Treasury Regulations” means the income Tax Treasury regulations, including temporary regulations, promulgated under the IRC.

“Warehouse Amendment Transaction Payment” has the meaning set forth in Section 2.5.

“Warehouse Credit Agreement” means the credit agreement dated as of March 27, 2024 among the SPV Borrower, as Borrower, Computershare Trust Company, National Association, as paying agent, the Administrative Agent, and the Warehouse Lenders, as amended, restated, supplemented, or otherwise modified from time to time.

“Warehouse Debt” means the secured debt owed by SPV Borrower to the Warehouse Lenders pursuant to the Warehouse Credit Agreement.

“Warehouse Facility” means the credit facility set forth in the Warehouse Credit Agreement.

“Warehouse Final Order” means a final order of the Bankruptcy Court approving the Seller’s continued performance in connection with the Warehouse Facility and granting related relief, in form and substance acceptable to the Administrative Agent.

“Warehouse Lenders” means the lenders party to the Warehouse Credit Agreement.

“Wind Down Cash” means cash in the amount of \$250,000 to be received by Sellers from the DIP Lender pursuant to the DIP Agreement to satisfy any and all Administrative Claims incurred through the Closing Date and to fund the wind-down of Sellers’ estates and the closure of the Chapter 11 Cases.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Purchased Assets. Except as expressly provided for in this Agreement, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall purchase, acquire and accept from Sellers, on an “as is, where is” basis and without any representation or warranty on the part of Sellers other than as expressly set forth in Section 3 hereof, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, all of the Purchased Assets, free and clear of all Liens (other than Permitted Liens and any Liens included in the Assumed Liabilities), for the consideration specified in Section 2.5. “Purchased Assets” shall mean all of the, direct or indirect, right, title and interest of any Seller in and to the tangible and intangible assets, properties, rights, claims and Contracts used, useful, or held for use in, or related to, the Business (but excluding Excluded Assets) as of the Closing, including:

(a) except for the Wind Down Cash; proceeds from the Acima Settlement; cash equal to the amount of the Katapult Reduction (if any); and any cash received in connection with any of the Excluded Assets, all cash, cash equivalents, bank deposits and similar cash items of any Seller to the extent such amounts exceed the amount of Sellers’ operational expenses, accrued or incurred between the Petition Date and the Closing Date, that remain unpaid following the Closing Date)

(such amounts that exceed the amount of such accrued or incurred operating expenses, the “Excess Cash”);

(b) subject to Section 2.2(j) and the right of any Seller to retain copies, all Purchased Business Information in the possession or control of any Seller, including their professionals, agents, contractors, or advisors, and whether in hard or electronic format;

(c) all prepaid expenses of any Seller relating to any of the Purchased Assets;

(d) without duplication, all deposits (including deposits in transit, but excluding any retainers held by advisors to any Seller, any professional fee escrow established pursuant to the DIP Order and deposits that constitute Excluded Utility Deposits) and other prepaid charges and expenses, credits, advance payments, charges and fees of any Seller that relate to the Purchased Assets;

(e) all computers and related equipment, servers, machinery, furniture, supplies and other tangible personal property (wherever located, whether held at any location or facility of any Seller) (including rights, if any, in any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person);

(f) all Assumed Contracts that have been assumed by and assigned to Buyer pursuant to Section 2.6;

(g) all Seller Intellectual Property;

(h) all Equity Interests in Intermediate Seller;

(i) subject to Section 2.2(j), all Records (provided that Sellers are entitled to retain copies of all Records and Buyer will make all such Records available to Sellers upon reasonable request and at no charge), but excluding (i) personnel files for Current Employees and Former Employees after the Closing Date and (ii) any materials exclusively related to any Excluded Assets and copies of all information relating solely to the Taxes and Tax Returns of the Business or the Purchased Assets in the possession of Sellers;

(j) all subscriber and customer data, information, including customer PII, analysis and modeling derived from any customer and other similar information including personal information (such as name, address, telephone number, e-mail address, website and any other database information), customer consents and opt-in/opt-outs, product hierarchy, segmentation (life cycle), customer lifetime value, application activity, IP logs, browser metadata, channel attribution, flags of inactive or fraudulent accounts and protects against chargeback disputes, chat transcripts, call logs, case histories, complaint records, soft-pull credit scores, decisioning flags, fraud screening results, session lengths, abandonment behavior, heatmap, do-not-email, do-not-contact, blocked IPs or device identifications, internal matching keys or hashed linkages across emails, phones, cookies, or devices, predictive modeling scores and models used, offers, coupons and discount information and data, and customer purchase and transaction history at a transaction level (including dollar amounts, dates, and items purchased) relating to customers of, or collected through or used in the operation of (i) the Business, and (ii) any customer lists;

(k) to the extent transferrable, the registrations and rights to any social media, e-commerce and other online, mobile or digital accounts and handles of Sellers (the “Online Accounts”), together with all content stored thereon; provided, that, to the extent transfer is not

permissible, the Parties shall enter into such alternative arrangement so as to allow Buyer to access, control and use such Online Accounts (including in connection with any commercial or marketing activities conducted therewith) to the extent administratively feasible;

(l) all goodwill associated with the Business or the Purchased Assets, including all goodwill associated with the Seller Intellectual Property and all rights under any non-disclosure and confidentiality, noncompete, or nonsolicitation agreements with current or former employees, directors, officers, managers, consultants or other service providers of any Seller or with third parties for the benefit of any Seller, in each case to the extent relating to the Business, the Purchased Assets and/or the Assumed Liabilities (or any portion thereof);

(m) all of the Assumed Permits or all of the rights and benefits accruing under any Permits relating to the Business to the extent transferrable and held by Sellers;

(n) the amount of, and all rights to any, insurance proceeds received by any of Sellers after the date hereof in respect of (i) the loss, destruction or condemnation of any Purchased Assets occurring prior to, on or after the Closing or (ii) any Assumed Liabilities;

(o) all other rights, demands, claims, credits, allowances, royalties, rebates, refunds and other rights in respect of promotional allowances or rights of setoff and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), other than against any Seller, arising out of or relating to the Business, the Purchased Assets or Assumed Liabilities;

(p) all Purchased Actions at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent;

(q) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the extent relating to equipment purchased, products sold, or services provided, to any Seller or to the extent affecting the Business, any Purchased Assets or Assumed Liabilities;

(r) all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names any of Seller related to the Business;

(s) the Customer Accounts;

(t) the assets listed on Schedule 2.1(t); and

(u) all other assets that are related to, used in or which could be used in connection with the Purchased Assets or the Business (but excluding all of the Excluded Assets).

Section 2.2 Excluded Assets. Notwithstanding Section 2.1, Buyer expressly understands and agrees that Buyer is not purchasing or acquiring, and Seller is not selling or assigning, any of the following assets, properties and rights of Sellers (the “Excluded Assets”):

(a) any cash received in connection with any of the Excluded Assets, the Wind Down Cash, the proceeds from the Acima Settlement and, solely to the extent there is a reduced Closing Payment in connection with the Katapult Litigation, cash in an amount equal to the Katapult Reduction and any Tax refund;

- (b) all Lease Receivables;
- (c) all bank accounts of Sellers;
- (d) all Excluded Utility Deposits;
- (e) all of Sellers' certificates of formation or certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, unit certificates and other documents relating to the organization, maintenance and existence of any Seller as a limited liability company, corporation or other entity;
- (f) all equity securities of any Seller or securities convertible into, exchangeable, or exercisable for any such equity securities and all net operating losses of any Seller;
- (g) all Leases (and related Leased Real Property) and Contracts, in each case, other than the Assumed Contracts;
- (h) the Excluded Actions;
- (i) any loans or notes payable to any Seller or any of its Affiliates from any employee of any Seller or any of its Affiliates;
- (j) any (1) Records containing confidential personal private information, including confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent the disclosure of such information to Buyer is prohibited by applicable Law, (2) other Records that Sellers are required by Law to retain, including pursuant to Section 6.11, and (3) any Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; provided that, subject to Section 6.11, Buyer shall have the right to make copies of any portions of such retained Records (other than the Records referenced in subsection (3)) to the extent that such portions relate to the Business or any Purchased Asset;
- (k) all Permits other than the Assumed Permits;
- (l) all directors' and officers' liability insurance policies, including any tail insurance policies, and all rights of any nature with respect to any such insurance policies, including any recoveries thereunder, proceeds thereof, and any rights to assess claims seeking any such recoveries;
- (m) except as provided in Section 2.3(c), all assets, rights and claims arising from or with respect to Taxes of any Seller that are Excluded Liabilities;
- (n) all Insurance Policies and any prepaid premiums with respect thereto;
- (o) any assets expressly excluded from Purchased Assets pursuant to Section 2.1;
- (p) all Employee Benefit Plans and trusts, Insurance Policies, rights and other assets set aside and specifically reserved solely to fund benefits payable under the applicable Employee Benefit Plan;

(q) all warranties, representations, and guarantees to the extent relating to any Excluded Asset, or rights and defenses related to any Excluded Liability;

(r) any attorney client privilege with respect to Sellers and any counsel; provided that for the avoidance of doubt, the applicable Seller shall be the sole holder of such attorney-client privilege and notwithstanding anything set forth herein, no Seller has, and shall not be deemed to have, waived any such privilege;

(s) the assets listed on Schedule 2.2(s); and

(t) the rights of Sellers under this Agreement and the Related Agreements and all cash and non-cash consideration payable or deliverable to Sellers under this Agreement.

Section 2.3 Assumption of Assumed Liabilities. On the terms and subject to the conditions of this Agreement, at the Closing (or, with respect to Assumed Liabilities under Assumed Contracts or Assumed Permits that are assumed by Buyer after the Closing, such later date of assumption as provided in Section 2.6), Buyer shall assume from the applicable Sellers (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and the applicable Sellers shall irrevocably convey, transfer, and assign to Buyer, the following Liabilities, without duplication and only to the extent not paid prior to the Closing and no other Liabilities (collectively, the “Assumed Liabilities”):

(a) the Cure Amounts under any and all Assumed Contracts, as set forth on Schedule 2.3(a);

(b) Liabilities under the Assumed Contracts and the Assumed Permits first arising from and after the Closing Date;

(c) any Transfer Taxes that are the responsibility of Sellers pursuant to Section 6.6;

(d) all Liabilities arising out of, or related to, the Buyer’s ownership, possession or use of the Purchased Assets first arising from and after the Closing Date; and

(e) any personal property Taxes with respect to the Purchased Assets to the extent that they are not otherwise satisfied under DIP Agreement.

Section 2.4 Excluded Liabilities. Notwithstanding anything herein to the contrary, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Sellers, whether existing on the Closing Date or arising thereafter, other than the Assumed Liabilities (all such Liabilities that Buyer is not assuming being referred to collectively as the “Excluded Liabilities”). For avoidance of doubt, Excluded Liabilities include (i) any Liabilities or obligations, contingent or otherwise, under the Employee Benefit Plans, whether arising prior to, on or after the Closing Date, (ii) any Liabilities and obligations, contingent or otherwise, relating to any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate, with respect to their employment or other service and/or termination of employment or other service with any Seller or any ERISA Affiliate, or any spouse, dependent or beneficiary thereof, including any Liability or obligation, contingent or otherwise, under any Employee Benefit Plan or any other employee benefit plans, programs, agreements or arrangements with respect to which any Seller or any ERISA Affiliate has or may have any Liability, contingent or otherwise, any Liabilities or obligations, contingent or otherwise, arising prior to or as of the Closing Date for vacation pay, sick pay, holiday pay, paid time off, wages, salary, bonuses, commissions, retention, severance or other payments, compensation or Liabilities of any kind to any current or former directors, officers, managers,

employees, consultants or other service providers of any Seller or any ERISA Affiliate or any contributions, remittances, premiums, or other amounts to be made to or payable with respect to any Employee Benefit Plan) and any liability under any employment agreement, offer letter, consulting agreement or other agreement between any Seller or any ERISA Affiliate and any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or ERISA Affiliate; (iii) any Liabilities arising out of any “mass layoff” or “plant closing” by Sellers as those terms are defined in the Worker Adjustment and Retraining Notification Act or any similar state or local legislation; (iv) any Liabilities related to any Seller’s failure or alleged failure to comply with any securities Laws or fraud; and (v) all Liabilities of any Seller attributable to (A) Taxes of any Seller; (B) Taxes of any Seller relating to the Business, the Purchased Assets, the Assumed Liabilities for any Pre-Closing Tax period allocable to such Seller; and (C) Taxes of any Seller payable by reason of any Tax allocation, sharing or similar agreement of any Seller or any of its predecessors in interest.

Section 2.5 Consideration.

(a) As consideration for the sale and transfer of the Purchased Assets, in addition to the assumption by Buyer of the Assumed Liabilities, Buyer shall, at Closing:

i. make a payment to Sellers equal to \$8 million (the “Closing Payment”); provided; however, that to the extent that the Katapult Litigation is dismissed, settled or compromised prior to the Closing Date, the Closing Payment shall be reduced by \$2 million so that the adjusted Closing Payment equals \$6 million (the “Katapult Reduction”); provided further, that to the extent the Closing Payment is reduced by the Katapult Reduction, the Sellers shall be entitled to retain cash in an amount equal to the Katapult Reduction; provided further, that to the extent the Sellers are unable to sell the Purchased Assets to the Buyer free and clear of any license or right of first refusal granted to Acima pursuant to the Acima Settlement, the Closing Payment shall be reduced by \$350,000 so that the adjusted Closing Payment equals \$7,650,000, in the event there is no Katapult Reduction, or \$5,650,000, in the event there is a Katapult Reduction (the “Acima Reduction”).

For the avoidance of doubt, but subject to Section 2.2(a), to the extent that the Katapult Litigation is dismissed, settled or compromised prior to the Closing Date, any proceeds of such settlement in excess of \$2 million shall be retained by Sellers and to the extent that the Katapult Litigation is dismissed, settled or compromised after the Closing Date, all proceeds of such settlement shall be retained by Buyer.

ii. make a cash payment to the Administrative Agent equal to \$7.5 million (the “Warehouse Amendment Transaction Payment”). In the event that that the DIP Lender, in the exercise of its sole and absolute discretion and with the consent of the Administrative Agent in accordance with Section 2.1 of the DIP Agreement, which shall not be unreasonably withheld, makes advances to the Sellers under the DIP Agreement in excess of \$8 million (exclusive of the amount of Warehouse Interim Advances (as defined in the DIP Agreement) reimbursed to the Administrative Agent) (any such excess advances, the “Excess DIP Amounts”), Buyer will be entitled to deduct 50% of the amount of Excess DIP Amounts, up to a maximum deduction of \$1.5 million, from its obligation to pay the Warehouse Amendment Transaction Payment. The Warehouse Amendment Transaction Payment shall be a fee payable to the Administrative Agent, for the benefit of the Warehouse Lenders, as consideration for their agreement to the transactions contemplated herein, and not as payment of any accrued, outstanding amounts under the Warehouse Credit Agreement or any other documents related to the Warehouse Facility.

