

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

In re

FLEXSHOPPER, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-12254 (LSS)

Joint Administration Requested

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING SECURED POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. § 364, (II) GRANTING ADEQUATE PROTECTION
PURSUANT TO 11 U.S.C. §§ 361, 363 AND 364, (III) SCHEDULING
A FINAL HEARING AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “Debtors”), respectfully move (the “Motion”) as follows:

PRELIMINARY STATEMENT

1. The Debtors filed these cases with the intention to complete a sale process that maximizes value for their estates and stakeholders and to avoid immediate and irreparable harm to the Debtors and their estates. To that end, the Debtors have a stalking horse bid in hand from ReadySett LLC (“ReadySett” or the “Proposed DIP Lender”) for the purchase of substantially all the Debtors’ assets, subject to Court approval and any topping bids that emerge during the sale process.

2. Like most companies entering bankruptcy, however, the Debtors lack sufficient cash on hand to fund their operating needs and complete their intended value-maximizing sale process. As such, ReadySett offered to provide the DIP Facility, with

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.

funded new money in the aggregate principal amount of up to \$8,000,000² to allow the Debtors to fund their operations in accordance with an approved budget.

3. The Proposed DIP Facility supplements the Debtors' Securitization Program (defined below) and provides the Debtors with the necessary and critical funding to afford an opportunity to preserve the value of their assets through a value-maximizing going-concern sale process, which will preserve jobs and allow the Debtors to pursue an orderly and fair liquidation and wind-down process following the consummation of the proposal asset sale. The liquidity made available under the DIP Facility signals to the Debtors' key stakeholders that the Debtors have the liquidity necessary to continue operating while they complete a successful going-concern sale of their assets. Without the DIP Facility, the value of the Debtors' business and assets would very quickly deteriorate, materially and irreparably harming the Debtors' estates. Therefore, the relief requested by this Motion is a necessary and critical step to both preserving the Debtors' operations as well as providing a bridge to a sale transaction that maximizes value for the Debtors' estates and their stakeholders.

4. For these reasons, as well as for the reasons set forth below in the *Declaration of Matthew Doheny in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed concurrently herewith, the Debtors believe that entry into the DIP Facility is an exercise of the Debtors' sound business judgment. Accordingly, the Debtors respectfully request that the Court approve the Debtors' entry into the DIP Facility.

² Under Section 2.1 of the DIP Credit Agreement, the DIP Lender, in its sole and absolute discretion (but only with the consent of the Administrative Agent), may make Subsequent DIP Loans (as defined in the DIP Credit Agreement) in excess of the DIP Commitment at the request of the DIP Borrower based on a documented need for such Subsequent DIP Loans as reflected in the Budget, which, if and to the extent made, will be additional DIP Obligations.

RELIEF REQUESTED

5. The Debtors seek the entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim DIP Order”), and a final order (the “Final DIP Order”),³ among other things:⁴

- (a) authorizing the Debtors to obtain senior secured superpriority debtor in possession financing (the “DIP Facility”) pursuant to the terms and conditions of the DIP Credit Agreement, attached as Exhibit 2 to the Interim DIP Order, in the aggregate principal amount of up to \$8,000,000 consisting of (i) a \$2,000,000 initial draw available upon entry of the Interim DIP Order and, (ii) up to an additional \$6,000,000 upon entry of the Final DIP Order;
- (b) authorizing the Debtors to execute, deliver, and perform under the DIP Credit Agreement, the Interim Order, the Final Order, the Budget, and any other schedules, exhibits, agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, escrow agreements, instruments, notes, and documents executed in accordance and connection with any of the foregoing; each as amended, restated, supplemented, waived, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Documents”) and any other DIP Documents;
- (c) authorizing the DIP Borrower to incur the principal, interest, fees, costs, expenses, obligations (whether contingent or otherwise), and all other amounts (including, without limitation, all “DIP Obligations” (as defined in the DIP Credit Agreement), as and when due and payable under and in accordance with each of the DIP Documents (collectively, the “DIP Obligations”);
- (d) authorizing the DIP Guarantors to guarantee the DIP Obligations

³ The Debtors will file the form of Final DIP Order prior to the Final Hearing (as defined herein).

⁴ The summaries and descriptions of the terms and conditions of the DIP Facility as set forth in this Motion are qualified in their entirety by the terms of the Interim DIP Order, Final DIP Order, and DIP Documents.

- (e) subject to the Carve Out (as defined below), granting to the Proposed DIP Lender, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all DIP Obligations of the Debtors;
- (f) granting to the Proposed DIP Lender valid, binding, enforceable, non-avoidable, and automatically and properly perfected, first priority senior priming liens and security interests on the DIP Collateral as set forth in the Interim Order and the Final Order, subject to the Carve Out;
- (g) authorizing the Debtors to waive, subject to entry of the Final DIP Order granting such relief, (i) their right to surcharge the Prepetition Collateral and the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code, and (ii) any “equities of the case” exception under section 552(b) of the Bankruptcy Code;
- (h) subject to entry of the Final DIP Order granting such relief, waiving the equitable doctrine of “marshalling” and other similar doctrines with respect to the DIP Collateral and any of the Prepetition Collateral;
- (i) authorizing the Debtors to use proceeds of the DIP Facility solely in accordance with the Interim Order, Final Order and/or the DIP Documents;
- (j) subject to the restrictions set forth in the DIP Documents, the Interim DIP Order, and the Final Order, authorizing the Debtors to provide adequate protection to the Warehouse Secured Parties for any diminution in value of their interests in the Prepetition Collateral;
- (k) modifying the Automatic Stay to the extent set forth in the Interim Order and Final Order to the extent necessary to permit the Debtors and their affiliates and the Proposed DIP Lender to implement and effectuate the terms and provisions of the Interim DIP Order, Final DIP Order, and the DIP Documents;
- (l) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim DIP Order and, upon entry, the Final DIP Order; and
- (m) scheduling a hearing (the “Final Hearing”), pursuant to Bankruptcy Rule 4001(c)(2), to consider entry of the Final

DIP Order (a) through (d) (collectively, the “Requested Relief”).

JURISDICTION AND VENUE

6. This Court has jurisdiction to consider 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 as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7. 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.

8. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, 506(c), and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 2002-1, 4001-1, 4001-2, and 9013-1(m).

BACKGROUND

I. General Background

9. On December 22, 2025 (the “Petition Date”), the Debtors each commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. The Debtors are managing

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

10. The Debtors constitute a financial technology company that provides transparent and competitive payment options to consumers via lease-purchase solutions and loans. The Debtors enable consumers to utilize an e-commerce marketplace to shop for brand name electronics, home furnishings and other durable goods on a lease-to-own (LTO) basis.

11. Additional detail regarding the Debtors, their business, the events leading to commencement of these cases, and the facts and circumstances supporting the relief requested herein is set forth in the First Day Declaration filed concurrently herewith and incorporated herein by reference.

II. The Prepetition Capital Structure

12. As of the Petition Date, most significant sources of the Debtors' secured and unsecured indebtedness were under the 2024 Warehouse Facility and the NRNS Note (each defined below). A separate facility issued pursuant to a credit agreement entered into among Flex Revolution, LLC, FlexShopper, Inc., and BP Fundco, LLC was satisfied in full prior to the Petition Date.⁵

13. **2024 Warehouse Facility.** On March 27, 2024, non-debtor FlexShopper 2, LLC ("SPV Borrower"), a wholly owned indirect subsidiary of FlexShopper, LLC, entered into a credit agreement (the "2024 Warehouse Facility")⁶ with Computershare Trust Company,

⁵ In addition to the sources of indebtedness described below, there are also other sources of indebtedness described in other motions filed contemporaneously herewith, such as indebtedness related to the Debtors' employee payroll and benefit obligations, as well as other debt accruals.

⁶ As described more fully in the Securitization Motion, the 2024 Warehouse Facility, among other things, refinanced a similar facility SPV Borrower entered into in 2015 with affiliates of the Warehouse Agent and Warehouse Lender as agent and lender thereunder.

National Association as paying agent, various lenders from time to time party thereto, and third-party lender Powerscourt Investments 50, LP, as administrative agent (in such capacity, the “Warehouse Agent”) and lender (in such capacity, the “Warehouse Lender”). The 2024 Warehouse Facility provides for a securitization program (the “Securitization Program”) to fund the Debtors’ origination of lease receivables essential to the Debtors’ business. The SPV Borrower was permitted to borrow funds from the Warehouse Lender under the 2024 Warehouse Facility based on SPV Borrower’s cash on hand and the Amortized Order Value of its Eligible Leases (as such terms are defined in the credit agreement governing the 2024 Warehouse Facility) less certain deductions described in the 2024 Warehouse Facility, subject to the other requirements of the 2024 Warehouse Facility.

14. Under the terms of the 2024 Warehouse Facility, subject to the satisfaction of certain conditions, the SPV Borrower was initially permitted to borrow up to \$150,000,000 from the Lender until the Commitment Termination Date and must repay all borrowed amounts one year thereafter, on the date that is 12 months following the Commitment Termination Date (unless such amounts become due or payable on an earlier date pursuant to the terms of the 2024 Warehouse Facility). On April 9, 2025, the parties executed an amendment to the 2024 Warehouse Facility to increase the maximum commitment amount to \$155,000,000. On April 30, 2025, another amendment was executed increasing the maximum commitment amount to \$200,000,000. The Commitment Termination Date was April 1, 2026. As described more fully in the Securitization Motion (as defined below), funds borrowed under the 2024 Warehouse Facility are used by SPV Borrower to purchase, through a series of transactions consumer merchandise leases and related rights owned by FlexShopper, LLC, which leases and related rights become collateral for the 2024 Warehouse Facility.

15. As of the Petition Date, the Warehouse Agent has valid, perfected, first-priority liens in Debtor FlexShopper, LLC's 100% equity interests in FlexShopper 1, LLC (the "Prepetition Collateral"). Additionally, as of the Petition Date, the Warehouse Agent, FlexShopper 1, LLC, and SPV Borrower, have valid, perfected, first-priority precautionary liens on the transferred receivables to the extent that the sales or contributions of receivables are recharacterized as being secured financing transactions rather than absolute transfers of the receivables (the "Prepetition Liens"). The Warehouse Agent also has valid, perfected, first-priority liens on substantially all assets of SPV Borrower

16. A portion of the obligations under the 2024 Warehouse Facility are also guaranteed by FlexShopper, LLC, on an unsecured basis pursuant to a limited guaranty. FlexShopper, LLC is also guarantor under the Validity Guaranty dated as of March 27, 2024 (the "Validity Guaranty"), pursuant to which FlexShopper, LLC agreed to be liable, for all losses, costs, expenses (including attorneys' fees), damages, liabilities and other amounts incurred or suffered by the Warehouse Agent and Warehouse Lender as a result of any "Liability Event" as defined in the Validity Guaranty. "Liability Events" include, among other things, (i) fraud in connection with the 2024 Warehouse Facility, Leases, Retail Loans, or other aspects of the securitization program, (ii) the provision to the Warehouse Agent or Warehouse Lender of any materially inaccurate or materially misleading information required under the 2024 Warehouse Facility or Servicing Agreement with intent to deceive, or (iii) the concealing of material information required to be delivered to the Warehouse Agent or Warehouse Lenders under the 2024 Warehouse Facility or Servicing Agreement with intent to deceive.

17. Contemporaneously with the filing of this Motion, the Debtors are filing a motion to continue the Securitization Program, including to perform under all agreements, amendments, restatements, supplements, and instruments entered into in connection therewith.

18. **NRNS Note.** FlexShopper, LLC, previously entered into letter agreements with NRNS Capital Holdings LLC (“NRNS”), the manager of which is the Chairman of the Company’s Board of Directors, pursuant to which FlexShopper, LLC, issued subordinated promissory notes to NRNS (the “NRNS Note”) in the total principal amount of approximately \$9,000,000. Obligations under the NRNS Note are subordinated to obligations under the 2024 Warehouse Facility pursuant to an intercreditor agreement between NRNS and the Warehouse Agent (the “Securitization Intercreditor Agreement”). Obligations under the NRNS Note were purportedly secured by substantially all FlexShopper, LLC’s, assets, subject to rights of the Warehouse Agent under the Securitization Intercreditor Agreement, but are, and have been, unperfected. Payment of principal and accrued interest due under the NRNS Note was originally due on June 30, 2021. Through the execution of numerous amendments, the maturity date of the NRNS Note was extended to July 1, 2025, and, as of the Petition Date, remains outstanding. Interest expense for the NRNS Note was \$532,782 and \$1,638,792 for the three and nine months ended September 30, 2024, respectively, and \$587,230 and \$1,716,217 for the three and nine months ended September 30, 2023, respectively.

CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001

19. Pursuant to Bankruptcy Rule 4001(b), (c), and (d), and Local Rule 4001-2(a), the following is a concise summary highlighting the proposed material terms of the DIP Facility, as specified in the DIP Credit Agreement and the Interim DIP Order:⁷

Material Provision	Summary Description of Material Provision
Obligors Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(J)	Borrowers: FlexShopper, LLC and FlexShopper, Inc. Guarantors: FlexLending, LLC; FlexRevolution, LLC; FlexRetail, LLC; Flex TX, LLC; Flex TX Funding, LLC; and Flex TX CAB, LLC Proposed DIP Lender: ReadySett LLC See Interim DIP Order, at 2; DIP Credit Agreement, Preamble, Art. 1.
DIP Commitment Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(i)(A)	The DIP Facility shall be a new money delayed-draw term loan facility (the “ <u>DIP Loans</u> ”) in an aggregate principal amount of \$8,000,000, of which (x) \$2,000,000 shall be available to the DIP Borrower immediately upon the entry of the Interim Order, and (y) an additional amount of up to \$6,000,000 shall be available to the DIP Borrower for borrowing immediately upon the entry of a final order granting the relief requested in the Motion on a final basis, in each case, expressly subject to the terms and conditions set forth in the Interim Order, any final order, the Budget, and the DIP Documents. See Interim DIP Order, Preamble (b)
Use of Proceeds Fed. R. Bankr. P. 4001(c)(1)(B)	The proceeds of the DIP Loans shall be used by the DIP Borrower solely in accordance with the Budget and the DIP Orders in order to (a) fund Postpetition operating expenses and working capital needs of the DIP Borrower as set forth in the Budget, including, but not limited to, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. § 1930; (b) pay interest, fees and expenses to the DIP Lender; (c) fund fees and expenses incurred in connection with the Sale Process; (d) pay permitted Prepetition claim payments and adequate protection payments approved by the DIP Lender in writing or set forth in the Budget, if any; (e) pay Professional Fees and Expenses; (f) reimburse Administrative Agent for the Warehouse Interim Advances; and (g) pay certain other costs and expenses of administration of the Chapter 11 Cases. None of the proceeds of the DIP Loans or the Carve Out shall be used (a) to permit the Credit Parties, or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (or

⁷ To the extent there is an inconsistency between the summary of material provisions and the DIP Documents, the DIP Documents shall control in all respects.

Material Provision	Summary Description of Material Provision
	support any other person or entity in challenging or contesting) (i) the validity, perfection or priority of security interests in favor of the DIP Lender or Administrative Agent or the transfer of any assets from any Credit Party (other than to seek entry of the Financing Orders), or (ii) the enforceability of the obligations of the Credit Parties under this Agreement and/or the other DIP Documents; (b) to investigate, commence, prosecute or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim, motion, proceeding or cause of action against the DIP Lender and their agents, employees, attorneys, advisors or representatives including, without limitation, any lender liability claims or subordination claims; (c) to investigate, commence, prosecute or defend (or support any other Person in investigating, commencing, prosecuting, or defending) any claim or proceeding or cause of action to disallow or challenge the obligations under this Agreement and/or the DIP Documents; or (d) to fund lease originations, acquisitions, capital expenditures, Capital Leases except to the extent being assumed as part of the Chapter 11 Cases, or any other similar expenditure other than capital expenditures specifically set forth in the Budget and approved by the DIP Lender. See DIP Credit Agreement, § 2.3
Conditions of Closing and Borrowing Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(i)(E)	Conditions Precedent to Initial DIP Loan: The obligation of DIP Lender to make the Initial DIP Loan is subject to the satisfaction, or waiver in accordance with Section 11.1, of the DIP Credit Agreement, of the following conditions on or before the Closing Date: 1. <u>Chapter 11 Cases.</u> The Debtors shall have commenced the Chapter 11 Cases and all of the “first day motions,” “first day orders” and all related pleadings entered or to be entered at the time of the Petition Date or shortly thereafter shall have been made available to the DIP Lender in advance, and shall be satisfactory in form and substance to the DIP Lender. The Chapter 11 Cases shall not have been dismissed or converted to cases under chapter 7 of the Bankruptcy Code. No trustee under chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Chapter 11 Cases. 2. <u>DIP Documents.</u> The DIP Lender shall have received duly executed original copies of each DIP Document (other than any DIP Document which the DIP Lender has allowed to be executed at a later date). 3. <u>DIP, Securitization and Bid Procedures Motions.</u> On the Petition Date, the Debtors shall have filed, with the express written support of Administrative Agent and the DIP Lender, motions in form and substance satisfactory to the DIP Lender seeking entry of the Financing Orders and the Bid Procedures Order.

Material Provision	Summary Description of Material Provision
	4. <u>Interim Order</u>. Within two (2) Business Days after the Petition Date, the Bankruptcy Court shall have entered (x) the Interim Order authorizing and approving, as applicable, (i) this Agreement and the transactions contemplated hereby, including, without limitation, the granting of valid, enforceable, non-avoidable and fully perfected superpriority security interests and Liens secured by the DIP Collateral and granting allowed superpriority claims in favor of the DIP Lender; and (ii) the current cash payment of expenses, including such amounts arising before and after the Petition Date and without the necessity of filing motions, to the extent such expenses have actually been incurred; and (y) the Warehouse Interim Order. The Interim Order and Warehouse Interim Order shall each be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated, in the case of any modification or amendment, in a manner, or relating to a matter, without the consent of each of the DIP Lender and Administrative Agent. The Debtors shall be in compliance in all respects with the Interim Order, Warehouse Interim Order, and all other orders of the Bankruptcy Court binding on them. 5. <u>Consents</u>. All necessary governmental and third-party consents and approvals necessary in connection with this Agreement and the transactions contemplated hereby, as determined by the DIP Lender in its sole and absolute discretion, shall have been obtained and shall remain in effect. Without limiting the foregoing, the DIP Lender shall have received evidence satisfactory to the DIP Lender in its sole and absolute discretion that Administrative Agent and any other holders of Liens in DIP Collateral that will be primed by the Liens granted to the DIP Lender hereunder have consented to the Credit Parties' entry into this Agreement and the granting of the Liens in the DIP Collateral. 6. <u>No Violation of Law or Litigation</u>. The DIP Lender shall have determined that the making of the Initial DIP Loan shall not violate any requirement of law and there shall not exist any action, suit, investigation, litigation or proceeding pending (other than the Chapter 11 Cases) or threatened in any court or before any Governmental Authority that, in the opinion of the DIP Lender, affects any of the transactions contemplated hereby, or that has or could be reasonably likely to have a Material Adverse Effect. 7. <u>Approved Budget and Projections</u>. The DIP Lender and Administrative Agent shall have approved the Interim Budget, together with all financial information and projections regarding the Credit Parties requested by the DIP Lender, all in form and substance satisfactory to the DIP Lender and the Administrative Agent.

Material Provision	Summary Description of Material Provision
	8. <u>Performance of Obligations.</u> All costs, fees, expenses (including, without limitation, legal fees and expenses) and other compensation payable to the DIP Lender shall have been paid to the extent due and payable in accordance with the terms of the Interim Order and the DIP Documents, and the Credit Parties shall have complied with all of their other obligations thereunder. 9. <u>Insurance.</u> The DIP Lender and Administrative Agent shall be satisfied with the amount, types and terms and conditions of all insurance and bonding maintained by the Credit Parties, and the DIP Lender shall have received endorsements naming the DIP Lender as an additional insured and loss payee under all insurance policies to be maintained with respect to the property of the Credit Parties forming part of the DIP Collateral. 10. <u>DIP Liens.</u> The DIP Lender shall have a valid and perfected first priority Lien on the DIP Collateral. The DIP Lender shall have received evidence that the Debtors shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument, and made or caused to be made any other filing and recording (other than as set forth herein), reasonably required by the DIP Lender to perfect, and to ensure the perfection of, its security interests in the DIP Collateral with the priority required by the DIP Documents. 11. <u>UCC Financing Statements.</u> The DIP Lender shall have received UCC financing statements duly authorized by the Debtors with respect to all personal, real and mixed property DIP Collateral of the Debtors, for filing in all jurisdictions as may be necessary or, in the opinion of the DIP Lender, desirable, to perfect the security interests created in such DIP Collateral pursuant to the DIP Documents. 12. <u>Lien Search Results.</u> The DIP Lender shall have received UCC, Lien, and judgment searches from all jurisdictions requested by the DIP Lender, including, without limitation, ownership of, and security interests in, intellectual property from the United States Patent and Trademark Office and United States Copyright Office, the results of which shall be satisfactory to the DIP Lender. 13. <u>IP Security Interests.</u> The DIP Lender shall have received duly executed notices of grant of security interest as are reasonably necessary, in the DIP Lender's sole discretion, to perfect the DIP Lender's security interest in the intellectual property of the Debtors that can be perfected by the filing of such notices.

Material Provision	Summary Description of Material Provision
	14. <u>Cash Management</u>. The Credit Parties shall have implemented cash management arrangements that are the same as or substantially similar to the Credit Parties' Prepetition cash management arrangements and that are satisfactory to each of the DIP Lender and the Administrative Agent in each of their sole and absolute discretion. 15. <u>Stalking Horse Purchase Agreement</u>. The Debtors and the Stalking Horse Purchaser shall have entered into the Stalking Horse Purchase Agreement with the consent of Administrative Agent, which Stalking Horse Purchase Agreement shall be in full force and effect subject only to the approval of the Bankruptcy Court. 16. <u>No Default</u>. No Default or Event of Default under this Agreement shall exist at the time of, or after giving effect to, the transactions contemplated on the Closing Date, including the advancing of any DIP Loans. 17. <u>Representations and Warranties</u>. All representations and warranties in the DIP Documents shall be true and correct as of the Closing Date. 18. <u>Other Information</u>. The DIP Lender shall have received any other financial or non-financial information regarding the Credit Parties as the DIP Lender may reasonably request. 19. <u>Proceedings</u>. All proceedings taken or to be taken in connection with the transactions contemplated by this Agreement shall be satisfactory to the DIP Lender and its counsel. 20. <u>Fees and Costs</u>. The Interim Order and the Budget shall provide, in form and substance satisfactory to each of the DIP Lender and Administrative, in each of their sole and absolute discretion, for the Debtors to pay, on the terms and schedule provided therein, (i) all fees and reasonable out-of-pocket expenses of the DIP Lender incurred in connection with this Agreement and the other DIP Documents; (ii) the Warehouse Interim Advances; and (iii) professional fees and expenses incurred by the Administrative Agent in connection with the Chapter 11 Cases, solely as provided for in the Budget. 21. <u>No Material Adverse Effect</u>. Each Credit Party shall have continued to operate its business in the ordinary course through the Closing Date, and since the Petition Date there shall have been no Material Adverse Effect. See DIP Credit Agreement, § 3.1

Material Provision	Summary Description of Material Provision
	Conditions to Each Subsequent DIP Loan: 1. <u>Borrowing Certificate</u>. The DIP Lender shall have received a fully executed and delivered Borrowing Certificate, in accordance with <u>Section 2.2</u>. Each Borrowing Certificate shall be executed by an Authorized Officer of the DIP Borrower and delivered to the DIP Lender. 2. <u>Final Orders and Bid Procedures Order</u>. The Bankruptcy Court shall have entered the Final Order, the Warehouse Final Order, and the Bid Procedures Order, which shall be in full force and effect and shall have not been reversed, modified, amended, stayed, vacated, rescinded or subject to a presently effective stay pending appeal. 3. <u>No Violation of Law or Litigation</u>. The DIP Lender shall have determined that the making of the Subsequent DIP Loan shall not violate any requirement of law and there shall not exist any action, suit, investigation, litigation or proceeding pending (other than the Chapter 11 Cases) or threatened in any court or before any Governmental Authority that, in the opinion of the DIP Lender, affects any of the transactions contemplated hereby, or that has or could be reasonably likely to have a Material Adverse Effect. 4. <u>Compliance</u>. The DIP Lender shall have determined in its sole and absolute discretion that the Debtors are then in compliance with each and every provision of the Budget (including resolution of any open questions with respect to Budget variances to the DIP Lender's satisfaction), DIP Documents, the Final Order, the DIP Milestones required to be satisfied as of such Borrowing Date, and the Bid Procedures Order. 5. <u>Available Commitments</u>. After making the Subsequent DIP Loan requested on such Borrowing Date, the aggregate outstanding principal amount of DIP Loans shall not exceed the aggregate amount of the DIP Commitment. 6. <u>Representations and Warranties</u>. As of such Borrowing Date (both immediately prior to, and after giving effect to, the advance of the Subsequent DIP Loan and application of its proceeds), the representations and warranties contained in the DIP Documents shall be true and correct on and as of that Borrowing Date, as if made on and as of that Borrowing Date (except to the extent such representations and warranties specifically relate to an earlier date, such representations and warranties were true and correct on and as of such earlier date). 7. <u>No Default or Event of Default</u>. As of such Borrowing Date, no event shall have occurred and be continuing or would result from the consummation of

Material Provision	Summary Description of Material Provision
	the applicable Borrowing (or the application of its proceeds) that would constitute an Event of Default or a Default. 8. <u>Consents</u>. The DIP Lender shall have received such Consents and other information, approvals, opinions or documents reasonably requested by the DIP Lender in connection with such Borrowing. 9. <u>No Material Adverse Effect</u>. Since the Borrowing Date, no Material Adverse Effect shall have occurred after giving effect to the making of the Subsequent DIP Loan. 10. <u>Deposit Account Control Agreements</u>. The DIP Lender shall have received fully executed deposit account control agreements, in form and substance satisfactory to the DIP Lender in its sole discretion with respect to each deposit account and security account maintained by the Debtors, establishing “control” under the applicable state Uniform Commercial Code. See DIP Credit Agreement, § 3.2
Repayment Features/Provisions Limiting Repayment Bankruptcy Rule 4001(b)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(I)	Except as provided in section 2.9 of the DIP Credit Agreement pertaining to Mandatory Prepayments, the DIP Borrower shall not be permitted to prepay or repay the DIP Obligations. See DIP Credit Agreement, §§ 2.8, 2.9
Approved Budget Bankruptcy Rule 4001(c)(1)(B) Del. Bankr. L.R. 4001-2(a)(i)(E)	Approved Budget: The “Budget” means the budget attached to the Interim Order as Exhibit 1, as may be modified from time to time with the prior written consent of the DIP Lender and Warehouse Agent. Beginning on the first Business Day that is at least one (1) week following the Petition Date (the “<u>First Variance Testing Date</u>”), and every week thereafter (each such date, a “<u>Variance Testing Date</u>”), in each case on or before 5:00 p.m. prevailing Eastern Time on such Variance Testing Date, the DIP Borrower will provide to the DIP Lender and Warehouse Agent a variance report tested for the preceding two-week period then ended as of the immediately preceding Sunday (each such period, a “<u>Testing Period</u>” and each such report, a “<u>Variance Report</u>”), reasonably satisfactory to each of the DIP Lender and the Warehouse Agent, detailing each of the following on a single, line item basis: (i) a comparison of

