

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): March 6, 2015

FlexShopper, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

0-52589

(Commission File Number)

20-5456087

(IRS Employer Identification No.)

2700 North Military Trail, Ste. 200 Boca Raton, FL

(Address of Principal Executive Offices)

33431

(Zip Code)

(561) 419-2923

(Registrant's Telephone number, including area code)

N/A

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions.

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On March 6, 2015, FlexShopper, Inc. (“FlexShopper”), through a wholly-owned subsidiary (the “Borrower”), entered into a credit agreement (the “Credit Agreement”) with WE 2014-1, LLC, an affiliate of Waterfall Asset Management, LLC (“Waterfall”), and certain other lenders thereunder from time to time (collectively, the “Lender”). The Borrower is permitted to borrow funds under the Credit Agreement based on the Borrower’s cash on hand and the Amortized Order Value of the Borrower’s Eligible Leases (as such terms are defined in the Credit Agreement) less certain deductions described in the Credit Agreement. Under the terms of the Credit Agreement, subject to the satisfaction of certain conditions, the Borrower may borrow up to \$25,000,000 from the Lender for a term of two years. The borrowing term may be extended for an additional twelve months in the sole discretion of the Lender. The Credit Agreement contemplates that the Lender may provide additional debt financing to the Borrower, up to \$100 million in total, under two uncommitted accordions following satisfaction of certain covenants and other terms and conditions. The Lender will receive security interests in certain leases as collateral under the Credit Agreement. For the term of the Credit Agreement, FlexShopper and its subsidiaries may not incur additional indebtedness (other than certain indebtedness expressly permitted under the Credit Agreement) without the permission of the Lender. Waterfall and its affiliates will have a right of first refusal on certain subsequent FlexShopper transactions involving leases or other financial products during the term of the Credit Agreement and up to three months following the termination thereof.

Pursuant to the Credit Agreement, amounts borrowed by the Borrower will bear interest at the rate of LIBOR plus a mid-teen percent per annum, and a small non-usage fee will be assessed on any undrawn amount if the facility is less than 80% drawn on average in any given measurement period commencing three months after the closing of the facility.

The Credit Agreement includes customary events of default, including, among others, failures to make payment of principal and interest, breaches or defaults under the terms of the Credit Agreement and related agreements entered into with the Lender, breaches of representations, warranties or certifications made by or on behalf of the Borrower in the Credit Agreement and related documents (including certain financial and expense covenants), deficiencies in the borrowing base, certain judgments against the Borrower and bankruptcy events. If an event of default occurs and is continuing, the Lender may, among other things, terminate any remaining commitments available to the Borrower, declare all outstanding principal and interest immediately due and payable and enforce any and all liens created in connection with the Credit Agreement. In connection with the closing under the Credit Agreement, the Company will pay placement agent fees totaling \$850,000.

In connection with entering into the Credit Agreement, on March 6, 2015, FlexShopper raised approximately \$8.6 million in net proceeds through direct sales of 17.0 million shares of FlexShopper common stock, par value \$0.0001 per share (the “Shares”), to certain affiliates of Waterfall and other accredited investors (the “Investors”) for a purchase price of \$0.55 per share (the “Equity Purchases”). The Shares were placed pursuant to Rule 506 of Regulation D under the Securities Act of 1933. The Shares were not registered under the Securities Act of 1933 and may not be offered or sold absent registration or an applicable exemption from registration requirements.

In connection with the issuance of the Shares to the Investors, on March 6, 2015, FlexShopper entered into Investor Rights Agreements with certain of the Investors. The Investor Rights Agreement entered into with affiliates of Waterfall provides that, so long as the those Investors beneficially own at least 10% of FlexShopper common stock then issued and outstanding, Waterfall will have the right to nominate one director to the FlexShopper Board of Directors (the "Board"). Upon the closing of the Equity Purchases, those Investors beneficially own more than 10% of FlexShopper common stock then issued and outstanding and thus are entitled to nominate one director to the Board. The Investor Rights Agreement with affiliates of Waterfall also entitles those Investors to certain demand registration rights and certain preemptive rights on future sales of equity securities of FlexShopper. The Waterfall Investor Rights Agreement and the Investor Rights Agreements entered into with other Investors entitle all Investors to certain piggyback registration rights.

A copy of the Credit Agreement and the Investor Rights Agreements are filed with this report as Exhibits 10.1, 10.2 and 10.3, respectively, and are hereby incorporated by reference herein. The foregoing descriptions of the Credit Agreement and the Investor Rights Agreements do not purport to be complete and are qualified in their entirety by reference to the full text of such documents.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information included in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information included in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Credit Agreement, dated as of March 6, 2015, among FlexShopper 2, LLC, Wells Fargo Bank, N.A., various Lenders from time to time party thereto and WE 2014-1, LLC.
10.2	Investor Rights Agreement, dated as of March 6, 2015, by and among FlexShopper, Inc., the Management Stockholders and affiliates of Waterfall.
10.3	Form of Investor Rights Agreement, dated as of March 6, 2015, by and among FlexShopper, Inc. and the Investors party thereto.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: March 11, 2015

FLEXSHOPPER, INC.

By: /s/ Brad Bernstein

Name: Brad Bernstein

Title: President and Chief Financial Officer

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CREDIT AGREEMENT
dated as of March 6, 2015

among

FLEXSHOPPER 2, LLC,
as Company,

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Paying Agent,

VARIOUS LENDERS FROM TIME TO TIME PARTY HERETO,

and

WE 2014-1, LLC,
as Administrative Agent

Securitization Warehouse Facility

**FLORIDA DOCUMENTARY STAMP TAX IN
THE AMOUNT OF \$2,450 HAS BEEN PAID OR
WILL BE PAID ON THE CLOSING DATE
DIRECTLY TO THE FLORIDA DEPARTMENT
OF REVENUE.**

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EXHIBITS:	A	Form of Assignment and Assumption Agreement
	B	Form of Borrowing Base Certificate
	C	Form of Certificate Regarding Non-Bank Status
	D	Form of Compliance Certificate
	E	Form of Funding Notice
	F	Form of Loan Note
	G	Form of Lease Agreement

CREDIT AGREEMENT

This CREDIT AGREEMENT, dated as of March 6, 2015 (the “Agreement”), is entered into by and among FlexShopper 2, LLC, a Delaware limited liability company (the “Company”), the Lenders party hereto from time to time, (the “Lenders”), Wells Fargo Bank, N.A., as Paying Agent for the Lenders (in such capacity, “Paying Agent”), and WE 2014-1, LLC, a Delaware limited liability company, as Administrative Agent for the Lenders (the “Administrative Agent”).

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, the Company desires to borrow from the Lenders from time to time;

WHEREAS, the Lenders shall, at the request of the Company in accordance with the terms of this Agreement, make Loans to the Company from time to time;

WHEREAS, WE 2014-1, LLC has been requested and is willing to act as Administrative Agent on behalf of the Lenders in accordance with the terms hereof;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

“Act” as defined in Section 4.25.

“Account Control Agreement” shall mean each of the Lockbox Account Control Agreement and the Blocked Account Control Agreement.

“Accrued Interest Amount” means, as of any day, the aggregate amount of all accrued and unpaid interest on the Loans payable hereunder pursuant to Section 2.5 or 2.6 as applicable.

“Adjusted Operating Cash Flow” means, (i) Operating Cash Flow minus (ii) capitalized expenses minus (iii) any applicable U.S. federal or state income taxes plus (iv) (a) Consolidated Total Debt as of the last day of the current Fiscal Quarter minus (b) the Consolidated Total Debt as of the last day of the prior Fiscal Quarter.

“Adjusted Vintage Pool” means as of any date of determination, for any Monthly Vintage Pool:

(i) If the aggregate Order Value of Delayed EPO Leases exceeds 10% of the aggregate Order Value of the related Monthly Vintage Pool, the Adjusted Vintage Pool shall be comprised of the population of Leases comprising a Monthly Vintage Pool excluding all Leases that are Early Purchase Option Leases.

(ii) At all other times, the Adjusted Vintage Pool shall be the population of Leases comprising a Monthly Vintage Pool excluding all Leases that are EPO Leases.

“Administrative Agent” as defined in the preamble hereto. The term **“Administrative Agent”** shall include, for all purposes of the Credit Documents, any successor Administrative Agent appointed pursuant to Section 8.6(a)(i) (including, for the avoidance of doubt and without limitation, any successor Administrative Agent appointed pursuant to the last sentence thereof).

“Advance Rate Step-Down Event” shall be in effect on any date that (i) the Advance Rate Step-Down Ratio is less than the related Advance Rate Step-Down Trigger Level, for two or more Seasoned Net Vintage Pools concurrently; and/or (ii) the Payment Processing Expense Ratio is greater than 8%.

“Advance Rate Step-Down Ratio” calculated for each Seasoned Net Vintage Pool comprised of Pledged Leases, shall mean the percentage equivalent of a fraction equal to (A) the cumulative sum of all Collections (net of any amounts collected with respect to such Leases pursuant to the payment of sales and use taxes) received with respect to the related Pledged Leases, over (B) the aggregate original Order Value associated with such related Pledged Leases.

“Advance Rate Step-Down Trigger Level” for any date of determination, the applicable percentage specified in Appendix D attached hereto.

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Company, Seller or any Subsidiary thereof) at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the actual knowledge of Company or Seller, threatened in writing against or affecting Company, Seller or any Subsidiary thereof, or any of their respective property.

“Affected Party” means any Lender, the Paying Agent, WE 2014-1, LLC, in its individual capacity and in its capacity as Administrative Agent, and, with respect to each of the foregoing, the parent company or holding company that controls such Person.

“Affiliate” means, with respect to any specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, “control” means the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and “controlled” and “controlling” have meanings correlative to the foregoing.

“Aggregate Amounts Due” as defined in Section 2.14.

“Agreement” means this Credit Agreement, dated as of March 6, 2015, as it may be amended, supplemented or otherwise modified from time to time.

“**Amortized Order Value**” means with respect to any Lease contract the (i) Order Value minus (ii) the product of (a) 1 divided by the Total Payback Multiple and (b) the cumulative Collections received with respect to such Lease since inception net of cumulative amounts collected with respect to any Lease pursuant to the payment of sales and use taxes.

“**Applicable Advance Rate**” means the “Applicable Advance Rate” described in the Fee Letter.

“**Applicable Margin**” means the “Applicable Margin” described in the Fee Letter.

“**Approved State**” means each of the 50 United States of America and the District of Columbia, other than New Jersey, Minnesota, North Carolina and Wisconsin, provided, however, that, in the event that the Requisite Lenders revoke the designation or restore a previously revoked designation of any jurisdiction as an “Approved State” due to a change in, or change in the interpretation of, the regulations or law (including case law) relating to (i) the origination, administration, servicing or terms, of any lease made to an Obligor; (ii) the choice of law, or the enforceability of the choice of law, that governs a lease made to an Obligor; or (iii) the choice of venue or the choice of jurisdiction, or the enforceability of the choice of venue or the choice of jurisdiction, that governs a lease made to a Obligor, then upon receipt by Company of written notice thereof from the Administrative Agent, each such jurisdiction shall or shall no longer constitute an “Approved State”, as applicable.

“**Asset Purchase Agreement**” means that certain Asset Purchase Agreement dated as of the date hereof by and between Intermediate Seller, as Purchaser, and the Seller, as amended, modified or supplemented from time to time, whereby the Seller has agreed to sell and Intermediate Seller has agreed to purchase Eligible Leases from time to time.

“**Asset Sale Agreement**” means that certain Asset Sale Agreement dated as of the date hereof by and between Company, as Purchaser, and the Intermediate Seller, as seller as amended, modified or supplemented from time to time, whereby the Intermediate Seller has agreed to sell and Company has agreed to purchase Eligible Leases from time to time.

“**Assignment Agreement**” means an Assignment and Assumption Agreement substantially in the form of Exhibit A, with such amendments or modifications as may be approved by Administrative Agent.

“**Authorized Officer**” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, chief financial officer, general counsel, treasurer, corporate secretary, controller or senior vice president of capital markets (or, in each case, the equivalent thereof).

“**Availability**” means, as of any date of determination, the amount, if any, by which the Borrowing Base exceeds the Total Utilization of Commitments.

“**Backup Servicer**” means First Associates, LLC or any replacement thereof appointed by the Requisite Lenders in accordance with Section 6.12, who will perform backup servicing and backup verification functions with respect to the Eligible Leases.

“**Backup Servicing Agreement**” means that certain Backup Servicing Agreement dated as of the date hereof among Company, the Servicer, the Administrative Agent and Backup Servicer, as it may be amended, modified or supplemented from time to time in accordance with Section 6.15, and any other agreement entered into from time to time among Company, the Servicer, the Administrative Agent and Backup Servicer with respect to the backup servicing and verification of the Eligible Leases.

“**Backup Servicing Fee**” shall have the meaning attributed to such term in the Backup Servicing Agreement.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “**Bankruptcy**,” as now and hereafter in effect, or any successor statute.

“**Blocked Account Control Agreement**” means that certain account control agreement, dated as of the date hereof, among the Company, the Administrative Agent and Wells Fargo Bank, National Association.

“Borrower Pledge Agreement” means that certain pledge agreement pursuant to which the Intermediate Seller pledges its equity interests in the Company to the Administrative Agent for the benefit of the Lenders.

“Borrowing Base” means, as of any day, an amount equal to the lesser of:

(a) the amount equal to the following:

(i) the sum of the product of the Applicable Advance Rate multiplied by Amortized Order Value at such day for each Eligible Lease, plus

(ii) the aggregate amount of Collections in the Lockbox Account and the Collection Account for Eligible Leases to the extent such Collections and other funds have already been applied to reduce the Amortized Order Value of the related Eligible Lease, plus

(iii) the aggregate amount of Collections in the Lockbox Account and the Collection Account for leases that are not Eligible Leases; minus

(iv) the sum of Accrued Interest Amount as of such day and the aggregate amount of all accrued and unpaid fees and expenses due hereunder and including (but not limited to) the Servicing Agreement, the Backup Servicing Agreement, and the Verification Agent Agreement; minus

(v) the Charge-Back Reserve Amount; minus

(vi) any amounts collected and on deposit in the Lockbox Account or Collection Account collected with respect to a Lease pursuant to the payment of sales and use taxes; and

(b) the Commitment on such date.