Except as otherwise expressly agreed at Closing, notwithstanding anything to the contrary in this Agreement, Buyer does not assume, and shall not be deemed to have assumed, and shall have no Liability in respect of the Warehouse Facility, the Warehouse Credit Agreement, the Warehouse Debt, or any Liabilities arising thereunder or relating thereto, other than the Warehouse Amendment Transaction Payment expressly set forth in this Section 2.5(a).

The consideration described in this Section 2.5(a) is collectively referred to herein as the “Transaction Consideration.”

(b) The Closing Payment shall be paid by Buyer to the extent of amounts owed by Sellers under the DIP Agreement, as a credit bid of such amounts, and if the Closing Payment exceeds amounts owed under the DIP Agreement, then such remaining balance shall be paid in the manner set forth in Section 2.8(b)(i).

Section 2.6 Assumption and Assignment of Contracts.

(a) On or prior to January 5, 2025, Sellers shall deliver to Buyer Schedule 2.6(a) that lists of all material Contracts of Sellers that are potentially capable of assumption and assignment pursuant to Section 365 of the Bankruptcy Code (the “Assignable Contracts”). At the Sale Hearing (notice of which shall be properly and timely served on all non-Sellers counterparties to Assignable Contracts by Sellers), Sellers shall seek authority to assume and assign to Buyer those Assignable Contracts that are, or that become (pursuant to the procedures set forth in Section 2.6(f) below), Assumed Contracts.

(b) Subject to Section 2.6(g), the Assumed Contracts shall be assumed by Sellers and assigned to Buyer at the Closing pursuant to an order of the Bankruptcy Court pursuant to Section 365 of the Bankruptcy Code.

(c) Schedule 2.6(c) sets forth those Contracts that Buyer has determined shall not be assigned and assumed to it, which shall be designated as “Excluded Contracts” (the “Excluded Contracts”). Notwithstanding anything in this Agreement to the contrary, Buyer shall not be liable for any Liabilities in respect of any Excluded Contracts, and any Liabilities arising under, relating to, or in connection with such Excluded Contract shall be deemed Excluded Liabilities for all purposes under this Agreement.

(d) At the Closing (subject to Section 2.6(g)), Buyer shall pay any Cure Amounts due in connection with the assumption and assignment of the Assumed Contracts as set forth in the Sale Order for which all necessary Consents required by the Bankruptcy Code to transfer have been obtained, and Buyer will assume and agree to perform and discharge the Assumed Liabilities under the Assumed Contracts or, such other additional or fewer Assumed Contracts as otherwise agreed by the Parties at the time of the Closing.

(e) Notwithstanding the foregoing, a Contract shall not be an Assumed Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract (i) is rejected by a Seller or terminated by a Seller in accordance with the terms hereof or by the other party thereto, or terminates or expires by its terms, on or prior to the Closing and is not continued or otherwise extended upon assumption, (ii) constitutes an Employee Benefit Plan or a trust, Insurance Policy, custodian agreement or other Contract relating to any Employee Benefit Plan, or (iii) is a Disputed Amount Contract (unless and until such Disputed Amount Contract is designated as an Assumed Contract in accordance with Section 2.6(g)). In addition, a Permit shall not be

assigned to, or assumed by, Buyer to the extent that such Permit requires a Consent of any Governmental Entity or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of such Seller's rights under such Permit, and no such Consent has been obtained prior to the Closing. If any such Consent shall not be obtained, or if any attempted assignment of such Contract or Permit would be ineffective or would impair Buyer's rights under the such Contract or Permit in question so that Buyer would not in effect acquire the benefit of such rights, such Seller, to the maximum extent permitted by Law (and subject to any approval of the Bankruptcy Court that may be required), at Buyer's sole cost and expense, and for a period not to exceed the Contract Designation Period, shall act as Buyer's agent in order to obtain for Buyer the benefits thereunder and shall cooperate, to the maximum extent permitted by Law, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer; provided, however, that (i) Sellers shall not incur any costs associated with the obligations hereunder (including with respect to the Cure Amounts) and (ii) Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed, or dismissed, Buyer shall reasonably cooperate with Sellers in order to enable Sellers to provide to Buyer the benefits contemplated by this Section 2.6(e).

(f) From the date hereof until the expiration of the Contract Designation Period, Sellers shall not seek Bankruptcy Court approval to amend, reject, or assign to a Person other than Buyer any Assignable Contract unless and until such Assignable Contract is designated by Buyer as an Excluded Contract or unless otherwise agreed to in writing by Buyer. Additionally, Sellers shall file with the Bankruptcy Court such motions or pleadings as may be appropriate or otherwise as may be reasonably requested by Buyer to preserve Sellers' right or ability to assume and assign any of the Assignable Contracts (including pursuant to Section 365(d)(4) of the Bankruptcy Code) until the expiration of the Contract Designation Period.

(g) Any Assignable Contract not designated by Buyer as either an Assumed Contract or an Excluded Contract as of Closing shall constitute a "Designation Right Contract". From and after the Closing Date until the date that is the earlier of (i) the entry of an order by the Bankruptcy Court dismissing the Chapter 11 Cases, converting the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code, or confirming a Chapter 11 plan of Sellers, (ii) the termination of this Agreement in accordance with Section 8.1 and (iii) seventy-five (75) days following the Closing Date (the "Contract Designation Period"), Buyer shall have the right, by providing Sellers with written notice, to amend Schedule 2.6(a) and Schedule 2.6(c) to designate any Designation Right Contract as (i) an Assumed Contract or (ii) an Excluded Contract. Upon receipt of notice of Buyer's designation of a Designation Right Contract as an Assumed Contract in accordance with this Section 2.6(g) Sellers shall promptly provide notice to the applicable non-Seller counterparty of such designation. Notwithstanding anything herein to the contrary, any and all expenses to be incurred by Sellers with respect to maintaining such Contracts after the Closing shall be at Buyer's sole cost and expense, and Buyer shall pay and be solely responsible for all amounts that accrue and become due and owing under any Designation Right Contract from and after the Closing Date through the earlier to occur of (A) the expiration of the Contract Designation Period and (B) the date that is two (2) Business Days after written notice from Buyer designating such Designation Right Contract as an Excluded Contract in accordance with this Section 2.6(g) (such notice, an "Excluded Contract Notice"); *provided*, that the Sellers shall notify the Buyer in advance if post-petition obligations under a Designation Right Contract exceed \$10,000, and Buyer shall have the right to immediately designate such Designation Right Contract as an Excluded Contract. From and after the date that the Buyer delivers an Excluded Contract Notice with respect to any Designation Right Contract, such Designation Right Contract shall be treated as an Excluded Contract for all purposes under this Agreement, and the Buyer shall have no further liability with respect to such Designation Right Contract. Notwithstanding anything in this Agreement to the

contrary, on the date any Designation Right Contract is designated an Assumed Contract pursuant to this Section 2.6(g), such Contract shall be deemed an Assumed Contract for all purposes under this Agreement and no further consideration shall be required to be paid by Buyer for such Contract. Sellers shall cooperate in all respects with Buyer to provide a license or other means necessary to access any contract rights under any Designation Right Contract.

(h) If any Assumed Contract requires the payment of Cure Amounts in order to be assumed pursuant to Section 365 of the Bankruptcy Code, and such Cure Amounts are undetermined on the Closing Date because a non-Seller counterparty to such Contract asserts a Cure Amount in an amount that is different than the amount of Cure Amounts proposed by Sellers and such difference will not be resolved prior to the Closing Date (each such Contract, a “Disputed Amount Contract”), then Sellers shall provide Buyer, not less than ten (10) Business Days prior to the Closing Date, or as soon as reasonably practicable thereafter (but in any event prior to Closing), with a schedule that lists each such Disputed Amount Contract and the Cure Amount that has been asserted by each such non-Seller counterparty. If Sellers, with the Consent of Buyer, and the non-Seller counterparty with respect to any Disputed Amount Contract, are unable to agree on Cure Amounts for such Disputed Amount Contract within ten (10) Business Days following the Closing Date, then Buyer may (i) elect to have such Disputed Amount Contract designated as an Excluded Contract, or (ii) solely upon Buyer’s written request, Sellers shall, at the expense of Buyer, seek to have the amount of Cure Amounts related to such Disputed Amount Contract determined by the Bankruptcy Court by the date that is no later than the end of the Contract Designation Period. Upon final determination of such Cure Amounts, or if no agreement is reached between the parties, Buyer may elect to designate such Disputed Amount Contract as an Excluded Contract or an Assumed Contract. If such Disputed Amount Contract is designated as an Assumed Contract, Buyer shall pay the Cure Amounts with respect to such Assumed Contract either (A) concurrently with Sellers’ assumption and assignment thereof to Buyer or (B) as agreed in writing by Buyer and the applicable counterparty to such Assumed Contract, and execute and deliver to the applicable Sellers an assignment and assumption agreement with respect to such Assumed Contract unless otherwise agreed to by the parties. If the Cure Amount related to a Disputed Amount Contract is not resolved (either by agreement of the parties or by determination of the Bankruptcy Court) by the close of the Contract Designation Period, then such Disputed Amount Contract shall automatically be designated an Excluded Contract unless the Buyer provides the Seller with written notice to the contrary. Notwithstanding the foregoing, if, following the Closing, it is discovered that a Contract that should have been listed on Schedule 2.6(a) was not so listed, Sellers shall, to the extent Sellers are still debtors-in-possession in the Chapter 11 Cases, promptly following the discovery thereof, notify Buyer in writing of any such Contract and Sellers’ good faith estimate of the amount of Cure Amounts applicable to each such Contract (and if no Cure Amount is estimated to be applicable with respect to any such Contract, the amount of such Cure Amount shall be designated for such Contract as “\$0.00”), and upon Buyer’s request, take all actions reasonably required to assume and assign to Buyer such Contract, provided that Buyer pay the applicable Cure Amount.

(i) Notwithstanding anything herein to the contrary, the Parties agree and acknowledge that the covenants set forth in this Section 2.6 shall survive the Closing.

Section 2.7 Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place remotely by the electronic exchange of counterpart signature pages, commencing at 10:00 a.m. Eastern Time on the date (the “Closing Date”) that is the first Business Day after the date on which all conditions to the obligations of Sellers and Buyer to consummate the Contemplated Transactions set forth in ARTICLE VII (other than conditions with respect to actions Sellers and Buyer will take at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or at such other time or on such other date as shall be mutually agreed upon by Sellers

and Buyer prior thereto. The Closing shall be deemed to have occurred at 12:01 a.m. (prevailing Eastern Time) on the Closing Date.

Section 2.8 Deliveries at Closing.

(a) At the Closing, Sellers shall deliver (or caused to be delivered) to Buyer the following documents and other items, duly executed by Sellers, as applicable:

- i. one or more Bills of Sale substantially in the form of Exhibit A attached hereto (“Bill of Sale”);
- ii. one or more Assignment and Assumption Agreements substantially in the form of Exhibit B attached hereto (“Assignment and Assumption Agreement”);
- iii. instruments of assignment substantially in the form of Exhibit C attached hereto for each registered patent, registered copyright and registered trademark, transferred or assigned hereby and for each pending application therefor (collectively, the “Intellectual Property Assignments”);
- iv. all assignments, endorsements, membership interest powers and other instruments of transfer necessary to transfer FlexShopper, LLC’s entire interest, legal and beneficial, in the Intermediate Seller Equity Interests;
- v. a copy of the Sale Order;
- vi. the certificate described in Section 7.1(i);
- vii. [Reserved];
- viii. a Form W-9, duly executed by any Seller receiving any portion of the Closing Payment;
- ix. a list of each of Seller’s source codes; and
- x. such other bills of sale, assignments and other instruments of transfer or conveyance as Buyer may reasonably request or as may otherwise be necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer and assumption of Assumed Liabilities by Buyer.

(b) At the Closing, Buyer shall deliver to Sellers, and, as applicable, to Administrative Agent, the following documents, cash amounts and other items, duly executed by Buyer, as applicable:

- i. if the Closing Payment exceeds the amounts owed by Sellers on the DIP Agreement, cash equal to the remaining balance, by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Sellers at least two (2) Business Days prior to the date such payment is to be made;
- ii. the Warehouse Amendment Transaction Payment, by wire transfer of immediately available funds to such bank account as shall be designated in writing by

Administrative Agent at least two (2) Business Days prior to the date such payment is to be made and Buyer shall deliver evidence of such payment to Sellers;

- iii. the Bills of Sale;
- iv. the Assignment and Assumption Agreement;
- v. the Intellectual Property Assignments;
- vi. the certificate described in Section 7.2(e); and
- vii. such other bills of sale, assignments and other instruments of transfer or conveyance as Sellers may reasonably request or as may otherwise be necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer and assumption of Assumed Liabilities by Buyer.

Section 2.9 **Allocation**. No later than ninety (90) days after Closing or within a reasonable time thereafter as agreed by Sellers and Buyer, Buyer shall prepare and deliver to Sellers a proposed allocation of the Closing Payment (plus the Assumed Liabilities and any other Liabilities deemed assumed by Buyer for U.S. federal income Tax purposes) among the Purchased Assets which shall be prepared in a manner consistent with section 1060 of the IRC (the “Proposed Allocation Schedule”). After receipt of the Proposed Allocation Schedule from Buyer, Sellers shall have fifteen (15) days to review the Proposed Allocation Schedule. The Proposed Allocation Schedule will be considered final and binding on the Parties unless Sellers communicate to Buyer objections to the Proposed Allocation Schedule (an “Allocation Dispute Notice”). Sellers and Buyer shall, within ten (10) days (or such longer period as Sellers and Buyer may agree in writing) following delivery of an Allocation Dispute Notice (the “Allocation Resolution Period”), attempt in good faith to resolve their differences and prepare a final allocation schedule that is acceptable to both Sellers and Buyer. If Sellers and Buyer are unable to completely resolve any such differences within such ten (10) day period, then each of Sellers and Buyer shall be permitted to file their respective Tax Returns (including amended returns and claims for refund) and information reports (including on IRS Form 8594 or in any audit or other examination or proceeding relating to Taxes) in a manner that is inconsistent with the other Party.

Section 2.10 **Withholding**. Notwithstanding anything in this Agreement to the contrary, Buyer shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Agreement any amount as may be required to be deducted and withheld with respect to the making of such payment under the Code or any other provision of Tax law. In the event Buyer determines that Buyer is required to deduct and withhold and pay Taxes, other than with respect to any compensatory payments with respect to which withholding is required by applicable Law, Buyer shall use commercially reasonable efforts to notify Sellers of such requirement and the basis for such requirement at least five (5) days prior to any deduction and withholding. Buyer and Sellers shall cooperate, as reasonably requested by Sellers to reduce the amount of deduction and withholding Taxes imposed in respect of the payment of the Closing Payment to the extent it is in accordance with applicable Law. To the extent that amounts are so withheld or deducted by Buyer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which such deduction and withholding was made by Buyer.