Material Provision	Summary Description of Material Provision
	the actual and budgeted line item disbursements and line item receipts of the DIP Borrower during the applicable Testing Period; (ii) any variance (whether positive or negative, expressed as a percentage) between the aggregate disbursements made during such Testing Period by the DIP Borrower against the aggregate disbursements for the Testing Period as set forth in the Budget applicable to such Testing Period that will include an explanation of any variance greater than 5.0%; and (iii) any variance (whether positive or negative, expressed as a percentage) between the aggregate receipts received during such Testing Period by the DIP Borrower against the aggregate receipts for the Testing Period as set forth in the Budget applicable to such Testing Period that will include an explanation of any variance greater than 5.0%, in each case of the foregoing clauses, with a detailed explanation of any such variance in form, substance and detail satisfactory to each of the DIP Lender and the Warehouse Agent in each of their reasonable discretion. Pursuant to the terms set forth in the DIP Credit Agreement, and as further set forth herein, the Debtors shall not permit actual amounts for total cash receipts and cash disbursements to vary from the applicable Budget (i) in the case of cash receipts, by ten percent (10%) below the cash receipts included in the Budget on a trailing two-week basis, and (ii) in the case of cash disbursements (which shall not and do not include any Professional Fees), by ten percent (10%) in excess of the cash disbursements included in the Budget on a trailing two-week basis (together, the “<u>Permitted Variances</u>”). Additional variances, if any, from the Budget, and any proposed changes to the Budget, shall be subject to the written consent of the DIP Lender and the Warehouse Agent in each of their sole and absolute discretion. Permitted Variances are not cumulative beyond a given Testing Period. The DIP Borrower’s failure to comply with the Budget subject to the Permitted Variances will constitute an Event of Default as defined in the DIP Documents. See Interim DIP Order, ¶ 7
Sale Milestones Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(i)(H)	The Debtors shall implement the Sale Process consistent with the terms of the Bid Procedures Order in accordance with the following milestones (subject to Bankruptcy Court availability): (a) the Bankruptcy Court shall have entered the Bid Procedures Order by no later than twenty-five (25) days following the Petition Date (the “<u>Bid Procedures Order Deadline</u>”); (b) any competing bids must be received by the Debtors by not later than fifteen (15) days after the Bid Procedures Order Deadline (the “<u>Competing Bid Deadline</u>”);

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	(c) if one or more qualified bids are received by the Debtors by the Competing Bid Deadline, the Debtors shall conduct an auction (the “<u>Auction</u>”) on or prior to the fiftieth (50th) day after the Petition Date; (d) a hearing before the Bankruptcy Court to consider entry of an order approving the sale must be held by not later than seven (7) days after the conclusion of the Auction; (e) the Bankruptcy Court shall have entered the Sale Order by not later than sixty (60) days following the Petition Date (the “<u>Sale Order Entry Deadline</u>”); and (f) the closing of the sale of the Purchased Assets shall occur by not later than the earlier of (y) five (5) days following date by which the Sale Order shall have become a final order; or (z) eighty (80) days following the Petition Date <i>See DIP Credit Agreement, § 10.6.</i>
DIP Financing Maturity Dates Fed. R. Bankr. P. 4001(c)(1)(B)	The DIP Facility shall terminate upon earliest to occur of (i) the Scheduled Maturity Date; (ii) the occurrence of an Event of Default; (iii) the consummation of the transactions contemplated by the Stalking Horse Purchase Agreement; and (iv) the closing date of a sale of substantially all of the Credit Parties’ assets to a purchaser other than the Stalking Horse Purchaser “Scheduled Maturity Date” shall mean the date that is 80 days after the Petition Date. <i>See DIP Credit Agreement, § 1.1</i>
Interest Rate Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	Interest: 1. <u>Applicable Rate; Payment of Interest.</u> Except as otherwise set forth herein, each DIP Loan and the Fees shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) on the unpaid principal amount thereof at a rate per annum equal to fifteen percent (15.0%). Accrued interest on each DIP Loan shall be paid in full on the Termination Date; <i>provided</i>, that if the Stalking Horse Purchaser is the successful bidder for the Purchased Assets, some or all accrued but unpaid interest hereunder may be applied by the Stalking Horse Purchaser on the closing date of the transactions contemplated by the Stalking Horse Purchase Agreement towards the purchase price of the Purchased Assets. All interest accruing after the Termination Date shall be payable in cash, upon demand by the DIP Lender.

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	2. <u>Calculation of Interest Rates.</u> Interest payable pursuant to this <u>Section 2.5</u> shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues. In computing interest on any DIP Loan, the date of the making of such DIP Loan shall be included, and the date of payment of such DIP Loan shall be excluded; <i>provided</i>, if such DIP Loan is repaid on the same day on which it is made, one day's interest shall be paid on such DIP Loan. 3. <u>Default Interest.</u> Effective immediately upon the occurrence of an Event of Default, unless waived in writing by the DIP Lender in its sole and absolute discretion, all DIP Obligations shall thereafter bear interest at a rate that is 4.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the DIP Loans or the maximum rate allowed under applicable law, whichever is less. See DIP Credit Agreement, § 2.5
Fees Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	Fees: The DIP Lender will be entitled to the following fees, for its own account: 1. a fee equal to one and one-half percent (1.5%) of the maximum aggregate DIP Commitment (the “<u>Initial Commitment Fee</u>”), which shall be deemed fully earned upon the entry of the Interim Order, shall accrue interest pursuant to <u>Section 2.5</u>, shall be payable on the Termination Date and shall be non-refundable when paid; 2. a fee equal to one and one-half percent (1.5%) of the maximum aggregate DIP Commitment (the “<u>Final Commitment Fee</u>”), which shall be deemed fully earned upon the entry of the Final Order, shall accrue interest pursuant to <u>Section 2.5</u>, shall be payable on the Termination Date, and shall be non-refundable when paid; and 3. a fee equal to one and one-half percent (1.5%) of the maximum aggregate DIP Commitment (the “<u>Facility Extension Fee</u>”), which shall be deemed fully earned upon the entry of the Final Order and payable to the DIP Lender in the event that all DIP Obligations are not repaid on the Termination Date, shall accrue interest pursuant to <u>Section 2.5</u>, shall be payable on demand from the DIP Lender, and shall be non-refundable when paid.

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	If the Stalking Horse Purchaser is the successful bidder for the Purchased Assets, some or all Fees hereunder may be applied by the Stalking Horse Purchaser on the closing date of the transactions contemplated by the Stalking Horse Purchase Agreement towards the purchase price of the Purchased Assets See DIP Credit Agreement, § 2.6
Events of Default Fed. R. Bankr. P. 4001(c)(1)(B)(v), (x) Local Rule 4001-2(a)(i)(M)	Any one or more of the following events which shall occur shall constitute an “<u>Event of Default</u>”: 1. <u>Failure to Make Payments When Due.</u> Failure by any Credit Party to make payments on any of the DIP Obligations as and when due; 2. <u>Breach of Covenants.</u> Failure of any Credit Party to perform or comply with any of its affirmative or negative covenants in this Agreement, including the Permitted Variance, or the other DIP Documents to which it is a party; 3. <u>Breach of Representations, Etc.</u> Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any DIP Document, the Sale Documents or in any statement or certificate at any time given by any Credit Party in writing, pursuant hereto or thereto or in connection herewith or therewith shall be incorrect in any material respect as of the date made or deemed made; 4. <u>Other Material Breach.</u> Any other material breach by any Credit Party of its obligations under the Sale Documents. 5. <u>Administrative Expenses.</u> Failure of the Debtors to pay all of their undisputed administrative expenses in full in accordance with and subject to the terms as provided for in the Budget; 6. <u>Financing Orders.</u> (i) Any Financing Order or the DIP Facility becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the DIP Lender and Administrative Agent, or (ii) failure of any Credit Party to perform or comply with the terms of the DIP Orders in any material respect; 7. <u>Conversion or Dismissal of Case.</u> The entry of an order dismissing the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, or any Credit Party files, without the prior written consent of the DIP Lender, a motion or other pleading seeking entry of such an order or supports or fails to timely oppose such dismissal or conversion; 8. <u>Trustee.</u> A trustee, responsible officer or an examiner having expanded powers under Bankruptcy Code Section 1104 (other than (x) a fee examiner

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	or (y) for purposes of an investigation pursuant to Sections 1106(a)(3) and (4) of the Bankruptcy Code) is appointed or elected in the Chapter 11 Cases, or any Credit Party applies for, consents to, supports, acquiesces in or fails to promptly oppose, any such appointment, or the Bankruptcy Court shall have entered an order providing for such appointment, in each case without the prior written consent of the DIP Lender in its sole and absolute discretion; 9. <u>Challenges</u>. Any Credit Party takes any action to, or fails to take all reasonable actions necessary to oppose any action by any other Person (including, but not limited to, (a) challenging the standing of such party to bring any such action, (b) filing pleadings, providing evidentiary support, and appearing in court to support and present the same in opposition of such party's action, and (c) timely prosecuting all available appeals of any order or decision authorizing such party's actions or approving relief granted to such party or timely opposing all appeals (or attempts to appeal) decisions denying standing or relief to such party), in each case, except as expressly permitted hereunder and in the DIP Orders, (i) impair any of the material rights and remedies of the DIP Lender under the DIP Documents, or (ii) avoid, subordinate, disallow, or require disgorgement by the DIP Lender of any amount received in respect of the DIP Obligations; 10. <u>DIP Documents Impaired</u>. At any time after the execution and delivery thereof, (i) this Agreement or any DIP Document ceases to be in full force and effect (other than by reason of a release of DIP Collateral in satisfaction in full of the DIP Obligations in accordance with the terms hereof) or shall be declared null and void, or the DIP Lender shall not have or shall cease to have a valid and perfected first priority DIP Liens, subject only to the Carve Out and Permitted Liens, in any of the DIP Collateral, (ii) any Credit Party shall contest the validity or enforceability of any DIP Document in writing or deny in writing that it has any further liability under any DIP Document to which it is a party, or (iii) any order is entered by the Bankruptcy Court staying, reversing, vacating or otherwise modifying, without the DIP Lender's consent, the DIP Facility, this Agreement or any of the other DIP Documents; 11. <u>DIP Liens; Superpriority Claims</u>. At any time after the execution and delivery thereof, the DIP Liens and/or the DIP Superpriority Claims created by the DIP Documents cease to be valid, perfected and enforceable in the priorities described in this Agreement or, except for expiration in accordance with its terms, any of the DIP Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Credit Party;

Material Provision	Summary Description of Material Provision
	12. <u>Liens or Superpriority Claims</u>. Any superpriority administrative expense claim or Lien (other than the Carve Out or Permitted Liens) that is <i>pari passu</i> with or senior to the DIP Liens and/or claims of the DIP Lender in connection with the DIP Loans shall have arisen or be authorized or allowed (other than as expressly allowed pursuant to the Financing Orders); 13. <u>Ownership of Assets</u>. Any order of the Bankruptcy Court is entered determining that (i) any of the Purchased Assets are not property of the Debtors' bankruptcy estates, (ii) the Purchased Assets are not capable of being sold pursuant to section 363 of the Bankruptcy Code or (iii) any of the Purchased Assets cannot be sold free and clear of a Lien or other encumbrance thereon; 14. <u>Adequate Protection</u>. The Debtors make payment of or grant adequate protection with respect to prepetition debt (other than as approved by the DIP Lender, Administrative Agent, and the Bankruptcy Court or as otherwise contemplated by the DIP Documents); 15. <u>Material Impairment</u>. The filing of a motion, pleading or proceeding by any Credit Party which could reasonably be expected to result in a material impairment of the rights or interests of the DIP Lender under the DIP Documents or any DIP Orders or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in such a material impairment; 16. <u>Termination of Exclusivity Period; Plan or Sale</u>. The termination or reduction of the exclusivity period for any Debtor to file a chapter 11 plan in the Chapter 11 Cases; 17. <u>Plan, Asset Sale or Change of Control</u>. Any Credit Party files a plan of reorganization that does not require the indefeasible repayment in full in cash of the DIP Obligations as of the effective date of such plan of reorganization, or files a plan of liquidation, or enters into any Asset Sale (other than in accordance with the Bid Procedures Order or otherwise approved in writing by the DIP Lender) or a Change of Control occurs (other than as a result of any sale of the Purchased Assets); 18. <u>Relief from Automatic Stay</u>. The Bankruptcy Court shall enter an order granting relief from the automatic stay to any creditor or party in interest (other than the DIP Lender) (i) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any Credit Party with a value in excess of \$25,000, or (ii) to permit other actions that the DIP Lender may, in its sole and absolute discretion, deem to have a Material Adverse Effect;

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	19. <u>Prohibited Payments</u>. Any Debtor makes any Prepetition Payment that is not authorized by an order of the Bankruptcy Court and set forth in the Budget; 20. <u>Government Restraint</u>. Any Governmental Authority, by a final, non-appealable order, ruling or other action, shall prevent any Credit Party from conducting any material part of such Credit Party's business, to the extent such prevention could reasonably be expected to result in a Material Adverse Effect; 21. <u>Judgments</u>. Any judgments which are in the aggregate in excess of \$25,000 as to any Postpetition obligation shall be rendered against any Credit Party and the enforcement thereof shall not be stayed (by operation of law, the rules or orders of a court with jurisdiction over the matter or by consent of the party litigants), or there shall be rendered against any Credit Party a nonmonetary judgment with respect to a Postpetition event which causes or would reasonably be expected to cause a Material Adverse Effect; 22. <u>Employment or Environmental Liabilities</u>. Any Credit Party incurs any liability under employment or environmental law which DIP Lender determines, in its sole and absolute discretion, is reasonably likely to result in a Material Adverse Effect; 23. <u>Unexpired Leases</u>. Any Debtor files a motion with the Bankruptcy Court to reject any unexpired lease of such Debtor that the DIP Lender deems to be material in its sole and absolute discretion; 24. <u>Sale Milestones</u>. The Debtors' failure to comply with the Sale Milestones; 25. <u>DIP Milestones</u>. The Debtors' failure to comply with the DIP Milestones. 26. <u>Warehouse Facility</u>. The Warehouse Lenders and/or Administrative Agent cease to perform under the Warehouse Credit Agreement or in accordance with their obligations under the Financing Orders, or otherwise cease to provide the Warehouse Facility to the Debtors; or 27. <u>Cash Management</u>. The Debtors make any change to their Prepetition cash management system that is not approved in advance in writing by the DIP Lender and Administrative Agent and approved by an order of the Bankruptcy Court. See DIP Credit Agreement, § 9.1

Payment of Prepetition Debt Local Rule 4001-2(a)(i)(O)	Authorized use of proceeds of the DIP Loans includes reimbursement of the Administrative Agent under the Warehouse Credit Agreement for prepetition amounts funded by the Administrative Agent for the benefit of the Debtors to cover the Debtors' necessary and documented operating expenses and professional fees between December 11, 2025 and the Petition Date. <i>See</i> DIP Credit Agreement, § 2.3
Security and Priority Status Fed. R. Bankr. P. 4001(c)(1)(B)(i) Local Rule 4001-2(a)(i)(G)	As security for the DIP Obligations, effective immediately upon the date of this Interim Order, as set forth more fully in the Interim Order, the DIP Lender is hereby granted (without the necessity of the execution by the Debtors or the filing or recordation of mortgages, security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise by the DIP Lender) valid, binding, enforceable, non-avoidable, and automatically and properly perfected, first priority senior priming liens and security interests (collectively, the “<u>DIP Liens</u>”), in the property and interests identified in clauses 1 and 2 below (collectively, the “<u>DIP Collateral</u>”), as collateral security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of all DIP Obligations: <i>Priming DIP Liens.</i> Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, perfected, first priority, senior priming lien upon all assets and property of each of the Debtors and their estates of any kind or nature whatsoever, real, personal, or mixed, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all Prepetition Collateral, all “DIP Collateral” as defined in the DIP Credit Agreement, all contracts, contract rights, licenses (including IP licenses), general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, money, insurance policies and proceeds thereof, receivables, deposits, refunds, receivables records, deposit accounts, collateral support, supporting obligations and instruments, all interests in leaseholds and real properties, all intellectual property, all patents, copyrights, trademarks (but excluding trademark applications filed in the United States Patent and Trademark Office on the basis of the applicant's intent-to-use such trademark unless and until evidence of use of the trademark has been filed with, and accepted by, the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. §1051, et seq.)), trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), records and data, know-how and other proprietary information and materials, all equity interests, all books and records relating to the foregoing, all other personal and real property of the Debtors (but excluding any property subject to a purchase money lien, capital lease or similar arrangement permitted under the DIP Documents to the extent the creation of a security interest therein is prohibited thereby or creates a right of termination in favor of any other party thereto or otherwise requires third party consent

thereunder), Purchased Actions (as defined in the DIP Credit Agreement) (provided that the DIP Lender's lien in any Avoidance Actions (as defined in the DIP Credit Agreement) constituting Purchased Actions shall be subject to entry of the Final Order), proceeds of Excluded Actions (as defined in the DIP Credit Agreement), whether by judgment, settlement or otherwise (provided that the DIP Lender's lien in proceeds of any Avoidance Actions constituting Excluded Actions shall be subject to entry of the Final Order), actions under section 549 of the Bankruptcy Code, and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (in each case as the foregoing are defined in the Uniform Commercial Code as in effect from time to time in the State of New York (and, if defined in more than one Article of such Uniform Commercial Code, shall have the meaning given in Article 9 thereof)), all subject and subordinate only to (a) the Permitted Liens (as defined in the DIP Credit Agreement), and (b) the Carve Out; *provided* that "DIP Collateral" excludes all Transferred Receivables and any proceeds therefrom and any other Excluded Collateral, and *provided further* that any proceeds of Transferred Receivables are subject to the Precautionary Warehouse Liens and Warehouse Superpriority Claims, as those terms are defined in the Interim Securitization Order; and

Liens on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, enforceable, fully-perfected first-priority security interest in and lien upon all of the Debtors' right, title, and interest in, to, and under any DIP Collateral that as of the Petition Date is unencumbered or not otherwise subject to valid, perfected, and non-avoidable liens, in each case other than the Excluded Actions (but, for the avoidance of doubt, "Unencumbered Property" shall include proceeds of Excluded Actions, including, subject to entry of the Final Order, proceeds of Avoidance Actions constituting Excluded Actions), subject and subordinate only to the Carve Out (all of the foregoing property, collectively, the "Unencumbered Property").

Excluded Collateral. Pursuant to the Interim Securitization Order, and subject to the terms thereof, all Transferred Receivables originated or held by any Debtor are deemed to be transferred, directly or indirectly, to FlexShopper 2, LLC (the "SPV Borrower") pursuant to the Securitization Transaction Documents, subject to the Precautionary Warehouse Liens. None of the Transferred Receivables (or any proceeds therefrom), Excluded Actions, nor any funds held in trust by any Debtor for payment of Leased Merchandise Sales Taxes (as defined in the Tax Motion) (collectively, the "Excluded Collateral"), constitute DIP Collateral, and the DIP Lender shall have no liens or other interests in, or claims against or payable from, any Excluded Collateral. Excluded Collateral shall not include any Permitted Purchase Price Payments (as defined in the Interim Securitization Order) or proceeds from Excluded Actions.

DIP Superpriority Claims. Effective immediately upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Debtors' Chapter 11 Cases and any Successor Cases thereof on account of the DIP Obligations, with priority over any and all administrative expenses of the

	kind that are specified in sections 503(b) or 507(b) of the Bankruptcy Code(the “<u>DIP Superpriority Claims</u>”), but subject to the rights of the Warehouse Secured Parties with respect to the Warehouse Superpriority Claims. The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code. <i>See</i> Interim DIP Order, ¶ 6 Local Rules 4001-2(N), (P), (U) are not applicable.
Adequate Protection Fed. R. Bankr. P. 4001(c)(1)(B)(iv), (c)(1)(B)(ii)	As adequate protection against any Diminution in Value (as defined below), the Warehouse Secured Parties shall: 1. receive a claim to the extent of such Diminution in Value, having priority over any and all expenses of the kind specified in section 507(b) of the Bankruptcy Code, subject to (i) the Carve Out and (ii) the DIP Superpriority Claims ; 2. have valid, binding, enforceable and perfected liens in all DIP Collateral, subject to (i) the Carve Out, (ii) Permitted Liens and (iii) the DIP Liens, in each case equal to the sum of the aggregate Diminution in Value; and 3. be entitled to reimbursement from the Debtors and their estates for the fees and costs of its professionals, as provided in paragraphs 3(d)(3) and 35 of the Interim Order and subject to the Budget. <i>See</i> Interim DIP Order, ¶ 8
Carve Out Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4002-2(a)(i)(F)	Notwithstanding anything to the contrary in this Interim Order, each of the DIP Liens, the Prepetition Liens, the Adequate Protection Liens, the DIP Superpriority Claims, and the Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Carve Out (as defined herein). The Carve Out shall be senior to all claims and liens over all assets of the Debtors, including any DIP Collateral. As used in this Interim Order the “Carve Out” means the sum, without duplication, of the following: (I) (a) all fees of the DIP Borrower required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (b) all reasonable fees and expenses up to \$25,000 incurred by a trustee under section 725(b) of the Bankruptcy Code; (c) the proceeds of the Acima Settlement (as defined in the Stalking Horse Purchase Agreement) solely to the extent that the unpaid allowed professional fees, costs and disbursements (“<u>Professional Fees</u>”) of the Debtors’ professionals exceed the cumulative line items for such professionals in the Budget; and (d) Professional Fees incurred by the DIP

Borrower and any Committee appointed in the Chapter 11 Cases, in each case not to exceed the cumulative line item amount set forth in the applicable line of the Budget for each such professional, but only up through and including the week of the budget as of the delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice (as defined below), and (II) after the delivery of a Carve Out Trigger Notice, allowed Professional Fees in an aggregate amount not to exceed \$200,000 incurred on or after the first day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (II) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the DIP Borrower, its lead restructuring counsel, counsel to the Warehouse Agent, the U.S. Trustee, and counsel to the Committee, if any (collectively, the “Carve Out Notice Parties”), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

So long as a Carve Out Trigger Notice has not been delivered, the Debtors are authorized to fund a trust account that shall function as a segregated account held in trust for and exclusively available for the payment of Professional Fees (the “Professional Fees Escrow Account”) in the amount equal to, but not to exceed, the allowed Professional Fees set forth in the Budget line items for professionals (the “Professionals”) retained by the Debtors and a Committee, if any (the “Budgeted Professional Expenses”). The Debtors are authorized and directed to fund the Professional Fees Escrow Account on a weekly basis in an amount up to, but not to exceed, the Budgeted Professional Expenses for that week. Such funds shall be held in the Professional Fee Escrow Account for the benefit of the Professionals to be applied solely to the allowed Professional Fees of the Professionals that are approved for payment pursuant to one or more orders of the Bankruptcy Court. All Professionals shall have a first-priority claim over the funds held in the Professional Fees Escrow Account, with priority over all administrative expense claims and unsecured claims against the Debtors and their estates of any kind or nature whatsoever, including, without limitation, (x) any DIP Obligations, including contingent indemnification claims, (y) administrative expense claims of the kinds specified in or ordered pursuant to any applicable section of the Bankruptcy Code, and (z) any DIP Liens or Adequate Protection Liens. Any allowed Professional Fees payable shall be paid first out of the Professional Fees Escrow Account. For the avoidance of doubt, no Professional shall be entitled to any portion of the Carve Out allocated for any other Professional in the Budget. Funds transferred to the Professional Fees Escrow Account shall not be subject to any liens or claims granted to the Warehouse Secured Parties or the DIP Lender herein or any liens or claims granted as adequate protection, shall not constitute DIP Collateral or Prepetition

	Collateral, and shall not constitute Cash Collateral; <u>provided</u>, that, notwithstanding anything to the contrary herein or in the DIP Documents, the DIP Collateral shall include the Debtors' reversionary interest in excess funds held in the Professional Fee Escrow Account after all allowed Professional Fees have been paid, and such reversionary interest shall be treated as DIP Collateral subject to the DIP Liens, the DIP Superpriority Claims, and any adequate protection liens or adequate protection claims. None of the provisions of this Interim Order or any DIP Loan Document shall prohibit or restrict the payment of any allowed professional fees, costs and disbursements from any retainers held by such Professional. See Interim DIP Order, ¶ 11
Indemnification Fed. R. Bankr. P. 4001(c)(1)(B)(ix)	The Debtors are hereby authorized and directed to indemnify and hold harmless the DIP Lender, its affiliates, and their respective officers, directors, employees and agents (including all of their Professionals) (each an "<u>Indemnified Party</u>") harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all professional fees) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation, or proceeding arising out of or relating to or in connection with the DIP Facility, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. See Interim DIP Order, ¶ 28
Secured Party's Expenses and Attorneys' Fees Local Rule 4001-2(a)(i)(K)	Whether or not the transactions contemplated hereby shall be consummated or any DIP Loans shall be made, the Debtors agree to pay promptly, subject to the DIP Orders (but no later than the Termination Date), upon written demand from the DIP Lender (together with summary backup documentation supporting such reimbursement request) and without the requirement for Bankruptcy Court approval: 1. all of the actual, documented, and reasonable, out-of-pocket costs and expenses of the DIP Lender (including, without limitation, fees and disbursements of counsel, including local counsel, and financial and accounting advisors) incurred in connection with the negotiation, preparation, execution and entry into the Sale Term Sheet, this Agreement, each of the other DIP Documents and any consents, amendments, waivers or other modifications thereto; the reasonable fees, expenses and disbursements in connection with the negotiation, preparation, execution, administration or enforcement of the DIP Documents and any consents, amendments, supplements, waivers or other modifications thereto;

	2. all of the actual, documented, and reasonable, out of pocket costs and expenses of creating and perfecting Liens in favor of the DIP Lender pursuant hereto, including, without limitation, filing and recording fees, expenses, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements; 3. all of the actual, documented, and reasonable, out-of-pocket costs and expenses of the DIP Lender (including, without limitation, fees and disbursements of counsel, including local counsel, and financial and accounting advisors) incurred in connection with any litigation, contest, dispute, suit, proceeding or action (whether instituted by the DIP Lender, the Credit Parties or any other Person) in any way relating to this Agreement or the other DIP Documents or any Credit Party's affairs; 4. upon the occurrence of an Event of Default, all the actual costs and reasonable fees, expenses and disbursements of any attorneys, auditors, accountants, consultants, appraisers, advisors and agents employed or retained by the DIP Lender, in connection with the inspection, verification, custody or preservation of any of the DIP Collateral, to the extent required or permitted hereunder; 5. after the occurrence and during the continuance of a Default or an Event of Default, all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees (including allocated costs of internal counsel) and out-of-pocket costs incurred by the DIP Lender in enforcing any DIP Obligations of or in collecting any payments due from any Credit Party hereunder or under the other DIP Documents; and 6. the Chapter 11 Cases. <i>See DIP Credit Agreement, § 11.3</i>
Releases Fed. R. Bankr. P. 4001(c)(1)(B)(viii)	Release: The Debtors hereby acknowledge that, effective upon entry of the Interim Order and as of such date, the Debtors have no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtors' liability to repay the DIP Lender, or to seek affirmative relief or damages of any kind or nature from the DIP Lender. Upon entry of the Interim Order and as of such date, the Debtors fully, finally and forever release and discharge the DIP Lender and its officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them, each solely in their capacity as such (collectively, the "<u>Released Parties</u>") of and from any and all actions, causes of action, demands, suits, claims, liabilities, liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and

	other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Interim Order, whether in law, equity or otherwise (including, without limitation, those arising under sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to the DIP Documents and the Financing Orders; <i>provided</i> that the foregoing shall not release any claims against a Released Party that a court of competent jurisdiction determines, pursuant to a final, non-appealable order, results primarily from the gross negligence or willful misconduct of such Released Party.
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See Interim DIP Order, ¶ 25

20. Local Rule 4001-2(a)(i) requires the Debtors to explain the reason for including certain significant provisions. Notably, the Interim Order does not implicate the following subsections of Local Rule 4001-2(a)(i): C; D; L; N; and P-X.