“Borrowing Base Certificate” means a certificate substantially in the form of Exhibit B, as amended, restated, supplemented or otherwise modified from time to time, executed by an Authorized Officer of Company and delivered to Administrative Agent, the Paying Agent and each Lender, which sets forth the calculation of the Borrowing Base, including a calculation of each component thereof.

“Borrowing Base Deficiency” means, as of any day, the amount, if any, by which the Total Utilization of the Commitments exceeds the Borrowing Base.

“Borrowing Base Report” means a report substantially in the form of Exhibit B, executed by an Authorized Officer of Company and delivered to the Administrative Agent, the Paying Agent and each Lender, attached to a Borrowing Base Certificate.

“Business Day” means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or the State of Minnesota or is a day on which banking institutions located in New York are authorized or required by law or other governmental action to close.

“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.

“Cash” means money, currency or a credit balance in any demand, securities account or deposit account; provided, however, that notwithstanding anything to the contrary contained herein, **“Cash”** shall exclude any amounts that would not be considered “cash” under GAAP or “cash” as recorded on the books of Seller and its Subsidiaries.

“Cash Equivalents” means, as of any day, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such day; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such day and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (d) certificates of deposit or bankers’ acceptances maturing within one year after such day and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator) and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000 and (iii) has the highest rating obtainable from either S&P or Moody’s.

“Certificate Regarding Non-Bank Status” means a certificate substantially in the form of Exhibit C, as amended, restated, supplemented or otherwise modified from time to time.

“Change of Control” means, at any time, any “person” or “group” of related persons (as such terms are given meaning in the Exchange Act and the rules of the SEC thereunder) is or becomes the owner, beneficially or of record, directly or indirectly, of more than 50% of the economic and voting interests (including the right to elect directors or similar representatives) in the Capital Stock of Parent the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of Seller and its Subsidiaries taken as a whole to any “person” (as such term is given meaning in the Exchange Act and the rules of the SEC thereunder); or (c) the Intermediate Seller shall cease to beneficially own and control 100% of the economic and voting interest in the Capital Stock of Company and the Seller shall cease to beneficially own and control 100% of the economic and voting interests in the Capital Stock of the Intermediate Seller.

“Charge-Back Reserve Amount” means \$0, or such other amount as may be agreed to from time-to-time by the parties hereto.

“Charged-Off Lease” means a Lease which, in each case, consistent with the Underwriting Policies, has or should have been written off Company’s books as uncollectable.

“Checklist” shall have the meaning attributed to such term in the Verification Agent Agreement.

“Closing Date” means March 6, 2015.

“Collateral” means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

“Collateral Documents” means the Security Agreement, the Control Agreements, the Pledge Agreement, the Borrower Pledge Agreement and all other instruments, documents and agreements delivered by, or on behalf of, Company, the Intermediate Seller or Seller pursuant to this Agreement or any of the other Credit Documents, as the case may be, in order to grant to, or perfect in favor of, Administrative Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of Company as security for the Obligations or to protect or preserve the interests of Administrative Agent or the Secured Parties therein.

“Collection Account” means an account with account number 84031201 at Wells Fargo Bank, National Association in the name of Company.

“Collections” means, with respect to each Pledged Lease, any and all cash collections and other cash proceeds of such Pledged Lease (whether in the form of cash, checks, wire transfers, electronic transfers or any other form of cash payment), including, without limitation, all prepayments, all overdue payments, all prepayment penalties and early termination penalties, all amounts collected as fees, or charges for late payments with respect to such Pledged Lease, all recoveries with respect to each Charged-Off Lease, all investment proceeds and other investment earnings (net of losses and investment expenses) on Collections as a result of the investment thereof pursuant to Section 6.6, all proceeds of any sale, transfer or other disposition of any Pledged Lease by Company and all deposits, payments or recoveries made in respect of any Pledged Lease to any Controlled Account, or received by Company in respect of a Pledged Lease, and all payments representing a disposition of any Pledged Lease.

“Commitment” means the commitment of a Lender to make or otherwise fund any Loan and **“Commitments”** means such commitments of the Lenders in the aggregate. The amount of each Lender’s Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The Commitment of each Lender will be equal to zero on the Commitment Termination Date.

“Commitment Period” means the period from the Closing Date to but excluding the Commitment Termination Date.

“Commitment Termination Date” means the earliest to occur of (i) March 6, 2017, as such date may be extended in the sole discretion of the Administrative Agent and the Lenders; (ii) the date the Commitments are permanently reduced to zero pursuant to Section 2.9(b); (iii) the date of the termination of the Commitments pursuant to Section 7.1 and (iv) errors, exceptions or discrepancies exist with respect the reconciliation of the applicable delivered documents to the Lease File with respect to any Proof of Purchase Verification Event or Verification Event and such errors, exceptions or discrepancies have not been remedied, for ten (10) Business Days following written notice thereof by the Required Lenders to the Company.

“Company” as defined in the preamble hereto.

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit D, as amended, restated, supplemented or otherwise modified from time to time.

“Compliance Review” as defined in Section 5.5(b).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income or that are franchise Taxes or branch profits Taxes.

“Consolidated Total Debt” means, as at any date of determination, the aggregate stated balance sheet amount of all long term Indebtedness of Parent and its Subsidiaries determined on a consolidated basis in accordance with GAAP, including all accrued and unpaid interest on the foregoing.

“Contractual Obligation” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Control Agreements” means collectively, the Lockbox Account Control Agreement and the Blocked Account Control Agreement.

“Controlled Account” means each of the Collection Account, the Sales Tax Account and the Lockbox Account, and the **“Controlled Accounts”** means all of such accounts.

“Controlled Account Bank” means Wells Fargo Bank, N.A.

“Credit Date” means the date of a Loan.

“Credit Document” means any of this Agreement, the Loan Notes, if any, the Collateral Documents, the Asset Purchase Agreement, the Asset Sale Agreement, the Servicing Agreement, the Backup Servicing Agreement, the Verification Agent Agreement, the Right of First Refusal Side Letter, the Guarantee Agreement, the Intermediate Seller Guarantee Agreement, the Validity Guarantee, the Fee Letter and all other documents, instruments or agreements executed and delivered by Company or Seller for the benefit of the Administrative Agent or any Lender in connection herewith.

“**CRR**” means Articles 404-410 of The European Union Capital Requirements Regulation (Regulation (EU) No 575/2013), as amended.

“**Cumulative Accrued Payment Amount**” means a) the Weekly Payment Amount divided by 7, multiplied by b) the number of calendar days since the first scheduled Payment Date.

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

“**Default Excess**” means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender’s Pro Rata Share of the aggregate outstanding principal amount of Loans of all Lenders over the aggregate outstanding principal amount of all Loans.

“**Default Interest Rate**” as defined in Section 2.6.

“**Defaulted Lease**” means, with respect to any date of determination, a Lease which is a Charged-Off Lease.

“**Defaulted Lender Loan**” as defined in Section 2.17.

“**Defaulting Lender**” as defined in Section 2.17.

“**Delayed EPO Lease**” means any Early Purchase Option Lease exercised by the Obligor on any date after the related Obligor’s thirteenth rental payment.

“**Delinquent Lease**” means, as of any date of determination, any Lease with a Missed Payment Factor of 4.29 or more.

“**Deposit Account**” means a “deposit account” (as defined in the UCC), including a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“**Designated Officer**” means, with respect to Company, any Person with the title of Chief Executive Officer or Chief Financial Officer.

“**Determination Date**” means the last day of each Monthly Period.

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

“**Early Purchase Option Lease**” means any Lease in which the early purchase option was exercised pursuant to the Lease Agreement.

“**Early Termination Fee**” means the “Early Termination Fee” as described in the Fee Letter. “**Eligibility Criteria**” means the criteria specified in Appendix C hereto under the definition of “Eligibility Criteria”, subject to any changes agreed to by each of the Requisite Lenders and Company from time to time.

“**Eligible Assignee**” means (i) any Lender or any Lender Affiliate (other than a natural person), and (ii) any other Person (other than a natural Person) approved by Company, so long as no Default or Event of Default has occurred and is continuing, and Administrative Agent (each such approval not to be unreasonably withheld); provided, that none of Seller or any Affiliate of Seller shall, in any event, be an Eligible Assignee.

“Eligible Lease” means a Lease with respect to which the Eligibility Criteria are satisfied or, solely with respect to the first Loan hereunder, waived by the Administrative Agent as of the applicable date of determination.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Seller, any of its Subsidiaries or any of their respective ERISA Affiliates.

“EPO Lease” means any Early Purchase Option Lease that is not a Delayed EPO Lease.

“Equity Book Value” means, determined in accordance with GAAP, (i) total stockholders’ equity plus (ii) retained earnings plus (iii) Net Income minus (iv) dividends. For avoidance of doubt, capitalized research and development along with amortization of research and development shall be included in the calculation of this figure.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended to the date hereof and from time to time hereafter, and any successor statute.

“ERISA Affiliate” means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of a Person shall continue to be considered an ERISA Affiliate of such Person within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person and with respect to liabilities arising after such period, but only to the extent that such Person could be liable under the Internal Revenue Code or ERISA as a result of its relationship with such former ERISA Affiliate.

“ERISA Event” means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty (30) day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Seller, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Seller, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Seller, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Seller, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Seller, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on Seller, any of its Subsidiaries or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan of Seller, any of its Subsidiaries, or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates, or the assets thereof, or against Seller, any of its Subsidiaries or, with respect to any Pension Plan or Multiemployer Plan, any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

“E-Sign Lease” means any Lease for which the signature or record of agreement of the Obligor is obtained through the use and capture of electronic signatures, click-through consents or other electronically recorded assents.

“Event of Default” means each of the events set forth in Section 7.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“Excluded Taxes” means, with respect to any Affected Party, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Affected Party being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes with respect to such Affected Party, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Affected Party with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Affected Party became an Affected Party or (ii) such Affected Party changes its lending office, except in each case to the extent that, pursuant to Section 2.16(b), amounts with respect to such Taxes were payable either to such Affected Party’s assignor immediately before such Affected Party became an Affected Party or to such Affected Party immediately before it changed its lending office, and (c) any U.S. federal withholding Taxes imposed under FATCA.

“Exposure” means, with respect to any Lender, as of any date of determination, (a) prior to the termination of the Commitment, the sum of the Commitment of the Lender; and (b) after the termination of the Commitment, the aggregate outstanding principal amount of the Loans owing to the Lender.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, as of the date of this agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with), and any current or future regulations promulgated thereunder or official interpretations thereof.

“Fee Letter” means the letter agreement dated as of the Closing Date between Company, Administrative Agent and Lenders, as amended, restated, supplemented or otherwise modified from time to time.

“Financial Covenants” means the financial covenants set forth on Schedule 1 hereto.

“Financial Officer Certification” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer (or the equivalent thereof) of Parent that such financial statements fairly present, in all material respects, the financial condition of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“First Priority” means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is perfected and is the only Lien to which such Collateral is subject other than Permitted Liens.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of Parent and its Subsidiaries ending on December 31 of each calendar year.

“Funding Default” as defined in Section 2.17.

“Funding Notice” means a notice substantially in the form of Exhibit E.

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

“Governmental Authorization” means any permit, license, notification, registration, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Guaranty Agreement” means that certain Limited Guaranty, in form and substance reasonably satisfactory to the Administrative Agent duly executed and delivered by the Guarantor to the Administrative Agent for the benefit of the Lenders, as amended, restated, supplemented or otherwise modified from time to time.

“Guarantor” means FlexShopper, LLC, a North Carolina limited liability company.

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

“Historical Financial Statements” means as of the Closing Date, (i) the audited financial statements of Parent and its Subsidiaries, for the Fiscal Year ended 2013, consisting of balance sheets and the related consolidated statements of income, stockholders’ equity and cash flows for such Fiscal Year, certified by the chief financial officer (or the equivalent thereof) of Parent that they fairly present, in all material respects, the financial condition of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

“Indebtedness” as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to capital leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding trade payables incurred in the ordinary course of business that are unsecured and not overdue by more than six (6) months unless being contested in good faith and any such obligations incurred under ERISA); (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) the direct or indirect guaranty, endorsement (otherwise 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 another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (ix) any liability of such Person for an obligation of another through any Contractual Obligation (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; and (x) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, whether entered into for hedging or speculative purposes.

“Indemnified Liabilities” means, collectively, any and all liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements of any kind or nature whatsoever (excluding any amounts not otherwise payable by Company under Section 2.16(b)(iii)) but including the reasonable and documented fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any reasonable and documented fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of this Agreement or the other Credit Documents, any Related Agreement, or the transactions contemplated hereby or thereby (including the Lenders’ agreement to make Loans or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral)).

“Indemnified Taxes” means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Company under any Credit Document.

“Indemnitee” as defined in Section 9.3.

“Indemnitee Agent Party” as defined in Section 8.5(a).

“Independent Manager” as defined in Section 6.14.

“Interest Payment Date” means the fifteenth calendar day after the end of each Monthly Period, and if such date is not a Business Day, the next succeeding Business Day, provided that the initial Interest Payment Date shall be April 15, 2015.

“Interest Period” means an interest period (i) initially, commencing on and including the Closing Date and ending on but excluding the initial Interest Payment Date; and (ii) thereafter, commencing on and including each Interest Payment Date and ending on and excluding the immediately succeeding Interest Payment Date; provided, that no Interest Period with respect to any portion of the Loans shall extend beyond the Termination Date.

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two (2) Business Days prior to each Interest Period.

“Intermediate Seller” means FlexShopper 1, LLC, a Delaware limited liability company.

“Intermediate Seller Guarantee Agreement” means that certain Limited Guaranty, in form and substance reasonably satisfactory to the Administrative Agent duly executed and delivered by the Intermediate Seller to the Administrative Agent for the benefit of the Lenders, as amended, restated, supplemented or otherwise modified from time to time.

“Intermediate Seller Limited Liability Company Agreement” means the Limited Liability Company Agreement of the Intermediate Seller, dated as of March 6, 2015, as it may be amended, restated or otherwise modified from time to time.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

“Investment” means (i) any direct or indirect purchase or other acquisition by Company of, or of a beneficial interest in, any of the Securities of any other Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, from any Person, of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Company to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

“Key Person Event” means the termination or resignation of (i) Brad Bernstein; or (ii) any of the other employees or Persons identified on Schedule 6 that are not replaced with Persons acceptable to Administrative Agent within 90 days from the date of termination or resignation.