ARTICLE III

SELLERS’ REPRESENTATIONS AND WARRANTIES

Each Seller hereby represents and warrants to Buyer as of the date hereof and as of the Closing Date that, except as set forth in the disclosure schedule accompanying this Agreement (the “Disclosure Schedule”), the statements contained in this ARTICLE III are true and correct.

Section 3.1 Organization. Sellers are either corporations or limited liability companies duly incorporated or organized and validly existing under the Laws of the jurisdiction of organization set forth in Schedule 3.1 and have all requisite power and authority to own, lease and operate their properties and to carry on their businesses as now being conducted.

Section 3.2 Authorization; Noncontravention.

(a) Subject to the entry of the Sale Order in the Chapter 11 Cases, each Seller has full corporate or limited liability company power and authority to execute and deliver this Agreement and Related Agreements and to perform their obligations hereunder and thereunder and to consummate the Contemplated Transactions. Subject to the entry of the Sale Order in the Chapter 11 Cases, the execution and delivery of this Agreement and the Related Agreements by Sellers and the performance by Sellers of their obligations hereunder and thereunder and the consummation of the Contemplated Transactions provided for herein and therein have been duly and validly authorized by all necessary corporate or similar action on the part of Sellers. Subject to the entry of the Sale Order in the Chapter 11 Cases, the respective governing bodies of Sellers have approved the execution, delivery and performance of this Agreement and the Related Agreements and the consummation of the Contemplated Transactions. This Agreement has been, and the Related Agreements will be as of the Closing Date, duly executed and delivered by each Seller and do or will, as the case may be, constitute (subject to the entry of the Sale Order in the Chapter 11 Cases) the valid and binding agreements of each Seller, enforceable against each Seller in accordance with their respective terms (assuming that this Agreement constitutes a valid and legally binding obligation of Buyer).

(b) Neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions (including the assignments and assumptions referred to in Section 2.6) will (i) conflict with or result in a breach of the certificate of formation, operating agreement, or other organizational documents, of any Seller, (ii) subject to any consents required to be obtained from any Governmental Entity, violate any Law to which any Seller is, or its assets or properties are subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which any Seller is a party or by which it is bound, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Seller is required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Entity in order for the Parties to consummate the transactions contemplated by this Agreement or any of the Related Agreements, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.3 Ownership. FlexShopper, LLC owns of record and beneficially all of the issued and outstanding Equity Interests of Intermediate Seller. Intermediate Seller owns of record and beneficially all of the issued and outstanding Equity Interests of SPV Borrower. Pursuant to the Sale Order, transfer to Buyer of the Equity Interests of Intermediate Seller in accordance with this Agreement will vest Buyer with good and marketable title to all the Equity Interests of Intermediate Seller free and clear of all Liens (other than Liens imposed by securities Laws and Permitted Liens).

Section 3.4 Consents. Except to the extent rendered unnecessary through the entry of the Sale Order or as otherwise set forth on Schedule 3.4, and where the failure to obtain such consent, waiver, approval, Order or authorization or to declare or file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and assuming the truth and completeness of the representations and warranties of Buyer contained in this Agreement, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Entity is required on the part of Sellers in connection with the execution and delivery of this Agreement, the Related Agreements or any other agreement, document or instrument contemplated hereby or thereby to which Sellers are a party, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the Contemplated Transactions or the taking by Sellers of any other action contemplated hereby or thereby (with or without notice or lapse of time, or both), except for the entry of the Sale Order.

Section 3.5 Real Property.

(a) To the Sellers' Knowledge, no Seller owns, or has ever owned, any real property.

(b) Schedule 3.5(b) sets forth an accurate and complete list of all Leased Real Property leased by Sellers. Sellers have made available true and complete copies of all Leases to Buyer. To Sellers' Knowledge, there are no pending or threatened condemnation or other proceedings or claims relating to any of the Leased Real Property. To Sellers' Knowledge, the Leases will continue to be legal, valid, binding, enforceable and in full force and effect on the same material terms immediately following the consummation of the Contemplated Transactions.

Section 3.6 Sufficiency of Assets; Title to Assets. Subject to entry of the Sale Order, Sellers own the Purchased Assets and at Closing shall deliver free and clear of all Liens (other than Permitted Liens). Upon consummation of the Contemplated Transactions, the Buyer will have acquired good and marketable title in and to, or a valid leasehold interest in, each of the Purchased Assets, free and clear of all Liens, other than Assumed Liabilities and Permitted Liens.

Section 3.7 Employees.

(a) Sellers shall provide to Buyer on or prior to January 5, 2025 a schedule that contains a complete and accurate list of all Employees employed during the period beginning on January 1, 2025 and ending on the date of this Agreement, as specified on such list, showing for each Employee (i) the position held, (ii) the wage rate or annual base compensation and target bonus or commission opportunity, (iii) such Employee's service recognized by any Seller for purposes of any Employee Benefit Plans (including service with predecessor employers, if applicable, and any prior unbridged service with any Seller or any ERISA Affiliate or other Affiliate), and (iv) which collective bargaining unit, if any, represents such Employee. Except as set forth on Schedule 3.7(a), none of the Employees are covered by any union, collective bargaining or other similar labor agreements. Sellers have delivered to Buyer a true, correct and complete copy of all collective bargaining agreements and other similar labor agreements covering Employees (including all amendments, side letters and similar documents relating thereto) (collectively, the "Collective Bargaining Agreements").

(b) Schedule 3.7(b)(i) contains a complete and accurate list of all Employee Benefit Plans; provided, that Schedule 3.7(b)(i) need not identify any offer letter or employment agreement if such offer letter or employment agreement (i) relates to an Employee, consultant or other service provider who is not an officer or director of any Seller and (ii) does not provide any severance or notice period in excess of such period required by applicable Laws. With respect to each of the Employee Benefit Plans identified on Schedule 3.7(b)(i), Sellers have made available to Buyer true

and complete copies of the Employee Benefit Plan, any related trust, Insurance Policy or other funding vehicle, the most recent summary plan description or, if no summary plan description exists, a written description of all material terms and conditions of such Employee Benefit Plan. Schedule 3.7(b)(iii) sets forth a complete list of any Employees that would be entitled to receive compensation, payments or other benefits, including any increase in payments or other compensation, acceleration of the time of payment or vesting, or requiring any funding of such amounts, under any Employee Benefit Plan or otherwise, as a result of the consummation of the Contemplated Transactions (whether alone or in combination with another event, such as termination of employment or other service, by any current or former officer, director, Employee, consultant or independent contractor of any Seller, and Sellers have provided to Buyer a schedule that sets forth a complete and accurate list of such payments or benefits to each such Person.

(c) To Sellers' Knowledge, each Employee Benefit Plan has been established, maintained, funded, operated, and administered in material compliance with its terms and applicable Laws, including ERISA and the Code. To Sellers' Knowledge, each Employee Benefit Plan which is a "pension benefit plan" within the meaning of Section 3(2) of ERISA ("Pension Plan"), and which is intended to be qualified under Section 401(a) of the IRC, is so qualified and has received a favorable determination letter from the IRS or has been established under a preapproved plan for which a favorable opinion letter from the IRS has been obtained by the plan sponsor, and there are no existing circumstances, and no events have occurred, that could reasonably be expected to adversely affect the tax-qualified status of any Pension Plan or the tax-exempt status of any related trust.

(d) To Sellers' Knowledge, none of Sellers have any Liability for retiree health, life, or other welfare benefits under any Employee Benefit Plan (other than as required under COBRA with respect to which the recipient pays the full cost of such coverage on an after-tax basis). To Sellers' Knowledge, none of Sellers or any ERISA Affiliate maintains, contributes to, or sponsors or is required to contribute to (or has in the past six years maintained, contributed to or sponsored or been required to contribute to) or otherwise has any Liability in respect of (i) a "multiemployer plan" (as defined in Section 3(37) of ERISA); (ii) a plan subject to Title IV of Section 302 of ERISA or Section 412 of the IRC; (iii) a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); or (iv) a "multiple employer plan" (within the meaning of Section 210 of ERISA or Section 413(c) of the Code).

(e) There is not presently pending or existing, and to Sellers' Knowledge, there is not threatened, (i) any strike, slowdown, picketing or work stoppage, or (ii) any application for certification of a collective bargaining agent. With respect to the Business: (A) no labor organization or group of employees of any Seller has made a pending demand for recognition or certification, and there are and have been no representation or certification proceedings or petitions seeking a representation proceeding, with the National Labor Relations Board or any other labor relations tribunal or authority, nor have any such demands, proceedings or petitions been brought or filed or threatened to be brought or filed within the past three (3) years; (B) there are not now, nor have there been at any time within the last three (3) years, any actual or threatened organizing activities, strikes, work stoppages, slowdowns, lockouts, material arbitrations or material grievances, or other material labor disputes against or involving any Seller; and (C) each Seller is in compliance in all material respects with all Collective Bargaining Agreements and with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health.

Section 3.8 **[Reserved].**

Section 3.9 Insurance Policies. Schedule 3.9 sets forth an accurate and complete list of all insurance policies maintained by any Seller in connection with the Business or the Purchased Assets, including any bonds and surety arrangements (collectively, the “Insurance Policies”), including the name of each policy, policy number, insurance carrier, term, type and amount of coverage, deductible or self-insured retention. Sellers have made available to the Buyer true and correct copies of the Insurance Policies. The Insurance Policies are in full force and effect, the limits of the Insurance Policies have not been materially eroded or exhausted and all premiums due with respect to the Insurance Policies have been paid in full. Sellers have not received written notice of cancellation, termination or premium increase with respect to any of the Insurance Policies. There are no material claims submitted in connection with the Insurance Policies as to which coverage has been denied, rejected or disputed by the applicable insurers. As of the date of this Agreement, to Sellers’ Knowledge, all claims and circumstances likely to give rise to a material claim in respect of any Purchased Asset covered by any of the Insurance Policies have been properly reported to the applicable insurers. All such Insurance Policies shall remain in effect through the Closing.

Section 3.10 Legal Proceedings. Other than the Chapter 11 Cases and except as Sellers shall set forth on Schedule 3.10, which Sellers shall deliver to Buyer on or prior to January 5, 2025, there is no Litigation pending or, to Sellers’ Knowledge, threatened against, relating to or involving any Seller (whether as a plaintiff or a defendant), the Contemplated Transactions, the Business or the Purchased Assets.

Section 3.11 Intellectual Property; Data Privacy.

(a) Schedule 3.11(a) sets forth a true, correct and complete list of all (i) patents, patent applications, registered trademarks and copyrights, applications for trademarks and copyright registrations, and domain names included in the Seller Intellectual Property, and any other forms of Seller Intellectual Property that is issued, registered, or subject to an application for registration (the “Registered IP”), including the applicable filing or registration number, title, jurisdiction and registered applicant(s) or owner(s), as applicable, (ii) Seller Software, (iii) unregistered trademarks included in the Seller Intellectual Property and any other Seller Intellectual Property that is material to the Business, taken as a whole, and (iv) Intellectual Property exclusively licensed to any Seller. Sellers exclusively own all Seller Intellectual Property and have valid rights to assign, transfer and convey all rights, title and interest associated therewith pursuant to this Agreement. Except as set forth on Schedule 3.11(a), all Registered IP remains pending or in full force and effect and has not expired or been abandoned or cancelled, and is in compliance in all material aspects with all applicable Laws. The Registered IP is subsisting, valid and enforceable. With respect to each item of Registered IP, all registration, issuance, renewal, maintenance and other payments that are or have become due with respect thereto have been timely paid by or on behalf of Sellers. No interference, opposition, reissue, reexamination, or other proceeding is or has been pending or, to Sellers’ Knowledge, threatened, in which the inventorship, scope, validity, or enforceability of any Seller Intellectual Property is being, has been, or could reasonably be expected to be contested or challenged. To Seller’s Knowledge, there is no basis for a claim that any Seller Intellectual Property is invalid or unenforceable.

(b) Sellers own, or have a valid and enforceable right to use, all Seller Intellectual Property used in the operation of the Business as currently conducted, and upon the consummation of the Contemplated Transactions, Buyer will own, or, subject to any required Consents, have a valid and enforceable right to use, all Seller Intellectual Property in the same manner and on the same terms as owned or used by Sellers as of the date hereof, to Sellers’ Knowledge, free and clear of any royalties, honoraria or other fees payable to any third parties for the right to use any such Seller Intellectual Property.

(c) Schedule 3.11(c) identifies (i) each Outbound IP License, and (ii) each Inbound IP License, excluding non-customized Software subject to customary “shrinkwrap” or “click-through” type contracts with annual or one-time payments of less than \$20,000. No Seller is in default under any Intellectual Property License, to Sellers’ Knowledge, no licensee is in default under any license agreement, and no Intellectual Property License will expire prior to the Closing Date. The Seller Intellectual Property, together with all Intellectual Property licensed to Sellers pursuant to an Inbound IP License, constitute all of the Intellectual Property used in the operation of the Business as currently conducted.

(d) Schedule 3.11(d) identifies any Seller Intellectual Property which is owned by any current or former employees, contract workers, directors or officers of Sellers.

(e) To Sellers’ Knowledge, the operation of the Business does not infringe, misappropriate, or otherwise violate, and has not in the past two (2) years infringed, misappropriated or violated, any Intellectual Property of any other Person or constituted unfair competition or unfair or deceptive trade practices under any applicable Law, and no such infringement, misappropriation, violation, unfair competition or unfair or deceptive trade practice is currently ongoing. To Sellers’ Knowledge, no Person is infringing, misappropriating or otherwise violating any Seller Intellectual Property. Schedule 3.11(e) accurately identifies (and Seller has provided to Buyer a complete and accurate copy of) each letter or other written or electronic communication or correspondence that has been sent or otherwise delivered by or to any Seller or any representative of any Seller regarding any actual, alleged, or suspected infringement or misappropriation of any Intellectual Property, and provides a brief description of the current status of the matter referred to in such letter, communication, or correspondence.

(f) To Sellers’ Knowledge, Sellers have taken commercially reasonable steps to protect and maintain all trade secrets, know-how, and other confidential or proprietary information included in the Seller Intellectual Property, including the source code of Seller Software, and to Sellers’ Knowledge, there have been no unauthorized uses or disclosures of any such trade secrets, know-how, or other confidential or proprietary information, including the source code of Seller Software.

(g) To Sellers’ Knowledge, no Seller Software includes any Open Source Software in a manner that would materially limit Buyer’s ability to use the Seller Software in the same manner as used by Sellers as of the date hereof.

(h) To Sellers’ Knowledge, no Seller Software contains any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user’s consent (collectively, “Malicious Code”).

(i) The information technology systems owned or controlled by Sellers (the “IT Systems”) are maintained in accordance with commercially reasonable standards and practices in all material respects for the operation of the Business as currently conducted. Without limiting the foregoing, to Sellers’ Knowledge, (i) Sellers have taken commercially reasonable steps and implemented commercially reasonable procedures to protect the IT Systems from Malicious Code and (ii) Sellers have implemented commercially reasonable disaster recovery and backup plans, procedures and facilities consistent with industry practices of companies offering similar services,

and acts in compliance therewith. Sellers have taken all reasonable measures to ensure the upkeep of the IT Systems, and there has not been any material malfunction with respect to any aspect of the IT Systems that has not been remedied in all material respects. There have been no unauthorized intrusions or breaches of security with respect to the IT Systems. In the past three (3) years, no third party providing services to any Seller with respect to the IT Systems has failed to meet any material service obligations.