BASIS FOR RELIEF REQUESTED

I. Authorization of the Senior Secured, Superpriority DIP Financing

A. The Debtors have exercised their sound business judgment in entering into the DIP Facility.

21. After appropriate robust, good faith, and arm's-length negotiations, the Debtors concluded that the proposed DIP Facility is the best alternative available under the circumstances of these cases. Bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Barbara K. Enters., Inc.*, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for

financing does not ‘leverage the bankruptcy process’ and unfairly cede control of the reorganization to one party in interest”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor’s] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, inter alia, an exercise of “sound and reasonable business judgment”).

22. To determine whether the business judgment standard is met, the Court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business judgment when the decision involves a “business judgment made in good faith upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code”). Bankruptcy courts will not generally second-guess a debtor’s business decisions when those decisions involve “a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code.” *Curlew Valley Assocs.*, 14 B.R. at 513 (footnote omitted). To determine whether the business judgment test is met, “the court ‘is required to examine whether a reasonable business person would make a similar decision under similar circumstances.’” *In re Dura Auto. Sys. Inc.*, 2007 Bankr. LEXIS 2764, at *272 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). The Court should evaluate the soundness of a debtor’s business judgment, “in context, and considering the relative circumstances

of the parties.” *Farmland Indus.*, 294 B.R. at 886 (“Viewed in isolation, several of the terms of the [postpetition financing] might appear to be extreme or even unreasonable. Certainly, many of them favor the Proposed DIP Lenders. But, taken in context, and considering the relative circumstances of the parties, the Court does not believe that the terms are unreasonable.”); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing that a debtor may have to enter into “hard bargains” to acquire funds for its reorganization).

23. Here, as described in the First Day Declaration, the Debtors’ determination to enter into the DIP Facility was a business decision guided by the Debtors’ financial needs to maximize value for the Debtors’ estates, avoid immediate and irreparable harm to the Debtors and their estates, and maintain positive ordinary course relations with their employees and vendors. Specifically, the Debtors and their advisors determined that the Debtors would not have sufficient liquidity to continue operating as a going concern and would require additional liquidity to operate “business as usual” while they pursue a value-maximizing sale transaction. The additional certainty of having an achievable and near-term exit path from chapter 11 on the Petition Date strongly weighed in favor of the Debtors’ decision to enter into the DIP Facility. The Debtors extensively negotiated the DIP Facility with the DIP Lender and Warehouse Agent at arms’-length and in good faith and believe that the DIP Facility is the best available means to maximize value for the Debtors’ estates.

24. Accordingly, the Debtors submit that entry into the DIP Facility is in the best interests of the Debtors’ stakeholders, is necessary to avoid immediate and irreparable harm to the Debtors and their estates and preserve the value of the estates’ assets, and is an exercise of the Debtors’ sound and reasonable business judgment.

B. The Debtors should be authorized to obtain postpetition financing on a senior secured and superpriority basis.

25. The Debtors satisfy the requirements for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to obtain secured or superpriority financing under certain circumstances. A debtor seeking financing under section 364 of the Bankruptcy Code must make a reasonable effort to seek other sources of unsecured credit but is granted deference in acting in accordance with its business judgment and, indeed, is not required to seek credit from every possible source. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37-40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); *Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”).

26. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *see also In re Garland Corp.*, 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep't Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

27. The Debtors could not have obtained a working capital facility of the type and magnitude required in these cases from a party other than the DIP Lender on more favorable terms. Notably, the Debtors' existing Warehouse Lender was not willing to provide the Debtors with DIP financing. The Debtors' initial marketing efforts resulted in the Debtors negotiating the sale of substantially all of their assets with the Proposed DIP Lender, who agreed to provide the DIP Facility to fund these cases. The Debtors believe, after rigorous arm's-length and good faith negotiations with the Proposed DIP Lender and Waterfall, the DIP Facility reflects the most favorable terms on which the Debtors are currently able to obtain postpetition financing, and that the Debtors could not obtain financing without granting the liens in the priority described herein.

C. The DIP Facility provides for consensual priming.

28. Courts may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property, without the consent of existing lien holders if the debtor cannot otherwise obtain such credit and the interests of existing lien holders are adequately protected. See 11 U.S.C. § 364(d)(1).

29. When determining whether to authorize a debtor to obtain credit secured by senior liens as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the Debtors' assets. Courts consider a number of factors, including: (i) whether the party subject to a priming lien has consented to such treatment; (ii) whether alternative financing is available on any other basis (*i.e.*, whether any better offers, bids, or timely proposals are before the court); (iii) whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors' business; and (iv) whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s). *See, e.g., Ames Dep't*

Stores, 115 B.R. at 37–39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113–14 (S.D. Ga. 2003); *Farmland Indus.*, 294 B.R. at 862–79; *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. March 5, 2009); 2008 WL 2439649 at *10. Here, the Warehouse Agent has consented to the priming of the liens on the Prepetition Collateral on the terms of the DIP Facility as set forth in the Interim Order. Further, the Warehouse Agent is receiving adequate protection as agreed to in the Interim Order. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

D. Section 364(e) protections should apply to the DIP Facility.

30. Section 364(e) of the Bankruptcy Code protects a good faith lender’s right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

31. Here, the Debtors, the DIP Lender and the Warehouse Agent engaged in extensive good faith, arm’s-length negotiations with respect to the DIP Facility. As set forth extensively above, the terms and conditions of the DIP Facility are reasonable. Accordingly, the Court should find that the Proposed DIP Lender and the Warehouse Secured Parties are entitled to the protections and benefits of section 364(e) of the Bankruptcy Code.

II. The scope of the Carve Out is necessary and appropriate.

32. Without the Carve Out (as defined in the Interim DIP Order), the Debtors and other parties-in-interest may be deprived of certain rights and powers because the services for which professionals may be paid in these chapter 11 cases would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve outs for professionals representing parties-in-interest because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced”). The Carve Out does not directly or indirectly deprive the Debtors’ estates or other parties-in-interest of possible rights and powers. Additionally, the Carve Out ensures that assets will be available for the Office of the United States Trustee for the District of Delaware, and professional fees of the Debtors and an unsecured creditors committee, if one is appointed. Accordingly, the Carve Out is necessary and appropriate, and should be approved.

III. The modification of the automatic stay is necessary and appropriate.

33. By this Motion, the Debtors are requesting modification of the automatic stay with respect to the Proposed DIP Lender as necessary to effectuate the provisions of the Interim DIP Order. The Debtors believe that these provisions are required for the Debtors to obtain the DIP Facility as provided in the Interim DIP Order.

34. Stay modification provisions of this kind are ordinary and standard terms of postpetition use of collateral by debtors-in-possession, and, in the Debtors’ business judgment, are reasonable and necessary under the present circumstances. *See, e.g., In re Royal Interco, LLC*, No. 25-10674 (TMH) (Bankr. D. Del. May 5, 2025); *In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (modifying automatic stay as necessary to effectuate the terms of the order and following occurrence of an event of default); *In re Carestream Health, Inc.*,

No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022); *In re Enjoy Tech., Inc.*, Case No. 22-10580 (JKS) (Bankr. D. Del. July 26, 2022) (terminating automatic stay after occurrence of event of default and applicable notice); *In re Stimwave Techs. Inc.*, Case No. 22-10541 (KBO) (Bankr. D. Del. July 14, 2022) (same); *In re MD Helicopters Inc.*, Case No. 22-10263 (KBO) (Bankr. D. Del. Apr. 26, 2022) (same); *In re Salem Harbor Power Dev. LP (f/k/a Footprint Power Salem Harbor Dev. LP)*, Case No. 22-10239 (MFW) (Bankr. D. Del. Apr. 22, 2022) (same).

35. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim DIP Order.

IV. The milestones under the DIP Facility are reasonable.

36. The DIP Facility contemplates, as a product of negotiation with and as required by the Proposed DIP Lender as a condition to providing the DIP Facility, the Debtors must meet certain Milestones throughout these chapter 11 cases, the failure of which would constitute an Event of Default. These Milestones were required by the Proposed DIP Lender as a condition to providing the DIP Facility.

37. The DIP Facility, including the Milestones, serves as an important component of these chapter 11 cases because it will provide the Debtors with the stability and certainty they need to operate in the ordinary course of business while consummating the proposed sale, subject to identifying higher or better offers. The continued and viable operation of the Debtors' business would not be possible absent access to the DIP Facility. The DIP Facility, and the Debtors' ability to achieve the Milestones contemplated therein, will prevent interruptions to the Debtors' operations, preserve the Debtors' ability to maintain ordinary course relationships with, among other parties in interest, employees, customers, and vendors, satisfy working capital needs in the ordinary course, and enable the Debtors to facilitate the proposed sale of all or

substantially all of their assets to maximize the value of their estates, and, critically, avoid immediate and irreparable harm to the Debtors and their estates.

V. Interim approval of the DIP Facility is necessary.

38. Bankruptcy Rule 4001(b) and (c) provide that a final hearing on a motion to obtain credit under Bankruptcy Code section 364 be commenced no earlier than 14 days after the service of such motion. Upon request, however, a court is empowered to conduct a preliminary expedited hearing on the motion and to authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

39. As described in the First Day Declaration, denial of immediate access to the DIP Facility will cause immediate and irreparable harm to the value of the Debtors estates to the detriment of their creditors and other stakeholders.

40. Accordingly, the Debtors respectfully request that the Court conduct an expedited hearing on the Motion and authorize the Debtors from the entry of the Interim DIP Order until the Final Hearing to obtain credit under the terms of the DIP Loan Documents.

VI. Request for a Final Hearing

41. Pursuant to Bankruptcy Rules 4001(b)(2), the Debtors request that the Court set a date for the Final Hearing that is no later than twenty-one (21) days after the Petition Date and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this Motion. The Debtors also request authority to serve a copy of the signed Interim DIP Order, which fixes the time and date for the filing of objections, if any, to entry of the Final DIP Order, by first class mail upon the notice parties listed below, and further requests that the Court deem service thereof sufficient notice of the hearing on the Final DIP Order under Bankruptcy Rule 4001(c)(2).

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

42. Bankruptcy Rule 6003 empowers the Court to issue an order, within 21 days after the Petition Date, granting a motion to “use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” if such requested relief is “needed to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003(a)(2). The Third Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the court has instructed that irreparable harm is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. App’x 907, 910 (3d Cir. 2007) (citing *Glasco Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Furthermore, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cnty.*, 40 F.3d 645, 653-55 (3d Cir. 1994). For the reasons discussed above, immediate and irreparable harm would result if the relief requested herein were not granted. Accordingly, the Debtors submit that it has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

WAIVER OF BANKRUPTCY RULE 6004(h)

43. The Debtors request a waiver of any stay of the order granting the relief requested herein pursuant to Bankruptcy Rules 4001(a)(3) and 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify waiving the 14-day stay imposed by Bankruptcy Rules 4001(a)(3) and 6004(h), to the extent such stay applies.

NOTICE

44. Notice of this Motion will be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Securities and Exchange Commission; (c) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (d) counsel to the Proposed DIP Lender; (e) counsel to the Warehouse Secured Parties; (f) all parties known to hold or assert liens against the Debtors' assets; and (g) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors request entry of the Interim DIP Order and Final DIP Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: December 22, 2025

Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Luke Brzozowski

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Interim DIP Order

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

In re

FLEXSHOPPER, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-12254 (LSS)

Re: D.I. ____

**INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO OBTAIN POSTPETITION
FINANCING, (II) GRANTING ADEQUATE PROTECTION TO THE
WAREHOUSE SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY,
(IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the above-referenced debtors, as debtors and debtors in possession (the “Debtors”) in the above-captioned cases (the “Chapter 11 Cases”), pursuant to sections 105, 361, 362, 363, 364, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§101-1532 (the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-2 and 9013-1(m) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking, among other things,

- (a) authorization for the Debtors, pursuant to sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code, to (i) prime the liens on Debtor FlexShopper LLC’s 100% equity interests in non-Debtor FlexShopper 1, LLC (the “Prepetition Collateral”), solely in accordance with the terms of this interim order (this “Interim Order”), (ii) use the proceeds of the DIP Facility (as defined herein), solely in accordance with the terms of the DIP Documents, (iii) to provide adequate protection to the Warehouse Secured Parties (to the extent set forth herein), and (iv) grant related relief;
- (b) authorization for FlexShopper, Inc. and FlexShopper, LLC (collectively, the “DIP Borrower”) to obtain postpetition financing on a senior secured superpriority basis

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

(the “DIP Facility”) from ReadySett LLC (the “DIP Lender”), comprised of a new money delayed-draw term loan facility (the “DIP Loans”) in an aggregate principal amount of \$8,000,000, of which (x) \$2,000,000 shall be available to the DIP Borrower immediately upon the entry of this Interim Order, and (y) an additional amount of up to \$6,000,000 shall be available to the DIP Borrower for borrowing immediately upon the entry of a final order granting the relief requested in the Motion on a final basis (the “Final Order”), in each case, expressly subject to the terms and conditions set forth in this Interim Order, any final order, the Budget (as defined herein), and that certain Senior Super-Priority Debtor-in-Possession Credit Agreement executed by the DIP Borrower and the DIP Lender and annexed hereto as **Exhibit 2** (as may be amended, restated, supplemented, waived, or otherwise modified from time to time in accordance with its terms and the terms of this Interim Order, the “DIP Credit Agreement” and, together with this Interim Order, the Final Order, the Budget, and any other schedules, exhibits, agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, escrow agreements, instruments, notes, and documents executed in accordance and connection with any of the foregoing; each as amended, restated, supplemented, waived, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Documents”) and any other DIP Documents;

- (c) authorizing the DIP Borrower to incur the principal, interest, fees, costs, expenses, obligations (whether contingent or otherwise), and all other amounts (including, without limitation, all “DIP Obligations” (as defined in the DIP Credit Agreement), as and when due and payable under and in accordance with each of the DIP Documents (collectively, the “DIP Obligations”);
- (d) authorizing the DIP Guarantors to guarantee the DIP Obligations; and
- (e) authorizing the Debtors to enter into the DIP Credit Agreement and any other schedules, exhibits, agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, escrow agreements, instruments, notes, and documents executed in connection with any of the foregoing;

and an interim hearing (the “Interim Hearing”) having been held by the Court on [•], 2025, at [•] a.m. (prevailing Eastern Time); and a final hearing (the “Final Hearing”) having been scheduled by the Court for [•], 2026, at [•] p.m. (prevailing Eastern Time) pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, and notice of the Motion and the relief sought therein having been given by the Debtors as set forth in this Interim Order; and the Court having considered the evidence adduced, and the statements of counsel at the Interim Hearing; and it appearing to the Court that

granting the relief sought in the Motion on the terms and conditions herein contained is necessary to enable the Debtors to preserve the value of the Debtors' business and assets, and to avoid immediate and irreparable harm to the Debtors and their estates; and due deliberation and good cause having been shown to grant the relief sought in the Motion,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Petition Date. On December 22, 2025 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware. The Debtors have continued with the management and operation of their business and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases. To date, the Office of the United States Trustee (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in the Chapter 11 Cases or any other committee (if any, the "Committee").

B. Jurisdiction and Venue. Consideration of the Motion constitutes a "core proceeding" as defined in 28 U.S.C. § 157(b)(2). This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Venue for the Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Corporate Authority. Subject to entry of this Interim Order, the Debtors have all requisite power and authority to execute and deliver the DIP Documents to which they are parties and to perform their obligations thereunder.

D. Need for Postpetition Financing. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2 and have an immediate

need to enter into the DIP Facility and prime the liens on the Prepetition Collateral in order to, among other things, avoid immediate and irreparable harm to the Debtors and their estates and preserve and maintain the value of their assets and business and maximize the return to all creditors. An immediate and critical need exists for the Debtors to use the proceeds of the DIP Facility, in accordance with a Budget and this Interim Order, for working capital purposes, to pay costs and fees under the DIP Facility and this Interim Order, for other general corporate purposes, and the satisfaction of costs and expenses of administering the Chapter 11 Cases. The ability of the Debtors to obtain liquidity through the use of the proceeds of the DIP Facility is vital to the Debtors in order to avoid immediate and irreparable harm and in furtherance of their efforts to maximize the value of their assets. Absent entry of this Interim Order, the Debtors' estates will be immediately and irreparably harmed. The terms of the proposed DIP Facility pursuant to the DIP Documents and this Interim Order are fair and reasonable, reflect the Debtors' exercise of their prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

E. No Credit Available on More Favorable Terms. The Debtors have been unable to obtain financing and other financial accommodations from sources other than the DIP Lender on terms more favorable than those provided under the DIP Facility and the DIP Documents. The Debtors have been unable to obtain adequate unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors have also been unable to obtain adequate postpetition funding (a) not having priority over administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code or (b) secured only by a lien on property of the Debtors and their estates that is not otherwise subject to a lien. Postpetition financing is not otherwise available without granting the DIP Lender, (1) the DIP Liens on all DIP

Collateral, as and to the extent set forth herein, (2) the DIP Superpriority Claims (as defined below), and (3) the other protections set forth in this Interim Order. After considering all alternatives, the Debtors have properly concluded, in the exercise of their sound business judgment, that the DIP Facility represents the best financing available at this time.

F. Use of Proceeds of the DIP Facility. As a condition to entry into the DIP Documents, the extension of credit and other financial accommodations made under the DIP Facility, the Debtors and the DIP Lender have agreed that the proceeds of the DIP Facility and all other cash or funds of the Debtors shall be used solely in accordance with the terms and conditions of this Interim Order, the *Interim Order (I) Authorizing Certain Debtors To Continue Selling And Servicing Receivables And Related Rights Pursuant A Securitization Program, (Ii) Modifying The Automatic Stay, And (Iii) Granting Related Relief* (the “Interim Securitization Order”), and the DIP Documents, and only for the expenditures set forth in and solely in accordance with the Budget (subject to Permitted Variances pursuant to paragraph 7 of this Interim Order), and for no other purpose.

G. Business Judgment and Good Faith Pursuant to Section 364(e). Based on the Motion, the First Day Declaration, and the record presented to the Court at the Interim Hearing, (i) the extension of credit and other financial accommodations made under the DIP Facility and the DIP Documents, (ii) the terms of the DIP Facility, (iii) the fees and other amounts paid and to be paid thereunder, (iv) the terms of adequate protection granted to the Warehouse Secured Parties, and (v) the terms on which the Debtors may prime the liens on the Prepetition Collateral: (a) are fair, reasonable, and the best available to the Debtors under the circumstances; (b) reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties; (c) are supported by reasonably equivalent value and fair consideration; and (d) represent the best

financing available under the circumstances. The DIP Facility and priming of the liens on the Prepetition Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Lender, and the Warehouse Secured Parties. The priming of the liens on the of Prepetition Collateral and the credit to be extended under the DIP Facility shall be deemed to have been so allowed, advanced, made, used, and/or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Lender and the Warehouse Secured Parties are therefore entitled to the protections and benefits of section 364(e) of the Bankruptcy Code and this Interim Order.

H. Notice. Notice of the requested relief sought at the Interim Hearing was provided by the Debtors consistent with Local Rule 9013-1(m) to: (i) the U.S. Trustee; (ii) the holders of the thirty (30) largest unsecured claims against the Debtors; (iii) counsel to the Warehouse Secured Parties and the DIP Lender; (iv) the Internal Revenue Service; (v) the United States Attorney's Office for the District of Delaware; (vi) the Securities and Exchange Commission; (vii) the Delaware Secretary of State; (viii) the Delaware State Treasury; (ix) Wells Fargo Bank; (x) all taxing authorities to whom the Debtors have paid or may owe taxes or related charges; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice was provided by the Debtors to all parties who have asserted or could assert a lien on the DIP Collateral to the Debtors' knowledge. The foregoing notice of the Interim Hearing complies with Local Rule 9013-1(m). No further notice of, or hearing on, the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

I. Consent by Warehouse Agent. The Administrative Agent as defined in the Interim Securitization Order (the "Warehouse Agent") has consented to the Debtors' entry into the DIP Facility and the DIP Documents, including the priming of the Prepetition Collateral, solely in

accordance with and subject to the terms and conditions provided for in this Interim Order, the DIP Credit Agreement, and the Interim Securitization Order.

NOW, THEREFORE, UPON THE RECORD OF THE PROCEEDINGS HERETOFORE HELD BEFORE THIS COURT WITH RESPECT TO THE MOTION, THE EVIDENCE ADDUCED AT THE INTERIM HEARING, AND THE STATEMENTS OF COUNSEL THEREAT, IT IS HEREBY ORDERED THAT:

1. **Motion Granted.** The Motion is granted as set forth herein. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled and all reservations of rights included therein, are hereby denied and overruled with prejudice.

2. **Final Hearing.** The final hearing (the “Final Hearing”) on the Motion will be held on , 2026, at (ET). Any objections or responses to entry of a final order on the Motion (each, an “Objection”) must be filed on or before **4:00 p.m. (ET) on** , 2026, and served on the following parties: (i) proposed 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, DE 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, Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, Attn: William

E. Chipman (chipman@chipmanbrown.com) and Mayer Brown LLP, 71 South Wacker Drive, Chicago, IL, 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. In the event no Objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. **Authorization of DIP Facility.**

(a) Subject to the terms and conditions of this Interim Order, the Debtors are hereby authorized to execute, enter into, and perform all obligations under the DIP Facility and the DIP Documents to which they are parties. The DIP Documents and this Interim Order govern the financial and credit accommodations to be provided to the Debtors by the DIP Lender in connection with the DIP Facility.

(b) The DIP Documents are binding upon and enforceable against the Debtors and the Debtors' estates.

(c) From the entry of this Interim Order through the entry of the Final Order, the Debtors are authorized to incur and guarantee all of their DIP Obligations on account of such incurrence under the DIP Facility, up to an aggregate principal amount of \$2,000,000 in DIP Loans on an interim basis, together with applicable interest, protective advances, expenses, fees, and other charges payable in connection with the DIP Facility (the "Interim Financing"), as applicable, subject to the terms and conditions set forth in this Interim Order and the DIP Documents, until the occurrence of a DIP Termination Date.

(d) Without limiting the foregoing, and without the need for further approval of this Court, the Debtors are authorized to perform all acts, make, execute and deliver all instruments and documents , and pay all fees or expenses that may be necessary or appropriate

for the Debtors to implement the terms of and perform their obligations under this Interim Order, the DIP Facility, and the DIP Documents (as applicable) in accordance herewith and therewith, including, without limitation:

(1) the execution and delivery of, and performance under, the DIP Documents;

(2) the execution and delivery of, and performance under, one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, as Debtors and the DIP Lender (in accordance with and subject to the terms of the applicable DIP Documents) may agree, for non-material authorizations, amendments, waivers, consents, or other modifications to and under the DIP Documents;

(3) the non-refundable and irrevocable payment of any and all fees, costs, and expenses payable pursuant to the DIP Documents, including, without limitation, (a) the Initial Commitment Fee (as defined in the DIP Credit Agreement), any closing fees, upfront fee, exit fee, prepayment fee, audit fees, appraisal fees, servicing fees, liquidator fees, agency fees, prepayment premiums, or similar amounts (which fees, in each case, shall be, and shall be deemed to have been, approved upon entry of this Interim Order, and which fees shall not be subject to any challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Documents, and (b) subject to the limitations expressly set forth in this Interim Order, the reasonable and documented invoiced out-of-pocket fees, costs, and expenses as may be due from time to time of (x) the DIP Lender, including, without limitation, the reasonable and documented fees and expenses of Troutman Pepper Locke, as counsel to the DIP Lender, and (y) the Warehouse Agent to the extent set forth in the Budget, including, without limitation, the Warehouse Interim Advances (as defined in the DIP Credit Agreement) and amounts payable to professionals retained by the Warehouse Secured Parties, in each case, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, without the need to file retention or fee applications; and

(4) subject to the Carve Out (as defined below), the granting and perfection of the DIP Liens and DIP Superpriority Claims, in each case, as set forth herein and in the DIP Documents.

(e) The DIP Lender shall not have any obligation or responsibility to monitor the DIP Borrower's use of the DIP Facility, and the DIP Lender may rely upon the DIP

Borrower's representations that the amount of the DIP Facility requested at any time and the use thereof are in accordance with the requirements of this Interim Order, the DIP Documents, and Bankruptcy Rule 4001(c)(2).

4. **DIP Obligations.** Upon entry of this Interim Order and execution and delivery of the DIP Documents, the Debtors' obligations set forth in the DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of the Debtors, and shall be fully enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any estate representative or trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the foregoing and/or upon the dismissal of the Chapter 11 Cases (collectively, the "Successor Cases"), in each case, in accordance with the terms thereof and this Interim Order. Upon execution and delivery of the DIP Documents, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, now existing or hereafter arising, which may from time to time be or become owing by the Debtors to the DIP Lender, under, or secured by, and in accordance with, the DIP Documents or this Interim Order, including all principal, interest, costs, fees, expenses, and other amounts under the DIP Documents (including this Interim Order). No obligation, payment, transfer, or grant of security under the DIP Documents or this Interim Order to the DIP Lender shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 362, 502(d), 544, 548, or 549 of the Bankruptcy Code, any applicable Uniform Voidable Transfer Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or other similar state statute or common law), or subject to any defense, reduction, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim,

claim, counterclaim, offset, or any other challenge under the Bankruptcy Code or any applicable law unless in accordance with paragraph 15 of this Interim Order.