“**Late-Eligible Lease**” means, as of any date of determination, any Eligible Lease Missed Payment Factor of greater than 2.14 but less than 4.29.

“**Lease**” means any lease or similar contract between Seller and an Obligor pursuant to which Seller leases Merchandise to an Obligor pursuant to the applicable Lease Agreements, including all rights under any and all security documents or supporting obligations related thereto, including the applicable Lease Agreement and the rights with respect to the Merchandise related thereto.

“**Lease Agreement**” means, a rental-purchase agreement/lease in substantially one of the forms attached as Exhibit G, as applicable, as may be amended, supplemented or modified from time to time in accordance with the terms of this Agreement.

“**Lease File**” means, with respect to any Lease, (i) copies of each applicable document listed in the definition of “Lease Agreements,” (ii) the UCC financing statement, if any, filed against the Obligor in connection with the origination of such Lease and (iii) copies of each of the documents required by, and listed in, the Checklist attached to the Verification Agent Agreement, each of which may be in electronic form.

“**Lender**” means collectively, the Persons identified as “Lenders” on Appendix A and any other Person that becomes a party hereto as a Lender pursuant to an Assignment Agreement.

“**Lender Affiliate**” means, as applied to any Lender or the Administrative Agent, any Related Fund and any Person directly or indirectly controlling (including any member of senior management of such Person), controlled by, or under common control with, such Lender or the Administrative Agent. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

“**Lender Default Period**” means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default, and ending on the earliest of the following dates: (i) the date on which all Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (ii) the date on which (a) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Lender Loans of such Defaulting Lender or by the non-pro rata application of any payments of the Loans in accordance with the terms of this Agreement), and (b) such Defaulting Lender shall have delivered to Company and Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitments, and (iii) the date on which Company, Administrative Agent and Requisite Lenders waive all Funding Defaults of such Defaulting Lender in writing.

“**LIBO Rate**” means, for any Loan (or portion thereof) for any Interest Period, the rate per annum as it appears at approximately 11:00 a.m., London time, on the second Business Day before the first day of such Interest Period by reference to the ICE Benchmark Administration Interest Settlement Rate (or any successor thereto) for deposits in dollars for a period of one month (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Paying Agent in its reasonable discretion); provided, that if such rate is not available at such time for any reason, then the “LIBO Rate” shall be the rate per annum equal to the average (rounded upward to the nearest 1/16th of 1%) of the respective rates at which Wells Fargo Bank, National Association offers deposits in Dollars at or about 10:00 a.m., New York City time, two Business Days prior to the beginning of the related Interest Period, in the interbank eurocurrency market where the eurocurrency and foreign currency and exchange operations in respect of its Eurodollar loans are then being conducted for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to the applicable amount of the outstanding principal balance to be accruing interest at the LIBO Rate during such Interest Period.

“**LIBOR Disruption Event**” means, with respect to any Interest Period, any of the following: (i) a determination by any Lender that it would be contrary to law or to the directive of any central bank or other governmental authority (whether or not having the force of law) to obtain dollars in the London interbank market to make, fund or maintain Loans during such Interest Period, (ii) the failure of the source listed in the definition of “LIBO Rate” to publish a London interbank offered rate as of 11:00 a.m. London time on the second Business Day prior to the first day of such Interest Period, together with the failure of Wells Fargo Bank, National Association to provide notice of an alternate rate (each as contemplated in such definition), (iii) a determination by any Lender acting reasonably that the rate at which deposits of United States dollars are being offered in the London interbank market does not accurately reflect the cost to such Person of making, funding or maintaining its Loans for such Interest Period or (iv) the inability of such Lender, because of market events not under the control of such Person, to obtain United States dollars in the London interbank market to make, fund or maintain its Loans for such Interest Period.

“Lien” means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

“Limited Liability Company Agreement” means the Amended and Restated Limited Liability Company Agreement of Company, dated as of the March 6, 2015, as it may be amended, restated or otherwise modified from time to time in accordance with Section 6.15.

“Liquidation Fees” means, in the event of any prepayment of a Loan owing to a Lender, and for the Interest Period during which such Loan was prepaid, the amount, if any, by which (i) interest would have accrued for each day during such Interest Period on the reduction of the principal amount of such Loan during such Interest Period had such reduction not occurred, exceeds (ii) the positive income, if any, received by such Lender from the investment of the proceeds of such reduction. A certificate as to the amount of any Liquidation Fee (including the computation of such amount) shall be submitted by the Paying Agent on behalf of the affected Lender to Company and Administrative Agent and shall be conclusive and binding for all purposes, absent manifest error.

“Loan” means a loan made by a Lender to Company pursuant to Section 2.1.

“Loan Note” means a promissory note in the form of Exhibit F hereto, as it may be amended, supplemented or otherwise modified from time to time.

“Lockbox Account” means a Deposit Account with account number 89181761631 at Wells Fargo Bank, National Association in the name of Company.

“Lockbox Account Bank” shall mean Wells Fargo Bank, National Association or any other entity maintaining the Lockbox Account pursuant to the Lockbox Account Control Agreement.

“Lockbox Account Control Agreement” means that certain account control agreement, dated as of the date hereof, among the Company, the Administrative Agent and Wells Fargo Bank, National Association.

“Margin Stock” as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“Material Adverse Effect” means a material adverse effect as determined by Administrative Agent in its sole and absolute discretion on: (i) the business, operations, properties, assets, financial condition or results of operations of Parent, Seller and its subsidiaries, taken as a whole; (ii) the ability of Company to pay any Obligations or Company or Seller to fully and timely perform, in any material respect, its obligations under any Credit Document; (iii) the legality, validity, binding effect, or enforceability against Company or Seller of any Credit Document to which it is a party; (iv) the existence, perfection, priority or enforceability of any security interest in the Pledged Leases; (v) the validity, collectability, or enforceability of the Pledged Leases taken as a whole or in any material part, or (vi) the rights, remedies and benefits available to, or conferred upon, the Administrative Agent and any Lender or any Secured Party under any Credit Document.

“Material Contract” means any contract or other arrangement to which Company is a party (other than the Credit Documents or the Related Agreements) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“Material Underwriting Policy Change” means any change or modification to the Underwriting Policies, if such change or modification could be expected to be adverse to Lenders or the Collateral. **“Materials”** as defined in [Section 5.5\(b\)](#).

“Maturity Date” means the earlier of (i) twelve (12) months following Commitment Termination Date or (ii) the date that all unpaid principal amount of and accrued interest on the Loans and all other Obligations is declared due and payable pursuant to the terms of this Agreement.

“Merchandise” means consumer goods subject to a Lease Agreement.

“Missed Payment Factor” means, in respect of any Lease on any day, an amount equal to the:

- a) The excess of i) Cumulative Accrued Payment Amount over ii) the actual cumulative Collections divided by
- b) The Weekly Payment Amount

“Minimum Retained Membership Interest” has the meaning assigned to such term in [Section 5.11\(b\)](#).

“Monthly Period” means the period from and including the first day of a calendar month to and including the last day of such calendar month.

“Monthly Reporting Date” means the date that is two (2) Business Days prior to each Interest Payment Date.

“Monthly Servicing Report” shall have the meaning attributed to such term in the Servicing Agreement.

“Monthly Vintage Pool” means as of any date of determination, the pool of Leases originated by Seller during any Monthly Period.

“Moody’s” means Moody’s Investor Services, Inc.

“Multiemployer Plan” means any Employee Benefit Plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA.

“NAIC” means The National Association of Insurance Commissioners, and any successor thereto.

“Net Income” means, net income or loss, determined in accordance with GAAP and before any reduction in respect of dividends.

“Non-Use Fee” has the meaning set forth in the Fee Letter.

“Non-US Lender” as defined in [Section 2.16\(e\)\(i\)](#).

“Obligations” means all obligations of every nature of Company from time to time owed to the Administrative Agent (including former Administrative Agents), the Lenders or any of them, in each case under any Credit Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to Company, would have accrued on any Obligation, whether or not a claim is allowed against Company for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

“Obligor” means with respect to any Lease, the Person or Persons obligated to make payments with respect to such Lease.

“Operating Cash Flow” Operating Cash Flow” means, determined in accordance with GAAP, Net Income, plus depreciation and amortization, less capital expenditures, plus changes in working capital comprised of accounts receivable, inventories (including lease merchandise), other current assets, trade accounts payable, accrued expenses (including payroll and related taxes), product warranty, advance payments from customers and long-term accrued expenses.

“Order Value” means with respect to any Lease, the lesser of (i) the “dealer price” as listed in Exhibit A of the related Lease Agreement and (ii) the sum of (a) the retail price of the Merchandise as set forth in such Lease Agreement; and (b) the shipping and handling expenses of the related Lease.

“Organizational Documents” means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization or certificate of formation, as amended, and its operating agreement, as amended, including, in the case of Company, its Limited Liability Company Agreement and in the case of the Intermediate Seller, the Intermediate Seller Limited Liability Company Agreement. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

“Other Connection Taxes” means, with respect to any Affected Party, Taxes imposed as a result of a present or former connection between such Affected Party and the jurisdiction imposing such Tax (other than connections arising from such Affected Party having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document).

“Parent” means FlexShopper, Inc., a Delaware corporation.

“Participant Register” as defined in [Section 9.5\(h\)](#).

“Paying Agent” as defined in the preamble hereto.

“Payment” means, with respect to any Lease, the required scheduled Lease payment in respect of such Lease, as set forth in the applicable Lease Agreement.

“Payment Dates” means, with respect to any Lease, the date a payment is due in accordance with the Lease Agreement with respect to such Lease as in effect as of the date of determination.

“Payment Processing Expenses” shall mean all expenses, fees, costs and other amounts paid to the any Payment Processor (as defined in the Servicing Agreement), including but not limited to ACH transaction fees, credit card transaction fees, debt card transaction fees, or any other amounts paid pursuant any Payment Processing Agreement.

“Payment Processing Expense Ratio” shall mean, as of any date of determination, the fraction expressed as a percentage of i) the Payment Processing Expenses with respect to the Pledged Leases over the previous Monthly Period divided by, ii) the cumulative sum of all Collections with respected to the Pledged Leases over the previous Monthly Period.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

“Permitted Investments” means the following, subject to qualifications hereinafter set forth: (i) obligations of, or obligations guaranteed as to principal and interest by, the U.S. government or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America; (ii) federal funds, unsecured certificates of deposit, time deposits, banker’s acceptances, and repurchase agreements having maturities of not more than 365 days of any bank, the short-term debt obligations of which are rated A-1+ (or the equivalent) by each of the rating agencies and, if it has a term in excess of three months, the long-term debt obligations of which are rated AAA (or the equivalent) by each of the Moody’s and S&P; (iii) deposits that are fully insured by the Federal Deposit Insurance Corp. (FDIC); (iv) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (i) through (iii) above; and (v) such other investments as to which the Administrative Agent consent in its reasonable discretion.

Notwithstanding the foregoing, **“Permitted Investments”** (i) shall exclude any security with the S&P’s “r” symbol (or any other rating agency’s corresponding symbol) attached to the rating (indicating high volatility or dramatic fluctuations in their expected returns because of market risk), as well as any mortgage-backed securities and any security of the type commonly known as “strips”; (ii) shall not have maturities in excess of one year; (iii) shall be limited to those instruments that have a predetermined fixed dollar of principal due at maturity that cannot vary or change; and (iv) shall exclude any investment where the right to receive principal and interest derived from the underlying investment provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment. Interest may either be fixed or variable, and any variable interest must be tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with that index. No investment shall be made which requires a payment above par for an obligation if the obligation may be prepaid at the option of the issuer thereof prior to its maturity. All investments shall mature or be redeemable upon the option of the holder thereof on or prior to the earlier of (x) three months from the date of their purchase or (y) the Business Day preceding the day before the date such amounts are required to be applied hereunder.

“Permitted Liens” means: (i) Liens in favor of Administrative Agent for the benefit of Secured Parties granted pursuant to any Credit Document, (ii) Liens for taxes or other governmental charges (x) not at the time delinquent or thereafter payable without penalty or (y) being contested in good faith by appropriate proceedings diligently conducted with respect to which reserves, if any, required in conformity with GAAP shall have been made; (iii) Judgments and similar Liens in connection with legal proceedings that do not otherwise result in or cause an Event of Default or adversely impact any Pledged Leases and are being contested in good faith by appropriate proceedings diligently conducted; (iv) Liens in favor of collecting banks arising under Section 4-210 of the Uniform Commercial Code, (v) Liens (including the right of setoff) in favor of a bank or other depository institution arising as a matter of law encumbering deposits; (vi) Liens securing the Second Warehouse Facility and (vii) Liens securing Indebtedness permitted under Section 6.1(e).

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, 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, and Governmental Authorities.

“Pledge Agreement” means that certain pledge agreement pursuant to which the Seller pledges its equity interests in the Intermediate Seller to the Administrative Agent for the benefit of the Lenders.

“Pledged Leases” shall have the meaning attributed to such term in the Servicing Agreement and shall include all rights of Company to any lease or similar contract with an Obligor pursuant to which Seller leases Merchandise to an Obligor pursuant to the applicable Lease Agreements, including all rights under any and all security documents or supporting obligations related thereto, including the applicable Lease Agreement and the rights with respect to the Merchandise related thereto.

“Prime Rate” means, as of any day, the rate of interest per annum equal to the prime rate publicly announced by the majority of the eleven largest commercial banks chartered under United States Federal or State banking law as its prime rate (or similar base rate) in effect at its principal office. The determination of such eleven largest commercial banks shall be based upon deposits as of the prior year-end, as reported in the American Banker or such other source as may be selected by the Paying Agent.

“Principal Office” means, for Administrative Agent, Administrative Agent’s “Principal Office” as set forth on Appendix B, or such other office as Administrative Agent may from time to time designate in writing to Company and each Lender; provided, however, that for the purpose of making any payment on the Obligations or any other amount due hereunder or any other Credit Document, the Principal Office of Administrative Agent shall be 1140 Avenue of the Americas, New York, New York 10036 (or such other location within the City and State of New York as Administrative Agent may from time to time designate in writing to Company and each Lender).