(j) To Sellers' Knowledge, the consummation of the Contemplated Transactions will not result in any violation of any Privacy Laws, and no Seller is subject to any contractual obligations that, following the consummation of the Completed Transactions, would prohibit Buyer from receiving or using PII in a manner that is the same as, or similar to the manner in which Sellers receive and use such PII prior to consummation of the Contemplated Transactions.

(k) To Sellers' Knowledge, the consummation of the Contemplated Transactions will not result in any violation of any Privacy Laws, and no Seller is subject to any contractual obligations that, following the consummation of the Completed Transactions, would prohibit Buyer from receiving or using PII in a manner that is the same as, or similar to the manner in which Sellers receive and use such PII prior to consummation of the Contemplated Transactions.

(l) Sellers' data, privacy, and security practices are, and have been for the last three (3) years, in compliance in all material respects with: (i) Sellers' externally facing privacy and data protection policies, (ii) all contractual obligations of Sellers concerning the privacy, security, or processing of PII from any individuals, including any customers, prospective customers, employees, or other third parties, and (iii) all applicable Privacy Laws. To Sellers' Knowledge, Sellers have obtained all necessary rights from third parties with respect to Sellers' collection, use, storage, and processing of PII. Sellers have complied in all material respects with all requests of customers to opt out of receipt of marketing messages. Sellers have commercially reasonable physical, technical, organizational and administrative security measures and backup procedures in place to protect all PII and customer information collected or received by Sellers or on their behalf from and against unauthorized access, use or disclosure in accordance with applicable Laws and contractual obligations.

(m) To Sellers' Knowledge, Sellers have not permitted any third party and, to Sellers' Knowledge no third party, has gained unauthorized access to or engaged in use, collection, disclosure or exploitation of any PII or data or information relating to the Business, including any customer information in Sellers' possession or control in violation of any applicable Privacy Laws or contractual obligations of Sellers, nor have there been any material investigations, claims, or written notices in connection with the foregoing. Sellers have not notified, and to Sellers' Knowledge, there have been no facts or circumstances that would require Sellers to notify, a Governmental Entity or other Person of any unauthorized access to or disclosure of PII or any use, collection, disclosure, or exploitation of any PII in violation of any Privacy Laws or contractual obligations.

(n) To Sellers' Knowledge, Sellers and any third party, have not gained unauthorized access to or engaged in use, collection, disclosure or exploitation of any PII or data or information relating to the Business, including any customer information in Sellers' possession or control in violation of any applicable Privacy Laws or contractual obligations of Sellers, nor have there been any material investigations, claims, or written notices in connection with the foregoing. To Sellers' Knowledge, Sellers have not notified and there have been no facts or circumstances that would require Sellers to notify, a Governmental Entity or other Person of any unauthorized access to or

disclosure of PII or any use, collection, disclosure, or exploitation of any PII in violation of any Privacy Laws or contractual obligations.

Section 3.12 Validity of Contracts.

(a) Schedule 2.6(a) sets forth an accurate list, as of the date hereof, of all material Contracts (including amendments, supplements or modifications thereto) to which a Seller is a party with respect to the Business, Contemplated Transactions, the Purchased Assets or the Assumed Liabilities as of the date hereof (each such Contract, an Assignable Contract or a “Material Contract”), and Sellers have made available to Buyer true and complete copies of all such Material Contracts.

(b) As of the date of this Agreement, each Assignable Contract is in full force and effect and is a valid and binding obligation of Sellers and, to Sellers’ Knowledge, the other parties thereto in accordance with such Assignable Contract’s terms and conditions, except as such validity and enforceability may be limited by (i) applicable Laws affecting the enforcement of the parties’ rights generally, (ii) equitable principles of general applicability (whether considered in a proceeding at law or in equity), and (iii) the obligation to pay Cure Amounts under Section 2.6(d). As of the date of this Agreement, except, in each case, where the occurrence of such event, breach, default or failure to perform would not be material to the Business, taken as a whole, (i) none of Sellers has received written notice of termination with respect to any Assignable Contract and, (ii) to Sellers’ Knowledge, no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default under or a violation of, or give rise to a right of indemnity under, any such Assignable Contract or would cause the acceleration of any obligation of Sellers or the creation of a Lien (other than a Permitted Lien) upon any Purchased Asset other than those defaults that will be cured in accordance with the Sale Order, or any other order of the Bankruptcy Court required to effect the assignment of any such Assignable Contract to the Buyer or waived in accordance with Section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of any such Assignable Contract that is included in the Purchased Assets).

Section 3.13 Financial Advisors. Except as set forth on Schedule 3.13, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated to pay.

Section 3.14 [Reserved].

Section 3.15 Compliance with Applicable Laws; Licenses. (a) Except as previously disclosed in public filings of FlexShopper, Inc. or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to Sellers’ Knowledge, Sellers own and operate, and since December 31, 2023 have owned and operated, the Purchased Assets or the Subsidiary Assets, as applicable, and conduct, and since December 31, 2023 have conducted, the Business in compliance in all material respects with all Orders, Licenses and Law applicable to Sellers, the Purchased Assets or the Business, except for prior instances of non-compliance that have been fully and finally resolved to the satisfaction of all Governmental Entities with jurisdiction over such matter. Except as set forth in Schedule 3.15(a), Sellers have not, and to Sellers’ Knowledge, none of their respective Representatives have, received in the past forty-eight (48) months any written notice from a Governmental Entity or any other Person alleging that any Seller or the Business is not in compliance in any material respect with applicable Orders, Licenses or Law. (b) Sellers shall on or prior to January 5, 2025 deliver to Buyer Schedule 3.15(b) that sets forth a true, correct and complete list of material Licenses held by Sellers with respect to the current operation and conduct of the Business, the Purchased Assets or the Assumed Liabilities.

Section 3.16 Taxes.

(a) Sellers have filed (or have had filed on their behalf) all material Tax Returns that Sellers were required to file in respect of the Purchased Assets or the Business and all such Tax Returns are correct and complete in all material respects. Sellers have timely paid (i) all material Taxes (whether or not shown to be due) on any such Tax Returns or pursuant to any assessment received by such Sellers, from any Tax Authority for any period preceding the Closing Date, and (ii) all Taxes attributable to the Purchased Assets and the Business for periods ending on or prior to the Closing Date (whether or not shown as due and payable) on such Tax Returns other than Taxes not due as of the date of the filing of the Chapter 11 Cases as to which subsequent payment was not required by reason of the Chapter 11 Cases. All material Taxes that Sellers are or were required by Law to withhold, collect or deposit with respect to the Purchased Assets or the Business have been timely withheld and collected and deposited, and to the extent required, paid over to the appropriate Tax Authority. Sellers have complied in all material respects with any information reporting and withholding requirements in connection with any amounts paid or owing to any Person and all IRS Forms W 2 and Forms 1099 (or any other applicable Tax forms) required with respect thereto have been properly and timely distributed.

(b) There are no outstanding agreements or waivers that would extend the statutory period in which a Tax Authority may assess or collect a material Tax that could result in (i) a material Lien upon the Purchased Assets or (ii) material Liability to Buyer as a transferee of or a successor to the Purchased Assets.

(c) There are no Liens with respect to Taxes (other Permitted Liens) upon the Purchased Assets or the Subsidiary Assets.

Section 3.17 Accounts Receivable. [To Sellers' Knowledge,] all accounts receivable arising out of or relating to the Business were acquired or arose from sales actually made or services actually performed in the Ordinary Course of Business that represent bona fide transactions and valid and enforceable claims, are not subject to any setoff, counterclaim or legal action or proceeding and are collectible in accordance with their terms.

Section 3.18 Partners.

(a) Schedule 3.18(a) sets forth an accurate and complete list of the twenty (20) largest dealers or retail partners (each, a "Material Partner"), based on revenue generated by such dealers or retail partners during the years ended December 31, 2023 and December 31, 2024 and the eleven month period ending November 30, 2025, showing the aggregate sales to each such Material Partner during each such period. For the past three (3) years, except as set forth on Schedule 3.18(b), none of Sellers or the Business have been, or are currently engaged in any material dispute with any Material Partner. Except with respect to Contracts that are expiring in the ordinary course in accordance with their terms, no Seller has received any written communication from any Material Partner of any intention or threat to terminate or materially reduce purchases from, or otherwise change in any material respect their relationship with, any Seller or the Business, and to Sellers' Knowledge, no such action is being considered.

Section 3.19 Records. To Sellers' Knowledge, the Records, all of which have been provided to Buyer, and all other materials provided to the Buyer in the course of its due diligence, are true, correct, and complete in all material respects, represent actual, bona fide transactions, and have been maintained in a consistent manner in accordance with sound business practices.

Section 3.20 Surety Bonds.

(a) Each Seller has posted all deposits, letters of credit, trust funds, stand-alone indemnification agreements, bid bonds, performance bonds, completion bonds, reclamation bonds, and surety bonds (along with all such similar undertakings, “Surety Bonds”) required to be posted in connection with its respective operations in connection with the Business, all of which are listed on Schedule 3.20(a).

(b) Except as disclosed on Schedule 3.20(b), each Seller is in compliance with all Surety Bonds applicable to it, and the operation of the Business and the state of reclamation with respect to the Surety Bonds are “current” or in “deferred status” regarding reclamation obligations and otherwise is in compliance with all applicable reclamation and other applicable Laws.

Section 3.21 Inventory. Except as set forth on Schedule 3.21, each item of Inventory and revenue-earning property used in or relating to the Business is: (i) owned by one (1) or more Sellers, and no Inventory or revenue-earning property is held on a consignment basis; and (ii) properly stated on the balance sheet of the Business (to the extent existing on the date thereof) and on the Records of the Business in accordance with GAAP.

Section 3.22 [Reserved].

Section 3.23 [Reserved].

Section 3.24 Lease-Purchase Agreements. Sellers have delivered or made available to Buyer true and correct copies of the all forms of lease-purchase agreements (the “Lease-Purchase Agreements”) utilized by or on behalf of Sellers currently and during the previous three (3) years and the form of each such agreement is and was, as the case may be, in compliance with all Laws. All such Lease-Purchase Agreements were entered into in the Ordinary Course of Business. Schedule 3.24 sets forth the aggregate outstanding balance (assuming all payments contemplated by the Lease-Purchase Agreements are made), as of November 30, 2025, of amounts outstanding under the Lease-Purchase Agreements payable to Sellers (collectively, “Lease Receivables”). Each Lease Receivable is evidenced by a valid Lease-Purchase Agreement, and is the legal, valid and binding obligation of the customer named therein, enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium, and similar Laws affecting creditors’ rights and remedies generally and subject, as to enforceability, to general principles of equity). With respect to each Lease Receivable, (i) all customer payments received prior to the Closing Date have or will have been recorded on said customer’s payment history, (ii) the associated Lease-Purchase Agreements contain a description of the underlying merchandise actually leased thereunder, and (iii) to Sellers’ Knowledge, the underlying leased merchandise is located at the premises described in the associated Lease-Purchase Agreement or at a premises noted in Sellers’ updated computer address records. All customer accounts under the Lease-Purchase Agreements (“Customer Accounts”) were opened in accordance with customary leasing standards and criteria of Sellers. All such Customer Accounts (and any related guarantees) and payments due thereunder are, and on the Closing Date will be, free and clear of any Liens, and Sellers have complied in all material respects, and on the Closing Date will have complied in all material respects, with all applicable Laws relating to such Customer Accounts.

Section 3.25 Litigation Preservation. To Sellers’ Knowledge, each Seller has retained and maintained copies of all Records and such other documents and electronically stored information as such Seller in good faith has determined are reasonably likely to be required to satisfy such Seller’s legal obligations to preserve and produce information in connection with any anticipated or pending Litigation (including governmental or civil actions) relating in whole or in part to periods prior to the Closing.

Section 3.26 No Other Representations or Warranties. Sellers acknowledge that, except for the representations and warranties contained in ARTICLE IV, neither Buyer nor any other Person on behalf of Buyer makes any express or implied representation or warranty with respect to Buyer or with respect to any information provided by or on behalf of Buyer to any Seller.

**ARTICLE IV
BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to Sellers as follows as of the date hereof and as of the Closing Date:

Section 4.1 Organization. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware.

Section 4.2 Authorization.

(a) Buyer has full limited liability company power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Agreement and all other Related Agreements to which Buyer is a party have been duly authorized by Buyer, and no other limited liability company action on the part of Buyer is necessary to authorize this Agreement or the Related Agreements to which it is a party or to consummate the Contemplated Transactions.

(c) This Agreement has been duly and validly executed and delivered by Buyer, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which Buyer is a party will have been duly and validly executed and delivered by Buyer. Subject to entry of the Sale Order, this Agreement constitutes a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that they are a party thereto, that each Related Agreement constitutes a valid and legally binding obligation of Sellers, each Related Agreement to which Buyer is a party, when executed and delivered, constituted or will constitute the valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions (including the assignments and assumptions referred to in Section 2.6) will (i) conflict with or result in a breach of the certificate of formation, operating agreement, or other organizational documents, of Buyer, (ii) subject to any consents required to be obtained from any Governmental Entity, violate any Law to which Buyer is, or its assets or properties are subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Entity in order for the Parties to consummate the transactions contemplated by this

Agreement or any of the Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements.

Section 4.4 Legal Proceeding. There are no Litigation pending or, to Buyer's knowledge, threatened against or affecting Buyer that will adversely affect Buyer's performance under this Agreement or the consummation of the transactions contemplated by this Agreement.

Section 4.5 Sufficiency of Funds. Buyer will have sufficient funds in an aggregate amount necessary to pay the Closing Payment (or will be capable of causing such payment to be made) contemplated by Section 2.5.

Section 4.6 No Other Representations or Warranties. Buyer acknowledges that, except for the representations and warranties contained in ARTICLE III, no Seller nor any other Person on behalf of any Seller makes any express or implied representation or warranty with respect to Sellers (including representations and warranties as to the condition of the Purchased Assets) or with respect to any information provided by or on behalf of Sellers to Buyer.

ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Certain Efforts; Cooperation.

(a) Subject to the terms and conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts, subject to the orders of the Bankruptcy Court, to make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the conditions to the obligations of the Parties to consummate the Contemplated Transactions set forth in ARTICLE VII), except as otherwise provided in Section 5.2; provided, however, Sellers shall be entitled to take such actions as are required in connection with the discharge of their fiduciary duties during the Chapter 11 Cases (including, soliciting higher or better offers for the Purchased Assets in any Auction).

(b) On and after the Closing, Sellers and Buyer shall use their commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done by Sellers and Buyer all things necessary under applicable Law, and to execute and deliver such documents, ancillary agreements and other papers as may be required to carry out the provisions of this Agreement and consummate and make effective the Contemplated Transactions, including in order to more effectively vest in Buyer all of Sellers' right, title and interest to the Purchased Assets, free and clear of all Liens (other than Permitted Liens expressly contemplated by the Sale Order); provided, however, that (i) Sellers shall not incur any costs associated with the obligations hereunder and (ii) Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed.