5. **No Obligation to Extend Credit.** The DIP Lender shall have no obligation to make any loan or advance under the applicable DIP Documents unless all of the conditions precedent to the making of such extension of credit by the DIP Lender under the DIP Documents and this Interim Order have been satisfied in full or waived in accordance with the terms of the DIP Documents.

6. **DIP Liens.**

(a) As security for the DIP Obligations, effective immediately upon the date of this Interim Order, as set forth more fully in this Interim Order, the DIP Lender is hereby granted (without the necessity of the execution by the Debtors or the filing or recordation of mortgages, security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise by the DIP Lender) valid, binding, enforceable, non-avoidable, and automatically and properly perfected, first priority senior priming liens and security interests (collectively, the “DIP Liens”), in the property and interests identified in clauses 1 and 2 below (collectively, the “DIP Collateral”), as collateral security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of all DIP Obligations:

(1) *Priming DIP Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, perfected, first priority, senior priming lien upon all assets and property of each of the Debtors and their estates of any kind or nature whatsoever, real, personal, or mixed, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all Prepetition Collateral, all “DIP Collateral” as defined in the DIP Credit Agreement, all contracts, contract rights, licenses (including IP licenses), general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, money, insurance policies and proceeds thereof, receivables, deposits, refunds, receivables records, deposit accounts, collateral support,

supporting obligations and instruments, all interests in leaseholds and real properties, all intellectual property, all patents, copyrights, trademarks (but excluding trademark applications filed in the United States Patent and Trademark Office on the basis of the applicant's intent-to-use such trademark unless and until evidence of use of the trademark has been filed with, and accepted by, the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. §1051, et seq.)), trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), records and data, know-how and other proprietary information and materials, all equity interests, all books and records relating to the foregoing, all other personal and real property of the Debtors (but excluding any property subject to a purchase money lien, capital lease or similar arrangement permitted under the DIP Documents to the extent the creation of a security interest therein is prohibited thereby or creates a right of termination in favor of any other party thereto or otherwise requires third party consent thereunder), Purchased Actions (as defined in the DIP Credit Agreement) (provided that the DIP Lender's lien in any Avoidance Actions (as defined in the DIP Credit Agreement) constituting Purchased Actions shall be subject to entry of the Final Order), proceeds of Excluded Actions (as defined in the DIP Credit Agreement), whether by judgment, settlement or otherwise (provided that the DIP Lender's lien in proceeds of any Avoidance Actions constituting Excluded Actions shall be subject to entry of the Final Order), actions under section 549 of the Bankruptcy Code, and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (in each case as the foregoing are defined in the Uniform Commercial Code as in effect from time to time in the State of New York (and, if defined in more than one Article of such Uniform Commercial Code, shall have the meaning given in Article 9 thereof)), all subject and subordinate only to (a) the Permitted Liens (as defined in the DIP Credit Agreement), and (b) the Carve Out; *provided* that "DIP Collateral" excludes all Transferred Receivables and any proceeds therefrom and any other Excluded Collateral, and *provided further* that any proceeds of Transferred Receivables are subject to the Precautionary Warehouse Liens and Warehouse Superpriority Claims, as those terms are defined in the Interim Securitization Order; and

(2) *Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, enforceable, fully-perfected first-priority security interest in and lien upon all of the Debtors' right, title, and interest in, to, and under any DIP Collateral that as of the Petition Date is unencumbered or not otherwise subject to valid, perfected, and non-avoidable liens, in each case other than the Excluded Actions (but, for the avoidance of doubt, "Unencumbered Property" shall include proceeds of Excluded Actions, including, subject to entry of the Final Order, proceeds of Avoidance Actions constituting Excluded Actions), subject and subordinate only to the Carve Out (all of the foregoing property, collectively, the "Unencumbered Property").

(3) *Excluded Collateral.* Pursuant to the Interim Securitization Order, and subject to the terms thereof, all Transferred Receivables originated or held by any Debtor are deemed to be transferred, directly or indirectly, to FlexShopper 2, LLC (the "SPV Borrower") pursuant to the Securitization Transaction Documents, subject to the Precautionary Warehouse Liens. None of the Transferred Receivables (or any proceeds therefrom), Excluded Actions, nor any funds held in trust by any Debtor for payment of Leased Merchandise Sales Taxes (as defined in the Tax Motion) (collectively, the "Excluded Collateral"), constitute DIP Collateral, and the DIP Lender shall have no liens or other interests in, or claims against or

payable from, any Excluded Collateral. Excluded Collateral shall not include any Permitted Purchase Price Payments (as defined in the Interim Securitization Order) or proceeds from Excluded Actions.

(b) Except as set forth in paragraph 6(a) of this Interim Order, the DIP Liens (i) shall not be subject to or *pari passu* with (A) any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against the Debtors, their estates, any trustee, or any other estate representative appointed or elected in the Chapter 11 Cases or any Successor Cases and/or upon the dismissal of the Chapter 11 Cases or any Successor Cases, (B) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise, or (C) any intercompany or affiliate lien, and (ii) shall not be subject to sections 506(c) (subject to and pending entry of the Final Order), 510, 549, 550, or 551 of the Bankruptcy Code.

(c) Subject to entry of the Final Order, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the consent, or the payment of any fees or obligations to, any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest in any property or the proceeds thereof, shall have no force or effect with respect to the DIP Liens or Warehouse Replacement Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by the Debtors, in favor of the DIP Lender or the Warehouse Secured Parties in accordance with the terms of the DIP Documents, this Interim Order, and the Interim Securitization Order, as applicable.

(d) **DIP Superpriority Claims.** Effective immediately upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Debtors' Chapter

11 Cases and any Successor Cases thereof on account of the DIP Obligations, with priority over any and all administrative expenses of the kind that are specified in sections 503(b) or 507(b) of the Bankruptcy Code (the “DIP Superpriority Claims”), but subject to the rights of the Warehouse Secured Parties with respect to the Warehouse Superpriority Claims. The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code. The DIP Superpriority Claims shall have recourse against the Debtors, subject to the Carve Out.

7. **Approved Budget; Budget Testing.**

(a) The proceeds of the DIP Facility shall be used solely to pay the expenditures set forth in the Budget or amounts payable to or on behalf of the DIP Lender or the Warehouse Agent pursuant to paragraph 3(d)(3) of this Interim Order.

(b) As used in this Interim Order: “Budget” means the budget attached hereto as **Exhibit 1** (as may be modified from time to time with the prior written consent of DIP Lender and Warehouse Agent).

(c) Beginning on the first Business Day that is at least one (1) week following the Petition Date (the “First Variance Testing Date”), and every week thereafter (each such date, a “Variance Testing Date”), in each case on or before 5:00 p.m. prevailing Eastern Time on such Variance Testing Date, the DIP Borrower will provide to the DIP Lender and Warehouse Agent a variance report tested for the preceding two-week period then ended as of the immediately preceding Sunday (each such period, a “Testing Period” and each such report, a “Variance Report”), reasonably satisfactory to each of the DIP Lender and the Warehouse Agent, detailing each of the following on a single, line item basis: (i) a comparison of the actual and budgeted line item disbursements and line item receipts of the DIP Borrower during the applicable Testing Period; (ii) any variance (whether positive or negative, expressed as a percentage) between the

aggregate disbursements made during such Testing Period by the DIP Borrower against the aggregate disbursements for the Testing Period as set forth in the Budget applicable to such Testing Period that will include an explanation of any variance greater than 5.0%; and (iii) any variance (whether positive or negative, expressed as a percentage) between the aggregate receipts received during such Testing Period by the DIP Borrower against the aggregate receipts for the Testing Period as set forth in the Budget applicable to such Testing Period that will include an explanation of any variance greater than 5.0%, in each case of the foregoing clauses, with a detailed explanation of any such variance in form, substance and detail satisfactory to each of the DIP Lender and the Warehouse Agent in each of their reasonable discretion.

(d) Pursuant to the terms set forth in the DIP Credit Agreement, and as further set forth herein, the Debtors shall not permit actual amounts for total cash receipts and cash disbursements to vary from the applicable Budget (i) in the case of cash receipts, by ten percent (10%) below the cash receipts included in the Budget on a trailing two-week basis, and (ii) in the case of cash disbursements (which shall not and do not include any Professional Fees), by ten percent (10%) in excess of the cash disbursements included in the Budget on a trailing two-week basis (together, the “Permitted Variances”). Additional variances, if any, from the Budget, and any proposed changes to the Budget, shall be subject to the written consent of the DIP Lender and the Warehouse Agent in each of their sole and absolute discretion. Permitted Variances are not cumulative beyond a given Testing Period. The DIP Borrower’s failure to comply with the Budget subject to the Permitted Variances will constitute an Event of Default as defined in the DIP Documents.

8. **Adequate Protection.** As adequate protection against any Diminution in Value (as defined below), the Warehouse Secured Parties shall:

(a) receive a claim to the extent of such Diminution in Value, having priority over any and all expenses of the kind specified in section 507(b) of the Bankruptcy Code, subject to (i) the Carve Out and (ii) the DIP Superpriority Claims (the “Warehouse Adequate Protection Claims”);

(b) have valid, binding, enforceable and perfected liens in all DIP Collateral, subject to (i) the Carve Out, (ii) Permitted Liens and (iii) the DIP Liens, in each case equal to the sum of the aggregate Diminution in Value (the “Warehouse Replacement Liens”); and

(c) be entitled to reimbursement from the Debtors and their estates for the fees and costs of its professionals, as provided in paragraphs 3(d)(3) and 35 of this Interim Order and subject to the Budget.

9. **Diminution in Value.** For purposes of this Interim Order, “Diminution in Value” shall mean an amount equal to the diminution from and after the Petition Date of the value as of the Petition Date of the Warehouse Secured Parties’ interests in the Prepetition Collateral resulting from the use, sale, or lease of such collateral (whether in accordance with the terms and conditions of this Interim Order or the Interim Securitization Order or otherwise), or the imposition of the automatic stay. For the avoidance of doubt, the rights of all parties in interest, including any Committee, concerning whether Diminution in Value has occurred and the extent and/or amount of such Diminution in Value, are hereby expressly reserved.

10. **Priority of Warehouse Replacement Liens and Warehouse Adequate Protection Claims.** Except for (i) the Carve Out, (ii) the DIP Liens and DIP Superpriority Claims, and (iii) as otherwise provided in paragraph 8 of this Interim Order, the Warehouse Replacement Liens and Warehouse Adequate Protection Claims, if any, granted to the Warehouse Secured Parties pursuant to paragraph 8 of this Interim Order shall not be subject or junior to any lien or

security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code and shall not be subordinated to or *pari passu* with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise.

11. Carve Out.

(a) Notwithstanding anything to the contrary in this Interim Order, each of the DIP Liens, the Prepetition Liens, the Adequate Protection Liens, the DIP Superpriority Claims, and the Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Carve Out (as defined herein). The Carve Out shall be senior to all claims and liens over all assets of the Debtors, including any DIP Collateral.

(b) As used in this Interim Order the "Carve Out" means the sum, without duplication, of the following: (I) (a) all fees of the DIP Borrower required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (b) all reasonable fees and expenses up to \$25,000 incurred by a trustee under section 725(b) of the Bankruptcy Code; (c) the proceeds of the Acima Settlement (as defined in the Stalking Horse Purchase Agreement) solely to the extent that the unpaid allowed professional fees, costs and disbursements ("Professional Fees") of the Debtors' professionals exceed the cumulative line items for such professionals in the Budget; and (d) Professional Fees incurred by the DIP Borrower and any Committee appointed in the Chapter 11 Cases, in each case not to exceed the cumulative line item amount set forth in the applicable line of the Budget for each such professional, but only up through and including the week of the budget as of the delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice (as defined below), and (II) after the delivery of a Carve Out Trigger Notice, allowed Professional Fees in an aggregate

amount not to exceed \$200,000 incurred on or after the first day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (II) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the DIP Borrower, its lead restructuring counsel, counsel to the Warehouse Agent, the U.S. Trustee, and counsel to the Committee, if any (collectively, the “Carve Out Notice Parties”), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(c) So long as a Carve Out Trigger Notice has not been delivered, the Debtors are authorized to fund a trust account that shall function as a segregated account held in trust for and exclusively available for the payment of Professional Fees (the “Professional Fees Escrow Account”) in the amount equal to, but not to exceed, the allowed Professional Fees set forth in the Budget line items for professionals (the “Professionals”) retained by the Debtors and a Committee, if any (the “Budgeted Professional Expenses”). The Debtors are authorized and directed to fund the Professional Fees Escrow Account on a weekly basis in an amount up to, but not to exceed, the Budgeted Professional Expenses for that week. Such funds shall be held in the Professional Fee Escrow Account for the benefit of the Professionals to be applied solely to the allowed Professional Fees of the Professionals that are approved for payment pursuant to one or more orders of the Bankruptcy Court. All Professionals shall have a first-priority claim over the funds held in the Professional Fees Escrow Account, with priority over all administrative expense claims and unsecured claims against the Debtors and their estates of any kind or nature whatsoever,

including, without limitation, (x) any DIP Obligations, including contingent indemnification claims, (y) administrative expense claims of the kinds specified in or ordered pursuant to any applicable section of the Bankruptcy Code, and (z) any DIP Liens or Adequate Protection Liens. Any allowed Professional Fees payable shall be paid first out of the Professional Fees Escrow Account. For the avoidance of doubt, no Professional shall be entitled to any portion of the Carve Out allocated for any other Professional in the Budget. Funds transferred to the Professional Fees Escrow Account shall not be subject to any liens or claims granted to the Warehouse Secured Parties or the DIP Lender herein or any liens or claims granted as adequate protection, shall not constitute DIP Collateral or Prepetition Collateral, and shall not constitute Cash Collateral; provided, that, notwithstanding anything to the contrary herein or in the DIP Documents, the DIP Collateral shall include the Debtors' reversionary interest in excess funds held in the Professional Fee Escrow Account after all allowed Professional Fees have been paid, and such reversionary interest shall be treated as DIP Collateral subject to the DIP Liens, the DIP Superpriority Claims, and any adequate protection liens or adequate protection claims. None of the provisions of this Interim Order or any DIP Loan Document shall prohibit or restrict the payment of any allowed professional fees, costs and disbursements from any retainers held by such Professional.

12. **Postpetition Lien Perfection.** The DIP Liens and Warehouse Replacement Liens shall attach and become valid, perfected, binding, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtors, the DIP Lender or the Warehouse Secured Parties, respectively, and without the necessity of execution by the Debtors, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages, filings with a governmental unit (including, without limitation, the U.S. Patent and Trademark Office or the Library of Congress), or other documents or the taking

of any other actions. If the DIP Lender or Warehouse Agent hereafter requests that the Debtors execute and deliver financing statements, security agreements, pledge agreements, control agreements, collateral assignments, mortgages, or other instruments and documents considered by the DIP Lender or Warehouse Agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Warehouse Replacement Liens, as applicable, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, pledge agreements, control agreements, mortgages, collateral assignments, instruments, and documents and to pay all fees, taxes, and other governmental charges required to be paid as a result of or as a condition to recording or filing any such agreements, financing statements, instruments and other documents, and the DIP Lender and the Warehouse Agent are hereby authorized (but not obligated) to file or record such documents without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the Petition Date. The DIP Lender and/or the Warehouse Agent may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to, or in lieu of, such financing statements, notices of liens or similar statements.

13. **Inspection Rights.** In addition to, and without limiting, whatever rights to access the Warehouse Secured Parties has under the Warehouse Credit Agreement (as defined in, and amended pursuant to, the Interim Securitization Order) and the DIP Lender has under the DIP Credit Agreement, upon reasonable prior written notice (including via acknowledged electronic mail) during normal business hours, the Debtors shall permit representatives, agents and employees of the Warehouse Agent and/or the DIP Lender to: (i) participate in one conference call per week with the Chief Restructuring Officer of the Debtors and the financial advisor to the

Debtors at a date and time mutually agreed to by the parties, (ii) have reasonable access to and inspect and copy the Debtors' books and records, including all records and files of the Debtors pertaining to the Prepetition Collateral and the DIP Collateral, (iii) have reasonable access to and inspect the Debtors' properties, including the Debtors' bank accounts and lease tapes, and (iv) discuss the Debtors' affairs, finances, and condition with the Debtors' officers, professionals, and financial advisors.

14. **DIP Termination Events.** Subject to paragraphs 11 and 15 of this Interim Order, unless waived in writing by the DIP Lender, the following events shall constitute termination events: (a) the failure of the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order; (b) entry of any order modifying, reversing, revoking, staying, rescinding, vacating, or amending this Interim Order (other than the Final Order) or Interim Securitization Order (other than the Final Securitization Order); (c) the failure of the Debtors to comply with the Sale Milestones and/or DIP Milestones (each, as defined in the DIP Credit Agreement); (d) the occurrence of the "Termination Date" under the DIP Credit Agreement; or (e) the occurrence of an "Event of Default" pursuant to the DIP Credit Agreement, (such events in a-e of this paragraph 14, each a "DIP Termination Event," and the date of such termination, the "DIP Termination Date"). On the DIP Termination Date, (a) the maturity of the DIP Facility shall be accelerated to the DIP Termination Date, and (b) the DIP Borrower's right to use proceeds of the DIP Facility shall automatically and immediately terminate.

15. **Remedies After a Termination Date.** The Debtors shall promptly provide notice to counsel to each of the DIP Lender, Warehouse Agent and Committee, if any, upon the occurrence of a DIP Termination Event. Upon the occurrence and during the continuation of a

DIP Termination Event (regardless of whether the Debtors have given the notice described in the previous sentence), and following the giving of not less than five (5) business days' advance written notice by counsel for the DIP Lender, which may be by email (such period the "Remedies Notice Period") and such notice, the "Enforcement Notice"), to counsel to the Debtors, counsel to the Warehouse Agent, the U.S. Trustee, and counsel to the Committee, if any, and subject to the obligations with respect to the Carve Out, (i) the DIP Lender may exercise any rights and remedies against the DIP Collateral available to it under this Interim Order, the DIP Credit Agreement and applicable non-bankruptcy law; (ii) the Warehouse Agent may exercise any rights and remedies to satisfy the Warehouse Replacement Liens and the Warehouse Adequate Protection Claims, subject to the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, and the Carve Out, and consistent with the Interim Securitization Order and the Securitization Transaction Documents; and (iii) the commitment of the DIP Lender to make the DIP Loans will be terminated to the extent any such commitment remains under the DIP Credit Agreement. The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically modified with respect to the DIP Lender and the Warehouse Agent at the end of the Remedies Notice Period, without further notice or order of the Court, unless, (a) the DIP Lender and the Warehouse Agent elect otherwise in a written notice to the Debtors, or (b) the Court has determined that a DIP Termination Event has not occurred or the Court orders otherwise. Any foreclosure by DIP Lender on DIP Collateral shall be made in accordance with applicable law, including but not limited to the Uniform Commercial Code.

16. **Emergency Hearing.** Upon the delivery of an Enforcement Notice, each of the DIP Lender, the Warehouse Agent, the Debtors, and any Committee, as applicable, consent to a hearing on an expedited basis (the "Emergency Default Hearing") regarding the DIP Termination Event(s), after which the Court may grant any relief it deems appropriate. If the Debtors or other

parties in interest request the Emergency Default Hearing during the Remedies Notice Period, but such Emergency Default Hearing is scheduled for a later date by the Court, then the Remedies Notice Period shall be automatically extended to the date of such Emergency Default Hearing. Nothing herein shall alter the rights or burden of proof with respect to any request by the Debtors or other party in interest to re-impose or continue the automatic stay under section 362(a) of the Bankruptcy Code, use Cash Collateral, or to obtain any other equitable or injunctive relief. In addition, after the DIP Lender delivers an Enforcement Notice, but prior to the expiration of the Remedies Notice Period, except as may be otherwise ordered by the Court, the DIP Borrower shall not use any proceeds of the DIP Facility to pay any expenses except those which are (a) solely to pay necessary expenses set forth in the Budget to avoid immediate and irreparable harm to the estate, and (b) the amount of Professional Fees reasonably necessary to contest in good faith whether a DIP Termination Event has occurred, all not to exceed: (i) the amount set forth in the Budget; or (ii) if a Carve Out Trigger Notice has been issued, the amount equal to (x) Budgeted Professional Expenses that have accrued through the date of the Carve Out Trigger Notice but have not yet been paid into the Professional Fee Escrow Account, and (y) the Post-Carve Out Trigger Notice Cap. Notwithstanding anything in this paragraph to the contrary, after notice and hearing, the Court may order such relief as it determines is appropriate following a DIP Termination Event. Any delay or failure of the Warehouse Agent or the DIP Lender to exercise rights under the Interim Securitization Order, Securitization Transaction Documents, the DIP Documents, or this Interim Order shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise. Notwithstanding anything to the contrary in this Interim Order, the entry of this Interim Order and the grant of adequate protection to the Warehouse Agent pursuant to the terms hereof shall be without prejudice to the rights of the Debtors to, following the occurrence of the DIP Termination

Date, seek authority (at any time) to use proceeds of the DIP Facility without the consent of the DIP Lender, and the DIP Lenders reserve all of its rights with respect to contesting any such motion or request by the Debtors or any other person; provided that the Debtors may not utilize proceeds of the DIP Facility (or, for the avoidance of doubt, proceeds of any Transferred Receivables or other Excluded Collateral) to seek such authority.

17. **Payments Free and Clear.** Any and all payments or proceeds remitted to or for the benefit of the Warehouse Secured Parties or to the DIP Lender pursuant to the provisions of this Interim Order or any subsequent order of this Court shall be irrevocable (subject, in the case of the Warehouse Secured Parties, to the Interim Securitization Order), received free and clear of any claim, charge, assessment or other liability, including without limitation, subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) (whether asserted or assessed by, through, or on behalf of the Debtors) or 552(b) of the Bankruptcy Code, and any amounts repaid to the DIP Lender may not be re-borrowed by the DIP Borrower.

18. **Limitation on Charging Expenses Against Collateral.** Subject to entry of the Final Order granting such relief, except to the extent of the Carve Out, all rights to surcharge the DIP Collateral or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in the Chapter 11 Cases or any Successor Cases.

19. **Modification of Automatic Stay.** The Debtors are authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions

contemplated hereby, including (a) the granting of the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may reasonable request to assure the perfection and priority of the DIP Liens and the DIP Superpriority Claims, and (b) the Debtors incurring all liability and obligations, including all the DIP Obligations, to the DIP Lender as contemplated under this Interim Order and the DIP Documents, and to enter into and perform under the DIP Documents and any and all other instruments, certificates, agreements, and documents that may be reasonably required, necessary, or prudent for the performance by the Debtors under the DIP Documents and any transactions contemplated therein or in this Interim Order, in each case in accordance herewith or therewith. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this Interim Order.

20. **Survival of Interim Order.** The provisions of this Interim Order shall be binding upon any trustee appointed during the Chapter 11 Cases or any Successor Cases, and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Chapter 11 Cases to a chapter 7 case or any other Successor Cases, dismissing the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise, or confirming or consummating any plan(s) of reorganization or liquidation. The terms and provisions of this Interim Order, as well as the priorities in payments, liens, and security interests granted pursuant to this Interim Order shall continue notwithstanding any conversion of the Chapter 11 Cases to a chapter 7 case or any other Successor Cases under the Bankruptcy Code, dismissal of the Chapter 11 Cases or confirmation or consummation of any plan(s) of reorganization. The terms of this Interim Order shall be valid and binding upon the Debtors, all creditors of the Debtors and all other parties in interest from and after the entry of this Interim Order by this Court.

21. **No Liability to Third Parties.** With respect to the entry into the DIP Facility or the providing of the DIP Loans or the priming of the Prepetition Collateral, or any approval or disapproval of expenditures set forth in the Budget including, without limitation, any Permitted Variance allowed pursuant to paragraph 7 of this Interim Order, neither the DIP Lender nor the Warehouse Agent shall: (i) be deemed to be in “control” of the operations of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (iii) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 or any similar federal or state statute).

22. **Insurance.** Subject to entry of the Final Order, and to the fullest extent provided by applicable law, the DIP Lender, shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

23. **Payments Held in Trust.** Subject to entry of the Final Order, prior to the indefeasible payment in full in cash of all DIP Obligations and termination of the commitment in accordance with the DIP Documents, if any party who holds a lien or security interest in DIP Collateral that is junior and/or subordinate to the DIP Liens or a claim that is subordinate to the DIP Superpriority Claims receives or is paid the proceeds of any DIP Collateral other than as expressly permitted in the DIP Documents and this Interim Order, such party shall be deemed to have received, and shall hold, such proceeds or payments in trust for the DIP Lender and shall immediately turn over such amounts to the DIP Lender to repay the DIP Obligations in accordance

with the DIP Documents and this Interim Order until the DIP Obligations are indefeasibly paid in full in cash.

24. **Good Faith under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order.** The DIP Lender and the Warehouse Secured Parties have acted in good faith in connection with the DIP Facility, the DIP Documents, the Interim Financing, and this Interim Order, and their reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, each of the DIP Lender and the Warehouse Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Documents. To the extent provided in section 364(e) of the Bankruptcy Code, (i) if any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacatur, or stay shall not affect the validity, priority, or enforceability of the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the Warehouse Replacement Liens, the Warehouse Adequate Protection Claims, or any other liens or claims of any Warehouse Secured Party, and (ii) notwithstanding any such reversal, modification, vacatur, or stay of this Interim Order, any DIP Obligations, DIP Liens, DIP Superpriority Claims, Warehouse Replacement Liens, Warehouse Adequate Protection Claims, or any other liens or claims of any Warehouse Secured Party incurred by the Debtors to the DIP Lender or the Warehouse Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Lender and the Warehouse Secured Parties of the effective date of such reversal, modification, vacatur stay shall be governed in all respects by the original provisions of this Interim Order.

25. **Release.** The Debtors hereby acknowledge that, effective upon entry of the Interim Order and as of such date, the Debtors have no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtors' liability to repay the DIP Lender, or to seek affirmative relief or damages of any kind or nature from the DIP Lender. Upon entry of the Interim Order and as of such date, the Debtors fully, finally and forever release and discharge the DIP Lender and its officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them, each solely in their capacity as such (collectively, the "Released Parties") of and from any and all actions, causes of action, demands, suits, claims, liabilities, liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Interim Order, whether in law, equity or otherwise (including, without limitation, those arising under sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to the DIP Documents and the Financing Orders; *provided* that the foregoing shall not release any claims against a Released Party that a court of competent jurisdiction determines, pursuant to a final, non-appealable order, results primarily from the gross negligence or willful misconduct of such Released Party.