“Proof of Purchase Verification Event” means the Servicer has caused to be delivered, on a weekly basis, (which delivery shall be by mutually agreeable electronic means) to the Administrative Agent a minimum of thirty-five (35) randomly selected or otherwise acceptable to the Administrative Agent receipts/proofs of purchases related to Pledged Leases.

“Pro Rata Share” means, with respect to any Lender, the Commitment of such Lender at such time, divided by the aggregate amount of the Commitments of all Lenders at such time.

“Register” as defined in Section 2.4(b).

“Related Agreements” means, collectively the Organizational Documents of Company.

“Related Fund” means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Related Security” shall have the meaning attributed to such term in the Asset Purchase Agreement and Asset Sale Agreement, as applicable.

“Requirements of Law” means as to any Person, any law (statutory or common), treaty, rule, ordinance, order, judgment, Governmental Authorization, or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“Requisite Lenders” means Lenders whose aggregate Exposures equal 50% or more of all Exposures. The Exposure of a Defaulting Lender shall be disregarded in determining the Requisite Lenders as of any determinate date.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock in the Parent.

“Retained Interest” has the meaning assigned to such term in Section 5.11.

“Right of First Refusal Side Letter” means the letter agreement, dated as of the date hereof, among Company, the Servicer and the Administrative Agent, as it may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Risk Retention Requirements” means the CRR, as supplemented by Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 and Commission Delegated Regulation (EU) No 602/2014 of 4 June 2014.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its permitted successors and assigns.

“Sales Tax Account” means a segregated account of Company into which Paying Agent, at the direction of the Administrative Agent, shall deposit all payments which the Servicer certifies were received from Obligor related to sales and use taxes.

“Seasoned Net Vintage Pool” means as of any date of determination, any Adjusted Vintage Pool that is seasoned more than one month.

“SEC” means the Securities and Exchange Commission.

“Second Warehouse Facility” means a loan facility in an amount not to exceed the aggregate Commitments of the Lenders as of the date of determination made to a direct or indirect wholly-owned Subsidiary of Seller that is not also a Subsidiary of Intermediate Seller pursuant to which (x) the Seller sells directly or indirectly certain of its Leases to such Subsidiary, (y) Seller guarantees such loan facility in whole or in part and/or (z) such Leases and the equity interests in such Subsidiary are pledged as collateral. Notwithstanding the foregoing, copies of documents relating to such Second Warehouse Facility shall be provided to the Administrative Agent at least 10 Business Days prior to the execution of such documents, provided that such documents may be provided on a redacted basis if required by the confidentiality provisions of such documents.

“Secured Parties” shall have the meaning attributed to such term in the Security Agreement.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Security Agreement” means that certain Security Agreement dated as of the Closing Date between Company, the Servicer and the Administrative Agent, as it may be amended, restated or otherwise modified from time to time.

“Seller” means FlexShopper, LLC a North Carolina limited liability company.

“Servicer” means Seller, in its capacity as the “Servicer” under the Servicing Agreement, and, after any removal or resignation of Seller as the “Servicer” in accordance with the Servicing Agreement, any Successor Servicer.

“Servicer Default” shall have the meaning attributed to such term in the Servicing Agreement.

“Servicing Agreement” means that certain Servicing Agreement dated as of the Closing Date between Company, Seller and the Administrative Agent, as it may be amended, restated or otherwise modified from time to time, and, after the appointment of any Successor Servicer, the Successor Servicing Agreement to which such Successor Servicer is a party, as it may be amended, restated or otherwise modified from time to time.

“Servicing Fees” shall have the meaning attributed to such term in the Servicing Agreement; provided, however that, after the appointment of any Successor Servicer, the Servicing Fees shall mean the Successor Servicer Fees payable to such Successor Servicer.

“Servicing Standard” shall have the meaning attributed to such term in the Servicing Agreement.

“Solvent” means, with respect to Company, that as of the date of determination, both (i) (a) the sum of such entity’s debt (including contingent liabilities) does not exceed the present fair saleable value of such entity’s present assets; (b) such entity’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date; and (c) such entity has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such entity is “solvent” within the meaning given that term and similar terms under laws applicable to it relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Special Member” shall have the meaning attribute to such term in that certain Amended And Restated Limited Liability Company Agreement of Flexshopper 2, LLC, entered into by the Intermediate Seller and the initial Independent Manager.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“Successor Servicer” shall have the meaning attributed to such term in the Servicing Agreement.

“Successor Servicing Agreement” shall have the meaning attributed to such term in the Servicing Agreement.

“Successor Servicer Fees” means the servicing fees payable to a Successor Servicer pursuant to a Successor Servicing Agreement.

“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, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means the date on which all of the following have occurred: (i) all Loans have been repaid in full in cash, (ii) all other Obligations (other than contingent indemnification obligations for which demand has not been made) under this Agreement and the other Credit Documents have been paid in full in cash or otherwise completely discharged, and (iii)(x) the Commitments have been permanently reduced to zero pursuant to Section 2.9(c), or (y) the Commitments have been terminated pursuant to Section 7.1.

“Termination Notice” shall have the meaning attributed to such term in the Servicing Agreement.

“Total Utilization of Commitments” means, as at any date of determination, the aggregate principal amount of all outstanding Loans.

“Transaction Costs” means the fees, costs and expenses payable by Seller or Company on or within ninety (90) days after the Closing Date in connection with the transactions contemplated by the Credit Documents.

“Total Payback Multiple” means, for any Lease, the sum of all scheduled payments with respect to such Lease (net of scheduled payments of sales and use tax with respect to a Lease), expressed as a percentage of the original Order Value.

“Transfer Date” has the meaning assigned to such term in the Asset Purchase Agreement and Asset Sale Agreement.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

“Underwriting Policies” means the Underwriting Dossier in the form attached hereto as Schedule 4, as such policies, procedures, guidelines and methodologies may be amended from time to time in accordance with Section 6.16.

“Unrestricted Cash” means cash and Cash Equivalents that are not controlled by or subject to any Lien or other preferential arrangement in favor of any creditor.

“Validity Guarantor” means Brad Bernstein.

“Validity Guarantee” means that certain guarantee agreement whereby the Validity Guarantor agrees, upon the occurrence of certain enumerated events, to absolutely, unconditionally and irrevocably guarantee the full and punctual payment when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, all amounts due by Company hereunder.

“Verification Agent” means Wells Fargo Bank, N.A., in its capacity as the provider of services under the Verification Agent Agreement, or any successor thereto or assignee thereof to the extent permitted by the Verification Agent Agreement.

“Verification Agent Agreement” mean the Verification Agent Agreement, dated as of the March 6, 2015, by and between Company, Verification Agent and Administrative Agent, as it may be amended, supplemented or otherwise modified from time to time.

“Verification Certificate” shall have the meaning attributed to such term in the Verification Agent Agreement.

“Verification Event” means in accordance with the terms of the Verification Agent Agreement, Company has delivered, or caused to be delivered to the Verification Agent, the Lease File related to each Lease that is, on such Credit Date, being transferred and delivered to Company pursuant to the Asset Sale Agreement, and the Administrative Agent has received a Verification Certificate from the Verification Agent.

“Weekly Payment Amount” means, for any Lease the “Total of Payments” (not including sales and use tax) listed on the Lease Agreement divided by 52.

1.1 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Lenders pursuant to Section 5.1(a) and Section 5.1(b) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable). If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either Company, the Requisite Lenders or the Administrative Agent shall so request, the Administrative Agent, the Lenders and Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP and accounting principles and policies in conformity with those used to prepare the Historical Financial Statements and (b) Company shall provide to the Administrative Agent and each Lender financial statements and other documents required under this Agreement or as requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. If Administrative Agent and Company cannot agree upon the required amendments within thirty (30) days following the date of implementation of any applicable change in GAAP, then all financial statements delivered and all calculations of financial covenants and other standards and terms in accordance with this Agreement and the other Credit Documents shall be prepared, delivered and made without regard to the underlying change in GAAP.

1.2 Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

SECTION 2. LOANS

2.1 Loans.

(a) Commitments.

(i) During the Commitment Period, subject to the terms and conditions hereof, including, without limitation delivery of an updated Borrowing Base Certificate and Borrowing Base Report, each Lender severally agrees to make Loans to Company in an aggregate amount up to but not exceeding such Lender’s Commitment; provided that no Lender shall make any such Loan or portion thereof to the extent that, after giving effect to such Loan:

a) the aggregate Total Utilization of Commitments exceeds the Borrowing Base; or

b) the aggregate outstanding principal balance of the Loans funded by such Lender hereunder exceeds its Commitment.

(b) Amounts borrowed pursuant to Section 2.1(a) may be reborrowed during the Commitment Period, and any repayment of the Loans (i) subject to clause (ii), on any Interest Payment Date shall be applied as set forth in Section 2.12(a) or (ii) on any date on which an Event of Default has occurred and is continuing shall be applied as set forth in Section 2.12(b). Each Lender’s Commitment shall expire on the Commitment Termination Date and all Loans and all other amounts owed hereunder with respect to the Loans and the Commitments shall be paid in full no later than the Maturity Date. There shall be no voluntary prepayments of any Loan made hereunder.

(c) Borrowing Mechanics for Loans.

(i) Loans shall be made in an aggregate minimum amount of \$50,000.

(ii) Whenever Company desires that Lenders make Loans, Company shall deliver to Paying Agent, Administrative Agent and each Lender a fully executed and delivered Funding Notice no later than Noon (New York City time) at least two (2) Business Days in advance of the proposed Credit Date. Each Funding Notice shall be delivered with a Borrowing Base Certificate reflecting sufficient Availability for the requested Loans and a Borrowing Base Report.

(iii) Each Lender shall make the amount of its Loan available to the Paying Agent not later than 11:00 a.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, and upon the written direction of the Administrative Agent, the Paying Agent shall remit such funds to Company not later than 4:00 p.m. (New York City time) by wire transfer of same day funds in Dollars to the account designated by the Company in the related Funding Notice (which need not be an account of the Company). If the Paying Agent has not received a written direction from the Administrative Agent by 4:00 p.m. (New York City time), Paying Agent will wire such funds back to applicable Lenders.

(iv) Company may submit a Funding Notice pursuant to this Section 2.1 no more than once per calendar week.

(d) Deemed Requests for Loans to Pay Required Payments. All payments of principal, interest, fees, unpaid Transaction Costs, and other amounts payable to Lenders or parties under this Agreement or any Credit Document may be paid from the proceeds of Loans, made pursuant to a Funding Notice from Company pursuant to Section 2.1(c)(ii).

(e) Increase in Commitments.

(i) Requests for Increase. So long as (i) no Event of Default or Default has occurred and is continuing, (ii) the Total Utilization of Commitments is at least equal to 50% of the Commitments of all Lenders and (iii) each Lender has been provided with any diligence and cash flow audit information it has requested and had adequate time to review, upon notice to the Administrative Agent and each Lender, Company may from time to time request an increase in the Commitment with respect to any Lender (with the written consent of the Administrative Agent in its sole and absolute discretion) at any time following the Closing Date and prior to the Commitment Termination Date with respect to such Lender.

(ii) Elections to Increase. Each Lender being asked to increase its Commitment shall notify Company whether or not such Person agrees, in its respective sole and absolute discretion, to the increase to such Commitment. Any such Person not responding within 10 Business Days after receipt of such request for an increase shall be deemed to have declined to consent to an increase in such Lender's Commitment.

(iii) Effective Date. If the Commitment of any Lender is increased in accordance with this Section, the Administrative Agent and the Lender shall determine the effective date with respect to such increase (such date, the "Commitment Increase Effective Date"). Upon the occurrence of each such Commitment Increase Effective Date, the parties hereto shall amend the Agreement to reflect any changes effected thereby to the Commitment of each Lender.

(iv) Notification by the Administrative Agent. The Administrative Agent shall notify each Lender and Company of the Administrative Agent's and such Lender's response to each request made hereunder, the amount of such increase (if any) and the related Commitment Increase Effective Date. Should any Lender decline to provide any increase in its Commitment, the Seller shall have the right (but not the obligation) to (1) seek a Second Warehouse Facility at any time thereafter, (2) sign and close on such Second Warehouse Facility, provided, that no Default or Event of Default has occurred and is continuing hereunder on the date of such signing and closing and (3) draw upon such Second Warehouse Facility at any time and from time to time, provided, that upon the first such draw, the Total Utilization of Commitments is equal to the Commitments of all Lenders and there exists no Default or Event of Default. At the option of the Administrative Agent, if an Obligor under a Pledged Lease is a party to another Lease that is not a Pledged Lease, Seller shall have the right repurchase the applicable Pledged Lease from Intermediate Seller (and Intermediate Seller shall have the corresponding right to repurchase such Pledged Lease from the Company), provided, that no Event of Default shall result from such repurchase. The repurchase price for such Pledged Lease shall be the greater of (a) the Amortized Order Value for such Lease and (b) any amounts necessary to cure any then existing Borrowing Base Deficiency. In connection therewith, Administrative Agent on behalf of the Lenders will promptly release any Lien on such Pledged Lease and the proceeds thereof so repurchased.

(v) Conditions to Effectiveness of Increase. As a condition precedent to each such increase, Company shall deliver to the Administrative Agent and each Lender, a certificate of the Secretary or Assistant Secretary of each of Company and the Seller, dated as of the Commitment Increase Effective Date, (i) certifying and attaching (x) the resolutions of Company approving or consenting to such Commitment increase and authorizing the execution, delivery and performance by such Person of the amendment to the Agreement, and (y) all documents evidencing all other necessary corporate action and governmental approvals, if any, with respect to such Commitment increase and such amendment to the Agreement and (ii) certifying that, before and after giving effect to such increase, (x) the representations and warranties of such Company and the Seller are true and correct as of the Commitment Increase Effective Date (unless any such representation or warranty relates to a specific date, in which case, it shall be true and correct in all material respects as of such date) and (y) no Event of Default or Default exists.

2.2 Pro Rata Shares. All Loans shall be made by the Lender, simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder.

2.3 Use of Proceeds. No portion of the proceeds of any Loan shall be used in any manner that causes or might cause such Loan or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

2.4 Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or Company's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern absent manifest error.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of the Lenders and Loans from time to time (the "**Register**"). The Register shall be available for inspection by Company or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register the Commitments and the Loans, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Company and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or Company's Obligations in respect of any Loan. Company hereby designates the entity serving as Administrative Agent to serve as Company's agent solely for purposes of maintaining the Register as provided in this Section 2.4, and Company hereby agrees that, to the extent such entity serves in such capacity, the entity serving as Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute Indemnitees.