Section 5.2 Notices and Consents.

(a) To the extent required by the Bankruptcy Code, Bankruptcy Rules, or the Bankruptcy Court, Sellers shall give any notices to third parties, and each Seller shall use its

commercially reasonable efforts to obtain any third-party Consents or sublicenses; provided, however, Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed, converted to cases under chapter 7 of the Bankruptcy Code, or dismissed.

(b) Subject to the terms and conditions set forth in this Agreement and applicable Law, each of Buyer and Sellers shall (A) promptly notify the other Party of, and if in writing, furnish the other Party with copies of (or in the case of oral communications, advise the other Party of the contents of) any communication to that Party from any Governmental Entity in respect of any filing, investigation or inquiry concerning this Agreement or the Contemplated Transactions, (B) if practicable, permit the other Party the opportunity to review and discuss in advance all the information relating to Sellers and their respective Subsidiaries or Buyer and its Affiliates, as the case may be, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Agreement and the transactions contemplated by this Agreement and incorporate the other Party's reasonable comments, (C) not participate in any meeting or discussion with any Governmental Entity in respect of any filing, investigation, or inquiry concerning this Agreement and the transactions contemplated by this Agreement unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Entity, gives the other Party the opportunity to attend, and (D) furnish the other Party with copies of all correspondences, filings, and written communications between them and their Subsidiaries and Representatives, on the one hand, and any Governmental Entity or its respective staff, on the other hand, with respect to this Agreement and the Contemplated Transactions, provided, however, that any materials or information provided pursuant to any provision of this Section 5.2(b) may be redacted before being provided to the other Party (i) to remove references concerning the valuation of Buyer, Sellers, or any of their Subsidiaries, (ii) to remove references concerning financing arrangements, (iii) as necessary to comply with contractual arrangements, and (iv) as necessary to address reasonable privilege or confidentiality issues.

(c) Notwithstanding anything herein to the contrary and subject to clause (B) of the following sentence, the Parties understand and agree that commercially reasonable efforts of Buyer hereto shall not be deemed to include: (i) entering into any settlement, undertaking, consent decree, stipulation or agreement with any Governmental Entity in connection with the transactions contemplated hereby or initiating any lawsuit, action, appeal or proceeding, judicial or administrative, challenging this Agreement or the transactions contemplated hereby, or (ii) proposing, negotiating, agreeing to or offering to commit to any sale, divestiture, license, disposition or separation (including by establishing a trust or otherwise) of, or any limitation on any operation or business of, any of its or its Affiliate's businesses, assets or properties. In furtherance, and not in limitation, of the foregoing in this Section 5.2(c), (A) other than in connection with an Alternate Transaction, Sellers shall not, and shall cause their Affiliates not to, propose, negotiate, agree to or offer to commit to any sale, divestiture, license, disposition or separation of any Purchased Asset, without the prior written consent of Buyer, and (B) Buyer shall not be required to agree to any divestiture, sale or other disposition of any of the Purchased Assets or any assets of Buyer or any of Buyer's Affiliates or agree to any limitation on any operation or business of Buyer or any of its Affiliates.

Section 5.3 Bankruptcy Actions.

(a) Sellers shall file the Sale Motion contemporaneously with the commencement of the Chapter 11 Cases seeking the Bankruptcy Court's:

- i. entry of an order on or before the Sale Procedures Order Deadline substantially in the form of Exhibit D, (the "Sale Procedures Order"), among other things,

(A) establishing bidding procedures governing the sale of the Purchased Assets, as amended, modified or supplemented in accordance with the Sale Procedures Order (the “Bidding Procedures”) (B) approving payment of the Break-Up Fee and the Expense Reimbursement, to the extent payable by the terms of this Agreement or the Sale Procedures Order, (C) providing that the Break-Up Fee and the Expense Reimbursement shall constitute administrative expenses of Sellers with priority over any and all pre-petition creditors and administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code until paid, (D) designating the Buyer as the stalking horse bidder and authorizing and approving the Sellers’ entry into this Agreement, and (E) containing such other terms that are otherwise acceptable to Sellers and Buyer, in their reasonable discretion; and

ii. entry of an order on or before the Sale Order Deadline in form and substance satisfactory to the Sellers and Buyer, authorizing and approving, inter alia, (A) the sale of the Purchased Assets to Buyer on the terms and conditions set forth herein, free and clear of all Liens and Claims (to the extent set forth therein), and (B) the assignment and assumption by Buyer of each Assumed Contract (the “Sale Order”). The Sale Order shall, among other things: (I) approve the sale of the Purchased Assets to Buyer free and clear of all Liens, Claims, and encumbrances of every kind and nature whatsoever, pursuant to (among other provisions) sections 105, 363, and 365 of the Bankruptcy Code, in each case to the extent set forth in this Agreement; (II) approve the assumption and assignment to Buyer of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code; (III) contain findings of fact and conclusions of law that Buyer is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code and is not a successor to Seller; and (IV) contain such other terms that are otherwise acceptable to Sellers and Buyer, in their reasonable discretion.

(b) Sellers shall provide Buyer with a reasonable opportunity to review and comment (but in no event less than twenty-four (24) hours) upon all motions, applications, and supporting papers relating to the transactions contemplated by this Agreement prepared by Sellers or any Affiliates (including forms of orders and notices to interested parties) prior to the filing thereof in the Chapter 11 Cases. All motions, applications, and supporting papers prepared by Sellers and relating to the transactions contemplated by this Agreement to be filed on behalf of Sellers after the date hereof must be reasonably satisfactory in form and substance to Buyer.

(c) If the Sale Procedures Order, Sale Order or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacatur, stay, rehearing or reargument shall be filed with respect to the Sale Order, Sale Procedures Order or other such order), and this Agreement has not otherwise been terminated pursuant to ARTICLE VIII, Sellers shall use their commercially reasonable efforts to diligently defend such appeal, petition or motion and shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion.

(d) Each Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that such Seller has in its possession (or receives) pertaining to the Contemplated Transaction, the Sale Order, Sale Procedures Order, or any other order related to any of the transactions contemplated by this Agreement, but only to the extent such papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to Buyer and its counsel. No Seller shall seek any modification to the Bidding Procedures, Sale

Procedures Order or Sale Order by the Bankruptcy Court or any other court without the prior written consent of Buyer, such consent not to be unreasonably withheld, conditioned or delayed.

(e) Each of Buyer and Sellers shall continue to act in good faith and without any improper conduct, including collusion or fraud of any kind.

(f) Each of Buyer and Sellers will promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order and the Sale Procedures Order and otherwise assist in consummating the transactions contemplated herein, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Sellers of their obligations under this Agreement and the Related Agreements and demonstrating that Buyer is a good faith buyer under section 363(m) of the Bankruptcy Code.

(g) Pursuant to the terms of the proposed Sale Procedures Order, Buyer shall provide information to Sellers to be disseminated to counterparties to Assumed Contracts who request such information, sufficient to satisfy a finding of adequate assurance of future performance as required in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts.

(h) Sellers shall use commercially reasonable efforts to provide appropriate notice of the hearings on the Sale Motion to all Persons entitled to notice, including, but not limited to, all known creditors of Sellers, all Persons that have asserted Liens on the Purchased Assets, all parties to the Assumed Contracts and all Taxing authorities in jurisdictions applicable to Sellers and as otherwise required by the Bankruptcy Code and bankruptcy rules.

(i) Sellers shall file with the Bankruptcy Court and serve a cure notice (the “Cure Notice”) as required by the Sale Procedures Order and provide a copy of the same to Buyer.

Section 5.4 Conduct of Business. Until the earlier of the termination of this Agreement and the Closing, subject to the terms and conditions of the Sale Order, and except as expressly contemplated by this Agreement or as set forth on Schedule 5.4, or required under the Bankruptcy Code or other applicable Law and except to the extent waived by Buyer’s prior written consent and except with the prior written consent of Buyer:

(a) to the extent permitted by the DIP Orders, the budgets therein and funds are available, Sellers shall use commercially reasonable efforts to maintain, preserve and protect all of the Purchased Assets in the condition in which they exist on the date hereof, except for ordinary wear and tear and except for replacements, modifications or maintenance in the Ordinary Course of Business;

(b) Sellers shall use commercially reasonable efforts to maintain compliance with the DIP Order and related budgets;

(c) Sellers shall use commercially reasonable efforts not to take, or agree to or commit to assist any other Person in taking, any action (i) that would reasonably be expected to result in a failure of any of the conditions to the Closing or (ii) that would reasonably be expected to impair the ability of Sellers or Buyer to consummate the Closing in accordance with the terms hereof or to materially delay such consummation;

(d) Sellers shall make all undisputed post-petition payments related to the Purchased Assets, including the Assumed Contracts (other than Cure Amounts), that become or became due

or payable pursuant to the terms thereof solely to the extent provided in the budgets in the DIP Order and funds to make such payments are available;

(e) Sellers shall comply in all material respects with all material Laws applicable to them or having jurisdiction over the Business or any Purchased Asset;

(f) except in the Ordinary Course of Business, not sell, lease, encumber, or otherwise dispose of all or any portion of any Assets that would constitute “Purchased Assets” pursuant to Section 2.1 as of the Closing Date;

(g) to the extent permitted by the DIP Orders, the budget therein and funds are available, not terminate, cancel or make any material changes to the structure, limits or terms and conditions of any of the Insurance Policies, including allowing the Insurance Policies to expire without renewing such Insurance Policies or obtaining comparable replacement coverage, or fail to pay premium or report known claims to an insurance carrier in a timely manner, in each case, except as would not be reasonably likely to be material to Sellers or the Business;

(h) to the extent permitted by the DIP Orders, the budget therein and funds are available, Sellers shall maintain in full force and effect each Assumed Permit held by any Seller as of the date hereof or otherwise obtained by any Seller prior to the Closing (to the any extent that such maintenance does not require Sellers to incur costs or make any payments), and shall comply with the terms of each such Permit and no Seller shall permit any such Permit to terminate, expire or lapse other than in the Ordinary Course of Business;

(i) Sellers shall not: (i) make, revoke, amend or change any Tax election; (ii) change any annual Tax accounting period or adopt or change any method of Tax accounting; (iii) make, change or rescind a material Tax reporting practice or policy; (iv) file any amended Tax Return; (v) enter into any closing agreement with respect to a material amount of Tax; (vi) settle any material Tax claim or assessment; (vii) extend or waive the application of any statute of limitations regarding the assessment or collection of any material Tax; or (viii) surrender any right to claim a refund of material Taxes;

(j) except as required by applicable Law or any Employee Benefit in effect as of the date hereof, no Seller shall (1) increase in any manner the cash compensation, bonus or commission opportunity, severance or termination pay or any other remuneration of any kind of any Employee, or (2) become a party to, establish, enter into, adopt, amend, commence participation in or terminate any Employee Benefit Plan, except for renewals in the Ordinary Course of Business, at no more than prevailing market rates, of Employee Benefit Plans that constitute “employee welfare benefit plans” within the meaning of section 3(1) of ERISA;

(k) to the extent permitted by the DIP Orders, the budget therein and funds are available, Sellers shall (w) conduct the Business in the Ordinary Course of Business, including with respect to the management of Customer Accounts, (x) use commercially reasonable efforts to preserve the existing business organization and keep management of the Business intact, (y) use commercially reasonable efforts to keep available the services of the Current Employees, and (z) use commercially reasonable efforts to maintain the existing relations with customers, carriers, suppliers, creditors, business partners, Employees and others having business dealings with the Business;

(l) except in the Ordinary Course of Business, Sellers shall not: (i) cancel, compromise, waive or release any right with respect to any Purchased Asset; (ii) enter into or

amend, modify, supplement, restate or renew in any respect or cancel or terminate or waive any rights under or with respect to any Assumed Contract or Assumed Permit; or (iii) subject to Section 2.6, except for such Contracts that Sellers shall file a motion with the Bankruptcy Court as of the Petition Date to reject, assume, reject or assign any Contract that may become an Assumed Contract other than through the assumption and assignment of the Assumed Contracts, as contemplated by this Agreement, to Buyer (or to a third party in connection with an Alternate Transaction); and

(m) Sellers shall not dismiss or settle the Katapult Litigation, or otherwise take any action with respect thereto that would diminish the rights, claims and interests of Sellers therein, including without limitation entering into or proposing a settlement agreement.

Nothing contained in this Agreement is intended to give Buyer or its Affiliates, directly or indirectly, the right to control or direct the business of Sellers prior to the Closing.

Section 5.5 Access.

(a) Upon reasonable advance written request by Buyer, Sellers shall permit Buyer and its Representatives to have reasonable access during normal business hours, subject to the terms of Leases and in a manner so as not to interfere unreasonably with the normal business operations of Sellers, to all premises, properties, personnel, Records and Contracts related to the Business, in each case, for the sole purpose of evaluating the Business; provided, however, that, for avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney client privilege or any confidentiality obligation to which it is bound with respect thereto or take any action in violation of applicable Law.

(b) As of the date hereof, Seller shall permit Buyer, any member of Buyer Group, or any of their respective Affiliates, to contact and communicate with any (i) Contract counterparty or (ii) customer or supplier of Sellers for the purpose of retaining such customer or supplier following Closing or evaluating whether to take assignment of such Contract.

Section 5.6 Press Releases; Public Announcements; Communications. Concurrently with the execution and delivery of this Agreement, the Parties shall make a press release in form and substance reasonably satisfactory to Buyer and Sellers regarding the transactions contemplated herein. Sellers shall be entitled to disclose, if required by applicable Law, in connection with the Auction, or by order of the Bankruptcy Court, this Agreement and all information provided by Buyer in connection herewith to the Bankruptcy Court, the Committee, parties in interest in the Chapter 11 Cases and other Persons bidding on assets of Sellers; provided, that, to the extent permitted by applicable law, Sellers shall provide notice thereof and consult with Buyer prior to such disclosure. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), in connection with the Auction or as required by applicable Law, the Parties shall not issue (prior to, on or after the Closing) any press release or make any public statement or public communication, including communications with Sellers' customers, suppliers and employees that include Buyer's position as a stalking horse bidder (other than as expressly provided in Section 5.5ARTICLE VII and this Section 5.6), without the prior written consent of the other Party; provided, however, (i) Sellers, without the prior consent of Buyer, may (A) issue such press release or make such public statement as may be required by applicable Law or any Governmental Entity with competent jurisdiction and (B) communicate with its and its Affiliates' investors and potential investors relating to the transactions contemplated by this Agreement and (ii) Buyer, without the prior consent of Sellers, may issue such press release or make such public statement, filing or disclosure as may, upon the advice of counsel, be required by applicable Law, including the Securities and Exchange Commission rules and regulations, or any Governmental Entity with competent jurisdiction.