26. **Cash Management.** Except to the extent that such use would be inconsistent with the express terms of this Interim Order or other applicable law, or as otherwise agreed in writing by the DIP Agent and the Warehouse Agent, it shall be an Event of Default (as

defined in the DIP Documents) if the Debtors at any time fail to use a cash management system that is the same as or substantially similar to the Debtors' cash management system in place prior to the Petition Date.

27. **Joint and Several Liability.** The Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Loan Documents.

28. **Indemnity.** The Debtors are hereby authorized and directed to indemnify and hold harmless the DIP Lender, its affiliates, and their respective officers, directors, employees and agents (including all of their Professionals) (each an "Indemnified Party") harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all professional fees) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation, or proceeding arising out of or relating to or in connection with the DIP Facility, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

29. **Enforceability; Waiver of Any Applicable Stay.** This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately

effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

30. **Proofs of Claim.** Neither the DIP Lender nor the Warehouse Secured Parties will be required to file proofs of claim in the Chapter 11 Cases or any Successor Chapter 11 Cases, and the Debtors' stipulations in this Interim Order and the Interim Securitization Order shall be deemed to constitute timely filed proofs of claim against the Debtors with respect to the claims of each of the DIP Lender and the Warehouse Secured Parties, as applicable. Notwithstanding the foregoing, each of the DIP Lender and the Warehouse Secured Parties are hereby authorized and entitled, in each of their sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim for any claims of the DIP Lender or the Warehouse Secured Parties, as applicable.

31. **Section 552(b) of the Bankruptcy Code.** Subject to entry of the Final Order, the DIP Lender and each Warehouse Secured Party shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Warehouse Secured Parties and DIP Lender with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

32. **Credit Bid.** Subject to entry of the Final Order, the DIP Lender shall have the right subject to section 363(k) to credit bid up to and including the full amount of the DIP Obligations, without the need for further Court order authorizing the same, and whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. Any such credit bid may provide for the

assignment of the right to purchase the acquired assets to an affiliate, sub-agent or a newly formed acquisition vehicle.

33. **No Marshaling.** Upon entry of the Final Order, the DIP Lender and the Warehouse Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds shall be received and applied in accordance with the DIP Documents and the Securitization Transaction Documents, as applicable.

34. **Discharge Waiver.** The DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization or liquidation, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such plan provides for either (x) the indefeasible payment in full in cash of all DIP Obligations or (y) such other treatment of the DIP Obligations acceptable to the DIP Lender in its sole and absolute discretion.

35. **Notice Procedures for Professional Fees.** Professionals for the Warehouse Agent and the DIP Lender (collectively, the “Secured Party Professionals”) shall not be required to submit invoices to this Court. All fees and expenses of Secured Party Professionals payable pursuant to this Interim Order or the DIP Credit Agreement shall be payable by the DIP Borrower (whether accrued or incurred prior to, on, or after the Petition Date) within ten calendar days after the delivery of invoices (which invoices shall not be required to comply with any particular format and may be in summary form only, include a general, brief description of the nature of the matters for which services were performed in lieu of time entries, and be in redacted form to protect privileged and confidential information) to counsel to the Debtors, the U.S. Trustee, and the Committee (if any), without the necessity of filing motions or fee applications, and such fees and expenses shall not be subject to any further review, challenge, or disgorgement following the

expiration of such period. The DIP Borrower shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses of a Secured Party Professional to which a fee objection has not been timely raised by the Debtors, the Committee, if any, or the U.S. Trustee (or which is subsequently allowed by agreement or an order of the Court), and (b) all fees, costs, and expenses of a Secured Party Professional on an invoice to which no fee objection has been timely raised by the Debtors, the Committee, if any, or the U.S. Trustee.

36. **No Waiver by Failure to Seek Relief.** The failure of the Debtors, the DIP Lender or the Warehouse Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Credit Agreement, the DIP Documents, the Interim Securitization Order, or the Securitization Transaction Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder or otherwise of the DIP Lender or Warehouse Secured Parties.

37. **Headings.** The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

38. **Retention of Jurisdiction.** The Court has and shall retain jurisdiction to enforce this Interim Order.

EXHIBIT 1
To Interim DIP Order

Budget

**[INTENTIONALLY
OMITTED]**

EXHIBIT 2
To Interim DIP Order

DIP Credit Agreement

**SENIOR SECURED SUPER-PRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

by and among

FLEXSHOPPER, LLC

and

FLEXSHOPPER, INC

each as Debtor and Debtor-in-Possession and DIP Borrower,

THE DIP GUARANTORS PARTY HERETO,

and

READYSETT LLC,

as DIP Lender

dated as of December __, 2025

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Exhibit A	Budget
Exhibit B	Interim Order

THIS SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this “Agreement”), is entered into as of [], 2025, among FLEXSHOPPER, LLC, a North Carolina limited liability company and FLEXSHOPPER, INC., a Delaware corporation, each as a borrower and debtor and debtor-in-possession in the Chapter 11 Cases (as defined below) (together, individually and collectively, jointly and severally, the “DIP Borrower”), each DIP Guarantor (as defined below), and READYSETT LLC, a Delaware limited liability company (the “DIP Lender”). The DIP Borrower, the DIP Guarantors and the DIP Lender are referred to herein as the “Parties” and each as a “Party”. Capitalized terms used but not defined herein shall have the meanings given to them in Article I or the Recitals hereto.

RECITALS

A. **WHEREAS**, on [], 2025 (the “Petition Date”), each of the Debtors commenced voluntary cases for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), and the Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. **WHEREAS**, the DIP Borrower has requested that the DIP Lender provide a senior secured superpriority debtor-in-possession financing facility for the purposes provided for herein (the “DIP Facility”), and the DIP Lender is willing to provide the DIP Facility on the terms and conditions hereof.

C. **WHEREAS**, the DIP Lender is only willing to provide the DIP Loans hereunder, and in so providing such DIP Loans is relying, upon the Debtors granting to the DIP Lender first-priority, priming DIP Liens and superpriority claims on all DIP Collateral, as more fully described in this Agreement, the other DIP Documents and the DIP Orders (each, as defined below), subject only to the Carve Out and Permitted Liens as set forth herein.

D. **WHEREAS**, the DIP Guarantors have agreed to guarantee the obligations of the DIP Borrower hereunder.

E. **WHEREAS**, each Party has reviewed, or has had the opportunity to review, this Agreement and all attachments hereto with the assistance of legal counsel of its own choosing.

NOW THEREFORE, in consideration of the premises and the mutual covenants and the agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINED TERMS

Section 1.1 Definitions. As used in this Agreement, including, without limitation, the preamble, recitals, exhibits and schedules hereto, the following terms have the meanings stated:

“Action” against a Person means an action, suit, litigation, arbitration, investigation, complaint, contest, hearing, inquiry, inquest, audit, examination or other proceeding threatened or

pending against or affecting such Person or its property, whether civil, criminal, administrative, investigative or appellate, in law or equity before any arbitrator or Governmental Authority.

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

“Affiliate” means, with respect to a Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (i) any Person which beneficially owns or holds five (5%) percent or more of any class of the Capital Stock of such Person or other equity interests in such Person, (ii) any Person of which such Person beneficially owns or holds five (5%) percent or more of any class of the Capital Stock or in which such Person beneficially owns or holds five (5%) percent or more of the equity interests, (iii) any director or executive officer of such Person. For the purposes of this definition, the term “control” (including with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, 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 the ownership of Capital Stock, by agreement or otherwise.

“Agreement” has the meaning stated in the Preamble to this Agreement.

“Asset Sale” means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person, in one or more transactions or a series of related transactions, of all or any part of the businesses of any Credit Party, and/or of all or any part of the assets or properties of any kind of any Credit Party, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, other than inventory (or other assets) sold or leased in the ordinary course of business. For the avoidance of doubt, no transaction pursuant to or in connection with the Warehouse Facility, Warehouse Interim Order, or Warehouse Final Order shall constitute an “Asset Sale.”

“Auction” has the meaning given such term in Section 10.6(c).

“Authorized Officer” means, as applied to any Person, any individual holding the position of chairman of the board, executive director (or the equivalent thereof), chief financial officer or treasurer of such Person or the Person or entity acting in that capacity.

“Avoidance Actions” means all claims or causes of action arising under chapter 5 of the Bankruptcy Code or any applicable state fraudulent transfer statutes, other than claims or causes of action arising under section 549 of the Bankruptcy Code.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Bankruptcy Court” has the meaning given to such term in the Recitals to this Agreement.

“Bid Procedures Motion” means a motion of the Debtors seeking entry of the Bid Procedures Order in form and substance satisfactory each of to the DIP Lender and Administrative Agent in each of their sole and absolute discretion.

“Bid Procedures Order” means an order in form and substance reasonably satisfactory to each of the DIP Lender and the Administrative Agent approving the Bid Procedures Motion and granting, among other things, the following relief: (a) approving the bidding procedures to be applicable to the Sale Process and (b) approving the break-up fee and expense reimbursement provided for the Stalking Horse Purchaser in the Stalking Horse Purchase Agreement.

“Borrowing” means an advance of a DIP Loan made hereunder.

“Borrowing Certificate” has the meaning given such term in Section 2.2(d).

“Borrowing Date” means the date of a Borrowing.

“Budget” means the 13-week cash flow forecast of the Debtors attached hereto as Exhibit A and each subsequent rolling 13-week cash flow forecast of the Debtors as approved in writing by the DIP Lender [**and Administrative Agent**], which forecasts shall, among other things, contain detailed projected cash receipts and cash disbursements on a weekly basis. References herein to the “Budget” shall be deemed to include references to the “Interim Budget.”

“Business Day” means a day other than Saturday or Sunday or other day on which commercial banks in New York, New York are authorized or required by law or other governmental action to close.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“Capital Stock” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

“Carve Out” has the meaning given such term in the Interim Order (before the entry of the Final Order) and, after the entry of the Final Order, the Final Order.

“Change of Control” means any one or more of the following events: (i) the transfer (in one transaction or a series of transactions) of all or substantially all of the assets of any Credit Party to any Person or group; (ii) the liquidation or dissolution of any Credit Party or the adoption of a plan by the Board of Directors of any Credit Party relating to the dissolution or liquidation of such Credit Party; (iii) the transfer of more than 10% of the equity interests of any Credit Party; or (iv) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of any Credit Party or control the election of members

of the board of directors or equivalent governing body of such Credit Party, except for any changes approved in advance by the DIP Lender.

“Chapter 11 Cases” has the meaning set forth in the Recitals to this Agreement.

“Closing Date” means the date hereof.

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

“Consents” means any approval, consent, authorization or order of, notice to or registration or filing with, or any other action by, any Governmental Authority or other Person.

“Credit Parties” means the DIP Borrower and each DIP Guarantor.

“Debtor” and “Debtors” means, individually and collectively, each Credit Party, as debtor and debtor-in-possession in the Chapter 11 Cases, and each of their respective successors and assigns (including, without limitation, any trustee or other fiduciary hereafter appointed as its legal representative or with respect to the property of the estate of such Debtor, whether under chapter 11 of the Bankruptcy Code or any subsequent chapter 7 case and such Debtor’s successor upon conclusion of the Chapter 11 Cases).

“Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“DIP Collateral” means all assets of the Debtors and their estates, of any kind or nature whatsoever, real, personal, and mixed, tangible and intangible, cash and cash accounts, deposit accounts, lease receivables, accounts receivable, general intangibles, payment intangibles, choses in action, supporting obligations, investment property, Purchased Actions (provided that the DIP Lender’s lien in any Avoidance Actions constituting Purchased Actions shall be subject to entry of the Final Order), proceeds of Excluded Actions, whether by judgment, settlement or otherwise (provided that the DIP Lender’s lien in proceeds of any Avoidance Actions constituting Excluded Actions shall be subject to entry of the Final Order), actions under section 549 of the Bankruptcy Code, inventory, rolling stock, machinery, equipment, fixtures, subsidiary Capital Stock, investment property, letters of credit, chattel paper, documents, instruments, contract rights, insurance proceeds, patents, copyrights, trademarks, trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), records and data, know-how and other proprietary information and materials, real estate, leased property and other leasehold interests, and tax refunds of the Debtors, whether now-owned or hereafter acquired, arising before or after the Petition Date, wherever located, and the proceeds and products therefrom; *provided* that DIP Collateral excludes all Excluded Collateral.

“DIP Commitment” means an aggregate amount of \$8,000,000 and committed by the DIP Lender to make DIP Loans hereunder.

“DIP Commitment Period” means the period commencing on the date on which the Bankruptcy Court issues the Interim Order and ending on the Termination Date.

“DIP Documents” means this Agreement and all other documents, instruments or agreements executed and delivered by any Credit Party for the benefit of the DIP Lender in connection herewith.

“DIP Guarantor” means each of FlexLending, LLC; FlexRevolution, LLC; FlexRetail, LLC; Flex TX, LLC; Flex TX Funding, LLC; and Flex TX CAB, LLC.

“DIP Lender” has the meaning stated in the Preamble to this Agreement.

“DIP Liens” has the meaning given such term in Section 7.1.

“DIP Loans” has the meaning given such term in Section 2.1.

“DIP Milestones” has the meaning given to such term in Section 10.7.

“DIP Obligations” means all indebtedness, obligations, covenants, duties of payment or performance of every kind and all other liabilities of any Credit Party from time to time owed to the DIP Lender, whether direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, owing, arising, due or incurred under this Agreement, the DIP Orders or any other DIP Document or in respect of any of the DIP Loans, or any other instruments at any time evidencing any of the foregoing or otherwise, including, without limitation, all obligations (including Guarantee Obligations of the DIP Guarantors under this Agreement) to repay principal of and interest on the DIP Loans, and to pay interest, Fees, other fees, costs, charges, expenses, professional fees, and all sums chargeable to the Credit Parties under the DIP Documents and the DIP Orders, whether or not evidenced by any note or other instrument, and the Credit Parties’ obligation to provide the DIP Lender with adequate protection of their interests in property to be used, sold, leased or otherwise disposed of by any Credit Party after the commencement of the Chapter 11 Cases under the terms of any DIP Orders (including, without limitation, coverage as to the account of any loss, damages, depletion, diminution or depreciation resulting from any Credit Party’s use (or in the case of inventory or equipment sale) of such property).

“DIP Orders” means, collectively, the Interim Order, the Final Order and such other orders relating thereto or authorizing the granting of credit to the Debtors on an emergency, interim or permanent basis, pursuant to section 364 of the Bankruptcy Code as may be issued or entered by the Bankruptcy Court in the Chapter 11 Cases.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition of any asset or property by any Person.

“Dollars” and the sign “\$” mean the lawful money of the United States of America.

“Equipment” means all of the Credit Parties’ equipment, including machinery, data processing and computer equipment (whether owned or licensed and including embedded software), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located, and whether now-owned and hereafter acquired.

“Event of Default” means each of the conditions or events set forth in Section 9.1.

“Excluded Actions” has the meaning given such term in the Stalking Horse Purchase Agreement.

“Excluded Collateral” has the meaning given such term in the DIP Orders.

“Facility Extension Fee” has the meaning given such term in Section 2.6(a)(iii).

“Final Commitment Fee” has the meaning given such term in Section 2.6(a)(ii).

“Fee” means, as applicable, the Initial Commitment Fee, the Final Commitment Fee and the Facility Extension Fee.

“Final Order” means the order or judgment of the Bankruptcy Court entered in the Chapter 11 Cases approving this Agreement, the other DIP Documents, the DIP Loans and the other transactions contemplated by this Agreement and the DIP Documents, on a final basis, in form and substance satisfactory to each of the DIP Lender and Administrative Agent in each of their sole and absolute discretion.

“Financing Orders” means the DIP Orders, Warehouse Interim Order, and Warehouse Final Order.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time, consistently applied throughout the periods to which reference is made.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee Obligations” means, with respect to any Person, any obligation or arrangement of such Person to guarantee or intended to guarantee any Indebtedness or other payment obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, (i) the direct or indirect guarantee, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the Obligation of a primary obligor; (ii) the obligation to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement; or (iii) any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the holder of such primary obligation against

loss in respect thereof. The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Guarantee Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

“Indebtedness” means, with respect to any Person, without duplication, the following: (i) all indebtedness of such Person for borrowed money; (ii) all obligations of such Person for the deferred purchase price of property or services (other than accounts payable and accrued liabilities that would be classified as current liabilities under GAAP which payables and liabilities are incurred in respect of property or services purchased in the ordinary course of business if and only for so long as either (A) no item of such accounts payable and accrued liabilities is more than 90 days past due or (B) in the case of the Credit Parties, the Credit Parties have notified the DIP Lender in writing thereof (including pursuant to the Schedules hereto) and payments in respect thereof are being made (or not made, as applicable) in accordance with and if permitted by the Budget and the DIP Orders); (iii) all obligations of such Person evidenced by notes, bonds, debentures or similar borrowing or securities instruments; (iv) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person; (v) all obligations of such Person as lessee under Capital Leases; (vi) all obligations of such Person in respect of banker’s acceptances and letters of credit; (vii) all obligations of such Person secured by Liens on the assets and property of such Person; (viii) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Capital Stock or other ownership or profit interest in such Person or any other Person or any warrants, rights or options to acquire such Capital Stock; (ix) net liabilities in respect of such Person’s hedge agreements as determined in accordance with GAAP; (x) all obligations of such Person in respect of any guaranty by such Person of any obligation of another Person of the type described in clauses (i) through (ix) of this definition; and (xi) all obligations of another Person of the type described in clauses (i) through (x) secured by a Lien on the property or assets of such Person (whether or not such Person is otherwise liable for such obligations of such other Person).

“Indemnified Person” has the meaning stated in Section 8.2.

“Initial Commitment Fee” has the meaning given such term in Section 2.6(a)(i).

“Initial DIP Loan” has the meaning given such term in Section 2.2(a).

“Intellectual Property” means, collectively, all copyrights, all patents and all trademarks, together with: (i) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (ii) all licenses or user or other agreements granted to any Credit Party with respect to any of the foregoing, in each case whether now or hereafter owned or used including the licenses or other agreements with respect to any DIP Collateral; (iii) all customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and

programs; (iv) all sales data and other information relating to sales or service of products now or hereafter manufactured; (v) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; and (vi) all causes of action, claims and warranties, in each case, now or hereafter owned or acquired by any Credit Party in respect of any of the items listed above.

“Interim Budget” means the initial budget of the Chapter 11 Cases, as approved by the DIP Lender and Administrative Agent and attached to the Interim Order.

“Interim Order” means the order or judgment of the Bankruptcy Court entered in the Chapter 11 Cases substantially in the form of Exhibit B approving this Agreement, the other DIP Documents, the DIP Loans and the other transactions contemplated by this Agreement and the other DIP Documents, on an interim basis, in form and substance satisfactory to each of the DIP Lender and Administrative Agent in each of their sole and absolute discretion.

“Intermediate Seller” means Flexshopper 1, LLC.

“Knowledge” means, with respect to any Credit Party, the actual knowledge of [•]. [NTD: MATCH THE APA]

“Lien” means any mortgage, deed of trust, leasehold deed of trust, security interest, charge, pledge, hypothecation, assignment, attachment, deposit arrangement, encumbrance, lien (statutory, judgment or otherwise, but excluding any right of set off arising by operation of law or pursuant to agreements entered into in the ordinary course of business), or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any Capital Lease, any synthetic lease, any financing lease involving substantially the same economic effect as any of the foregoing and the filing of any financing statement under the UCC or comparable law of any jurisdiction in respect of the foregoing).

“Material Adverse Effect” means any material adverse effect on or change in (i) the business, operations, properties, prospects, assets or condition (financial or otherwise) of any Credit Party, (ii) the ability of any Credit Party to perform its obligations hereunder or under of any of the DIP Documents, (iii) the legality, validity or enforceability of any DIP Document, or (iv) the DIP Collateral or the perfection or priority of any DIP Liens granted to the DIP Lender under any of the DIP Documents; *provided* that, for the avoidance of doubt, it is understood and agreed that the following shall be disregarded in determining whether a “Material Adverse Effect” has occurred: the effect of (x) the filing of the Chapter 11 Cases, the events and conditions related to and/or leading up thereto and/or typically resulting from the filing of the cases under chapter 11 of the Bankruptcy Code, (y) any actions required to be taken under the DIP Documents or the DIP Orders and (z) any matters (including, for the avoidance of doubt, any litigation) disclosed in schedules to the DIP Documents and/or publicly disclosed in any first day pleadings or declarations in the Chapter 11 Cases.

“Material Contracts” means, with respect to any Person, each contract to which such Person is a party which is material to the business, financial condition, operations, performance, properties or reasonably foreseeable business prospects of such Person.

“Net Proceeds” means: (i) in connection with any Asset Sale, the proceeds thereof in the form of cash and cash equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale, net of reasonable attorneys’, accountants’ and investment banking fees directly related thereto, amounts applied to the repayment of Indebtedness secured by a valid, perfected, enforceable and unavoidable Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale and other reasonable customary fees and expenses actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements); and (ii) in connection with any casualty or condemnation event, the insurance proceeds or condemnation awards paid in the form of cash and cash equivalents, net of reasonable out-of-pocket expenses actually incurred and paid by any Credit Party in connection with receiving the payment of such insurance proceeds or condemnation awards in such casualty or condemnation event (including reasonable attorneys’ and accountants’ fees).

“Notices” has the meaning stated in Section 11.2.

“NRNS” means NRNS Capital Holdings LLC, a [] limited liability company.

[“Operating Account” means the account of FlexShopper, LLC at Wells Fargo Bank, N.A. having an account number ending 9915, currently used as its general operations deposit account.]

“Party” and “Parties” have the meanings stated in the Preamble to this Agreement.

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“Permit” means any permit, license, approval, consent, permission, notice, franchise, confirmation, endorsement, waiver, certification, registration, qualification, clearance or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any federal, state, local or foreign Regulation.

“Permitted Liens” has the meaning stated in Section 6.1(b).

“Permitted Variances” has the meaning stated in Section 5.1(e).

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, other legal entities and Governmental Authorities.

“Petition Date” has the meaning stated in the Recitals to this Agreement.

“Postpetition” means following the Petition Date.

“Prepetition” means prior to the Petition Date.

“Prepetition Payment” means a payment of (i) any Indebtedness or trade payables of any Debtor; or (ii) or other Prepetition claims against any Debtor, including by way of adequate protection payments, in each case arising prior to the Petition Date.

“Professional Fees and Expenses” means fees and expenses of professionals retained by (i) the Debtors, to the extent such professionals are retained by an order of the Bankruptcy Court pursuant to section 327, 328, 363 or 1103(a) of the Bankruptcy Code or pursuant to any order of the Bankruptcy Court authorizing retention of ordinary course professionals; (ii) Administrative Agent; and (iii) the DIP Lender, in each case, in accordance with the Budget.

“Purchased Actions” has the meaning given such term in the Stalking Horse Purchase Agreement.

“Purchased Assets” has the meaning given such term in the Stalking Horse Purchase Agreement.

“Regulation” means each applicable law, rule, regulation, order, guidance or recommendation (or any change in its interpretation or administration) by any Governmental Authority, central bank or comparable agency and any request or directive (whether or not having the force of law) of any of those Persons and each judgment, injunction, order, writ, decree or award of any Governmental Authority, arbitrator or other Person.

“Sale Documents” means the Stalking Horse Purchase Agreement and each other agreement, document, certificate or instrument entered into in connection therewith.

“Sale Milestones” has the meaning given such term in Section 10.6.

“Sale Process” means the implementation of bidding and sale procedures in respect of all of the Debtors’ assets and property, including the Purchased Assets, pursuant to the Bid Procedures Order.

“Sale Term Sheet” means the Snap/FlexShopper Term Sheet dated as of November 13, 2025, among Snap U.S. Holdings, LLC, FlexShopper, LLC, and Administrative Agent.

“Scheduled Maturity Date” means the date that is 80 days following the Petition Date.

“SPV Borrower” means FlexShopper 2, LLC.

“Stalking Horse Purchase Agreement” means that certain Asset Purchase Agreement dated as of [____], 2025, among FlexShopper, Inc., FlexShopper, LLC, FlexLending LLC, as sellers, and the Stalking Horse Purchaser, as purchaser, as amended, modified, or supplemented

from time to time in the sole and absolute discretion of the DIP Lender with the consent of the Administrative Agent, which consent shall not be unreasonably withheld.

“Stalking Horse Purchaser” means the DIP Lender or its Affiliate that is the purchaser of the Purchased Assets pursuant to the Stalking Horse Purchase Agreement.

“Subsequent DIP Loans” has the meaning stated in Section 2.2(b).

“Subsidiary” means as to any Person, a corporation, partnership, limited liability company or other entity of which shares of Capital Stock having ordinary voting power (other than Capital Stock having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

“Tax” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed.

“Termination Date” means the earliest to occur of (i) the Scheduled Maturity Date; (ii) the occurrence of an Event of Default; (iii) the consummation of the transactions contemplated by the Stalking Horse Purchase Agreement; and (iv) the closing date of a sale of substantially all of the Debtors’ assets to a purchaser other than the Stalking Horse Purchaser.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the State of New York; *provided* that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the DIP Liens is governed by the Uniform Commercial Code as in effect in a United States jurisdiction other than New York, “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“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, entered substantially contemporaneously with the Final Order, approving the DIP Borrowers’ continued performance in connection with the Warehouse Facility and granting related relief, in form and substance acceptable to the Administrative Agent in its sole and absolute discretion.

“Warehouse Interim Advances” means Prepetition amounts funded by the Administrative Agent to or for the benefit of any Credit Party to cover such Credit Party’s necessary and documented operating expenses and professional fees between December 11, 2025 and the Petition Date, 50% of which shall be reimbursable to the Administrative Agent from proceeds of the DIP Facility. Any Warehouse Interim Advances shall be mutually agreed between the Administrative Agent and the DIP Lender.

“Warehouse Interim Order” means an interim order of the Bankruptcy Court, entered substantially contemporaneously with the Interim Order, approving the DIP Borrowers’ continued performance in connection with the Warehouse Facility and granting related relief, in form and substance acceptable to the Administrative Agent in its sole and absolute discretion.