(c) Loan Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at any time after the Closing Date, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 9.6), promptly after Company's receipt of such notice) a Loan Note, as applicable, to evidence such Lender's Loans.

2.5 Interest on Loans.

(a) Except as otherwise set forth herein, the Loans shall accrue interest daily in an amount equal to the product of (A) the unpaid principal amount thereof as of such day and (B) the LIBO Rate for such period (unless a LIBOR Disruption Event has occurred and is continuing, in which case such rate shall be the Prime Rate) plus the Applicable Margin.

(b) Interest payable pursuant to Section 2.5(a) shall be computed on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Loan.

(c) Except as otherwise set forth herein, interest on each Loan shall be payable in arrears (i) on and to each Interest Payment Date; (ii) upon any prepayment of that Loan to the extent accrued on the amount being prepaid; and (iii) at maturity.

(d) Paying Agent shall provide to Company on each Interest Rate Determination Date the LIBO Rate.

2.6 Default Interest. Upon the occurrence and during the continuance of an Event of Default, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable in accordance with Section 2.12 at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.0% per annum in excess of the interest rate otherwise payable hereunder) (the "**Default Interest Rate**"). Payment or acceptance of the increased rates of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

2.7 Fees.

(a) Company agrees to pay to the Person entitled to payment hereunder, including but not limited to payment to each Lender of its Non-Use Fee, any fees then due and owing to such Person by Company. Company agrees to pay any Liquidation Fees payable to a Lender in connection with a prepayment of Loans.

(b) All fees referred to in Section 2.7(a) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable monthly in arrears on (i) each Interest Payment Date during the Commitment Period, commencing on the first such date to occur after the Closing Date, and (ii) on the Commitment Termination Date.

2.8 Maturity Date. Company shall repay the Loans in full on or before the Maturity Date.

2.9 Voluntary Commitment Reductions.

(a) Subject to payment of an Early Termination Fee as described in this Section 2.9, Company may, upon not less than thirty (30) Business Days' prior written notice to Administrative Agent and each Lender, at any time and from time the date that is eighteen (18) months after the Closing Date, terminate in whole or permanently reduce in part the Commitments in an amount up to the amount by which the Commitments exceed the Total Utilization of Commitments at the time of such proposed termination or reduction; provided, any such partial reduction of the Commitments shall be in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount; and *provided further* that any such reduction of the Commitments shall effect a ratable reduction of the Commitments of each Lender. Notwithstanding the foregoing, voluntary reductions of Commitments are prohibited from the Closing Date until the date that is eighteen (18) months after the Closing Date.

(b) Company's notice shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Commitments shall be effective on the date specified in Company's notice and shall reduce the Commitment of each applicable Lender proportionately to its applicable Pro Rata Share thereof.

(c) If Company voluntarily reduces or terminates any Commitments as provided in this Section 2.9, Company shall pay to each Lender whose Commitments was terminated or reduced, on the date of such reduction or termination, the an amount equal to the Early Termination Fee.

2.10 Borrowing Base Deficiency. Company shall prepay the Loans within three (3) Business Days of the earlier of (i) an Authorized Officer or the Chief Financial Officer of Company becoming aware that a Borrowing Base Deficiency exists and (ii) receipt by Company of written notice from the Administrative Agent or any Lender that a Borrowing Base Deficiency exists, in each case in an amount equal to such Borrowing Base Deficiency.

2.11 Controlled Accounts.

(a) Company shall establish and maintain cash management systems acceptable to the Administrative Agent, including, without limitation, with respect to blocked account arrangements. Company shall not establish or maintain an account other than a Controlled Account and Company shall not, and shall cause Servicer not to deposit Collections or proceeds thereof in an account which is not a Controlled Account (provided, that, inadvertent and non-reoccurring errors by Servicer in applying such Collections or proceeds that are promptly, and in any event within two (2) Business Days after Servicer or Company has (or should have had in the exercise of reasonable diligence) knowledge thereof, cured shall not be considered a breach of this covenant). All Collections and proceeds of Collateral shall be subject to an express trust for the benefit of Administrative Agent on behalf of the Secured Parties and shall be delivered to the Lenders for application to the Obligations or any other amount due under any other Credit Document as set forth in this Agreement.

On or prior to the Closing Date, Company shall cause to be established and shall thereafter cause to be maintained, (i) a trust account (or sub-accounts) in the name of Company and under the sole dominion and control of, the Administrative Agent designated as the "**Collection Account**" bearing a designation clearly indicating that the funds and other property credited thereto are held for Administrative Agent for the benefit of the Lenders and subject to the applicable Control Agreement, (ii) a Deposit Account into which the proceeds of all Pledged Leases, including by automatic debit from Leases Obligor's operating accounts, shall be deposited in the name of Company designated hereunder as the "**Lockbox Account**" as to which the Administrative Agent has sole dominion and control over such account for the benefit of the Secured Parties within the meaning of Section 9-104(a)(2) of the UCC pursuant to the Lockbox Control Agreement and (iii) a trust account in the name of Company and under the sole dominion and control of, the Administrative Agent designated hereunder as the "Sales Tax Account" bearing a designation clearly indicating that the funds and other property credited thereto are held for Administrative Agent for the benefit of the Lenders and subject to the applicable Control Agreement. The Lockbox Account Control Agreement will provide that all funds in the Lockbox Account will be swept daily into the Collection Account.

(b) Lockbox System

(i) Company has established pursuant to the Lockbox Account Control Agreement and the other Control Agreements for the benefit of the Administrative Agent, on behalf of the Secured Parties, a system of lockboxes and related accounts or deposit accounts as described in Sections 2.11(a) and (b) (the “**Lockbox System**”) into which (subject to the proviso in Section 2.11(a)) all Collections shall be deposited.

(ii) Company shall grant the Backup Servicer (and its delegates) and Administrative Agent read-only access to the Lockbox Account.

(iii) Company shall not establish any lockbox or lockbox arrangement without the consent of the Administrative Agent in its discretion, and prior to establishing any such lockbox or lockbox arrangement, Company shall cause each bank or financial institution with which it seeks to establish such a lockbox or lockbox arrangement, to enter into a control agreement with respect thereto in form and substance satisfactory to the Administrative Agent.

(iv) Without the prior written consent of the Administrative Agent, Company shall not (A) change the general instructions given to the Servicer in respect of payments on account of Pledged Leases to be deposited in the Lockbox System or (B) change any instructions given to any bank or financial institution which in any manner redirects any Collections or proceeds thereof in the Lockbox System to any account which is not a Controlled Account.

(v) Company acknowledges and agrees that (A) the funds on deposit in the Lockbox System shall continue to be collateral security for the Obligations secured thereby, and (B) upon the occurrence and during the continuance of an Event of Default, at the election of the Requisite Lenders, the funds on deposit in the Lockbox System may be applied as provided in Section 2.12(b).

(vi) Company has directed, and will at all times hereafter direct, the Servicer to direct payment from each of the Obligors on account of Pledged Leases directly to the Lockbox System. Company agrees (A) to instruct the Servicer to instruct each Obligors to make all payments with respect to Pledged Leases directly to the Lockbox System and (B) promptly (and, except as set forth in the proviso to this Section 2.11(c)(vi), in no event later than two (2) Business Days following receipt) to deposit all payments received by it on account of Pledged Leases, whether in the form of cash, checks, notes, drafts, bills of exchange, money orders or otherwise, in the Lockbox System in precisely the form in which they are received (but with any endorsements of Company necessary for deposit or collection), and until they are so deposited to hold such payments in trust for and as the property of the Administrative Agent; provided, however, that with respect to any payment received that does not contain sufficient identification of the account number to which such payment relates or cannot be processed due to an act beyond the control of the Servicer, such deposit shall be made no later than the second Business Day following the date on which such account number is identified or such payment can be processed, as applicable. The Company or its designee shall be permitted from time to time to request disbursement of funds on deposit in the Collection Account for the purchase of additional Eligible Leases pursuant to the terms and conditions of the Asset Sale Agreement and the Asset Purchase Agreement; provided that, (i) such additional Eligible Leases are purchased simultaneously with the funding date for a Loan hereunder and (ii) the Company has delivered a Borrowing Base Certificate evidencing, after giving effect to the transfer of Collections and the funding of any Loan being made on such date, no Borrowing Base Deficiency has occurred or will occur. Upon receipt of such certificate, and with the consent of and at the direction of the Administrative Agent (which direction shall not be unreasonably withheld, delayed or conditioned), the Paying Agent shall remit such funds to the account designated by the Company.

(vii) The Company (or the Servicer on its behalf) shall, no more than one time per calendar week, deliver to the Paying Agent, the Administrative Agent and each Lender a certificate setting forth the amount of sales and use taxes paid by Obligors with respect to Pledged Leases since the most recently delivered certificate (or since the Closing Date, in the case of the first such certificate) and requesting the Paying Agent to transfer such amounts from the Collection Account to the Sales Tax Account. Upon receipt of such certificate and at the direction of the Administrative Agent, the Paying Agent shall remit funds in an amount equal to that specified in such certificate to the Sales Tax Account.

(viii) No more than once per month, the Company (or the Servicer on its behalf) shall deliver to the Paying Agent, the Administrative Agent and each Lender a certificate certifying the amounts to be disbursed and requesting disbursement of funds from the Sales Tax Account in the amount necessary to pay all sales and use tax due or coming due with respect to the Pledged Leases. Upon receipt of such certificate, and at the direction of the Administrative Agent (which direction shall not be unreasonably withheld, delayed or conditioned), the Paying Agent shall transfer such funds to an account designated by the Servicer.

2.12 Application of Proceeds.

(a) Application of Amounts in the Collection Account. So long as no Event of Default has occurred and is continuing (after giving effect to the application of funds in accordance herewith on the relevant date), on each Interest Payment Date, amounts specified in the Monthly Servicing Report on deposit in the Collection Account (net of amounts on deposit in the Collection Account collected with respect to a Lease pursuant to the payment of sales and use taxes, if any) shall be applied by the Paying Agent based on the Monthly Servicing Report as follows:

(i) *first*, to Company, amounts sufficient for Company to maintain its limited liability company existence and to pay similar expenses up to an amount not to exceed \$10,000 in any Fiscal Year,

(ii) *second*, on a *pro rata* basis, (A) to Verification Agent to pay any accrued and unpaid fees and expenses of the Verification Agent (B) to the Company to pay any accrued and unpaid fees and expenses of the Controlled Account Bank (in respect of the Lockbox Account), (C) to Administrative Agent to pay any costs, fees or indemnities then due and owing to Administrative Agent under the Credit Documents; and (D) to Paying Agent to pay any costs, fees or indemnities then due and owing to Paying Agent under the Credit Documents;

(iii) *third*, on a *pro rata* basis based upon amounts due to such party, (A) to the Servicer, to pay any accrued and unpaid Servicing Fees and (B) to the Backup Servicer, to pay any accrued and unpaid Backup Servicing Fees;

(iv) *fourth*, on a *pro rata* basis, to the Lenders to pay costs, fees, any Liquidation Fees (if applicable) and the outstanding Accrued Interest Amount and expenses then due and payable by Company pursuant to the Credit Documents;

(v) *fifth*, prior to the Commitment Termination Date, on a *pro rata* basis, to the Lenders in an amount necessary to reduce any Borrowing Base Deficiency to zero and, on and after the Commitment Termination Date, on a *pro rata* basis, to the Lenders for application to the outstanding principal balance of the Loans until paid in full;

(vi) *sixth*, to pay all other Obligations or any other amount then due and payable hereunder by Company (other than, prior to the Commitment Termination Date, principal); and

(vii) *seventh*, any remainder to Company.

(b) Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, on each Interest Payment Date all amounts in the Controlled Accounts (net of amounts on deposit in the Collection Account collected with respect to a Lease pursuant to the payment of sales and use taxes, if any) shall be applied by the Paying Agent as follows:

(i) *first*, to Company, amounts sufficient for Company to maintain its limited liability company existence and to pay similar expenses up to an amount not to exceed \$10,000 in any Fiscal Year,

(ii) *second*, on a *pro rata* basis, (A) to Verification Agent to pay any accrued and unpaid fees and expenses of the Verification Agent (B) to the Company to pay any accrued and unpaid fees and expenses of the Controlled Account Bank (in respect of the Lockbox Account), (C) to Administrative Agent to pay any costs, fees or indemnities then due and owing to Administrative Agent under the Credit Documents; and (D) to Paying Agent to pay any costs, fees or indemnities then due and owing to Paying Agent under the Credit Documents;

(iii) *third*, on a *pro rata* basis, (A) to the Servicer, to pay any accrued and unpaid Servicing Fees and (B) to the Backup Servicer, to pay any accrued and unpaid Backup Servicing Fees;

(iv) *fourth*, on a *pro rata* basis, to the Lenders to pay costs, fees, any Liquidation Fees (if applicable) and the outstanding Accrued Interest Amount and expenses then due and payable by Company pursuant to the Credit Documents;

- (v) *fifth*, on a *pro rata* basis, to the Lenders until the Loans are paid in full;
- (vi) *sixth*, to pay all other Obligations or any other amount then due and payable hereunder; and
- (vii) *seventh*, any remainder to Company.

2.13 General Provisions Regarding Payments.

(a) All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and paid not later than 2:00 p.m. (New York City time) on the date due via wire transfer of immediately available funds. Funds received after that time on such due date shall be deemed to have been paid by Company on the next Business Day (provided, that any prepayment made or any application of funds by Paying Agent pursuant to Section 2.12 on any Interest Payment Date shall be deemed for all purposes to have been made in accordance with the deadlines and payment requirements described in this Section 2.13).

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.

(c) Paying Agent shall promptly distribute to each Lender to such account as such Lender shall indicate in writing, the applicable Pro Rata Share of each Lender of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including, without limitation, all fees payable with respect thereto.

(d) 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 or of the commitment fees hereunder.