Section 5.7 Risk of Loss. The risk of loss with respect to the Purchased Assets shall remain with Sellers until the Closing. In the event prior to the Closing any Purchased Asset or Subsidiary Asset is lost, damaged or destroyed and such loss, damage or destruction, individually or in the aggregate, has or would reasonably be expected to result in a Material Adverse Effect, then, subject to the rights of Sellers' lenders pursuant to any debtor in possession financing, Buyer may require at Closing that Sellers assign to Buyer the proceeds of any insurance payable as a result of the occurrence of such loss, damage or destruction.

Section 5.8 Supplements to Schedules. From time to time up to the Closing, Sellers shall promptly supplement or amend the Schedules that they have delivered with respect to any matter first existing or occurring following the date hereof that (a) if existing or occurring at or prior to the date hereof, would have been required to be set forth or described in the Schedules, or (b) is necessary to correct any information in the Schedules that has been rendered inaccurate thereby; provided, in each case, that the disclosure provided in any such supplemented or amended schedule shall in no way be effective for purposes of the conditions set forth in ARTICLE VII or to cure any breach of representation or warranty that otherwise may have existed hereunder by reason of such matter.

ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing, provided that (i) Sellers shall not incur any costs associated with the obligations hereunder and (ii) Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed:

Section 6.1 Cooperation. Each of the Parties shall cooperate with each other, and shall use their commercially reasonable efforts to cause their respective Representatives to cooperate with each other, to provide an orderly transition of the Purchased Assets and Assumed Liabilities from Sellers to Buyer and to minimize the disruption to the Business resulting from the Contemplated Transactions.

Section 6.2 Further Assurances. In case at any time from and after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Order, at any Party's request and sole cost and expense, each Party shall take such further action (including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation and providing materials and information) as another Party may reasonably request as shall be necessary to transfer, convey and assign to Buyer all of the Purchased Assets, to confirm Buyer's assumption of the Assumed Liabilities and to confirm Sellers' retention of the Excluded Assets and Excluded Liabilities. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discovers any additional assets or properties which the Parties mutually agree should have been transferred or assigned to Buyer as Purchased Assets but were not so transferred or assigned, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyer. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discovers any assets or properties which the parties mutually agree should have been retained by Sellers as Excluded Assets, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Sellers. If any Seller, Buyer or any of their respective Subsidiaries, from time to time, identifies any Assumed Liability that was not transferred to Buyer, or any Excluded Liability that was transferred to Buyer, Sellers and Buyer shall use their commercially reasonable efforts to transfer those Liabilities to the correct party as promptly as reasonably practicable after Closing.

Section 6.3 Availability of Business Records. From and after the Closing, Buyer shall promptly provide to Sellers and their respective Representatives (after reasonable notice and during normal business hours and without charge to Sellers) access to all Records included in the Purchased Assets for periods prior to the Closing and reasonable access to Transferred Employees to the extent such access is necessary in order for Sellers (as applicable) to comply with applicable Law or any contract to which it is a party, for liquidation, winding up, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (i) seven (7) years after the Closing Date, (ii) the required retention period for all government contact information, records or documents, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases or (iv) in the case of Records related to Taxes, the expiration of the statute of limitation applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available. Buyer acknowledges that Sellers have the right to retain originals or copies of all Records included in the Purchased Assets for periods prior to the Closing. Prior to destroying any Records included in the Purchased Assets for periods prior to the Closing, Buyer shall notify Sellers thirty (30) days in advance of any such proposed destruction of its intent to destroy such Records, and Buyer shall permit Sellers to retain such Records, at Sellers' cost and expense. With respect to any Litigation and claims that are Excluded Liabilities, Buyer shall render all reasonable assistance that Sellers may request in defending or prosecuting such Litigation or claim and shall make available to Sellers such personnel as are most knowledgeable about the matter in question, all without charge. Without limitation of any of the foregoing, such assistance by Buyer to Sellers shall include reasonable assistance to Sellers by the Transferred Employees after the Closing with respect to the wind down of the Chapter 11 Cases, which shall include during the pendency of the Chapter 11 Cases, maintaining the accounting infrastructure and assisting in the compilation of the monthly operating reports and other reporting and filings that are required to be filed with the Bankruptcy Court.

Section 6.4 Employee Matters.

(a) Prior to the Closing, Buyer may, but is not obligated to, offer (or cause a designee of Buyer to offer), by written offer letter outlining the terms and conditions of the offer of employment, to employ certain Current Employees (as determined solely by Buyer in its sole discretion prior to Closing), copies of which offers Buyer will deliver to Sellers and Sellers will deliver to the intended Current Employees, in each case prior to Closing. All such offers shall be on an "at will" basis and on such other terms and conditions as the Buyer or its designee in its discretion shall offer. For purposes of this Agreement, each Current Employee who receives and accepts such offer of employment prior to the Closing and who actually commences work with Buyer immediately after the Closing Date shall be referred to herein as a "Transferred Employee". The Buyer and its designees shall not be under any obligation to provide the Transferred Employees any specific level of pay, bonuses, credit for years of service or employee benefits. Nothing contained in this Agreement shall confer upon any Transferred Employee any right to continued employment with the Buyer or its designees or any Affiliate thereof, nor shall anything herein interfere with the right of the Buyer or its designees or any Affiliate thereof to terminate the employment of any of the Transferred Employees at any time on or after the Closing.

(b) Other than the Assumed Liabilities, Sellers shall bear responsibility for all Liabilities arising out of, relating to, or with respect to any compensation and employee benefits, as well as any other labor or employment-related liability, relating to the employment or other service or termination of employment or other service with Sellers, their ERISA Affiliates and their Affiliates of any current or former directors, officers, managers, employees, consultants or other service providers of any Seller or any ERISA Affiliate, or any spouse, dependent or beneficiary thereof. Nothing in this Agreement shall require the Buyer or any Affiliate to assume any Employee Benefit Plan nor shall Buyer and its Affiliates have any Liability for any Employee

Benefit Plan. The Seller and/or its ERISA Affiliates shall retain and be responsible for all liabilities and obligations relating to any Employee Benefit Plan, including without limitation, regardless of whether Seller and/or its ERISA Affiliates are otherwise obligated, the provision of continuing health care after the termination of employment or service of any current or former employee, director, manager, officer, consultant, independent contractor, or other service provider of any Seller or any ERISA Affiliate (or their spouses, beneficiaries or dependents) to the same extent as would be required under COBRA whether or not COBRA is applicable.

(c) Following the date of this Agreement:

i. Sellers will allow Buyer and its Representatives reasonable access upon reasonable advance notice to meet with and interview during normal business hours, any Current Employees that Buyer may select;

ii. Sellers shall not, nor shall any Seller authorize or direct or give express permission to any Affiliate, officer, director, manager, employee, consultant or other service providers of Seller or any Affiliate to, (A) interfere with Buyer's or its Representatives' rights under Section 6.4(a) to make offers of employment to any Current Employee, or (B) solicit or encourage any Current Employee not to accept, or to reject, any such offer of employment;

iii. Sellers shall provide reasonable cooperation and information to Buyer and its Representative as reasonably requested by Buyer or such Representative with respect to its determination of the current terms and conditions of employment for any Current Employee;

iv. Sellers shall provide all information reasonably requested by Buyer to determine the status as full-time employees under the Patient Protection and Affordable Care Act of 2010, as amended, of any Current Employee who is offered employment with Buyer;

v. Sellers shall process the payroll for and pay, or cause to be paid, the base wages, base salary, bonuses and other compensation and benefits that are due and payable with respect to all Current Employees and Former Employees in connection with their employment or other service with Sellers, including under any Employee Benefit Plan. Sellers shall withhold and remit all applicable payroll taxes as required by Law, and pay the related employer portion of any such taxes, with respect to all Current Employees and Former Employees of Sellers with respect to such payments; and

vi. None of the foregoing shall be construed as requiring, and neither Sellers nor any of their Affiliates shall take any affirmative action that would have the effect of requiring, Buyer to continue any specific Employee Benefit Plan or to continue the employment of any specific person on or after the Closing Date. Nothing in this Agreement is intended to establish, create or amend, nor shall anything in this Agreement be construed as establishing, creating or amending, any employee benefit plan, practice or program of Buyer, any of its Affiliates or any of the Employee Benefit Plans, nor shall anything in this Agreement create or be construed as creating any contract of employment or as conferring upon any Transferred Employee or upon any other person, other than the parties to this Agreement in accordance with its terms, any rights to enforce any provisions of this Agreement under ERISA or otherwise. This Section shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this Section, express

or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section.

Section 6.5 Recording of Intellectual Property Assignments. All of the Intellectual Property Assignments shall be recorded and filed by Buyer (at Buyer's sole cost and expense) with the appropriate Governmental Entities as promptly as practicable, but in no event later than thirty (30) days, following the Closing.

Section 6.6 Transfer Taxes.

(a) To the extent not exempt under section 1146 of the Bankruptcy Code, Buyer shall pay any and all sales, use, stamp, documentary, registration, transfer (including real estate transfer tax), stock transfer, registration, gross receipts, duty, securities transactions, stamp, documentary, registration, transfer, added value or similar Tax (each, a "Transfer Tax") imposed under any applicable Law in connection with the transactions contemplated by this Agreement, regardless of the Person liable for such Transfer Taxes under applicable Law. Sellers and Buyer shall cooperate to prepare any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence. The Party that is responsible under applicable law to file such Tax returns, shall timely file such returns.

(b) Buyer and Sellers will cooperate fully with each other regarding Tax matters and will make available to the other as reasonably requested all information, records and documents required under this Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes.

Section 6.7 Release.

(a) Effective upon the Closing, Sellers, on behalf of themselves, their bankruptcy estates, and their respective successors and assigns (collectively, the "Seller Releasing Parties"), hereby release, remise, acquit and forever discharge (i) Buyer and its past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns, and each of its and their respective directors, managers, officers, employees, attorneys, contractors, subcontractors, independent contractors, owners and insurance companies (collectively, the "Buyer Released Parties"), from any and all claims, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys' fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses arising on or prior to the Closing Date, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description, including, without limitation as to any of the foregoing, any claim by way of indemnity or contribution, which any Seller Releasing Party has, may have had or may hereafter assert against any Buyer Released Party and (ii) any claim, right or interest of Sellers or their bankruptcy estates (whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description) in the Purchased Assets; provided, that notwithstanding the foregoing, Seller Releasing Parties do not in any event release Buyer (i) from its obligations under this Agreement, including the Assumed Liabilities, or from acts or omissions constituting gross negligence or willful misconduct, (ii) with respect to any rights of Sellers under this Agreement, any of the Related Agreements, the DIP Agreement and any other agreement between the Parties entered after the date hereof, and (iii) with respect to any indemnification or similar protection set forth in the

constituent documents of the Intermediate Seller and the SPV Borrower. The foregoing release shall only be effective following approval of the Sale Order.

(b) Effective upon the Closing, Buyer, on behalf of itself and its successors and assigns (collectively, the “Buyer Releasing Parties”), hereby release, remise, acquit and forever discharge Sellers and their past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns, and each of their respective directors, managers, officers, employees, attorneys, independent contractors, owners and insurance companies (collectively, the “Seller Released Parties”), from any and all claims, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys’ fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses arising on or prior to the Closing Date, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description, including, without limitation as to any of the foregoing, any claim by way of indemnity or contribution, which any Buyer Releasing Party has, may have had or may hereafter assert against any Seller Released Party; provided, that notwithstanding the foregoing, Buyer Releasing Parties do not in any event release Sellers (i) from their obligations under this Agreement or from acts or omissions constituting gross negligence or willful misconduct and (ii) with respect to any rights of Buyer under this Agreement, any of the Related Agreements, the DIP Agreement, the DIP Order and any other agreement between the Parties entered after the date hereof.

Section 6.8 Collection of Items Related to Purchased Assets.

(a) As of the Closing Date, each Seller hereby (i) authorizes Buyer to open any and all mail addressed to any Seller relating to the Business or the Purchased Assets and delivered to the offices of the Business or otherwise to Buyer if received on or after the Closing Date and (ii) appoints Buyer or its attorney-in-fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyer after the Closing Date that are or constitute Purchased Assets made payable or endorsed to any Seller or Sellers’ order, for Buyer’s own account.

(b) As of the Closing Date, each Seller agrees that any monies, checks or negotiable instruments received by any Seller after the Closing Date that are or constitute Purchased Assets shall be held in trust by such Seller for Buyer’s benefit and account, and promptly upon receipt by a Seller of any such payment (but in any event within one (1) Business Day of such receipt), such Seller shall pay over to Buyer or its designee the amount of such payments. In addition, Buyer agrees that, after the Closing, it shall hold and shall promptly transfer and deliver to Sellers, from time to time as and when received by Buyer or its Affiliates, any cash, checks with appropriate endorsements, or other property that Buyer or its Affiliates may receive on or after the Closing which properly belongs to Sellers hereunder, including any Excluded Assets.

Section 6.9 Confidentiality.

(a) Buyer acknowledges that it has had access to and the use of Confidential Information concerning the Business and the Purchased Assets, and that the protection of such Confidential Information is necessary to protect and preserve the value of the Business and the Purchased Assets after the Closing. Until the Closing, Buyer shall not directly or indirectly, without the prior written consent of Sellers, disclose to any third party or use any Confidential Information involving or relating to the Business or the Purchased Assets, except as necessary to fulfill its

obligations under this Agreement or the Related Agreements or as is required to be disclosed in the Chapter 11 Cases.

(b) Sellers acknowledge that the success of the Business after the Closing depends upon the continued preservation of the Confidential Information possessed by Sellers and their Affiliates, that the preservation of the Confidential Information by Sellers and their Affiliates is an essential premise of the bargain between Sellers, on the one hand, and Buyer, on the other hand, and that Buyer would be unwilling to enter into this Agreement in the absence of this Section 6.9. Accordingly, from and after the Closing Date, Sellers shall not, and shall cause their Affiliates and their Affiliates' Representatives to not, at any time after Closing, directly or indirectly, without the prior written consent of Buyer, disclose to any third party or use any Confidential Information involving or relating to the Business or the Purchased Assets except as necessary to fulfill its obligations under this Agreement or the Related Agreements or as is required to be disclosed in connection with the Chapter 11 Cases.

(c) Should any Party or any of its Affiliates or Representatives be required to disclose any such Confidential Information in response to an Order or as otherwise required by Law or administrative process, to the extent permitted by applicable Law, subpoena or other court process, such Party will inform the other Party in writing of such request or obligation as soon as possible after such Party is informed of it and, if possible, before any information is disclosed, so that a protective order or other appropriate remedy may be obtained by the Party wishing to protect such information.

(d) The provisions of this Section 6.9 shall expressly survive Closing.

Section 6.10 Warehouse Facility. Sellers shall use commercially reasonable efforts to continue to comply with all obligations under the Warehouse Final Order (as modified pursuant to the Warehouse Facility Orders) and take no action to prevent or limit the continued funding of the Warehouse Debt by Warehouse Lenders pursuant to the Warehouse Facility through the Closing Date.