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

[“Weekly Budget Report” means, commencing on the first Business Day that is one week after the Petition Date and for each weekly period ending thereafter, a budget variance and reconciliation report setting forth in form and substance reasonably satisfactory to the DIP Lender (i) a comparative reconciliation, on a line-by-line basis, of actual cash receipts and disbursements against the cash receipts and disbursements forecast in the Budget, and the percentage variance thereof, for (A) the two-week period ended on (and including) the immediately preceding Sunday and (B) the cumulative period to date; and (ii) a detailed written explanation of such variances. Each Weekly Budget Report shall be certified by an Authorized Officer of the Debtors as being prepared in good faith and fairly presenting in all material respects the information set forth therein.]¹

ARTICLE II_ LOANS

Section 2.1 DIP Loans. Subject to the terms and conditions set forth herein and in the DIP Orders, upon the DIP Borrower’s request for a DIP Loan in accordance with Section 2.2(d), the DIP Lender agrees to make term loans pursuant to this Section 2.1 (the “DIP Loans”) during the DIP Commitment Period. Each DIP Loan shall be for purposes consistent with the Budget and otherwise consistent with this Agreement; *provided* that both before and after giving effect to any DIP Loan, the DIP Loans shall not exceed the DIP Commitment (after giving effect to all prior Borrowings of DIP Loans); *provided further* that the DIP Lender, in its sole and absolute discretion (but only with the consent of the Administrative Agent), may make Subsequent DIP Loans (defined below) in excess of the DIP Commitment at the request of the DIP Borrower based on a documented need for such Subsequent DIP Loans as reflected in the Budget. Once repaid, DIP Loans borrowed hereunder may not be reborrowed. Each DIP Borrower jointly and severally promises to pay to the order of DIP Lender, in lawful money of the United States of America, the aggregate unpaid principal amount of the DIP Loans and all interest thereon in accordance with the terms hereof.

¹ NTD: To be conformed to DIP Order.

Section 2.2 Borrowing Mechanics

(a) Commencing on the date of the Bankruptcy Court's entry of the Interim Order, a DIP Loan in a single advance shall be available to the DIP Borrower in an amount up to \$2,000,000 (the "Initial DIP Loan").

(b) Commencing on the date of the Bankruptcy Court's entry of the Final Order through the Termination Date, as long as no Event of Default exists and subject to the prior satisfaction of all applicable conditions precedent, the DIP Lender shall make one or more additional DIP Loans (each, a ("Subsequent DIP Loan"). DIP Loans shall be available to the DIP Borrower in one or more draws in an amount up to the lesser of the aggregate DIP Commitment and the amount of borrowings contemplated by the DIP Orders.

(c) The DIP Loans shall be funded by the DIP Lender and shall be disbursed to the Operating Account solely in accordance with the Budget and the DIP Orders, subject to Section 3.1 and Section 3.2.

(d) No less than three (3) Business Days prior to any Borrowing Date, but not more than once in every two (2) calendar week period, the DIP Borrower shall deliver to the DIP Lender a borrowing certificate (a "Borrowing Certificate"). Such Borrowing Certificate shall be in form and substance reasonably satisfactory to the DIP Lender, shall be irrevocable and shall specify (i) the amount of the proposed DIP Loans in minimum increments of \$500,000, or such lesser amount as may then be available for borrowing under the DIP Commitment, (ii) shall state the Borrowing date thereof, and (iii) shall include the DIP Borrower's calculation of the maximum amount available to be borrowed under this Agreement. On the Borrowing Date specified in any Borrowing Certificate delivered in accordance with this Section 2.2(d), as long as no Event of Default exists and subject to the prior satisfaction of all applicable conditions precedent, the DIP Lender shall disburse such funds to the Operating Account and shall use reasonable efforts to make the funds available to the DIP Borrower no later than 2:00 p.m. (New York time) on the requested Borrowing Date.

Section 2.3 Use of Proceeds. The proceeds of the DIP Loans shall be used by the DIP Borrower solely in accordance with the Budget and the DIP Orders in order to (a) fund Postpetition operating expenses and working capital needs of the DIP Borrower as set forth in the Budget, including, but not limited to, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. § 1930; (b) pay interest, fees and expenses to the DIP Lender; (c) fund fees and expenses incurred in connection with the Sale Process; (d) pay permitted Prepetition claim payments and adequate protection payments approved by the DIP Lender in writing or set forth in the Budget, if any; (e) pay Professional Fees and Expenses; (f) reimburse Administrative Agent for the Warehouse Interim Advances; and (g) pay certain other costs and expenses of administration of the Chapter 11 Cases. None of the proceeds of the DIP Loans or the Carve Out shall be used (a) to permit the Credit Parties, or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (or support any other person or entity in challenging or contesting) (i) the validity, perfection or priority of security interests in favor of the DIP Lender or Administrative Agent or the transfer of any assets from any Credit Party (other than to seek entry of the Financing Orders), or (ii) the

enforceability of the obligations of the Credit Parties under this Agreement and/or the other DIP Documents; (b) to investigate, commence, prosecute or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim, motion, proceeding or cause of action against the DIP Lender and their agents, employees, attorneys, advisors or representatives including, without limitation, any lender liability claims or subordination claims; (c) to investigate, commence, prosecute or defend (or support any other Person in investigating, commencing, prosecuting, or defending) any claim or proceeding or cause of action to disallow or challenge the obligations under this Agreement and/or the DIP Documents; or (d) to fund lease originations, acquisitions, capital expenditures, Capital Leases except to the extent being assumed as part of the Chapter 11 Cases, or any other similar expenditure other than capital expenditures specifically set forth in the Budget and approved by the DIP Lender.

Section 2.4 Evidence of Debt. The DIP Lender shall maintain in its internal records an account or accounts evidencing the DIP Obligations owed to the DIP Lender, including the amounts of the DIP Loans owed to it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the DIP Borrower, absent manifest error; *provided*, failure to make any such recordation, or any error in such recordation, shall not affect the DIP Commitment, the DIP Loans or any of the DIP Obligations.

Section 2.5 Interest on Loans.

(a) Applicable Rate; Payment of Interest. Except as otherwise set forth herein, each DIP Loan and the Fees shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) on the unpaid principal amount thereof at a rate per annum equal to fifteen percent (15.0%). Accrued interest on each DIP Loan shall be paid in full on the Termination Date; *provided*, that if the Stalking Horse Purchaser is the successful bidder for the Purchased Assets, some or all accrued but unpaid interest hereunder may be applied by the Stalking Horse Purchaser on the closing date of the transactions contemplated by the Stalking Horse Purchase Agreement towards the purchase price of the Purchased Assets. All interest accruing after the Termination Date shall be payable in cash, upon demand by the DIP Lender.

(b) Calculation of Interest Rates. Interest payable pursuant to this Section 2.5 shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues. In computing interest on any DIP Loan, the date of the making of such DIP Loan shall be included, and the date of payment of such DIP Loan shall be excluded; *provided*, if such DIP Loan is repaid on the same day on which it is made, one day's interest shall be paid on such DIP Loan.

(c) Default Interest. Effective immediately upon the occurrence of an Event of Default, unless waived in writing by the DIP Lender in its sole and absolute discretion, all DIP Obligations shall thereafter bear interest at a rate that is 4.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the DIP Loans or the maximum rate allowed under applicable law, whichever is less.

Section 2.6 Fees.

(a) The DIP Lender will be entitled to the following fees, for its own account:

(i) a fee equal to one and one-half percent (1.5%) of the maximum aggregate DIP Commitment (the “Initial Commitment Fee”), which shall be deemed fully earned upon the entry of the Interim Order, shall accrue interest pursuant to Section 2.5, shall be payable on the Termination Date and shall be non-refundable when paid;

(ii) a fee equal to one and one-half percent (1.5%) of the maximum aggregate DIP Commitment (the “Final Commitment Fee”), which shall be deemed fully earned upon the entry of the Final Order, shall accrue interest pursuant to Section 2.5, shall be payable on the Termination Date, and shall be non-refundable when paid; and

(iii) a fee equal to one and one-half percent (1.5%) of the maximum aggregate DIP Commitment (the “Facility Extension Fee”), which shall be deemed fully earned upon the entry of the Final Order and payable to the DIP Lender in the event that all DIP Obligations are not repaid on the Termination Date, shall accrue interest pursuant to Section 2.5, shall be payable on demand from the DIP Lender, and shall be non-refundable when paid.

(b) If the Stalking Horse Purchaser is the successful bidder for the Purchased Assets, some or all Fees hereunder may be applied by the Stalking Horse Purchaser on the closing date of the transactions contemplated by the Stalking Horse Purchase Agreement towards the purchase price of the Purchased Assets.

Section 2.7 Repayment. Subject to Section 2.10 and Section 2.11, the DIP Loans shall be due and payable, and the DIP Borrower shall be required to repay all of the DIP Obligations (including, without limitation, all accrued and unpaid principal, interest, Fees, any other fees, costs, and expenses on the DIP Loans) on the Termination Date.

Section 2.8 No Optional Prepayment. Except as provided in Section 2.9, the DIP Borrower shall not be permitted to prepay or repay the DIP Obligations.

Section 2.9 Mandatory Prepayments.

(a) No later than the first Business Day following the date of receipt by the Credit Parties of any Net Proceeds from any Asset Sale to a buyer other than the Stalking Horse Purchaser, the DIP Borrower shall repay the DIP Loans (including all principal, accrued and unpaid interest thereon, Fees and all other accrued fees, costs and expenses) as set forth in Section 2.11 in an aggregate amount equal to such Net Proceeds.

(b) No later than the first Business Day following the date of receipt by any Credit Party of any Net Proceeds from any casualty or condemnation event, the DIP Borrower shall repay the DIP Loans (including all principal, accrued and unpaid interest thereon, Fees and all other accrued fees, costs and expenses) as set forth in Section 2.11 in an aggregate amount equal to such Net Proceeds.

(c) If and to the extent that at any time the unrestricted cash and cash equivalents of the Debtors exceeds \$250,000 for more than five (5) consecutive days, then the Debtors shall repay the DIP Loans (including all principal, accrued and unpaid interest thereon, Fees and all other accrued fees, costs and expenses) as set forth in Section 2.11 in an aggregate amount equal to the amount that such unrestricted cash and cash equivalents exceed \$250,000; *provided* that in no event shall the DIP Lender receive payments in excess of the amounts then due under this Agreement or the DIP Orders.

Section 2.10 Application of Payments and Proceeds. Any amount required to be paid pursuant to Section 2.9 or any other provision of this Agreement, and all proceeds of the DIP Collateral (whether before or after an Event of Default) shall be applied (a) *first*, to pay any amounts (including attorneys' fees) payable to the DIP Lender under Section 11.3, (b) *second*, to pay accrued and unpaid interest, the Fees and any other fees, costs, expenses and other outstanding DIP Obligations, and (c) *third*, to repay any principal amounts outstanding in respect of the DIP Loans.

Section 2.11 General Provisions Regarding Payments.

(a) Payments. All payments by the DIP Borrower of principal, interest, Fees and other fees, costs and expense reimbursements, and other DIP Obligations shall be made by the DIP Borrower to the DIP Lender. All such payments shall be in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to the DIP Lender not later than 2:00 p.m. (New York time) on the date due at the DIP Lender's office for receipt of notices hereunder (or as otherwise instructed by the DIP Lender to the DIP Borrower) without presentment, demand, protest or notice or any kind, all of which are expressly waived by the DIP Borrower.

(b) Non-Conforming Payments. Any payment by or on behalf of the DIP Borrower that is not made in same day funds prior to 2:00 p.m. (New York time) shall be deemed to be a non-conforming payment. Any such payment shall not be deemed to have been received by the DIP Lender until the later of (i) the time such funds become available funds and (ii) the applicable next Business Day. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.5 from the date such amount was due and payable until the date such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day).

(c) Payments to Include Accrued Interest. All payments in respect of the principal amount of any DIP Loan (whether mandatory or optional) shall include payment of accrued interest on the principal amount being repaid or prepaid calculated in accordance with Section 2.5, and all such payments (and, in any event, any payments in respect of any DIP Loan on a date when interest is due and payable with respect to such DIP Loan) shall be applied to the payment of interest before application to principal.

(d) Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

Section 2.12 Termination of DIP Commitment. Unless previously terminated, the DIP Commitment automatically shall terminate at the end of the DIP Commitment Period. Upon the making of any DIP Loan, the DIP Commitment shall be permanently reduced by an amount equal to the principal amount of such DIP Loan.

ARTICLE III_ CONDITIONS PRECEDENT TO DIP LOANS

Section 3.1 Conditions Precedent to Initial DIP Loan. The obligation of DIP Lender to make the Initial DIP Loan is subject to the satisfaction, or waiver in accordance with Section 11.1, of the following conditions on or before the Closing Date:

(a) Chapter 11 Cases. The Debtors shall have commenced the Chapter 11 Cases and all of the “first day motions,” “first day orders” and all related pleadings entered or to be entered at the time of the Petition Date or shortly thereafter shall have been made available to the DIP Lender in advance, and shall be satisfactory in form and substance to the DIP Lender. The Chapter 11 Cases shall not have been dismissed or converted to cases under chapter 7 of the Bankruptcy Code. No trustee under chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Chapter 11 Cases.

(b) DIP Documents. The DIP Lender shall have received duly executed copies of each DIP Document (other than any DIP Document which the DIP Lender has allowed to be executed at a later date).

(c) DIP, Securitization and Bid Procedures Motions. On the Petition Date, the Debtors shall have filed, with the express written support of Administrative Agent and the DIP Lender, NRNS, Howard S. Dvorkin and any other Person holding secured claims against the Purchased Assets, motions in form and substance satisfactory to the DIP Lender seeking entry of the Financing Orders and the Bid Procedures Order.

(d) Interim Order. Within two (2) Business Days after the Petition Date, the Bankruptcy Court shall have entered (x) the Interim Order authorizing and approving (i) this Agreement and the transactions contemplated hereby, including, without limitation, the granting of valid, enforceable, non-avoidable and fully perfected superpriority security interests and Liens secured by the DIP Collateral and granting allowed superpriority claims in favor of the DIP Lender; and (ii) the current cash payment of expenses, including such amounts arising before and after the Petition Date and without the necessity of filing motions, to the extent such expenses have actually been incurred; and (y) the Warehouse Interim Order. The Interim Order and Warehouse Interim Order shall each be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated, in the case of any modification or amendment, in a manner, or relating to a matter, without the

consent of each of the DIP Lender and Administrative Agent. The Debtors shall be in compliance in all respects with the Interim Order, Warehouse Interim Order, and all other orders of the Bankruptcy Court binding on them.

(e) Consents. All necessary governmental and third-party consents and approvals necessary in connection with this Agreement and the transactions contemplated hereby, as determined by the DIP Lender in its sole and absolute discretion, shall have been obtained and shall remain in effect.

(f) No Violation of Law or Litigation. The making of the Initial DIP Loan shall not violate any requirement of law and there shall not exist any action, suit, investigation, litigation or proceeding pending (other than the Chapter 11 Cases) or threatened in any court or before any Governmental Authority that, in the opinion of the DIP Lender, affects any of the transactions contemplated hereby, or that has or could be reasonably likely to have a Material Adverse Effect..

(g) Approved Budget and Projections. The DIP Lender and Administrative Agent shall have approved the Interim Budget, together with all financial information and projections regarding the Credit Parties requested by the DIP Lender, all in form and substance satisfactory to the DIP Lender and the Administrative Agent.

(h) Insurance. The DIP Lender and Administrative Agent shall be satisfied with the amount, types and terms and conditions of all insurance and bonding maintained by the Credit Parties.

(i) DIP Liens. The DIP Lender shall have a valid and perfected first priority Lien on the DIP Collateral. The DIP Lender shall have received evidence that the Debtors shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument, and made or caused to be made any other filing and recording (other than as set forth herein), reasonably required by the DIP Lender to perfect, and to ensure the perfection of, its security interests in the DIP Collateral with the priority required by the DIP Documents; *provided* that the DIP Lender acknowledges and agrees that the entry of the Interim DIP Order shall satisfy this condition precedent.

(j) Stalking Horse Purchase Agreement. The Debtors and the Stalking Horse Purchaser shall have entered into the Stalking Horse Purchase Agreement with the consent of Administrative Agent, which Stalking Horse Purchase Agreement shall be in full force and effect subject only to the approval of the Bankruptcy Court.

(k) No Default. No Default or Event of Default under this Agreement shall exist at the time of, or after giving effect to, the transactions contemplated on the Closing Date, including the advancing of any DIP Loans.

(l) Representations and Warranties. All representations and warranties in the DIP Documents shall be true and correct as of the Closing Date.

(m) Other Information. The DIP Lender shall have received any other financial or non-financial information regarding the Credit Parties as the DIP Lender may reasonably request.

(n) Fees and Costs. The Interim Order and the Budget shall provide, in form and substance satisfactory to each of the DIP Lender and Administrative, in each of their sole and absolute discretion, for the Debtors to pay, on the terms and schedule provided therein, (i) all fees and reasonable out-of-pocket expenses of the DIP Lender incurred in connection with this Agreement and the other DIP Documents; (ii) the Warehouse Interim Advances; and (iii) professional fees and expenses incurred by the Administrative Agent in connection with the Chapter 11 Cases, solely as provided for in the Budget.

(o) No Material Adverse Effect. Each Credit Party shall have continued to operate its business in the ordinary course through the Closing Date, and since the Petition Date there shall have been no Material Adverse Effect.

Section 3.2 Conditions to Each Subsequent DIP Loan. The obligations of the DIP Lender to make any Subsequent DIP Loan on any Borrowing Date is subject to the satisfaction, or waiver in accordance with Section 11.1, of the following conditions precedent:

(a) Borrowing Certificate. The DIP Lender shall have received a fully executed and delivered Borrowing Certificate, in accordance with Section 2.2. Each Borrowing Certificate shall be executed by an Authorized Officer of the DIP Borrower and delivered to the DIP Lender.

(b) Final Orders and Bid Procedures Order. The Bankruptcy Court shall have entered the Final Order, the Warehouse Final Order, and the Bid Procedures Order, which shall be in full force and effect and shall have not been reversed, modified, amended, stayed, vacated, rescinded or subject to a presently effective stay pending appeal.

(c) No Violation of Law or Litigation. The making of the Subsequent DIP Loan shall not violate any requirement of law and there shall not exist any action, suit, investigation, litigation or proceeding pending (other than the Chapter 11 Cases) or threatened in any court or before any Governmental Authority that, in the opinion of the DIP Lender, affects any of the transactions contemplated hereby, or that has or could be reasonably likely to have a Material Adverse Effect.

(d) Compliance. The Debtors shall be in compliance with all of the provisions of the DIP Documents, the Final Order, the DIP Milestones required to be satisfied as of such Borrowing Date, and the Bid Procedures Order.

(e) Available Commitments. After making the Subsequent DIP Loan requested on such Borrowing Date, the aggregate outstanding principal amount of DIP Loans shall not exceed the aggregate amount of the DIP Commitment.

(f) Representations and Warranties. As of such Borrowing Date (both immediately prior to, and after giving effect to, the advance of the Subsequent DIP Loan and application of its proceeds), the representations and warranties contained in the DIP

Documents shall be true and correct on and as of that Borrowing Date, as if made on and as of that Borrowing Date (except to the extent such representations and warranties specifically relate to an earlier date, such representations and warranties were true and correct on and as of such earlier date).

(g) No Default or Event of Default. As of such Borrowing Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Borrowing (or the application of its proceeds) that would constitute an Event of Default or a Default.

(h) No Material Adverse Effect. Since the Borrowing Date, no Material Adverse Effect shall have occurred after giving effect to the making of the Subsequent DIP Loan.

ARTICLE IV_ REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties. In order to induce the DIP Lender to enter into this Agreement and for the DIP Lender to make each DIP Loan, each Credit Party, jointly and severally, hereby represents and warrants to the DIP Lender, on the Closing Date and on each Borrowing Date as follows:

(a) Status; Authorization. Such Credit Party is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or formation and is duly qualified and in good standing in every other jurisdiction where it is doing business except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect, and, subject to the entry by the Bankruptcy Court of the Interim Order and the Final Order, the execution, delivery and performance by such Credit Party of each DIP Document to which it is a party (i) are within its respective power and authority, (ii) have been duly authorized, and (iii) do not conflict with or contravene its constitutive documents. The execution, delivery, performance of its obligations, and exercise of its rights under the DIP Documents by such Credit Party, including, without limitation, the making of the DIP Loans under this Agreement, (y) do not require any Consents that have not been obtained or notices to third parties that have not been provided and (z) are not and will not be in conflict with or be prohibited or prevented by (A) any Regulation, (B) any corporate governance document, corporate minute or resolution of such Credit Party or (C) any instrument, agreement or provision thereof, in each case binding on it or affecting any of its property.

(b) Execution and Binding Effect. Subject to the entry by the Bankruptcy Court of the Interim Order and the Final Order upon execution and delivery thereof, each DIP Document to which a Credit Party is a party shall constitute the legal, valid and binding obligation of such Credit Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) Title. Such Credit Party has good and marketable title in fee simple to any owned real property, and valid leasehold interests in all real property leased by it, in each case, necessary or used in the ordinary conduct of its business. The property of such Credit Party is subject to no Liens, other than Permitted Liens. Such Credit Party enjoys, and will enjoy, peaceful and undisturbed possession of, or a lease or license to use, all property (subject only to the Permitted Liens) that is necessary for the conduct of its business.

(d) Intellectual Property. Such Credit Party owns or possesses the legal right to use, all of its Intellectual Property that is used in the operation of the business of such Credit Party. Set forth on Schedule 4.1(d) is a list of the Intellectual Property that is registered or pending registration in (or with) the United States and owned by such Credit Party as of the Closing Date.

(e) Capitalization. Set forth on Schedule 4.1(e) is a complete and accurate list as of the Closing Date of each Subsidiary of each Credit Party.

(f) Insurance. Such Credit Party has provided to the DIP Lender a description of all insurance maintained by or on its behalf as of the Closing Date. The property, general liability and any business interruption insurance coverage of such Credit Party as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 4.1(f).

(g) Litigation. Except for the Chapter 11 Cases and any case that could not reasonably be expected to have a Material Adverse Effect, there are no legal or other proceedings or investigations pending or, to the Knowledge of such Credit Party, threatened against such Credit Party before any court, tribunal or regulatory authority.

(h) Governmental Approvals and Filings. Other than the Bankruptcy Court's entry of the DIP Orders, no approval, order, consent, authorization, certificate, license, permit or validation of, or exemption or other action by, or filing, recording or registration with, or notice to, any Governmental Authority is or will be necessary in connection with the execution and delivery of this Agreement or any other DIP Document, consummation by such Credit Party of the transactions herein or therein contemplated, or performance of or compliance with the terms and conditions hereof or thereof

(i) Material Misstatements and Omissions. Any projections and pro forma financial information contained in or delivered pursuant to any DIP Document (including the Budget and each Weekly Budget Report) or any other document, certificate or written statement furnished to the DIP Lender pursuant to any DIP Document are based upon good faith estimates and assumptions believed by such Credit Party to be reasonable at the time made, it being recognized by the DIP Lender that any projections as to future events contained therein are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results (provided that nothing in this clause 0 shall operate to eliminate or derogate any of such Credit Party's obligations under the DIP Documents to which it is a party, including, without limitation, 0 and 0 herein).

(j) Budget. All facts in the Budget and each Weekly Budget Report (when delivered) are accurate and the Credit Parties have disclosed to the DIP Lender all material assumptions in the Budget and each Weekly Budget Report. After giving effect to the DIP Loans projected to be made under the Budget, such Credit Party believes, in good faith and in the exercise of its commercially reasonable judgment, that it has or will have sufficient capital and funds to pay and satisfy the expenses, obligations and liabilities of such Credit Party as set forth, as and when provided to be paid or satisfied, in the Budget.

(k) Absence of Events of Default and Material Adverse Effect. Since the Petition Date, no event has occurred and is continuing and no condition exists which constitutes a Default or Event of Default. Since the Petition Date, no Material Adverse Effect has occurred.

(l) DIP Collateral.

(i) From and after the issuance of the Interim Order or, if the Final Order has been entered, the Final Order, the DIP Lender shall have first-priority perfected DIP Liens in and to all of the DIP Collateral, free and clear of any Liens other than the Carve Out and Permitted Liens, and entitled to priority under applicable law, with no financing statements, hypothecations, chattel mortgages, real estate mortgages or similar filings on record with respect to such Credit Party or DIP Collateral anywhere other than such filings in connection with this Agreement and the DIP Documents (if any). Each of the representations and warranties made by such Credit Party in each DIP Document to which it is a party is true and correct as of each date made or deemed made.

(ii) The Interim Order or, if the Final Order has been entered, the Final Order, is effective to create in favor of the DIP Lender legal, valid, enforceable and fully perfected DIP Liens on the DIP Collateral. Subject to the Interim Order and the entry by the Bankruptcy Court of the Final Order, the provisions of each DIP Document are effective to create in favor of the DIP Lender a legal, valid and enforceable security interest in all right, title and interest of such Credit Party in the DIP Collateral described therein, and the DIP Lender will have a fully perfected security interest in all right, title and interest in all of the DIP Collateral described therein, in each case, subject to the exceptions contained in the DIP Orders and this Agreement, superior to and prior to the rights of all third Persons, and subject to no other Liens other than the Carve Out and Permitted Liens.

(m) Security Interest. Upon entry of each of the Interim Order and the Final Order, as applicable, each such DIP Order shall be effective to create in favor of the DIP Lender a legal, valid, enforceable and perfected security interest in the DIP Collateral and proceeds thereof, as and to the extent contemplated by each such DIP Orders and the DIP Documents.

(n) DIP Orders. The Interim Order or, at all times after its entry by the Bankruptcy Court, the Final Order, is in full force and effect, and has not been vacated,

reversed, terminated, stayed, modified or amended in any manner without the reasonable written consent of the DIP Lender.

(o) Patriot Act. Such Credit Party hereby represents and warrants that it is not, nor is it acting as an agent, representative, intermediary or nominee for, a person identified on the list of blocked persons maintained by the Office of Foreign Assets Control, U.S. Department of Treasury. In addition, such Credit Party has complied with all applicable U.S. laws, regulations, directives, and executive orders imposing economic sanctions, embargoes, export controls or anti-money laundering requirements, including but not limited to the Patriot Act.

ARTICLE V AFFIRMATIVE COVENANTS

Section 5.1 Affirmative Covenants. Each Credit Party, jointly and severally, covenants and agrees that until payment in full of all DIP Obligations (other than indemnification obligations for which a claim does not exist as of the applicable date of determination), such Credit Party shall perform all the covenants in this ARTICLE V applicable to it:

(a) Financial and Management Reporting Requirements.² **[The Debtors shall furnish to the DIP Lender and Administrative Agent;**

(i) copies of the monthly operating reports filed with the Bankruptcy Court on the date they are filed with the Bankruptcy Court;

(ii) commencing on the first Business Day that is at least one (1) week after the Petition Date, and every week thereafter, the Debtors shall (x) update the prior Budget showing the Debtors' projected cash needs for the ensuing thirteen (13) weeks, and (y) provide the DIP Lender and Administrative Agent a Weekly Budget Report;

(iii) on the third (3rd) Business Day of each calendar month, monthly bank statements for all of the Credit Parties' bank accounts for the prior calendar month and schedules of fixed assets and intellectual property, in form and substance satisfactory to the DIP Lender, for the prior calendar month;

(iv) read-only access to the Debtors' bank accounts; and

(v) on Friday of each week (or more frequently as required by the DIP Lender in its sole and absolute discretion), a written report from the management team of the Debtors, in form and substance satisfactory to the DIP Lender, addressing such items as are reasonably requested by the DIP Lender, including addressing the status of the Sale Process and the operations of the Credit Parties.