(e) Except as set forth in the proviso to Section 2.13(a), Paying Agent shall deem any payment by or on behalf of Company hereunder to them that is not made in same day funds prior to 2:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Paying Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Paying Agent shall give prompt notice via electronic mail to Company and Administrative Agent if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 7.1(a). 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 Default Interest Rate determined pursuant to Section 2.6 from the date such amount was due and payable until the date such amount is paid in full.

2.14 Ratable Sharing. Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by payment, through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents, or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than such Lender would be entitled pursuant to this Agreement, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent, Paying Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that the recovery of such Aggregate Amounts Due shall be shared by the applicable Lenders in proportion to the Aggregate Amounts Due to them pursuant to this Agreement; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all monies owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.15 Increased Costs; Capital Adequacy.

(a) Compensation for Increased Costs and Taxes. Subject to the provisions of Section 2.16 (which shall be controlling with respect to the matters covered thereby), in the event that any Affected Party shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or compliance by such Affected Party with any guideline, request or directive issued or made after the date hereof (or with respect to any Lender which becomes a Lender after the date hereof, effective after such date) by any central bank or other Governmental Authority or quasi-Governmental Authority (whether or not having the force of law): (i) subjects such Affected Party (or its applicable lending office) to any additional Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) and (c) of the definition of Excluded Taxes and (c) Connection Income Taxes) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Affected Party (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC or other insurance or charge or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Affected Party; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Affected Party (or its applicable lending office) or its obligations hereunder; and the result of any of the foregoing is to increase the cost to such Affected Party of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Affected Party (or its applicable lending office) with respect thereto; then, in any such case, if such Affected Party deems such change to be material, Company shall promptly pay to such Affected Party, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Affected Party in its sole discretion shall determine) as may be necessary to compensate such Affected Party for any such increased cost or reduction in amounts received or receivable hereunder and any reasonable expenses related thereto. Such Affected Party shall deliver to Company (with a copy to Administrative Agent and Paying Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Affected Party under this Section 2.15(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Affected Party shall have determined in its sole discretion (which determination shall, absent manifest effort, be final and conclusive and binding upon all parties hereto) that (i) the adoption, effectiveness, phase-in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (ii) compliance by any Affected Party (or its applicable lending office) or any company controlling such Affected Party with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the Closing Date, has or would have the effect of reducing the rate of return on the capital of such Affected Party or any company controlling such Affected Party as a consequence of, or with reference to, such Affected Party's Loans or Commitments, or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Affected Party or such controlling company could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Affected Party or such controlling company with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by Company from such Affected Party of the statement referred to in the next sentence, Company shall pay to such Affected Party such additional amount or amounts as will compensate such Affected Party or such controlling company on an after-tax basis for such reduction. Such Affected Party shall deliver to Company (with a copy to Administrative Agent and Administrative Agent and Paying Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Affected Party under this Section 2.15(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error. For the avoidance of doubt, subsections (i) and (ii) of this Section 2.15 shall apply, without limitation, to all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued by any Governmental Authority (x) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended to the date hereof and from time to time hereafter, and any successor statute and (y) in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), regardless of the date adopted, issued, promulgated or implemented.

(c) Delay in Requests. Failure or delay on the part of any Affected Party to demand compensation pursuant to the foregoing provisions of this Section 2.15 shall not constitute a waiver of such Affected Party's right to demand such compensation, provided that Company shall not be required to compensate an Affected Party pursuant to the foregoing provisions of this Section 2.15 for any penalties or interest incurred or suffered more than one hundred twenty (120) days prior to the date that such Affected Party notifies Company of the matters giving rise to such increased costs or reductions and of such Affected Party's intention to claim compensation therefor.

2.16 Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. Subject to Section 2.16(b), all sums payable by Company hereunder and under the other Credit 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 imposed, levied, collected, withheld or assessed by or within the United States or any political subdivision in or of the United States or any other jurisdiction from or to which a payment is made by or on behalf of Company or by any federation or organization of which the United States or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If Company or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by Company to an Affected Party under any of the Credit Documents: (i) Company shall notify Paying Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (ii) Company or the Paying Agent shall make such deduction or withholding and pay any such Tax to the relevant Governmental Authority before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on Company) for its own account or (if that liability is imposed on Paying Agent or such Affected Party, as the case may be) on behalf of and in the name of Paying Agent or such Affected Party; (iii) if such Tax is an Indemnified Tax, the sum payable by Company 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 (and any withholdings imposed on additional amounts payable under this paragraph), such Affected Party receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty (30) days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty (30) days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Company shall deliver to Paying Agent evidence reasonably satisfactory to the other Affected Parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Indemnification by Company. Company shall indemnify each Affected Party, within ten (10) days after written demand therefor, for the full amount of any additional amounts required to be paid by Company pursuant to Section 2.16(b)(iii), payable or paid by such Affected Party or required to be withheld or deducted from a payment to such Affected Party and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Company by an Affected Party (with a copy to the Paying Agent), or by the Paying Agent on its own behalf or on behalf of an Affected Party, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Affected Party shall severally indemnify the Paying Agent, within ten (10) days after written demand therefor, for (i) any Taxes attributable to such Affected Party (but only to the extent Company has not already indemnified the Paying Agent for such Taxes and without limiting the obligation of Company to do so) and (ii) any Taxes attributable to such Affected Party's failure to comply with the provisions of Section 9.5(h) relating to the maintenance of a Participant Register, in either case, that are payable or paid by the Paying Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Affected Party by the Paying Agent shall be conclusive absent manifest error. Each Affected Party hereby authorizes the Paying Agent to set off and apply any and all amounts at any time owing to such Affected Party under any Credit Document or otherwise payable by the Paying Agent to the Affected Party from any other source against any amount due to the Paying Agent.

(e) Evidence of Exemption From U.S. Withholding Tax.

(i) Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a “**Non-US Lender**”) shall, to the extent it is legally entitled to do so, deliver to Paying Agent for transmission to Company, on or prior to the Closing Date or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Company or Paying Agent (each in the reasonable exercise of its discretion), (A) two original copies of Internal Revenue Service Form W-8BEN, 8BEN-E or W-8ECI or W-8IMY (with appropriate attachments) (or any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to establish that such Lender is not subject to, or is eligible for a reduction in the rate of, deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (B) if such Lender is not a “bank” or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver Internal Revenue Service Form W-8IMY or W-8ECI pursuant to clause (A) above and is relying on the so called “portfolio interest exception”, a Certificate Regarding Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN or 8BEN-E (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to establish that such Lender is not subject to, or is eligible for a reduction in the rate of, to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.16(e)(i) or Section 2.16(e)(ii) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Paying Agent for transmission to Company two new original copies of Internal Revenue Service Form W-8BEN, 8BEN-E, W-8IMY, or W-8ECI, or, if relying on the “portfolio interest exception”, a Certificate Regarding Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN or 8BEN-E (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Company to confirm or establish that such Lender is not subject to, or is eligible for a reduction in the rate of, deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Paying Agent and Company of its inability to deliver any such forms, certificates or other evidence. Company shall not be required to pay any additional amount in respect of U.S. Federal withholding taxes to any Non-US Lender under Section 2.16(b)(iii) if such Lender shall have failed (1) to deliver any forms, certificates or other evidence required by Section 2.16(e)(i) or Section 2.16(e)(ii), or (2) to notify Paying Agent and Company of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.16(e)(i) and Section 2.16(e)(ii) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.16(e)(i) shall relieve Company of its obligation to pay any additional amounts pursuant to this Section 2.16 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

(ii) Any Lender that is a U.S. Person shall deliver to Company and the Paying Agent on or prior to the Closing Date or the date on which such Lender becomes a Lender under this Agreement pursuant to an Assignment Agreement (and from time to time thereafter upon the reasonable request of Company or the Paying Agent), executed originals of IRS Form W-9 certifying that such Lender is a U.S. Person and exempt from U.S. federal backup withholding tax.

(iii) If a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Company and the Paying Agent at the time or times reasonably requested by Company or the Paying Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Company or the Paying Agent as may be necessary for Company and the Paying Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.16(e)(iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Refunds of Indemnified Taxes. If any Affected Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.16, it shall pay to Company an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.16 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Affected Party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Company, upon the request of such Affected Party, shall repay to such Affected Party the amount paid over pursuant to this Section 2.16(f) in the event that such Affected Party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.16(f), in no event shall the Affected Party be required to pay any amount to Company pursuant to this Section 2.16(f) the payment of which would place the Affected Party in a less favorable net after-tax position than the Affected Party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.16(f) shall not be construed to require any Affected Party to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Company or any other Person.

2.17 Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that other than at the direction or request of any regulatory agency or authority, any Lender defaults (in each case, a "**Defaulting Lender**") in its obligation to fund (a "**Funding Default**") any Loan (in each case, a "**Defaulted Lender Loan**"), then (a) during any Lender Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Credit Documents; (b) to the extent permitted by applicable law, until such time as the Default Excess, if any, with respect to such Defaulting Lender shall have been reduced to zero, any mandatory prepayment of the Loans shall be applied to the Loans of other Lenders (but not to the Loans of such Defaulting Lender) as if such Defaulting Lender had funded all Defaulted Lender Loans of such Defaulting Lender, it being understood and agreed that Company shall be entitled to retain any portion of any mandatory prepayment of the Loans that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause (b); (c) such Defaulting Lender's Commitment and outstanding Loans shall be excluded for purposes of calculating any Commitment fee payable to Lenders in respect of any day during any Lender Default Period with respect to such Defaulting Lender, and such Defaulting Lender shall not be entitled to receive any Commitment fee pursuant to Section 2.7 with respect to such Defaulting Lender's Commitment in respect of any Lender Default Period with respect to such Defaulting Lender; and (d) the Total Utilization of Commitments as at any date of determination shall be calculated as if such Defaulting Lender had funded all Defaulted Lender Loans of such Defaulting Lender. No Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.17, performance by Company of its obligations hereunder and the other Credit Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.17. The rights and remedies against a Defaulting Lender under this Section 2.17 are in addition to other rights and remedies which Company may have against such Defaulting Lender with respect to any Funding Default and which Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default or violation of Section 8.4(a).

2.18 Intention of Parties. It is the intention of the parties that the Loans be characterized as indebtedness for all U.S., federal, state and local income tax purposes. The terms of the Loans shall be interpreted to further this intention and the Lenders and Company agree to treat the Loans as indebtedness for U.S., federal, state and local income tax purposes. In addition, the Lenders and Company agree to treat the Loans as indebtedness for all non-tax purposes, including for financial statement reporting and regulatory purposes.

2.19 The Paying Agent.

(a) The Lenders hereby appoint Wells Fargo Bank, National Association as the initial Paying Agent. All payments of amounts due and payable in respect of the Obligations that are to be made from amounts withdrawn from the Collection Account shall be made by the Paying Agent based on the Monthly Servicing Report.

(b) The Company shall pay to the Paying Agent the applicable fees payable to it in accordance with schedule of fees attached hereto as Schedule 9.

(c) The Paying Agent hereby agrees that, subject to the provisions of this Section, it shall:

(i) hold any sums held by it for the payment of amounts due with respect to the Obligations in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(ii) [reserved];

(iii) comply with all requirements of the Internal Revenue Code and any applicable State law with respect to the withholding from any payments made by it in respect of any Obligations of any applicable withholding taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith; and

(iv) provide to the Lenders such information as is required to be delivered under the Internal Revenue Code or any State law applicable to the particular Paying Agent, relating to payments made by the Paying Agent under this Agreement.

(d) Each Paying Agent (other than the initial Paying Agent) shall be appointed by the Lenders with the prior written consent of the Company.

(e) The Company shall indemnify the Paying Agent and its officers, directors, employees and agents for, and hold them harmless against any loss, liability or expense incurred, other than in connection with the willful misconduct, fraud, gross negligence or bad faith on the part of the Paying Agent, arising out of or in connection with the performance of its obligations under and in accordance with this Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement. Such indemnity shall survive the termination of this Agreement and the resignation or removal of the Paying Agent.

(f) The Paying Agent undertakes to perform such duties, and only such duties, as are expressly set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against the Paying Agent. The Paying Agent may conclusively rely on the truth of the statements and the correctness of the opinions expressed in any certificates or opinions furnished to the Paying Agent pursuant to and conforming to the requirements of this Agreement.

(g) If the Paying Agent shall at any time receive conflicting instructions from the Administrative Agent and the Company or the Servicer or any other party to this Agreement and the conflict between such instructions cannot be resolved by reference to the terms of this Agreement, the Paying Agent shall be entitled to rely on the instructions of the Administrative Agent. The Paying Agent may rely upon the validity of documents delivered to it, without investigation as to their authenticity or legal effectiveness, and the parties to this Agreement will hold the Paying Agent harmless from any claims that may arise or be asserted against the Paying Agent because of the invalidity of any such documents or their failure to fulfill their intended purpose.

(s) The Paying Agent may: (i) terminate its obligations as Paying Agent under this Agreement (subject to the terms set forth herein) upon at least 30 days' prior written notice to the Company, the Servicer and the Administrative Agent; provided, however, that, without the consent of the Administrative Agent, such resignation shall not be effective until a successor Paying Agent reasonably acceptable to the Administrative Agent and Company shall have accepted appointment by the Lenders as Paying Agent, pursuant hereto and shall have agreed to be bound by the terms of this Agreement; or (ii) be removed at any time by written demand, of the Requisite Lenders, delivered to the Paying Agent, the Company and the Servicer. In the event of such termination or removal, the Lenders with the consent of the Company shall appoint a successor paying. If, however, a successor paying agent is not appointed by the Lenders within ninety (90) days after the giving of notice of resignation, the Paying Agent may petition a court of competent jurisdiction for the appointment of a successor Paying Agent.

(t) Any successor Paying Agent appointed pursuant hereto shall (i) execute, acknowledge, and deliver to the Company, the Servicer, the Administrative Agent, and to the predecessor Paying Agent an instrument accepting such appointment under this Agreement. Thereupon, the resignation or removal of the predecessor Paying Agent shall become effective and such successor Paying Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties, and obligations of its predecessor as Paying Agent under this Agreement, with like effect as if originally named as Paying Agent. The predecessor Paying Agent shall upon payment of its fees and expenses deliver to the successor Paying Agent all documents and statements and monies held by it under this Agreement; and the Company and the predecessor Paying Agent shall execute and deliver such instruments and do such other things as may reasonably be requested for fully and certainly vesting and confirming in the successor Paying Agent all such rights, powers, duties, and obligations.