Section 6.11 Litigation Preservation; Discovery. Each Seller shall retain and maintain copies of all Records and such other documents and electronically stored information as such Seller in good faith determines are reasonably likely to be required to satisfy such Seller's legal obligations to preserve and produce information in connection with any anticipated or pending Litigation (including governmental or civil actions) relating in whole or in part to periods prior to the Closing ("Seller Litigation"). Buyer shall have no obligation to preserve, search, collect, review, or produce any Records or other information in connection with any Seller Litigation, except to the extent required by applicable Law.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1 Conditions to Buyer's Obligations. Subject to **Error! Reference source not found.** and Section 7.5, Buyer's obligation to consummate the Contemplated Transactions in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 3.1, Section 3.2 and Section 3.4 shall be true and correct in all material respects, and (ii) each other representation or warranty set forth in ARTICLE III shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or

in the aggregate with other such failures, has not had, and would not reasonably be expected to have, a Material Adverse Effect; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to “materiality” and “Material Adverse Effect” contained in such representations and warranties shall be disregarded;

(b) Sellers shall have performed and complied with their covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Sellers shall have caused the documents and instruments required by Section 2.8(a) to be delivered to Buyer (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) (i) (A) the Bankruptcy Court shall have entered the Sale Procedures Order by the Sale Procedures Order Deadline and the Sale Order by the Sale Order Deadline, and (B) the Sale Procedures Order and the Sale Order shall each be a Final Order on the Closing Date; and (ii) the Sale Procedures Orders and the Sale Order, as entered by the Bankruptcy Court, shall not modify the terms and conditions of this Agreement or the transactions contemplated hereby in such a manner as to result in a material diminution in the benefits of this Agreement to Buyer;

(e) the Bankruptcy Court shall not have entered any order (i) appointing a trustee or examiner with respect to the Chapter 11 Cases, (ii) converting the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or (iii) dismissing the Chapter 11 Cases;

(f) from the date of this Agreement until the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect;

(g) all Consents required under applicable Law, if any, for Buyer to take assignment at Closing of any Assignable Contracts, shall be obtained;

(h) all consents of any Governmental Entity, if any, to consummate the Contemplated Transactions, shall have been obtained; and

(i) Sellers shall have delivered a certificate from an authorized officer of Sellers to the effect that each of the conditions specified in Section 7.1(a), Section 7.1(b) and Section 7.1(f) has been satisfied.

Section 7.2 Conditions to Sellers’ Obligations. Subject to Sections 7.3 and 7.5, Sellers’ obligation to consummate the Contemplated Transactions in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 4.1, Section 4.2 or Section 4.3 shall be true and correct in all material respects, and (ii) each other representation or warranty set forth in ARTICLE IV shall be true and correct in all material respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, would not reasonably be expected to materially prevent, restrict or delay the consummation of the Contemplated Transactions or by any

Related Agreement; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to “materiality” and “Material Adverse Effect” contained in such representations and warranties shall be disregarded;

(b) Buyer shall have performed and complied with its covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Buyer shall have caused the documents, instruments and payments required by Section 2.8(b) to be delivered to Sellers (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) the Sale Order shall have been entered by the Bankruptcy Court and shall not be subject to a stay pending appeal;

(e) Sellers shall have received a Release from Administrative Agent in a form acceptable to Sellers releasing each Seller from its guarantees of the Warehouse Facility; and

(f) Buyer shall have delivered a certificate from an authorized officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) has been satisfied.

Section 7.3 Additional Closing Conditions. Buyer and Sellers may not consummate the Contemplated Transactions unless the following additional conditions have been satisfied (which conditions may not be waived or modified by Buyer or Sellers, or deemed to be waived pursuant to Section 7.5, without the express written consent of Administrative Agent):

(a) the Warehouse Final Order shall have been entered and shall remain in effect in all respects;

(b) SPV Borrower, Administrative Agent, and Warehouse Lenders shall have entered into an amendment to the Warehouse Credit Agreement, and such other necessary and appropriate amendments to the documentation related to the Warehouse Facility, each in form and substance satisfactory to Administrative Agent and Buyer and effective as of the Closing, providing for the post-Closing rights and obligations of SPV Borrower, Buyer, Administrative Agent, and any other parties thereto, and reinstating the maturity date under the Warehouse Credit Agreement to a date no later than the first anniversary of the Closing; and

(c) SPV Borrower, Administrative Agent, and Buyer shall have entered into the Servicing Agreement.

Section 7.4 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to its obligation to consummate the Contemplated Transactions set forth in Section 7.1, Section 7.2 or **Error! Reference source not found.**, as the case may be, to be satisfied if such failure was caused by such Party’s failure to use its commercially reasonable efforts with respect to those matters contemplated by the applicable Sections of this Agreement to satisfy the conditions to the consummation of the Contemplated Transactions or other breach of a representation, warranty or covenant hereunder.

Section 7.5 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this ARTICLE VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing.

ARTICLE VIII TERMINATION

Section 8.1 Termination of Agreement. This Agreement may be terminated in accordance with this ARTICLE VIII and the Contemplated Transactions abandoned at any time prior to the Closing:

(a) by the mutual written consent of Buyer, on the one hand, and Sellers, on the other hand;

(b) by written notice of any of Buyer or Sellers, upon the issuance by any Governmental Entity of a Decree restraining, enjoining, or otherwise prohibiting the consummation of the Contemplated Transactions or declaring unlawful the transactions contemplated by this Agreement, and such Decree having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Decree was caused by the breach or action or inaction of such Party;

(c) by written notice of any of Buyer or Sellers, if the Closing shall not have occurred on or before eighty (80) days following the Petition Date (the “Outside Date”); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by the breach or action or inaction of such Party;

(d) by written notice of either Buyer or Sellers, if the Chapter 11 Cases are dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner is appointed in the Chapter 11 Cases;

(e) by Buyer by giving written notice to Sellers at any time prior to Closing (i) in the event there has been a breach of or inaccuracy in any representation or warranty made by Sellers in this Agreement or if Sellers have breached any covenant contained in this Agreement in any respect, which breach, inaccuracy or failure to perform (A) gives rise to a failure of the conditions set forth in Section 8.1(a) or 8.1(b) to be satisfied and (B) (y) is not capable of being cured by the Outside Date or (z) if capable of being cured by the Outside Date, is not cured by the earlier of the Outside Date and fifteen (15) days after delivery by Buyer of written notice to Sellers of such breach, or (ii) in the event that any condition set forth in Section 7.1 shall become incapable of being satisfied by the Outside Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants hereof to be performed or complied with by it prior to the Closing, and such condition is not waived by Buyer;

(f) by Sellers by giving written notice to Buyer at any time prior to Closing (i) in the event there has been a breach of or inaccuracy in any representation or warranty made by Buyer in this Agreement or if Buyer has breached any covenant contained in this Agreement in any respect, which breach, inaccuracy or failure to perform (A) gives rise to a failure of the conditions set forth in Sections 8.3(a) or Section 7.3(b) to be satisfied and (B) (y) is not capable of being cured by the Outside Date or (z) if capable of being cured by the Outside Date, is not cured by the earlier of the Outside Date and fifteen (15) days after delivery by Sellers of written notice to Buyer of such breach, or (ii) in the event that any condition set forth in Section 7.2 shall become incapable of being satisfied by the Outside Date, unless such failure shall be due to the failure of Sellers to

perform or comply with any of the covenants hereof to be performed or complied with by them prior to the Closing, and such condition is not waived by Sellers;

(g) by written notice from Sellers to Buyer, if all of the conditions set forth in Section 7.1 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Buyer fails to complete the Closing at the time required by Section 2.7;

(h) automatically and without any action or notice by Sellers to Buyer, or Buyer to Sellers, immediately upon the consummation of an Alternate Transaction approved by the Bankruptcy Court; or

(i) by written notice from Buyer to Sellers if: (i) the Bankruptcy Court does not enter the Sale Procedure Order by the Sale Procedures Order Deadline; (ii) the Bankruptcy Court does not enter the Sale Order by the Sale Order Deadline; or (iii) following entry of the Sale Order or the Sale Procedures Order, either the Sale Order or the Sale Procedures Order is stayed, reversed, modified, vacated or amended in any material respect without the prior written consent of Buyer (such consent not to be unreasonably withheld), and such stay, reversal, modification, vacation or amendment is not eliminated within fourteen (14) days of any such stay, reversal, modification, vacation or amendment;

(j) by written notice from Buyer to Sellers upon the acceleration of the DIP Agreement and exercise of remedies as set forth in the DIP Agreement by the DIP Lender;

(k) by written notice from Buyer to Sellers if the Bankruptcy Court approves a disclosure statement with respect to a Chapter 11 plan filed by any party other than Sellers; or

(l) by written notice from Buyer to Sellers if a Seller files a Chapter 11 plan without the consent of Buyer, such consent not to be unreasonably withheld.

Notwithstanding anything to the contrary contained herein, (i) in no event may Buyer terminate this Agreement under Section 8.1(e) on account of Buyer's failure to satisfy the conditions contained in sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to any proposed Assumed Contract and (ii) if Buyer elects to be a "back-up bidder" then this Agreement shall not terminate pursuant to Section 8.1(h) until the earlier of (x) the closing of the Alternate Transaction, (y) thirty (30) days following the completion of any Auction, and (z) the eightieth (80th) day following the Petition Date.

Section 8.2 Procedure upon Termination. In the event of termination and abandonment by Sellers and Buyer, pursuant to Section 8.1, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate and the Contemplated Transactions shall be abandoned, without further action by Sellers and Buyer.

Section 8.3 Breakup Fee and Expense Reimbursement. If this Agreement is terminated pursuant to Section 8.1(i), Sellers shall immediately pay Buyer from the proceeds of the Alternate Transaction and by not later than the closing of any Alternate Transaction, an expense reimbursement of actual, necessary and documented out of pocket expenses (including fees and expenses of counsel) associated with diligence of Sellers in connection with Buyer becoming the stalking horse bidder, negotiation and documentation of this Agreement and term sheets and pleadings and papers related thereto, hearings, contested matters and any auction related to the Purchased Assets, and any other matters related to this Agreement (the "Expense Reimbursement") and, a breakup fee of \$620,000 (the "Breakup Fee"); provided that the Expense Reimbursement shall not exceed two percent (2.0%) of the Transaction

Consideration. Sellers' obligation to pay the Breakup Fee and Expense Reimbursement pursuant to this Section 8.3 shall be subject to Bankruptcy Court approval and shall survive termination of this Agreement and shall constitute an administrative expense of Sellers to be paid solely out of proceeds of an Alternate Transaction, but shall be payable as a condition to closing any Alternate Transaction. If Buyer is entitled to receipt of the Breakup Fee and Expense Reimbursement pursuant to this Section 8.3, the receipt of the Breakup Fee and Expense Reimbursement shall (i) be paid by wire transfer of immediately available funds to an account designated by Buyer no later than the closing of an Alternate Transaction, and (ii) be the liquidated damages of Buyer and Buyer's sole and exclusive remedy for the breach by Sellers of this Agreement.

Section 8.4 Effect of Termination.

(a) Except as otherwise expressly set forth in this Agreement, nothing herein shall relieve any Party from Liability for any breach of covenant occurring prior to any termination of this Agreement.

(b) No termination of this Agreement pursuant to Section 8.1 shall be effective until written notice thereof is given to the non-terminating Party specifying the provision hereof pursuant to which such termination is made. If the transactions contemplated hereby are not consummated this Agreement shall become null and void and of no further force and effect (except that ARTICLE I (Definitions), Section 6.9 (Confidentiality.), Article IX (Miscellaneous), and this ARTICLE VIII (Termination) shall survive any such termination).

(c) Nothing herein shall preclude either of the Parties from exercising their remedies under Section 9.1.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1 Remedies. (i) Each Party recognizes that if such Party breaches or refuses to perform any covenant hereunder, monetary damages alone would not be adequate to compensate the non-breaching Party or Parties for their injuries, (ii) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of, or to enjoin the violation of, the terms of such covenants, (iii) if any action, claim or proceeding is brought by the non-breaching Party to enforce such covenants, the Party in breach shall waive the defense that there is an adequate remedy at law, (iv) each Party agrees to waive any requirement for the security or posting of any bond in connection with any action, claim or proceeding seeking specific performance of, or to enjoin the violation of, such covenants, and (v) each Party agrees that the only permitted objection that it may raise in response to any action for specific performance of such covenants is that it contests the existence of a breach or threatened breach of such covenants.

Section 9.2 Expenses. Except as otherwise provided in this Agreement or a Related Agreement, and without limiting the Expense Reimbursement or any fees and expenses of Buyer payable by Sellers under the DIP Agreement, Sellers and Buyer shall bear their own expenses, including attorneys' fees, incurred in connection with the negotiation and execution of this Agreement, the Related Agreements and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Contemplated Transactions.

Section 9.3 Entire Agreement. This Agreement and the Related Agreements constitute the entire agreement among the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the Parties, written or oral, with respect to the subject matter hereof.

Section 9.4 Incorporation of Schedules, Exhibits and Disclosure Schedule. The schedules, appendices and exhibits to this Agreement, and the documents and other information made available in the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all Parties; provided, however, that Buyer shall be permitted to assign any of its rights hereunder to one or more of its Affiliates, as designated by Buyer in writing to Sellers; provided, however, Buyer shall remain jointly and severally liable with such Affiliates for all of its obligations under this Agreement after any such assignment; provided, further, that Sellers shall be permitted to assign any of their rights hereunder pursuant to a confirmed Chapter 11 plan or pursuant to an order of the Bankruptcy Court.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient; (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (iii) when sent by email (with written confirmation of transmission); or (iv) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Sellers, then to:

Flexshopper, Inc.
901 Yamato Road, Suite 260
Boca Raton, Florida 33431
Attention: Matthew A. Doheny
Email: mattdoh6@aol.com

with a copy (which shall not constitute notice) to:

Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE
Attention: Robert J. Dehney

Email: rdehney@morrisnichols.com
Attention: Tarik J. Haskins
Email: thaskins@morrisnichols.com

If to Buyer, then to:

ReadySett LLC
P.O. Box 26561
Salt Lake City, Utah 84126
Attention: Chief Financial Officer and Chief Legal Officer
Email: jgiuliani@snapfinance.com; ballen1@snapfinance.com

with copies (which shall not constitute notice) to:

Troutman Pepper Locke LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308
Attention: Matthew R. Brooks
Email: matthew.brooks@troutman.com
Attention: James W. Stevens
Email: james.stevens@troutman.com

Any Party may change the mailing address or email address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law; Jurisdiction. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws. The Parties agree that any Litigation one Party commences against any other Party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court and each of the Parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the Bankruptcy Court or that any such suit, action or proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum; provided that if the Bankruptcy Court is unwilling or unable to hear any such Litigation, then the courts of the State of Delaware, sitting in New Castle County, Delaware, and the federal courts of the United States of America sitting in New Castle County, Delaware, shall have exclusive jurisdiction over such Litigation.

Section 9.9 Consent to Service of Process. Each of the Parties hereby consents to process being served by any Party, respectively, in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.9.