²

NTD: To be conformed to DIP Orders.

(b) **Other Information.** The Credit Parties shall furnish to the DIP Lender:

(i) as soon as practicable in advance of filing with the Bankruptcy Court or delivering to any Committee appointed in the Chapter 11 Cases or to the United States Trustee for the District of Delaware, as the case may be, the Final Order (which must be in form and substance satisfactory to the DIP Lender in its sole and absolute discretion), all other proposed orders and pleadings related to the approval of this Agreement and the transactions contemplated herein (which must be in form and substance satisfactory to the DIP Lender in its sole and absolute discretion) and any plan of reorganization and/or any disclosure statement related thereto or any proposed asset purchase agreements, merger agreements, or acquisition agreements;

(ii) at any time and from time to time that any Credit Party receives any written notice from any Governmental Authority, such Credit Party shall immediately, and in no event later than one (1) Business Day, provide a copy of such notice to the DIP Lender, and such Credit Party shall provide to the DIP Lender copies of all reports, certificates and notices that such Credit Party may provide to such Governmental Authority;

(iii) promptly (i) upon (but no later than three (3) Business Days after) request therefor by the DIP Lender, such information regarding the business or the financial or corporate affairs of the Credit Parties or the compliance by the Credit Parties with the terms of this Agreement or the other DIP Documents as the DIP Lender may from time to time reasonably request; and (ii) upon any officer of the Credit Parties becoming aware thereof, notify the DIP Lender writing of (I) the occurrence of any Default or Event of Default, and (II) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.]

(c) **Access.** [The Credit Parties shall (i) upon reasonable prior written notice (including via acknowledged electronic mail) during normal business hours, permit the DIP Lender to visit and inspect any of the Credit Parties' properties and to have full access to and the right to audit, check, inspect and make abstracts and copies from each Credit Party's books, records, audits, correspondence and all other papers relating to the operation of the Credit Parties' businesses; and (ii) cause their management team to be available to provide periodic telephonic updates of such reports to the DIP Lender from time to time (but not less frequently than weekly), as reasonably requested by the DIP Lender.]

(d) **Use of Proceeds.** The Debtors shall use the proceeds of the DIP Loans solely for the purposes set forth in Section 2.3.

(e) **Budget Compliance.** [The Debtors shall comply with the Budget (subject to the permitted variances provided in the next immediate sentence), and shall not make any payments, or incur any obligations or liabilities, except as expressly projected and provided for in the Budget. Notwithstanding the foregoing,

as of the last day in each weekly period covered in a Weekly Budget Report, cash receipts and cash disbursements (which shall not and do not include Professional Fees and Expenses) paid by the DIP Borrower may vary from the applicable Budget by not more than (A) ten percent (10%) for cash receipts on a trailing two (2) week basis; (B) ten percent (10%) for cash disbursements on a trailing two (2) week basis; and (C) five percent (5%) on a cumulative basis for that portion of the Budget period then ended (the “Permitted Variances”). Permitted Variances are not cumulative beyond a rolling two-week basis.]

(f) Maintenance of Existence. Each Credit Party shall (i) preserve, renew and maintain in full force and effect its legal existence, structure and name under the laws of the jurisdiction of its organization; and (ii) take all commercially reasonable action to maintain all rights, privileges (including its good standing, where such concept exists), permits, licenses and franchises necessary or desirable in the normal conduct of its business.

(g) Maintenance of Properties. Each Credit Party shall maintain, preserve and protect all of its material properties and equipment that are used or useful in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted, and make all commercially reasonable and appropriate repairs, renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof except where failure to do so would not reasonably be expected to materially adversely affect the use of the related property.

(h) Compliance with Laws. Except as otherwise excused by the Bankruptcy Code, each Credit Party shall comply with all laws, rules, licenses, permits, regulations and orders of any Governmental Authority applicable to it or its property, except where failures to do so, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(i) Compliance with DIP Orders. The Debtors shall comply with the applicable DIP Order to the extent the Debtors’ compliance therewith is required at such time.

(j) Insurance. The Credit Parties shall, promptly following the entry of the Interim Order, use commercially reasonable efforts to cause the DIP Lender to be named as an additional insured and loss payee under all insurance policies to be maintained with respect to the property of the Credit Parties forming part of the DIP Collateral.

(k) Deposit Account Control Agreements. The Debtors shall, promptly following the entry of the Interim Order, use commercially reasonable efforts to deliver to DIP Lender fully executed deposit account control agreements, in form and substance satisfactory to the DIP Lender in its sole discretion with respect to each deposit account and security account maintained by the Debtors, establishing “control” under the applicable state Uniform Commercial Code.

(l) Further Assurances.

(i) The Credit Parties shall cooperate with the DIP Lender, take such action, execute such documents, and provide such information as the DIP Lender may from time to time reasonably request in order to effect the transactions contemplated by and the purposes and intent of the DIP Documents.

(ii) Each Credit Party shall promptly, upon request by the DIP Lender, correct, and cause each of the other parties to the DIP Documents to promptly correct, any defect or error that may be discovered in any DIP Document or in the execution, acknowledgment or recordation of the DIP Document. Promptly upon request by the DIP Lender, the Credit Parties shall execute, authorize, acknowledge, deliver, record, file and register, any and all such further acts, deeds, conveyances, documents, security agreements, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations, notices of assignment, transfers, certificates, assurances and other instruments as the DIP Lender may reasonably require from time to time in order to carry out more effectively the purposes and intent of each DIP Document; *provided* that the Debtors shall not be required to incur any costs or expenses in connection with complying with this provision unless such expenditures are covered in the Budget and failure to comply with this section because funds are not available under the Budget shall not constitute a breach. Without limiting the foregoing, the Debtors shall (A) authorize the filing by the DIP Lender of UCC-1 financing statements for all jurisdictions deemed necessary or desirable by the DIP Lender, and (B) take such action from time to time (including, without limitation, authorizing, filing, executing and/or delivering such assignments, security agreements and other instruments) as shall be reasonably requested by the DIP Lender to create, in favor of the DIP Lender, to the extent required under the respective DIP Documents and to the maximum extent permitted under applicable law, a first-priority perfected Lien in all of the DIP Collateral, subject only to the Carve Out and Permitted Liens.

ARTICLE VI_ NEGATIVE COVENANTS/BUDGET COMPLIANCE

Section 6.1 Negative Covenants. Each Credit Party, jointly and severally, covenants and agrees that until payment in full of all DIP Obligations (other than indemnification obligations for which a claim does not exist as of the applicable date of determination) have been paid in full, such Credit Party shall perform all covenants in this Section 6.1 applicable to it:

(a) Indebtedness. No Credit Party shall incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly), any Indebtedness, performance, obligations or dividends of any other Person, except the Indebtedness described in the following clauses (i) through (iv):

(i) the DIP Obligations;

(ii) Indebtedness incurred pursuant to the Warehouse Interim Order and Warehouse Final Order;

(iii) purchase money Indebtedness (including Capital Leases) arising after the date hereof to the extent secured by purchase money security interests in Equipment (including Capital Leases) not to exceed \$10,000 in the aggregate at any time outstanding to the extent consistent with the Budget;

(iv) Indebtedness existing on the Petition Date and listed on Schedule 6.1(a)(iii); *provided* that such Indebtedness remains at all times junior and subordinate to the DIP Obligations pursuant to the DIP Orders; and

(v) unsecured trade debt of the Debtors incurred in the ordinary course of business after the Petition Date to the extent consistent with the Budget.

(b) Liens. No Credit Party shall create or incur any Liens on any of their respective property or assets, except (the Liens described in the following clauses (i) through (v), the “Permitted Liens”):

(i) Liens of the DIP Lender securing the DIP Obligations;

(ii) Liens granted to SPV Borrower, Intermediate Seller, Administrative Agent, and Warehouse Lenders pursuant to the Financing Orders;

(iii) Liens securing the payment of Taxes, assessments or other governmental charges or levies either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to the applicable Credit Party and with respect to which adequate reserves have been set aside on its books;

(iv) Liens existing on the Petition Date and listed on Schedule 6.1(b)(iii), including Liens securing the Credit Parties’ obligations under the Warehouse Credit Agreement; *provided* that, with respect to the DIP Collateral, such Liens remain at all times junior and subordinate to the DIP Liens pursuant to the DIP Orders; and

(v) non-consensual statutory Liens (other than Liens securing the payment of taxes) arising in the ordinary course of the Credit Parties’ business to the extent: (A) such Liens secure Indebtedness which is not overdue or (B) such Liens secure Indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued by the applicable Credit Party, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books.

In addition, the Credit Parties shall not create or permit to exist (y) any administrative expense, unsecured claim, or other claim or Lien on the DIP Collateral, or apply to the Bankruptcy Court for authority to do so, except for the Carve Out or as may be included in the Budget, and (z) any obligation to make adequate protection payments, or otherwise provide adequate protection, other than any adequate protection obligations owed to the Administrative Agent in connection with its authorization to use cash collateral.

(c) Restricted Payments. The Credit Parties shall not directly or indirectly: (i) make any payment of principal or interest or otherwise on account of any (y) Prepetition Indebtedness or trade payables or (z) Postpetition Indebtedness or trade payables, in each case, other than as included in the Budget and agreed to by each of the DIP Lender and Administrative Agent in each of their sole and absolute discretion or as otherwise permitted or required pursuant to the Financing Orders; and (ii) declare or make any dividend, payment or other distribution directly or indirectly of cash or a non-cash asset on account of the Capital Stock of any Credit Party.

(d) Fundamental Changes. No Credit Party shall merge, dissolve, liquidate, consolidate with or into another Person, split or allow any change to the ownership of such Credit Party, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person.

(e) Change in Nature of Business. Except as required by the Bankruptcy Code or as set forth in any order of the Bankruptcy Court, no Credit Party shall engage in any line of business other than those lines of business conducted by such Credit Party on the Closing Date.

(f) Material Contracts. From and after the Closing Date, no Credit Party shall enter into a material contractual obligation without the consent of the DIP Lender.

(g) Chapter 11 Claims. Except as provided in the DIP Orders, the Credit Parties will not incur, create, assume, suffer to exist or permit any other superpriority expense claim under section 364 of the Bankruptcy Code or any or Lien which is senior to or pari passu with, the DIP Liens securing the DIP Obligations.

(h) Revision of Orders; Applications to Bankruptcy Court. The Credit Parties shall not:

(i) seek, consent to or suffer to exist any modification, stay, vacation or amendment of the applicable DIP Order or the Bid Procedures Order, or file any other application, motion or other pleading materially inconsistent with this Agreement, except for any modifications and amendments agreed to in writing by the DIP Lender; or

(ii) apply to the Bankruptcy Court for authority to take any action prohibited by this Section 6.1 (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of the DIP Lender);

(i) Retention Plans. The Credit Parties shall not file with the Bankruptcy Court a motion to approve, or otherwise seek approval of or pay, any incentive or retention plan, except as otherwise as agreed in writing by the DIP Lender.

ARTICLE VII
SECURITY AND PRIORITY

Section 7.1 Grant of Security Interest. As security for the payment and performance of the DIP Obligations, each Debtors hereby assigns and grants to the DIP Lender, subject only to the Carve Out and Permitted Liens, valid, binding, enforceable, fully-perfected first-priority security interests in all DIP Collateral, including (i) pursuant to section 364(d)(1) of the Bankruptcy Code, first priority, senior priming Liens on and security interests in all DIP Collateral subject to validly-perfected, existing Liens on the Petition Date, including, for the avoidance of doubt, any valid, non-avoidable and enforceable Lien that is perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), such that the DIP Lender shall have Liens senior in all respects to any security interests in the DIP Collateral; and (ii) pursuant to section 364(c)(2) of the Bankruptcy Code, first-priority, senior Liens on and security interests in all DIP Collateral that is not subject to existing Liens on the Petition Date (collectively, the “DIP Liens”).

Section 7.2 DIP Superpriority Claim. Subject only to the Carve Out, all amounts owing by the Debtors to the DIP Lender under this Agreement, including the DIP Obligations and all accrued interest, fees, costs and expenses (a) will at all times, in accordance with section 364(c)(1) of the Bankruptcy Code, constitute allowed superpriority administrative expense claims in the Chapter 11 Cases, having priority over all administrative expenses of the kind specified in, among other sections, sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code (the “DIP Superpriority Claims”).

Section 7.3 Cash Management. The Credit Parties shall use a cash management system that is the same as or substantially similar to their Prepetition cash management system and that is satisfactory to the DIP Lender; *provided*, that the Credit Parties shall only be allowed to withdraw or transfer from their accounts amounts necessary to fund expenses of the DIP Borrower in accordance with the Budget, unless otherwise authorized in writing by the DIP Lender and an order of the Bankruptcy Court. Any changes from such Prepetition cash management system must be approved in writing by the DIP Lender and approved by an order of the Bankruptcy Court.

ARTICLE VIII _____
TAXES; INDEMNIFICATIONS, SET OFF; ETC.

Section 8.1 Taxes; Withholding, Etc.

(a) Payments to Be Free and Clear. Except as otherwise required under this Section 8.1, all sums payable by the Credit Parties hereunder and under the other DIP Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of the DIP Lender) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on

behalf of the Credit Parties or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If any Credit Party is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by such Credit Party to the DIP Lender in the ordinary or general conduct of business: (i) such Credit Party shall notify the DIP Lender of any such requirement or any change in any such requirement as soon as the Credit Party becomes aware of it, (ii) such Credit Party shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on such Credit Party) for its own account or (if that liability is imposed on the DIP Lender, as the case may be) on behalf of and in the name of the DIP Lender, (iii) in the case of Taxes other than Taxes on the overall net income of the DIP Lender or Taxes otherwise excluded from payment or indemnity under Section 8.1(a), the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, the DIP Lender receives an amount equal to what it would have received had no such deduction, withholding or payment been required or made, and (iv) within 30 days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by clause (ii) above to pay, such Credit Party shall deliver to the DIP Lender evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

Section 8.2 Indemnification. Each Credit Party will indemnify and defend the DIP Lender, each of its affiliates and each of their respective officers, directors, employees, agents, advisors, attorneys and representatives (each, an “Indemnified Person”) from and against any and all claims, damages losses, liabilities and expenses (including, without limitation, reasonable fees and disbursements of counsel and financial advisors, joint or several, that may be incurred by or asserted or awarded against any Indemnified Person (including, without limitation, in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense in connection therewith), in each case arising out of or in connection with or by reason of the DIP Facility, the DIP Documents or any of the transactions contemplated thereby, or any actual or proposed use of the proceeds of the DIP Facility, except to the extent such claim, damage, loss, liability or expense is found in a final nonappealable judgment by a court of competent jurisdiction to have resulted primarily from such Indemnified Person’s gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Credit Parties, any of their directors, security-holders or creditors, an Indemnified Person or any other person, or an Indemnified Person is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated.

Section 8.3 Right of Set Off. Notwithstanding the provisions of Bankruptcy Code section 362, upon the occurrence of any Event of Default, the DIP Lender is hereby authorized by the DIP Borrower at any time or from time to time, without notice to the DIP Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of

deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by the DIP Lender to or for the credit or the account of the DIP Borrower against and on account of the DIP Obligations of the DIP Borrower to the DIP Lender hereunder, irrespective of whether or not (a) the DIP Lender shall have made any demand hereunder or (b) the principal of or the interest on the DIP Loans or any other amounts due hereunder or the other DIP Documents shall have become due and payable and although such obligations and liabilities, or any of them, may be contingent or unmatured.

ARTICLE IX_ EVENTS OF DEFAULT

Section 9.1 Events of Default. Any one or more of the following events which shall occur shall constitute an “Event of Default”:

(a) Failure to Make Payments When Due. Failure by any Credit Party to make payments on any of the DIP Obligations as and when due;

(b) Breach of Covenants. Failure of any Credit Party to perform or comply with any of its affirmative or negative covenants in this Agreement, including the Permitted Variance, or the other DIP Documents to which it is a party, and such failure continues for a period of three (3) Business Days following notice thereof to such Credit Party;

(c) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any DIP Document, the Sale Documents or in any statement or certificate at any time given by any Credit Party in writing, pursuant hereto or thereto or in connection herewith or therewith shall be incorrect in any material respect as of the date made or deemed made;

(d) Other Material Breach. Any other material breach by any Credit Party of its obligations under the Sale Documents.

(e) Administrative Expenses. Failure of the Debtors to pay all of their undisputed administrative expenses in full in accordance with and subject to the terms as provided for in the Budget;

(f) Financing Orders. (i) Any Financing Order or the DIP Facility becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the DIP Lender and Administrative Agent, or (ii) failure of any Credit Party to perform or comply with the terms of the DIP Orders in any material respect;

(g) Conversion or Dismissal of Case. The entry of an order dismissing the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, or any Credit Party files, without the prior written consent of the DIP Lender, a motion or other pleading seeking entry of such an order or supports or fails to timely oppose such dismissal or conversion;

(h) Trustee. A trustee, responsible officer or an examiner having expanded powers under Bankruptcy Code Section 1104 (other than (x) a fee examiner or (y) for

purposes of an investigation pursuant to Sections 1106(a)(3) and (4) of the Bankruptcy Code) is appointed or elected in the Chapter 11 Cases, or any Credit Party applies for, consents to, supports, acquiesces in or fails to promptly oppose, any such appointment, or the Bankruptcy Court shall have entered an order providing for such appointment, in each case without the prior written consent of the DIP Lender in its sole and absolute discretion;

(i) Challenges. Any Credit Party takes any action to, or fails to take all reasonable actions necessary to oppose any action by any other Person (including, but not limited to, (a) challenging the standing of such party to bring any such action, (b) filing pleadings, providing evidentiary support, and appearing in court to support and present the same in opposition of such party's action, and (c) timely prosecuting all available appeals of any order or decision authorizing such party's actions or approving relief granted to such party or timely opposing all appeals (or attempts to appeal) decisions denying standing or relief to such party), in each case, except as expressly permitted hereunder and in the DIP Orders, (i) impair any of the material rights and remedies of the DIP Lender under the DIP Documents, or (ii) avoid, subordinate, disallow, or require disgorgement by the DIP Lender of any amount received in respect of the DIP Obligations;

(j) DIP Documents Impaired. At any time after the execution and delivery thereof, (i) this Agreement or any DIP Document ceases to be in full force and effect (other than by reason of a release of DIP Collateral in satisfaction in full of the DIP Obligations in accordance with the terms hereof) or shall be declared null and void, or the DIP Lender shall not have or shall cease to have a valid and perfected first priority DIP Liens, subject only to the Carve Out and Permitted Liens, in any of the DIP Collateral, (ii) any Credit Party shall contest the validity or enforceability of any DIP Document in writing or deny in writing that it has any further liability under any DIP Document to which it is a party, or (iii) any order is entered by the Bankruptcy Court staying, reversing, vacating or otherwise modifying, without the DIP Lender's consent, the DIP Facility, this Agreement or any of the other DIP Documents;

(k) DIP Liens; Superpriority Claims. At any time after the execution and delivery thereof, the DIP Liens and/or the DIP Superpriority Claims created by the DIP Documents cease to be valid, perfected and enforceable in the priorities described in this Agreement or, except for expiration in accordance with its terms, any of the DIP Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Credit Party;

(l) Liens or Superpriority Claims. Any superpriority administrative expense claim or Lien (other than the Carve Out or Permitted Liens) that is *pari passu* with or senior to the DIP Liens and/or claims of the DIP Lender in connection with the DIP Loans shall have arisen or be authorized or allowed (other than as expressly allowed pursuant to the Financing Orders);

(m) Ownership of Assets. Any order of the Bankruptcy Court is entered determining that (i) any of the Purchased Assets are not property of the Debtors' bankruptcy estates, (ii) the Purchased Assets are not capable of being sold pursuant to section 363 of the Bankruptcy Code or (iii) any of the Purchased Assets cannot be sold free

and clear of a Lien or other encumbrance thereon, other than any contracts that cannot be transferred without the consent of a counterparty;

(n) Adequate Protection. The Debtors make payment of or grant adequate protection with respect to prepetition debt (other than as approved by the DIP Lender, Administrative Agent, and the Bankruptcy Court or as otherwise contemplated by the DIP Documents);

(o) Material Impairment. The filing of a motion, pleading or proceeding by any Credit Party which could reasonably be expected to result in a material impairment of the rights or interests of the DIP Lender under the DIP Documents or any DIP Orders or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in such a material impairment;

(p) Termination of Exclusivity Period; Plan or Sale. The termination or reduction of the exclusivity period for any Debtor to file a chapter 11 plan in the Chapter 11 Cases;

(o) Plan, Asset Sale or Change of Control. Any Credit Party files a plan of reorganization that does not require the indefeasible repayment in full in cash of the DIP Obligations as of the effective date of such plan of reorganization, or files a plan of liquidation, or enters into any Asset Sale (other than in accordance with the Bid Procedures Order or otherwise approved in writing by the DIP Lender) or a Change of Control occurs (other than as a result of any sale of the Purchased Assets);

(p) Relief from Automatic Stay. The Bankruptcy Court shall enter an order granting relief from the automatic stay to any creditor or party in interest (other than the DIP Lender or the Administrative Agent in accordance with the Warehouse Interim Order or Warehouse Final Order, as applicable) (i) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any Credit Party with a value in excess of \$25,000, or (ii) to permit other actions that the DIP Lender may, in its sole and absolute discretion, deem to have a Material Adverse Effect;

(q) Prohibited Payments. Any Debtor makes any Prepetition Payment that is not authorized by an order of the Bankruptcy Court and set forth in the Budget;

(t) Government Restraint. Any Governmental Authority, by a final, non-appealable order, ruling or other action, shall prevent any Credit Party from conducting any material part of such Credit Party's business, to the extent such prevention could reasonably be expected to result in a Material Adverse Effect;

(r) Judgments. Any judgments which are in the aggregate in excess of [\$50,000] as to any Postpetition obligation shall be rendered against any Credit Party and the enforcement thereof shall not be stayed (by operation of law, the rules or orders of a court with jurisdiction over the matter or by consent of the party litigants), or there shall be rendered against any Credit Party a nonmonetary judgment with respect to a Postpetition event which causes or would reasonably be expected to cause a Material Adverse Effect;

(s) Employment or Environmental Liabilities. Any Credit Party incurs any liability under employment or environmental law that is reasonably likely to result in a Material Adverse Effect;

(t) Unexpired Leases. Any Debtor files a motion with the Bankruptcy Court to reject any unexpired lease of such Debtor that the DIP Lender deems to be material in its sole and absolute discretion;

(u) Sale Milestones. The Debtors' failure to comply with the Sale Milestones;

(v) DIP Milestones. The Debtors' failure to comply with the DIP Milestones.

(w) Warehouse Facility. The Warehouse Lenders and/or Administrative Agent cease to perform under the Warehouse Credit Agreement or in accordance with their obligations under the Financing Orders, or otherwise cease to provide the Warehouse Facility to the Debtors; or

(x) Cash Management. The Debtors make any change to their Prepetition cash management system that is not approved in advance in writing by the DIP Lender and Administrative Agent and approved by an order of the Bankruptcy Court.

Section 9.2 Remedies. Upon the occurrence of an Event of Default, the DIP Lender may, upon written notice to the Credit Parties (with a copy to the United States Trustee and counsel to any Committee), take any or all of the following actions: (i) (a) declare the DIP Commitment terminated, whereupon all DIP Commitment shall forthwith terminate immediately; (b) declare the principal of and any accrued interest in respect of all DIP Loans and any promissory notes evidencing such DIP Loans and all other DIP Obligations owing with respect thereto hereunder and thereunder to be, whereupon the same shall become, forthwith immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Credit Parties; and (c) enforce all of the DIP Liens and security interests created pursuant to the DIP Documents securing DIP Obligations owing to the DIP Lender, and (ii) in addition to the foregoing, upon the occurrence of an Event of Default, the DIP Lender may, (a) exercise any right of counterclaim, setoff, banker's lien or otherwise which it may have with respect to money or property of the Credit Parties, (b) bring any lawsuit, action or other proceeding permitted by law for the specific performance of, or injunction against any violation of, any DIP Document and may exercise any power granted under or to recover judgment under any DIP Document, and (c) exercise any other right or remedy permitted or otherwise available to the DIP Lender, at law, in equity or otherwise, including realizing on the DIP Collateral.

Section 9.3 Remedies Cumulative. No remedy herein conferred for the benefit of the DIP Lender is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

ARTICLE X_
CERTAIN BANKRUPTCY MATTERS

Section 10.1 Marshalling, Waiver of 506(c) Claims and Waiver of Equities. Subject to entry of the Final Order, the DIP Lender shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral, and all proceeds thereof shall be received and used in accordance with the Interim Order and the Final Order. Subject to the entry of the Final Order, the DIP Lender shall (i) be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) shall not apply to the DIP Lender with respect to proceeds, products, offspring, or profits of any of the DIP Collateral, and (ii) not be subject to any surcharge claim under sections 506(c) or 105(a) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lender upon the DIP Collateral or and no costs or expenses of administration that have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Lender or any of its claims or Liens, and the Credit Parties hereby irrevocably waive any such claims.

Section 10.2 Credit Bidding. In accordance with section 363(k) of the Bankruptcy Code, the DIP Lender shall have the unqualified right to credit bid up to the full amount of the DIP Obligations in any sale of the Credit Parties’ assets, including the Purchased Assets, without the need for further court order authorizing the same, and whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

Section 10.3 Lien Validation and Perfection. All Liens authorized and granted pursuant to the Interim Order or the Final Order entered by the Bankruptcy Court approving the DIP Loans protection shall be deemed effective and perfected as of the Petition Date, and no further filing, notice or act will be required to effect such perfection.

Section 10.4 Bankruptcy Court Filings. At least twenty-four (24) hours in advance of filing with the Bankruptcy Court, the Debtors shall furnish to the DIP Lender and Administrative Agent all of the following, which shall be in form and substance acceptable to the DIP Lender in its sole and absolute discretion:

- (a) the “first-day” pleadings and all orders sought pursuant thereto;
- (b) the motion seeking approval of and proposed forms of the Interim Order and the Final Order;
- (c) the Bid Procedures Motion and Bid Procedures Order;
- (d) all other proposed orders and pleadings related to this Agreement, the other DIP Documents, the Sale Process, the Sale Documents, and the DIP Facility;
- (e) any plan of reorganization or liquidation, and/or any disclosure statement related to such plan;
- (f) any motion and proposed form of order seeking to extend or otherwise modify the Debtors’ exclusive periods set forth in section 1121 of the Bankruptcy Code; and

(g) any motion and proposed form of order filed with the Bankruptcy Court relating to any management equity plan, incentive plan or severance plan, the assumption, rejection, modification or amendment of any material contract.