(u) The Company shall reimburse the Paying Agent for the reasonable out-of-pocket expenses of the Paying Agent incurred in connection with the succession of any successor Paying Agent including in transferring any funds in its possession to the successor Paying Agent.

SECTION 3. CONDITIONS PRECEDENT

3.1 Conditions Precedent to Effectiveness of the Agreement. The Agreement shall become effective on the Closing Date subject to the satisfaction, or waiver in accordance with Section 9.4, of the following conditions on or before the Closing Date:

(a) Credit Documents and Related Agreements. Each Lender shall have received copies of the Credit Documents, originally executed and delivered by each applicable Person.

(b) Organizational Documents; Incumbency. Each Lender shall have received (i) copies of each Organizational Document executed and delivered by Company and Seller, as applicable, and, to the extent applicable, (x) certified as of the Closing Date or a recent date prior thereto by the appropriate governmental official and (y) certified by its secretary or an assistant secretary as of the Closing Date, in each case as being in full force and effect without modification or amendment; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each of Company and Seller approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each of Company and Seller's jurisdiction of organization or formation; and (v) such other documents as any Lender may request.

(c) Organizational and Capital Structure. The organizational structure and capital structure of Seller and Company, shall be as set forth on Schedule 3.

(d) Transaction Costs. On or prior to the Closing Date, Company shall have delivered to Administrative Agent and each Lender, Company's reasonable best estimate of the Transaction Costs (other than fees payable to the Administrative Agent and each Lender).

(e) Governmental Authorizations and Consents. Company and Seller shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable to be obtained by them, in connection with the transactions contemplated by the Credit Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to each Lender. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(f) Opinions of Counsel to Company and Seller. Each Lender and the Administrative Agent shall have received originally executed copies of the favorable written opinions of K&L Gates LLP, counsel for Company and Seller, as to such other matters as any Lender may request, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to each Lender.

(g) Fees. Company shall have paid all fees, expenses and disbursements payable by it on Closing Date.

(h) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the sole discretion of any Lender, singly or in the aggregate, materially impairs any of the transactions contemplated by the Credit Documents or that would be expected to result in a Material Adverse Effect.

(i) No Material Adverse Change. Since December 31, 2014, no event, circumstance or change shall have occurred that has caused, either in any case or in the aggregate, a Material Adverse Effect.

(j) No Default or Event of Default. No Default, Event of Default or Servicer Default shall have occurred and be continuing.

(k) Florida Documentary Stamp Tax. Seller or Company shall have provided to Administrative Agent evidence that it has mailed payment to the Florida Department of Revenue of all amounts owed in relation to the Florida documentary stamp tax, in accordance with Rule 12B-4 of the Florida Administrative Code.

(l) Completion of Proceedings. All corporate, limited liability and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto shall be reasonably satisfactory in form and substance to each Lender and the Administrative Agent, and each Lender, and the Administrative Agent shall have received all such counterpart originals or certified copies of such documents as they may request.

3.2 Conditions to Each Loan.

(a) Conditions Precedent. The obligation of each Lender to make any Loan on any Credit Date is subject to the satisfaction, or waiver in accordance with Section 9.4, of the following conditions precedent:

(i) at least two (2) Business Days prior to such Credit Date, Administrative Agent, Paying Agent and each Lender shall have received a fully executed and delivered Funding Notice together with a Borrowing Base Certificate, evidencing sufficient Availability with respect to the requested Loans, and a Borrowing Base Report;

(ii) both before and after making any Loans requested on such Credit Date, the Total Utilization of Commitments shall not exceed the Borrowing Base;

(iii) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date (unless any such representation or warranty relates to a specific date, in which case, it shall be true and correct in all material respects as of such date);

(iv) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Loan that would constitute an Event of Default or a Default;

(v) as of such Credit Date no event has occurred which has had a Material Adverse Effect;

(vi) as of such Credit Date, no Key Person Event shall have occurred;

(vii) with respect to the related Verification Event for such Credit Date, Schedule II of such Verification Certificate notes no more than the greater of (i) eight (8) of such Lease Files reviewed by the Verification Agent or (ii) 5% of such Lease files reviewed by the Verification Agent;

(viii) to the extent that the pledge of any Lease would cause the aggregate Amortized Lease Value of all Leases the Obligors of which have billing addresses in any one state to exceed 22.5% of the Amortized Lease Value of all Pledged Leases, a legal opinion with respect to compliance with law in such state, reasonably acceptable to the Administrative Agent; and

(ix) such other items as the Administrative Agent or any Lender shall reasonably request.

The Administrative Agent shall be entitled, but not obligated to, request and receive, prior to the making of any Loan, additional information reasonably satisfactory to the Administrative Agent or any Lender confirming the satisfaction of any of the foregoing if, in the reasonable discretion of the Administrative Agent or such Lender such request is warranted under the circumstances.

(b) **Notices.** Any Funding Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent, Paying Agent and each Lender.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders to enter into this Agreement and to make each Loan to be made thereby, Company represents and warrants to each Lender that each and every of its representations and warranties contained in the Agreement are true and correct as of the Closing Date and each Credit Date:

4.1 Organization; Requisite Power and Authority; Qualification; Other Names. Company (a) is duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of organization or formation as identified in Schedule 2, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be expected to result in a Material Adverse Effect. Company does not operate or do business under any assumed, trade or fictitious name. Company has no Subsidiaries.

4.2 Capital Stock and Ownership. The Capital Stock of Company has been duly authorized and validly issued and is fully paid and non-assessable. As of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Company is a party requiring, and there is no membership interest or other Capital Stock of Company outstanding which upon conversion or exchange would require, the issuance by Company of any additional membership interests or other Capital Stock of Company or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Company. Schedule 3 correctly sets forth the ownership interest of Company as of the Closing Date.

4.3 Due Authorization. The execution, delivery and performance of the Credit Documents to which Company is a party have been duly authorized by all necessary action of Company.

4.4 No Conflict. The execution, delivery and performance by Company of the Credit Documents to which it is party and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate in any material respect any provision of any law or any governmental rule or regulation applicable to Company, any of the Organizational Documents of Company, or any order, judgment or decree of any court or other Governmental Authority binding on Company; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Company; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Company (other than any Permitted Liens); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Company, except for such approvals or consents which have been obtained.

4.5 Governmental Consents. The execution, delivery and performance by Company of the Credit Documents to which Company is a party and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Administrative Agent for filing and/or recordation, as of the Closing Date other than (a) those that have already been obtained and are in full force and effect, or (b) any consents or approvals the failure of which to obtain will not have a Material Adverse Effect.

4.6 Binding Obligation. Each Credit Document to which Company is a party has been duly executed and delivered by Company and is the legally valid and binding obligation of Company, enforceable against Company in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7 Eligible Leases. Each Lease that is identified by Company as an Eligible Lease in a Borrowing Base Certificate satisfies all of the criteria set forth in the definition of Eligibility Criteria.

4.8 Historical Financial Statements. The Historical Financial Statements and any financial statements delivered to the Administrative Agent and the Lenders pursuant Section 5.1(b) or (c) after the Closing Date were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments.

4.9 No Material Adverse Effect. Since December 31, 2014, no event, circumstance or change has occurred that has caused, either in any case or in the aggregate, a Material Adverse Effect.

4.10 Adverse Proceedings, etc. There are no Adverse Proceedings pending against Company that challenges Company's right or power to enter into or perform any of its obligations under the Credit Documents to which it is a party or that individually or in the aggregate are material to Company. Company is not (a) in violation of any applicable laws in any material respect, or (b) subject to or in default with respect to any judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other Governmental Authority.

4.11 Payment of Taxes. Except as otherwise permitted under Section 5.3, all material tax returns and reports of Company required to be filed by it have been timely filed, and all material taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Company and upon its properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. Company knows of no proposed tax assessment against Company which is not being actively contested by Company in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.12 Title to Assets. Company has no fee, leasehold or other property interests in any real property assets. Company has good and valid title to all of its assets. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens. All Liens purported to be created in any Collateral pursuant to any Collateral Document in favor of Administrative Agent are First Priority Liens.

4.13 No Indebtedness. Company has no Indebtedness, other than Indebtedness incurred under (or contemplated by) the terms of this Agreement or otherwise permitted hereunder.

4.14 No Defaults. Company is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, would not be expected to result in a Material Adverse Effect.

4.15 Material Contracts. Company is not a party to any Material Contract other than the Credit Documents to which it is a party.

4.16 Government Contracts. Company is not a party to any contract or agreement with any Governmental Authority, and the Pledged Leases are not subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state or local law.

4.17 Governmental Regulation. The Company is not an "investment company" (as such term is defined under the Investment Company Act of 1940, as amended ("1940 Act")) that is registered or required to be registered under the 1940 Act. Company is not a "covered fund" as defined in the final regulations issued December 10, 2013, implementing the "Volcker Rule" (Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act).

4.18 Margin Stock. Company is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans made to Company will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

4.19 Employee Benefit Plans. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, will not have a Material Adverse Effect. Company does not maintain or contribute to any Employee Benefit Plan.

4.20 Certain Fees. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby, other than fees payable to Broad Mark Capital, LLC.

4.21 Solvency; Fraudulent Conveyance. Company is and, upon the incurrence of any Loan by Company on any date on which this representation and warranty is made, will be, Solvent. Company is not transferring any Collateral with any intent to hinder, delay or defraud any of its creditors. Company shall not use the proceeds from the transactions contemplated by this Agreement to give preference to any class of creditors. Company has given fair consideration and reasonably equivalent value in exchange for the sale of the Leases by Intermediate Seller under the Asset Sale Agreement. Intermediate Seller has given fair consideration and reasonably equivalent value in exchange for the sale of the Leases by Seller under the Asset Purchase Agreement.

4.22 Compliance with Statutes, etc. Company is in compliance with all applicable Requirements of Law in respect of the conduct of its business and the ownership of its property, noncompliance with which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company, the Intermediate Seller and the Seller are each currently in possession or has applied for all applicable licenses necessary to carry out its business and operations

4.23 Matters Pertaining to Related Agreements.

(a) Delivery. Company has delivered, or caused to be delivered, to the Administrative Agent and each Lender complete and correct copies of (i) each Related Agreement and of all exhibits and schedules thereto as of the Closing Date, and (ii) copies of any material amendment, restatement, supplement or other modification to or waiver of each Related Agreement entered into after the Closing Date.

(b) The Asset Purchase Agreement creates a valid transfer and assignment to Intermediate Seller of all right, title and interest of Seller in and to all Pledged Leases and all Related Security conveyed to Intermediate Seller thereunder and Intermediate Seller has a First Priority perfected security interest therein. Intermediate Seller has given reasonably equivalent value to Seller in consideration for the transfer to Intermediate Seller by Seller of the Pledged Leases and Related Security pursuant to the Asset Purchase Agreement.

(c) The Asset Sale Agreement creates a valid transfer and assignment to Company of all right, title and interest of Intermediate Seller in and to all Pledged Leases and all Related Security conveyed to Company thereunder and Company has a First Priority perfected security interest therein. Company has given reasonably equivalent value to Intermediate Seller in consideration for the transfer to Company by Intermediate Seller of the Pledged Leases and Related Security pursuant to the Asset Sale Agreement.

4.24 Disclosure. No documents, certificates, written statements or other written information furnished to Lenders by or on behalf of Seller or Company for use in connection with the transactions contemplated hereby, taken as a whole, contains any untrue statement of a material fact, or taken as a whole, omits to state a material fact (known to Seller or Company, in the case of any document not furnished by either of them) necessary in order to make the statements contained therein not misleading in light of the circumstances in which the same were made.

4.25 Patriot Act. To the extent applicable, Company and Seller are in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “Act”). No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended to the date hereof and from time to time hereafter, and any successor statute.

4.26 Remittance of Collections. Company represents and warrants that each remittance of Collections by it hereunder to any Lender hereunder will have been (a) in payment of a debt incurred by Company in the ordinary course of business or financial affairs of Company and (b) made in the ordinary course of business or financial affairs.

SECTION 5. AFFIRMATIVE COVENANTS

Company covenants and agrees that until the Termination Date, Company shall perform (or cause to be performed, as applicable) all covenants in this Section 5.

5.1 Financial Statements and Other Reports. Unless otherwise provided below, Company or its designee will deliver to the Administrative Agent and each Lender:

(a) **Monthly Reports.** As soon as available, and in any event within thirty (30) days after the end of each month (including any month in which the Closing Date occurred), the consolidated balance sheet of Parent and its subsidiaries as at the end of such month and the related consolidated statements of income, consolidated statements of stockholders’ equity and consolidated statements of cash flows of Parent and its subsidiaries, in each case for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a schedule of reconciliations for any reclassifications with respect to prior months or periods (and, in connection therewith, copies of any restated financial statements for any impacted month or period) a Financial Officer Certification with respect thereto and any other operating reports prepared by the management of Parent for such period as may be requested by the Administrative Agent or any Lender;

(b) **Quarterly Financial Statements.** Promptly after becoming available, and in any event within forty-five (45) days (or, with respect to the fourth Fiscal Quarter of each Fiscal Year, sixty (60) days) after the end of each Fiscal Quarter of each Fiscal Year, the consolidated balance sheet of Parent and its subsidiaries, in each case, as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders’ equity and cash flows of Parent and its subsidiaries, in each case, for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto and any other operating reports prepared by the management of Parent for such period as may be requested by any Lender or the Administrative Agent;

(c) **Annual Financial Statements.** As soon as available, and in any event within one hundred twenty (120) days after the end of each Fiscal Year, (i) the consolidated balance sheets of Parent and its subsidiaries, in each case, as at the end of such Fiscal Year and the related consolidated statements of income, stockholders’ equity and cash flows of Parent and its subsidiaries, in each case, for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of EisnerAmper or other independent certified public accountants of recognized national standing selected by Seller, and reasonably satisfactory to the Administrative Agent (which report shall be unqualified (other than any qualification related solely to the potential inability of Company to refinance the Obligations prior to the Commitment Termination Date) as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) (such report shall also include (x) a detailed summary of any audit adjustments; (y) a reconciliation of any audit adjustments or reclassifications to the previously provided monthly or quarterly financials; and (z) restated monthly or quarterly financials for any impacted periods);

(d) Compliance Certificates. Together with each delivery of financial statements pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements delivered pursuant to Section 5.1(b) or 5.1(c) will differ in any material respect from the consolidated financial statements that would have been delivered had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(f) Collateral Reporting.