Section 9.10 WAIVERS OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RELATED AGREEMENTS OR THE CONTEMPLATED TRANSACTIONS OR THEREBY.

Section 9.11 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 9.12 No Third Party Beneficiaries. Except with respect to Buyer Released Parties and Seller Released Parties pursuant to Section 6.7 and the rights granted to the Administrative Agent hereunder, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

Section 9.13 No Survival of Representations, Warranties and Agreements. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then until the close or dismissal of the Chapter 11 Cases, and nothing in this Section 9.13 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Buyer and Sellers acknowledge and agree, on their own behalf and, with respect to Buyer, Buyer Group, that the agreements contained in this Section 9.13 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing until the close or dismissal of the Chapter 11 Cases; and (b) are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this Section 9.13, none of the Parties would enter into this Agreement.

Section 9.14 Non-Recourse. This Agreement may only be enforced against, and any Litigation based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or representative of any party to this Agreement will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the parties to this Agreement or for any Litigation based upon, arising out of or related to this Agreement.

Section 9.15 Construction. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa. The word “including” and “include” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereto” and “hereby,” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision of this Agreement. Unless expressly stated in connection therewith or the context otherwise requires, the phrase “relating to the Business” and other words of similar import shall be deemed to mean “relating to the operation of the Business as conducted as of the date

hereof.” Except as otherwise provided herein, references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Exhibits, Appendices and the Disclosure Schedule herein are references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Appendices, Exhibits and the Disclosure Schedule of this Agreement. Any reference herein to any Law (or any provision thereof) shall include such Law (or any provision thereof) and any rule or regulation promulgated thereunder, in each case, including any successor thereto, and as it may be amended, modified or supplemented from time to time. Any reference herein to “dollars” or “\$” means United States dollars.

Section 9.16 Computation of Time. In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Sellers or the Chapter 11 Cases, the provisions of rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

Section 9.17 Mutual Drafting. Each of the Parties has participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.18 Disclosure Schedule. The Disclosure Schedule has been arranged for purposes of convenience in separately numbered Sections corresponding to the Sections of this Agreement and each Section of the Disclosure Schedule will be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of Sellers that are set forth in the corresponding section or subsection of this Agreement; and (b) other representations and warranties of Seller that are set forth in the Agreement only to the extent that it is reasonably apparent on the face of such disclosure that it is an exception to (or, as applicable, a disclosure for purposes of) such representation or warranty. Capitalized terms used in the Disclosure Schedule and not otherwise defined therein have the meaning given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Disclosure Schedule or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course of Business or consistent with past practice, and no party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Disclosure Schedule or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Disclosure Schedule or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course of Business. In addition, matters reflected in the Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected in the Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Disclosure Schedule will be deemed to broaden in any way the scope of the parties’ representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Disclosure Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item which terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Disclosure Schedule and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

Section 9.19 Headings; Table of Contents. The Section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.20 Counterparts; Facsimile and Email Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies (including any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), each of which shall be deemed an original.

Section 9.21 Time of Essence. Time is of the essence of this Agreement.

Section 9.22 “AS-IS” TRANSACTION. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN (INCLUDING IN ARTICLE III HEREOF, BUT AS OTHERWISE LIMITED HEREBY), SELLERS MAKE NO (AND SELLERS EXPRESSLY DISCLAIM AND NEGATE ANY) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE BUSINESS, THE OPERATION OR CONTINUED OPERATION OF THE BUSINESS, THE PURCHASED ASSETS OR ANY OTHER MATTER WHATSOEVER, INCLUDING INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE BUSINESS OR THE PURCHASED ASSETS, THE PHYSICAL CONDITION OF ANY PART OF THE PURCHASED ASSETS, THE ENVIRONMENTAL CONDITION OR OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY LEASED REAL PROPERTY, THE ZONING OF ANY SUCH LEASED REAL PROPERTY, THE VALUE OF THE BUSINESS OR THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF THE PURCHASED ASSETS, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE FUTURE RELATIONSHIP OR STABILITY OF THE CUSTOMERS OR VENDORS OF THE BUSINESS OR OF THE TRANSFERRED EMPLOYEES, THE TITLE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE MERCHANTABILITY OR FITNESS OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS OR THE BUSINESS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN (INCLUDING IN ARTICLE III HEREOF, BUT AS OTHERWISE LIMITED HEREBY), SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. BUYER FURTHER ACKNOWLEDGES THAT EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN (INCLUDING IN ARTICLE III HEREOF, BUT AS OTHERWISE LIMITED HEREBY), SUBJECT TO BUYER’S RIGHTS UNDER THIS AGREEMENT, BUYER WILL ACCEPT THE PURCHASED ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS” AND WITHOUT RECOURSE AGAINST SELLERS.

[SIGNATURE PAGES FOLLOW]

**SIGNATURE PAGE TO
ASSET PURCHASE AGREEMENT**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SELLERS:

FLEXSHOPPER, INC.

By _____
Name:
Title:

FLEXSHOPPER, LLC

By _____
Name:
Title:

FLEXLENDING, LLC

By _____
Name:
Title:

**SIGNATURE PAGE TO
ASSET PURCHASE AGREEMENT**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

BUYER:

READYSETT LLC

By

Name:

Title:

EXHIBIT A

FORM OF BILL OF SALE

This Bill of Sale, dated as of [____], 2025 (this “Bill of Sale”), is made and entered into by and among **FLEXSHOPPER, INC.**, a Delaware corporation, **FLEXSHOPPER, LLC**, a North Carolina limited liability company, **FLEXLENDING, LLC**, a Delaware limited liability company (each a “Seller” and collectively, “Sellers”), and **READYSETT LLC**, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement, dated as of December [●], 2025 (the “Asset Purchase Agreement”), by and among Buyer and Sellers.

WHEREAS, pursuant to sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Sellers have, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Sellers, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Sellers in and to the Purchased Assets, free and clear of all Liens (other than Permitted Liens); and

WHEREAS, Sellers desire to deliver to Buyer such instruments of sale, transfer assignment, conveyance and delivery as are required to vest in Buyer all of Sellers’ right, title and interest in and to the Purchased Assets;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Each Seller hereby sells, transfers, assigns, conveys and delivers to Buyer all of its right, title and interest in and to the Purchased Assets, free and clear of all Liens (other than Permitted Liens).
2. From time to time after the Closing Date, each party shall, upon the reasonable request of the other, execute and deliver or cause to be executed and delivered such further instruments of sale, conveyance, assignment, transfer and assumption, and take such further action, as may reasonably be requested in order to more effectively carry out the purposes and intent of the Asset Purchase Agreement and this Bill of Sale.
3. This Bill of Sale is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.
4. No provision of this Bill of Sale, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Bill of Sale or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Bill of Sale shall be for the sole and exclusive benefit of each of Sellers and Buyer, their respective successors and permitted assigns.
5. None of the provisions of this Bill of Sale may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Sellers and Buyer, or in the case of a waiver, by the party(ies) against whom the waiver is to be effective.

6. This Bill of Sale is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Bill of Sale shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Bill of Sale as provided by, and subject to the limitations set forth in, the Asset Purchase Agreement. To the extent any provision of this Bill of Sale is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. EXCEPT AS AND TO THE EXTENT PROVIDED IN THE ASSET PURCHASE AGREEMENT, SELLERS EXPRESSLY AND SPECIFICALLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ORAL OR WRITTEN, AND WHETHER GIVEN OR MADE OR DEEMED TO HAVE BEEN GIVEN OR MADE AT ANY TIME OR TIMES IN THE PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING THE NATURE OR CONDITION OF THE PURCHASED ASSETS, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES AS TO THE MERCHANTABILITY OF THE PURCHASED ASSETS OR THE SUITABILITY OR FITNESS OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE OR FOR ANY PURPOSE.

8. This Bill of Sale shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws.

9. This Bill of Sale may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Bill of Sale or any counterpart may be executed and delivered by facsimile or email with scan attachment copies (including any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), each of which shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be duly executed by their respective authorized officers as of the date first above written.

SELLERS:

FLEXSHOPPER, INC.

By _____
Name:
Title:

FLEXSHOPPER, LLC

By _____
Name:
Title:

FLEXLENDING, LLC

By _____
Name:
Title:

BUYER:

READYSETT LLC

By _____
Name:
Title:

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of [____], 2025 (this “Agreement”), is made and entered into by and among **FLEXSHOPPER, INC.**, a Delaware corporation, **FLEXSHOPPER, LLC**, a North Carolina limited liability company, **FLEXLENDING, LLC**, a Delaware limited liability company (each a “Seller” and collectively, “Sellers”), and **READYSETT LLC**, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement, dated as of December [●], 2025 (the “Asset Purchase Agreement”), by and among Buyer and Sellers.

WHEREAS, pursuant to sections 105, 363 and 365 of the Bankruptcy Code and the Asset Purchase Agreement, Sellers have, among other things, agreed to sell, transfer, assign, convey and deliver to Buyer and Buyer has agreed to purchase, acquire and accept from Sellers, upon the terms and conditions set forth in the Asset Purchase Agreement, all of the right, title and interest of Sellers in and to the Purchased Assets including, the Assumed Contracts, free and clear of all Liens (other than Permitted Liens); and

WHEREAS, pursuant to Section 2.3 of the Asset Purchase Agreement, Buyer has agreed to assume, effective as of the Closing, the Assumed Liabilities.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Sellers hereby assign and delegate the Assumed Contracts and the Assumed Liabilities to Buyer and Buyer hereby accepts assignment and delegation of and assumes the Assumed Contracts and the Assumed Liabilities as set forth in the Asset Purchase Agreement. Buyer assumes none of the Excluded Liabilities and the parties agree that all such Excluded Liabilities remain the responsibility of Sellers.

2. From time to time after the Closing Date, each party shall, upon the reasonable request of the other, execute and deliver or cause to be executed and delivered such further instruments of sale, conveyance, assignment, transfer and assumption, and take such further action, as may reasonably be requested in order to more effectively carry out the purposes and intent of the Asset Purchase Agreement and this Agreement.

3. This Agreement is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.

4. No provision of this Agreement, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the parties hereto and their respective successors and permitted assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Agreement shall be for the sole and exclusive benefit of each of Sellers and Buyer, their respective successors and permitted assigns.

5. None of the provisions of this Agreement may be amended or waived except if such amendment or waiver is in writing and is signed, in the case of an amendment, by Sellers and Buyer, or in the case of a waiver, by the party(ies) against whom the waiver is to be effective.

6. This Agreement is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this Agreement shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this Agreement as provided and subject to the limitations set forth in the Asset Purchase Agreement. To the extent any provision of this Agreement is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

7. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws.

8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies (including any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), each of which shall be deemed an original.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

SELLERS:

FLEXSHOPPER, INC.

By _____
Name:
Title:

FLEXSHOPPER, LLC

By _____
Name:
Title:

FLEXLENDING, LLC

By _____
Name:
Title:

BUYER:

READYSETT LLC

By _____
Name:
Title:

EXHIBIT C

FORM OF INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement dated as of December [●], 2025 (this “IP Assignment”), is made by and among **FLEXSHOPPER, INC.**, a Delaware corporation, **FLEXSHOPPER, LLC**, a North Carolina limited liability company, **FLEXLENDING, LLC**, a Delaware limited liability company, (each a “Seller” and collectively, “Sellers”), and **READYSETT LLC**, a Delaware limited liability company (together with its permitted successors, designees and assigns, “Buyer”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement dated as of December [●], 2025 (the “Asset Purchase Agreement”) by and among Buyer and Sellers.

WHEREAS, under the terms of the Asset Purchase Agreement, Sellers have conveyed, transferred, and assigned to Buyer, among other assets, certain intellectual property of Sellers, and have agreed to execute and deliver this IP Assignment, for recording with the United States Patent and Trademark Office, the United States Copyright Office, and corresponding entities or agencies in any applicable jurisdictions;

NOW, THEREFORE, the Sellers agree as follows:

1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Sellers hereby irrevocably convey, transfer, and assign to the Buyer and the Buyer hereby accepts all of the Sellers’ right, title, and interest in and to the following (the “Assigned IP”):

a. the patents and patent applications set forth on Schedule 1 hereto and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations, and renewals thereof (the “Patents”);

b. the trademark registrations and applications set forth on Schedule 2 hereto and all issuances, extensions, and renewals thereof (the “Trademarks”), together with the goodwill of the business connected with the use of, and symbolized by, the Trademarks;

c. the copyright registrations and applications for registration, set forth on Schedule 3 hereto and all issuances, extensions, and renewals thereof (the “Copyrights”);

d. all Seller Intellectual Property;

e. all rights of any kind whatsoever of the Sellers accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions, and otherwise throughout the world;

f. any and all royalties, fees, income, payments, and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and

g. any and all claims and causes of action with respect to any of the foregoing, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right but no obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

2. The Sellers hereby authorize the Commissioner for Patents and the Commissioner for Trademarks in the United States Patent and Trademark Office, the Register of Copyrights in the United States Copyright Office, and the officials of corresponding entities or agencies in any applicable jurisdictions to record and register this IP Assignment upon request by the Buyer as applicable. Following the date hereof, the Sellers shall take such steps and actions, and provide such cooperation and assistance to the Buyer and its successors, assigns, and legal representatives, including the execution and delivery of any affidavits, declarations, oaths, exhibits, assignments, powers of attorney, or other documents, as may be necessary to effect, evidence, or perfect the assignment of the Assigned IP to the Buyer, or any assignee or successor thereto.

3. This IP Assignment is subject in all respects to the terms and conditions of the Asset Purchase Agreement. Nothing contained in this IP Assignment shall be deemed to supersede, enlarge or modify any of the representations, warranties, covenants or other agreements contained in the Asset Purchase Agreement, all of which survive the execution and delivery of this IP Assignment as provided by, and subject to the limitations set forth in, the Asset Purchase Agreement. To the extent any provision of this IP Assignment is inconsistent with the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

4. This IP Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This IP Assignment or any counterpart may be executed and delivered by facsimile or email with scan attachment copies (including any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), each of which shall be deemed an original.

5. This IP Assignment is being executed by Sellers and Buyer and shall be binding upon each of Sellers and Buyer, their respective successors and assigns, for the respective uses and purposes herein set forth and referred to, and shall be effective as of the date hereof.

6. This IP Assignment shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws.

[Signature page follows]

IN WITNESS WHEREOF, Sellers have duly executed and delivered this IP Assignment as of the date first above written.

SELLERS:

FLEXSHOPPER, INC.

By _____
Name:
Title:

FLEXSHOPPER, LLC

By _____
Name:
Title:

FLEXLENDING, LLC

By _____
Name:
Title:

BUYER:

READYSETT LLC

By _____
Name:
Title:

Schedule 1

Patents

[To be populated.]

Schedule 2

Trademarks

[To be populated.]

Schedule 3

Copyrights

[To be populated.]

EXHIBIT D

FORM OF SALES PROCEDURE ORDER

See attached.

EXHIBIT C

Proposed Sale Order

[To Come]