Section 10.5 Carve Out. Subject to entry of the Interim Order and Final Order, the Liens and claims granted to the DIP Lender and any adequate protection obligations provided for in this Agreement, the Interim Order or the Final Order are all subject to the Carve Out.

Section 10.6 Sale Process. The Debtors shall implement the Sale Process consistent with the terms of the Bid Procedures Order in accordance with the following milestones (subject to Bankruptcy Court availability, as applicable) (the “Sale Milestones”), which may be extended by the written consent of the DIP Lender in its sole and absolute discretion:

(a) the Bankruptcy Court shall have entered the Bid Procedures Order by no later than twenty-five (25) days following the Petition Date (the “Bid Procedures Order Deadline”);

(b) any competing bids must be received by the Debtors by not later than fifteen (15) days after the Bid Procedures Order Deadline (the “Competing Bid Deadline”);

(c) if one or more qualified bids are received by the Debtors by the Competing Bid Deadline, the Debtors shall conduct an auction (the “Auction”) on or prior to the fiftieth (50th) day after the Petition Date;

(d) a hearing before the Bankruptcy Court (the “Sale Hearing”) to consider entry of an order approving the sale (the “Sale Order”) must be held by not later than seven (7) days after the conclusion of the Auction;

(e) the Bankruptcy Court shall have entered the Sale Order by not later than sixty (60) days following the Petition Date (the “Sale Order Entry Deadline”); and

(f) the closing of the sale of the Purchased Assets shall occur by not later than the earlier of (y) five (5) days following date by which the Sale Order shall have become a final order; or (z) eighty (80) days following the Petition Date.

Section 10.7 DIP Milestones. In connection with the conduct of the Chapter 11 Cases, the Debtors shall strictly comply with the following milestones (the “DIP Milestones”):

(a) on the Petition Date, the Debtors shall have filed a motion seeking entry of the Bid Procedures Order, approving the Sale Process, including the Purchaser’s “stalking horse bid” and the Breakup Fee and Expense Reimbursement (each as defined in the Stalking Horse Purchase Agreement);

(b) on or before the date that is two (2) Business Days after the Petition Date, the Interim Order and Warehouse Interim Order shall have been entered by the Bankruptcy Court; and

(c) on or before the date that is twenty-eight (28) days after the Petition Date, the Final Order and Warehouse Final Order shall have been entered by the Bankruptcy Court.

Section 10.8 Termination Date Remedies. Notwithstanding anything in this Agreement to the contrary, including Section 9.2, on and after the occurrence of the Termination Date, the DIP Lender is authorized to take any or all of the following actions without further notice (other than the Termination Notice), motion or application to, order of or hearing before the Bankruptcy Court:

- (a) cease making any DIP Loan advances to the DIP Borrower;
- (b) terminate, reduce or restrict any commitment to extend credit to the DIP Borrower under this Agreement;
- (c) declare the unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and all other DIP Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Credit Party;
- (d) freeze monies or balances in the Credit Parties' accounts except to the extent that such cash may be used for the Carve Out;
- (e) (i) immediately set off any and all amounts in accounts maintained by the DIP Borrower with the DIP Lender against the Obligations except to the extent that such cash may be used for the Carve Out; (ii) enforce all rights and remedies against the DIP Collateral in the possession of the DIP Lender for application towards the DIP Obligations and otherwise proceed to protect or enforce all rights and remedies of the DIP Lender under this Agreement or any of the other DIP Documents or applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement (or any other DIP Document) or any instrument pursuant to which the DIP Obligations are evidenced; and (iii) if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the DIP Lender, except to the extent necessary for payment of the Carve Out; and
- (f) take any other actions or exercise any other rights or remedies permitted under this Interim Order or the Final Order, as applicable, this Agreement or any of the DIP Documents, or applicable law to effectuate the repayment of the DIP Obligations;

provided, however, that, prior to the first exercise of any right or remedy described in clauses (b) through (f) of this Section 10.8, the DIP Lender shall be required to provide to the Debtors (with a copy to their bankruptcy counsel), counsel to the Committee (if any), counsel to the Administrative Agent, and the U.S. Trustee five (5) days' prior written notice of the DIP Lender's intention to enforce any such rights or remedies (the "Termination Notice").

ARTICLE XI_
MISCELLANEOUS

Section 11.1 Amendments and Waivers. No amendment, modification, termination (other than pursuant to the express terms of the DIP Documents) or waiver of any provision of the DIP Documents, or consent to any departure by any Credit Party therefrom, shall be effective without (i) the written consent of the DIP Lender, acting in its sole and absolute discretion, and (ii) solely with respect to any amendment, modification, termination or waiver affecting the rights of the Administrative Agent or Warehouse Lenders hereunder, under the Financing Orders, or in connection with the Sale Process, the written consent of the Administrative Agent, acting in its sole and absolute discretion.

Section 11.2 Notices. All notices, requests, demands and other communications to any party or given under any DIP Document (collectively, the “Notices”) will be in writing and delivered personally, by overnight courier or by registered mail to the parties at the following address or sent by electronic transmission (with confirmation of transmission), to the address specified below (or at such other address as will be specified by a party by like notice given at least five calendar days prior thereto):

(a) If to the DIP Borrower or any other Credit Party, at:

Flexshopper, Inc.
901 Yamato Road, Suite 260
Boca Raton, Florida 33431
Attention: John Davis
Email: [●]

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

Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE
Attention: Robert J. Dehney
Matthew O. Talmo
Tarik J. Haskins
Email: rdehney@morrisnichols.com
mtalmo@morrisnichols.com
thaskins@morrisnichols.com

(b) If to DIP Lender:

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

Ballen1@snapfinance.com

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

Troutman Pepper Locke LLP
875 Third Avenue
New York, NY 10022
Attention: Matthew Ray Brooks
David Fournier
Email: matthew.brooks@troutman.com
David.fournier@troutman.com

All Notices will be deemed delivered when actually received. Each of the parties will hereafter notify the other in accordance with this Section of any change of address or email address to which notice is required to be mailed.

Section 11.3 Expenses. Whether or not the transactions contemplated hereby shall be consummated or any DIP Loans shall be made, but subject to entry of the Interim DIP Order, the Debtors agree to pay promptly upon written demand from the DIP Lender (together with summary backup documentation supporting such reimbursement request) and without the requirement for Bankruptcy Court approval:

(a) all of the actual, documented, and reasonable, out-of-pocket costs and expenses of the DIP Lender (including, without limitation, fees and disbursements of counsel, including local counsel, and financial and accounting advisors) incurred in connection with the negotiation, preparation, execution and entry into the Sale Term Sheet, this Agreement, each of the other DIP Documents and any consents, amendments, waivers or other modifications thereto; the reasonable fees, expenses and disbursements in connection with the negotiation, preparation, execution, administration or enforcement of the DIP Documents and any consents, amendments, supplements, waivers or other modifications thereto;

(b) all of the actual, documented, and reasonable, out of pocket costs and expenses of creating and perfecting Liens in favor of the DIP Lender pursuant hereto, including, without limitation, filing and recording fees, expenses, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements;

(c) all of the actual, documented, and reasonable, out-of-pocket costs and expenses of the DIP Lender (including, without limitation, fees and disbursements of counsel, including local counsel, and financial and accounting advisors) incurred in connection with any litigation, contest, dispute, suit, proceeding or action (whether instituted by the DIP Lender, the Credit Parties or any other Person) in any way relating to this Agreement or the other DIP Documents or any Credit Party's affairs;

(d) upon the occurrence of an Event of Default, all the actual costs and reasonable fees, expenses and disbursements of any attorneys, auditors, accountants, consultants, appraisers, advisors and agents employed or retained by the DIP Lender, in

connection with the inspection, verification, custody or preservation of any of the DIP Collateral, to the extent required or permitted hereunder;

(e) after the occurrence and during the continuance of a Default or an Event of Default, all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees (including allocated costs of internal counsel) and out-of-pocket costs incurred by the DIP Lender in enforcing any DIP Obligations of or in collecting any payments due from any Credit Party hereunder or under the other DIP Documents; and

(f) the Chapter 11 Cases.

Section 11.4 Enforceability; Successors and Assigns. This Agreement will be binding upon and inure to the benefit of and is enforceable by the respective successors and permitted assigns of the parties hereto. The Administrative Agent shall have the right to enforce any provision of this Agreement granting any rights to, or otherwise affecting the rights of, the SPV Borrower, Intermediate Seller, Administrative Agent, or Warehouse Lenders. No Credit Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other DIP Document without the prior written consent of the DIP Lender. The DIP Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other DIP Documents. Any assignment or attempted assignment in contravention of this Section will be void ab initio and will not relieve the assigning party of any obligation under this Agreement.

Section 11.5 Integration. This Agreement and the other DIP Documents contain and constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior negotiations, agreements and understandings, whether written or oral, of the parties hereto.

Section 11.6 No Waiver; Remedies. No failure or delay by any party in exercising any right, power or privilege under this Agreement or any of the other DIP Documents will operate as a waiver of such right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of the right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies provided in the DIP Documents will be cumulative and not exclusive of any rights or remedies provided by law.

Section 11.7 Setoff. The Credit Parties hereby, subject to the DIP Orders, the Carve Out and Permitted Liens, grant to the DIP Lender a continuing lien, security interest and right of setoff as security for all liabilities and obligations to the DIP Lender, whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of DIP Lender or any Affiliate and their successors and assigns or in transit to any of them. Regardless of the adequacy of any collateral, if any of the DIP Obligations are due and payable and have not been paid or any Event of Default shall have occurred, any deposits or other sums credited by or due from the DIP Lender to any Credit Party and any securities or other property of any Credit Party in the possession of the DIP Lender may be applied to or set off by the DIP Lender against the payment of DIP Obligations and any and all other liabilities, direct, or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of any Credit Party to the DIP Lender. **ANY AND ALL RIGHTS TO**

REQUIRE THE DIP LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER DIP COLLATERAL WHICH SECURES THE DIP OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE CREDIT PARTIES IS HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

Section 11.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement.

Section 11.9 Governing Law; Submission to Jurisdiction; Venue.

(a) SUBJECT TO THE JURISDICTION OF THE BANKRUPTCY COURT, THIS AGREEMENT AND THE OTHER DIP DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN CERTAIN OF THE OTHER DIP DOCUMENTS, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE INTERNAL LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICTS OF LAWS RULES AND PRINCIPLES THEREUNDER) AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER DIP DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT. IN THE EVENT THAT THE BANKRUPTCY COURT DOES NOT HAVE OR DOES NOT EXERCISE JURISDICTION, THEN IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER DIP DOCUMENT, EACH PARTY HERETO HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACKS PERSONAL JURISDICTION OVER SUCH PARTY, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER DIP DOCUMENT BROUGHT IN THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER SUCH PARTY. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS AND IN THE MANNER SET FORTH IN SECTION 10.2 HEREOF. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR

PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER DIP DOCUMENT THAT SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE DIP LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY CREDIT PARTY IN ANY OTHER JURISDICTION.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER DIP DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (A) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURTS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) THE BANKRUPTCY COURT SHALL RETAIN EXCLUSIVE JURISDICTION WITH RESPECT TO ALL MATTERS RELATING TO THE EXERCISE OF RIGHTS AND REMEDIES OF THE DIP LENDER HEREUNDER, WITH RESPECT TO THE CREDIT PARTIES, UNDER THE DIP ORDERS, OR WITH RESPECT TO THE DIP COLLATERAL; *PROVIDED* THAT THE CREDIT PARTIES MAY SEEK RELIEF FROM THE BANKRUPTCY COURT SOLELY REGARDING THE QUESTION WHETHER AN EVENT OF DEFAULT HAS OCCURRED OR IS CONTINUING.

Section 11.10 Waiver of Jury. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, DIP LENDER, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTIES WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 11.11 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this

Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 11.12 Survival. All representations, warranties, covenants, agreements, and conditions contained in or made pursuant to this Agreement or the other DIP Documents shall survive (a) the making of the DIP Loans and the payment of the DIP Obligations and (b) the performance, observance and compliance with the covenants, terms and conditions, express or implied, of all DIP Documents, until the due and punctual (i) indefeasible payment of the DIP Obligations and (ii) performance, observance and compliance with the covenants, terms and conditions, express or implied, of this Agreement and all of the other DIP Documents; *provided, however*, that the provisions of ARTICLE VII, and Section 11.3 shall survive (x) indefeasible payment of the DIP Obligations and (y) performance, observance and compliance with the covenants, terms and conditions, express or implied, of this Agreement and all of the other DIP Documents.

Section 11.13 Maximum Lawful Interest. Notwithstanding anything to the contrary contained herein, in no event shall the amount of interest and other charges for the use of money payable under this Agreement or any other DIP Document exceed the maximum amounts permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. The Parties, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and other charges for the use of money and manner of payment stated within it; *provided, however*, that, anything contained herein to the contrary notwithstanding, if the amount of such interest and other charges for the use of money or manner of payment exceeds the maximum amount allowable under applicable law, then, ipso facto as of the Closing Date, the DIP Lender shall only be entitled to payment of such maximum as allowed by law, and payment received from any Credit Party in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the DIP Loans to the extent of such excess.

Section 11.14 Interpretation. As used in this Agreement, references to the singular will include the plural and vice versa and references to the masculine gender will include the feminine and neuter genders and vice versa, as appropriate. Unless otherwise expressly provided in this Agreement (a) the words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement and (b) article, section, subsection, and schedule references are references with respect to this Agreement unless otherwise specified. Unless the context otherwise requires, the term “including” will mean “including, without limitation.” The headings in this Agreement and in the Schedules are included for convenience of reference only and will not affect in any way the meaning or interpretation of this Agreement.

Section 11.15 Ambiguities. This Agreement and the other DIP Documents were negotiated between legal counsel for the parties and any ambiguity in this Agreement or the other DIP Documents shall not be construed against the party who drafted this Agreement or such other DIP Documents.

Section 11.16 The PATRIOT Act. The DIP Lender subject to the PATRIOT Act hereby notifies each Credit Party, that pursuant to the requirements of the PATRIOT Act, it is required to

obtain, verify and record information that identifies such Credit Party and other information that will allow the DIP Lender to identify such Credit Party in accordance with the PATRIOT Act.

Section 11.17 Conflicting Provisions in DIP Documents. In the event that any provisions of this Agreement or any other DIP Document conflicts with any provision of the DIP Orders, the provisions of the DIP Orders shall govern and control.

Section 11.18 Modifications. Except as specifically contemplated in the DIP Orders, the DIP Liens, lien priority, administrative priorities and other rights and remedies granted to the DIP Lender pursuant to this Agreement and the DIP Orders (specifically, including, but not limited to, the existence, perfection and priority of the DIP Liens provided herein and therein and the administrative priority herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Credit Parties (pursuant to section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Chapter 11 Cases, or by any other act or omission whatsoever (other than in connection with any asset disposition permitted hereunder). Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission: (i) except for the Carve Out having priority over the DIP Obligations, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of the DIP Lender against any Credit Party in respect of any DIP Obligation; (ii) the DIP Liens granted under the DIP Documents shall continue to be valid and perfected and with the specified priority without the necessity that financing statements be filed or that any other action be taken, or document or instrument registered or delivered, under applicable non-bankruptcy law; and (iii) notwithstanding any failure on the part of the Credit Parties, the DIP Lender to perfect, maintain, protect or enforce the DIP Liens in the DIP Collateral granted under the DIP Documents, the DIP Orders shall automatically, and without further action by any Person, perfect such DIP Liens against the DIP Collateral of the Credit Parties.

Section 11.19 Release. THE CREDIT PARTIES, FOR THEMSELVES, THEIR AFFILIATES, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ASSIGNS, HEREBY FOREVER WAIVE, RELEASE AND DISCHARGE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DIP LENDER, AND ITS PRINCIPALS, PREDECESSORS, SUCCESSORS, ASSIGNS, AGENTS, EMPLOYEES, REPRESENTATIVES, ATTORNEYS, SUBSIDIARIES, AFFILIATES, FROM AND FROM ANY AND ALL CLAIMS (INCLUDING, WITHOUT LIMITATION, CROSSCLAIMS, COUNTERCLAIMS, RIGHT OF SET-OFF AND RECOUPMENT), ACTIONS, CAUSES OF ACTION, SUITS, DEBTS, ACCOUNTS, INTERESTS, LIENS, PROMISES, WARRANTIES DAMAGES AND CONSEQUENTIAL DAMAGES, DEMANDS, AGREEMENTS, BONDS, BILLS, SPECIALTIES, COVENANTS, CONTROVERSIES, VARIANCES, TRESPASSES, JUDGMENTS, EXECUTIONS, COSTS, EXPENSES OR CLAIMS WHATSOEVER, THAT THE CREDIT PARTIES NOW HAVE OR HEREAFTER MAY HAVE, OF WHATSOEVER NATURE AND KIND, OF ANY NATURE WHATSOEVER, WHETHER AT LAW OR IN EQUITY, EITHER NOW ACCRUED OR HEREAFTER MATURING AND WHETHER KNOWN OR UNKNOWN, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL CLAIMS WHICH MAY BE BASED ON ALLEGATIONS OF BREACH OF CONTRACT, FAILURE TO LEND, FRAUD, PROMISSORY ESTOPPEL, LIBEL, SLANDER, USURY, NEGLIGENCE, MISREPRESENTATION, BREACH OF

FIDUCIARY DUTY, BAD FAITH, LENDER MALPRACTICE, UNDUE INFLUENCE, DURESS, TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS, INTERFERENCE WITH MANAGEMENT, OR MISUSE OF CONTROL WHICH ANY CREDIT PARTY NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE BY REASON OF ANY MATTER, CAUSE, THING OR EVENT OCCURRING ON OR PRIOR THE DATE HEREOF, AGAINST THE DIP LENDER, BASED IN WHOLE OR IN PART ON FACTS, WHETHER OR NOT NOW KNOWN THAT RELATE TO, ARISE OUT OF OR OTHERWISE ARE IN CONNECTION WITH THE DIP FACILITY, THE DIP OBLIGATIONS, THE DIP DOCUMENTS, THE DIP ORDERS, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AND THE SALE PROCESS.

ARTICLE XII GUARANTEE

Section 12.1 Guarantee. Subject to the DIP Orders, each DIP Guarantor unconditionally guarantees, jointly with the other DIP Guarantors and severally, to the DIP Lender as a primary obligor and not merely as a surety, the due and punctual payment and performance of the DIP Obligations. Each DIP Guarantor further agrees that the DIP Obligations may be extended or renewed, in whole or in part, or amended or modified, in each case, in accordance with the terms of the DIP Documents, without notice to or further assent from such DIP Guarantor, and that such DIP Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal, or amendment or modification, of any DIP Obligation. Each DIP Guarantor waives promptness, presentment to, demand of payment from and protest to the DIP Borrower or any other Credit Party of any of the DIP Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

Section 12.2 Guarantee of Payment and Performance; Continuing Guarantee. Each DIP Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment and performance when due (whether at the stated maturity, by acceleration or otherwise) and not merely of collection, and waives any right to require that any resort be had by the DIP Lender to any security held for the payment of any of the DIP Obligations or to any balance of any deposit account or credit on the books of the DIP Lender in favor of any Credit Party or any other person. The obligations of each DIP Guarantor hereunder are independent of the obligations of the DIP Borrower or any other DIP Guarantor, and a separate action or actions may be brought and prosecuted against each DIP Guarantor whether or not action is brought against the DIP Borrower or any other DIP Guarantor and whether or not the DIP Borrower or any other DIP Guarantor is joined in any such action or actions. Each DIP Guarantor agrees that its guarantee hereunder is continuing in nature and applies to all of the DIP Obligations, whether currently existing or hereafter incurred.

Section 12.3 No Limitations, Etc.

(a) Except for termination of a DIP Guarantor's obligations hereunder as expressly provided for in this Agreement, the obligations of each DIP Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity,

illegality or unenforceability of any of the DIP Obligations, any impossibility in the performance of any of the DIP Obligations or otherwise. Without limiting the generality of the foregoing, except for termination or release of a DIP Guarantor's obligations hereunder in accordance with the terms of this Agreement (but without prejudice to Section 12.4), the obligations of each DIP Guarantor hereunder, to the fullest extent permitted by applicable law, shall not be discharged or impaired or otherwise affected by, and each DIP Guarantor hereby waives any defense to the enforcement hereof by reason of:

(i) the failure of DIP Lender to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any DIP Document or otherwise;

(ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any DIP Document or any other agreement, including with respect to any other DIP Guarantor under this Agreement;

(iii) the failure to perfect any security interest in, or the impairment of or the release of, any of the DIP Collateral held by or on behalf of the DIP Lender for the DIP Obligations;

(iv) any default, failure or delay, willful or otherwise, in the performance of the DIP Obligations;

(v) any other act or omission that may in any manner or to any extent vary the risk of any DIP Guarantor or otherwise operate as a discharge of any DIP Guarantor as a matter of law or equity;

(vi) any illegality, lack of validity or enforceability of any DIP Obligation or any DIP Document;

(vii) any change in the corporate existence, structure or ownership of any Credit Party, or any insolvency, bankruptcy, reorganization or similar proceeding affecting any Credit Party or its assets or any resulting release or discharge of any of the DIP Obligations;

(viii) the existence of any claim, set-off or other rights that any DIP Guarantor may have at any time against the DIP Borrower, the DIP Lender, or any other person, whether in connection herewith, the other DIP Documents or any unrelated transactions;

(ix) this Agreement having been determined (on whatsoever grounds) to be invalid, non-binding or unenforceable against any other DIP Guarantor *ab initio* or at any time after the Closing Date;

(x) the fact that any person that, pursuant to the DIP Documents, was required to become a party hereto may not have executed or is not effectually bound by this Agreement, whether or not this fact is known to the DIP Lender;

(xi) any action permitted or authorized hereunder;

(xii) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any DIP Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, the DIP Borrower or any DIP Guarantor or any other guarantor or surety (other than the payment in full in cash or immediately available funds of the DIP Obligations (without prejudice to Section 12.4)); or

(xiii) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the DIP Borrower, any other DIP Guarantor or any other person under any DIP Document, by operation of law or otherwise.

Each DIP Guarantor expressly authorizes the DIP Lender to take and hold security for the payment and performance of the DIP Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the DIP Obligations or take any other actions permitted by the DIP Documents, all without affecting the obligations of any DIP Guarantor hereunder.

(b) To the fullest extent permitted by applicable law and except for termination or release of a DIP Guarantor's obligations hereunder in accordance with the terms of this Agreement (but without prejudice to Section 12.4), each DIP Guarantor waives any defense based on or arising out of any defense of any other Credit Party or the unenforceability of the DIP Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Credit Party. The DIP Lender may, at its election, exercise any right or remedy available to them against any other Credit Party pursuant to this Agreement or the other DIP Documents, without affecting or impairing in any way the liability of any DIP Guarantor hereunder except to the extent that after giving effect thereto all DIP Obligations have been terminated and paid in full (but without prejudice to Section 12.4). To the fullest extent permitted by applicable law, each DIP Guarantor waives any defense arising out of any such election or exercise by DIP Lender though such election or exercise operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such DIP Guarantor against any other Credit Party, or any security, including, without limitation, the DIP Collateral. To the fullest extent permitted by applicable law, each DIP Guarantor waives any all suretyship defenses.

Section 12.4 Reinstatement. Each DIP Guarantor agrees that its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if, at any time payment, or any part thereof, of any DIP Obligation is rescinded or must otherwise be restored by the DIP Lender upon the bankruptcy or reorganization (or analogous proceeding in any jurisdiction) of the DIP Borrower or any other Credit Party or otherwise. The provisions of this Section 12.4 shall survive the termination of this Agreement.

Section 12.5 Agreement To Pay; Contribution; Subrogation. In furtherance of the foregoing and not in limitation of any other right that the DIP Lender has at law or in equity against any DIP Guarantor by virtue hereof, upon the failure of any Credit Party to pay any DIP Obligation when and as the same shall become due, whether an amortization payment, at maturity, by

acceleration, after notice of prepayment or otherwise, each DIP Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the DIP Lender in cash or other immediately available funds the amount of such unpaid DIP Obligation. Subject to the foregoing, to the extent that any DIP Guarantor shall, under this Agreement as a joint and several obligor, repay any of the DIP Obligations constituting DIP Loans or other advances made to or reimbursement obligations owed by another Credit Party under this Agreement (an “Accommodation Payment”), then the DIP Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other DIP Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other DIP Guarantor’s Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the DIP Guarantors; provided that such rights of contribution and indemnification shall be subordinated to the discharge of DIP Obligations. As of any date of determination, the “Allocable Amount” of each DIP Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such DIP Guarantor hereunder and under this Agreement without (a) rendering such DIP Guarantor “insolvent” within the meaning of section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act (“UFTA”) or Section 2 of the Uniform Fraudulent Conveyance Act (“UFCA”), (b) leaving such DIP Guarantor with unreasonably small capital or assets, within the meaning of section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such DIP Guarantor unable to pay its debts as they become due within the meaning of section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

Section 12.6 Information. Each DIP Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of the DIP Borrower and each other Credit Party and of all other circumstances bearing upon the risk of nonpayment of the DIP Obligations and the nature, scope and extent of the risks that such DIP Guarantor assumes and incurs hereunder, and agrees that DIP Lender will have not any duty or obligation to advise such DIP Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 12.7 Maximum Liability. Each DIP Guarantor, and by its acceptance of this guarantee, DIP Lender confirms that it is the intention of all such persons that this guarantee and the DIP Obligations of each DIP Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the UFCA, the UFTA or any similar foreign, federal or state law to the extent applicable to this guarantee and the DIP Obligations of each DIP Guarantor hereunder. To effectuate the foregoing intention, the DIP Lender and the DIP Guarantors hereby irrevocably agree that the DIP Obligations of DIP Guarantor under this guarantee at any time shall be limited to the maximum amount as will result in the Obligations of such DIP Guarantor under this guarantee not being void or voidable under applicable law, including under Section 548 of the Bankruptcy Code or any comparable provisions under any other applicable law.

[Remainder of Page Intentionally Left Blank]

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

DIP BORROWER:

FLEXSHOPPER, LLC,
a North Carolina limited liability company

By: _____
Name: _____
Title: _____

FLEXSHOPPER, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

DIP GUARANTORS:

FLEXLENDING, LLC

By: _____
Name: _____
Title: _____

FLEXREVOLUTION, LLC

By: _____
Name: _____
Title: _____

FLEXRETAIL, LLC

By: _____
Name: _____
Title: _____

FLEX TX, LLC

By: _____
Name: _____
Title: _____

FLEX TX FUNDING, LLC

By: _____
Name: _____
Title: _____

FLEX TX CAB, LLC

By: _____
Name: _____
Title: _____

DIP LENDER:

READYSETT LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____