(i) On each Monthly Reporting Date, with each Funding Notice, and at such other times as the Administrative Agent or any Lender may request, a Borrowing Base Certificate (calculated as of the close of business of the previous Monthly Period or as of a date no later than three (3) Business Days prior to such request), together with a reconciliation to the most recently delivered Borrowing Base Certificate and Borrowing Base Report, in form and substance satisfactory to Administrative Agent, Paying Agent and each Lender. Each Borrowing Base Certificate delivered to Administrative Agent and each Lender shall bear a signed statement by an Authorized Officer certifying the accuracy and completeness in all material respects of all information included therein. The execution and delivery of a Borrowing Base Certificate shall in each instance constitute a representation and warranty by Company to Administrative Agent and each Lender that each Lease included therein as an "Eligible Lease" is, in fact, an Eligible Lease. In the event any request for a Loan, or a Borrowing Base Certificate or other information required by this Section 5.1(f) is delivered to Administrative Agent, Paying Agent and each Lender by Company electronically or otherwise without signature, such request, or such Borrowing Base Certificate or other information shall, upon such delivery, be deemed to be signed and certified on behalf of Company by an Authorized Officer and constitute a representation to Administrative Agent, Paying Agent and each Lender as to the authenticity thereof. The Administrative Agent shall have the right but not the obligation to adjust any Borrowing Base to correct any errors in calculations of thereto, provided, that prior to making any such adjustment, the Administrative Agent shall provide written notice describing in reasonable detail the error and re-calculation of the Borrowing Base (with supporting documentation) and afford to the Company a reasonable opportunity to review such re-calculation and discuss same with the Administrative Agent.

(ii) On each Monthly Reporting Date, the Monthly Servicing Report to Administrative Agent, Paying Agent and each Lender on the terms and conditions set forth in the Servicing Agreement.

(g) Legal Update. Together with each delivery of a Compliance Certificate pursuant to Section 5.1(d) and otherwise promptly upon any Authorized Officer's knowledge thereof, written notice of the occurrence of any material legal developments expected to have a significant adverse impact on Seller's or Parent's business (or, if there are no such material legal developments since the last update provided by Company pursuant to this Section 5.1(g), a written confirmation that there are no such legal developments since such last update).

(h) Notice of Default. Promptly upon an Authorized Officer of Company obtaining actual knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Seller, Parent or Company with respect thereto; (ii) that any Person has given any notice to Seller, Parent or Company or taken any other action with respect to any event or condition set forth in Section 7.1(a); or (iii) of the occurrence of any event or change that has caused, either in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Seller, Parent or Company, as applicable, has taken, is taking and proposes to take with respect thereto;

(i) Notice of Litigation. Promptly upon an Authorized Officer of Company obtaining actual knowledge of an Adverse Proceeding not previously disclosed in writing by Company to Lenders or any material development in any such Adverse Proceeding (including any adverse ruling or significant adverse development in any Adverse Proceeding) that would be expected to have a significant adverse impact on Company, Parent or Seller or any Subsidiary thereof, written notice thereof together with such other information as may be available to Company or Seller to enable Lenders and their counsel to evaluate such matters;

(j) ERISA. (i) Promptly upon an Authorized Officer of Company becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Seller, Parent, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each Schedule SB (Actuarial Information) to the annual report (Form 5500 Series) filed by Seller, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each affected Pension Plan; (2) all notices received by Parent, Seller, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any affected Employee Benefit Plan of Parent, Seller or any of its Subsidiaries thereof, or, with respect to any affected Pension Plan or affected Multiemployer Plan, any of their respective ERISA Affiliates (with respect to an affected Multiemployer Plan, to the extent that Seller or the Subsidiary or ERISA Affiliate, as applicable, has rights to access such documents, reports or filings), as the Administrative Agent or Lender shall reasonably request;

(k) Notice of Change in Board of Directors. Subject to Section 6.14, with reasonable promptness, and in any event within five (5) Business Days, written notice to each Lender and the Administrative Agent of any change in the board of directors (or similar governing body) of the Parent;

(l) Information Regarding Collateral. Prior written notice to Administrative Agent of any change (i) in Company's corporate name, (ii) in Company's identity, limited liability company structure or jurisdiction of organization, or (iii) in Company's Federal Taxpayer Identification Number. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents;

(m) Public Reporting. The obligations in Sections 5.1(b) and (c) in respect of Parent's financial statements may be satisfied by furnishing, at the option of the Company, the applicable financial statements as described above or Parent's Annual Report on Form 10-K or Parent's Quarterly Report on Form 10-Q, as filed with the SEC, as applicable;

(n) Other Information.

(i) to the extent not otherwise provided hereunder, copies of all material reports, including all year-end summaries, annual reports, budgets, business plans, a quarterly delivery of Seller's capitalization table, written consents or matters pertaining to a vote of security holders sent generally by Seller to its security holders acting in such capacity or by any Subsidiary of Seller to its security holders other than Seller or another Subsidiary of Seller;

(ii) not later than Friday of each week (or if such day is not a Business Day, the immediately preceding Business Day) in which a Borrowing Base Report has not otherwise been delivered hereunder, a Borrowing Base Report; and

(iii) such material information and data with respect to Seller or any of its Subsidiaries as from time to time may be reasonably requested by the Administrative Agent or any Lender, in each case, which relate to Company's or Seller's financial or business condition or the Collateral.

5.2 Existence. Except as otherwise permitted under Section 6.7, Company, Seller and Parent will at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business.

5.3 Payment of Taxes and Claims. Company, Seller and Parent will pay all material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. Company will not file or consent to the filing of any consolidated income tax return with any Person (other than Parent or any of its Subsidiaries). In addition, Company agrees to pay to the relevant Governmental Authority in accordance with applicable law any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by any Governmental Authority that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any Credit Document.

Company shall deposit all portions of payments received from Lease Obligors representing payments of sales and use taxes to the Lockbox System in accordance with Section 2.11(b)(vi) hereof. As soon as reasonably practicable after any payment of taxes by Company, the Servicer or any party on their respective behalves to any taxing authority reflecting sales and use taxes, Company and the Servicer shall deliver to the Administrative Agent and the Lenders a certificate satisfactory to the Administrative Agent and the Lenders detailing the aforementioned tax payments, certifying that such amounts are accurate and correct and confirming that payments of such taxes have been made in a timely manner to the relevant tax authority.

5.4 Insurance. Company shall cause Seller and Parent to maintain or cause to be maintained, with financially sound and reputable insurers, (a) all insurance required to be maintained under the Servicing Agreement, (b) business interruption insurance reasonably satisfactory to Administrative Agent, and (c) casualty insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Seller and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons.

5.5 Inspections; Compliance Audits; Regulatory Review.

(a) Company will permit or cause to be permitted, as applicable, any authorized representatives designated by Administrative Agent or any Lender to visit and inspect any of the properties of Company or Seller, at any time, and from time to time upon reasonable advance notice and during normal working hours, to (i) inspect, copy and take extracts from its financial and accounting records, and to discuss its affairs, finances and accounts with any Person, including, without limitation, employees of Company or Seller and independent public accountants and (ii) verify the compliance by Company or Seller with the Credit Agreement, the other Credit Documents and/or the Underwriting Policies, as applicable. Company agrees to pay Administrative Agent's then customary charge for field examinations and audits and the preparation of reports thereof performed or prepared (A) at any time during the existence of a Default or an Event of Default and (B) otherwise up to two (2) times in any calendar year.

(b) At any time during the existence of an Event of Default and otherwise one (1) time in any calendar quarter, the Administrative Agent, any Lender or its designee, may, at Company's expense, perform a compliance review (a "**Compliance Review**") with five (5) Business Days' prior written notice to verify the compliance by Company and Seller with Requirements of Law related to the Pledged Leases and to review the materials prepared in accordance with Section 5.5(a). Company shall, and shall cause Seller to, cooperate with all reasonable requests and provide the Administrative Agent with all necessary assistance and information in connection with each such Compliance Review. In connection with any such Compliance Review, Company will permit any authorized representatives designated by the Administrative Agent to review Company's form of Lease Agreements, Underwriting Policies, information processes and controls, compliance practices and procedures and marketing materials ("**Materials**"). Such authorized representatives may make written recommendations regarding Company's compliance with applicable Requirements of Law, and Company shall consult in good faith with the Administrative Agent regarding such recommendations. In connection with any Compliance Review pursuant to this Section 5.5(b), the Administrative Agent agrees to use a single regulatory counsel.

(c) In connection with any inspection pursuant to Section 5.5(a) or a Compliance Review, the Administrative Agent or its designee may contact a Obligor as necessary to perform such inspection or Compliance Review, as the case may be, provided, however, that such contact shall be made in the name of, and in cooperation with, Seller and Company, unless Seller (i) has failed to so cooperate for at least ten (10) Business Days after receiving a written request from the Administrative Agent requesting such cooperation, or (ii) is no longer the "Servicer" under the Servicing Agreement.

5.6 Lenders Meetings. Company shall, and shall cause Seller to, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Company and Administrative Agent. Upon Company's request and consent by Administrative Agent and Requisite Lenders, such meeting shall be held by conference call.

5.7 Compliance with Laws. Company shall, and shall cause Seller and Parent to, comply with the Requirements of Law, noncompliance with which would be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.8 Separateness. Company shall at all times comply with Sections 9 (or any successor sections) of its Limited Liability Company Agreement, and shall not violate or cause to be violated the assumptions made with respect to Company in any opinion letter pertaining to substantive consolidation delivered to Lenders in connection with the Credit Documents.

5.9 Further Assurances. At any time or from time to time upon the reasonable request of any Lender or the Administrative Agent, Company will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Administrative Agent or such Lender may request in order to effect fully the purposes of the Credit Documents, including providing Lenders with any information requested pursuant to Section 9.20. In furtherance and not in limitation of the foregoing, Company shall take such actions as the Administrative Agent or any Lender may request from time to time to ensure that the Obligations are secured by substantially all of the assets of Company.

5.10 Communication with Accountants. Company authorizes Administrative Agent to communicate directly with Company's independent certified public accountants and authorizes and shall instruct such accountants to communicate directly with Administrative Agent and authorizes such accountants to (and, upon Administrative Agent's request therefor (at the request of any Lender), shall request that such accountants) communicate to Administrative Agent information relating to Company with respect to the business, results of operations and financial condition of Company (including the delivery of audit drafts and letters to management), provided that advance notice of such communication is given to Company, and Company is given a reasonable opportunity to cause an officer to be present during any such communication. Company agrees that the Administrative Agent may communicate with Company's independent certified public accountants pursuant to this Section 5.10 (a) at any time (i) during the existence of a Default or an Event of Default, (ii) upon any event or circumstance which has a Material Adverse Effect or (iii) upon any material change (as determined by the Administrative Agent) in Seller's or Company's accounting principles and policies and (b) otherwise, up to four (4) times in any calendar year. The failure of Company to be present during such communication after given such reasonable opportunity shall in no way impair the rights of the Administrative Agent under this Section 5.10.

5.11 Special Covenants Regarding CRR Compliance. (a) Seller, in its capacity as sole member of Company, represents that, on the Closing Date, its membership interest in the Company (the "**Retained Interest**") represents a net economic interest in the Leases which is not less than 5% of the aggregate Amortized Order Value, except to the extent permitted under the Risk Retention Requirements, and the Retained Interest takes the form of the first loss tranche in accordance with Article 404(1)(d) of the CRR, as represented by overcollateralization with respect to each Lease. Seller agrees that, from the Closing Date until the Termination Date, it shall, for the benefit of each Lender and each holding company of any Lender that is required to comply with the requirements of the CRR, unless each Lender shall otherwise consent in writing:

(b) hold such membership interest on an ongoing basis until the Termination Date; provided, that Seller shall not be restricted by this Section 5.11(b) from transferring one or more senior interests in the membership interest, so long as it maintains the most subordinate interest in such membership interest and such subordinate interest satisfies the requirements of Article 404(1)(d) of the CRR (the “**Minimum Retained Membership Interest**”);

(c) not sell or subject the Minimum Retained Membership Interest to any hedge, credit risk mitigation or short position that is not permitted under the Risk Retention Requirements;

(b) above;

(d) for the purpose of each Monthly Servicing Report, confirm to the Servicer that it continues to comply with subsections (a) and

(e) provide notice promptly to each Lender in the event it has breached subsections (a) or (b) above;

(f) notify each Lender of any change to the form of retention of the Retained Interest; and

(g) provide all information which any Lender reasonably requests in order for such Lender to comply with its obligations under the Risk Retention Requirements with respect to the Loans made by it hereunder. This Section 5.11 shall only be effective if any Lender is a Non-US Lender and each Non-US Lender agrees that the foregoing is reasonable.

5.12 Acquisition of Leases. With respect to each Pledged Lease, Company shall (a) acquire such Lease pursuant to and in accordance with the terms of the Asset Sale Agreement, (b) take all actions necessary to perfect, protect and more fully evidence Company’s ownership of such Lease, including, without limitation, executing or causing to be executed (or filing or causing to be filed) such other instruments or notices as may be necessary or appropriate, and (c) take all additional action that the Administrative Agent may reasonably request to perfect, protect and more fully evidence the respective interests of Company, the Administrative Agent and the Lenders.

5.13 Performance Covenants. With respect to any Leases originated during such Monthly Period:

(a) For any Monthly Vintage Pool of Leases originated by Seller after the Closing Date, the aggregate Order Value of Leases in which the Obligor failed to make its first scheduled payment due shall not exceed 25% of the aggregate Order Value of the Monthly Vintage Pool; and

(b) For any Seasoned Net Vintage Pool of Leases originated by Seller after the Closing Date, the aggregate related Collections (net of any amounts collected with respect to such Leases pursuant to the payment of sales and use taxes) is less than 6.5% of the aggregate related Order Value of the Seasoned Net Vintage Pool.

5.14 Officers. The Company shall cause the Seller to engage a chief credit risk officer, collections manager and a financial analyst within one-hundred twenty (120) days of the date hereof, each as reasonably acceptable to the Administrative Agent.

5.15 Termination of Backup Servicer. In the event that the Backup Servicing Agreement is terminated for reasons other than those specified in Section 7.1(o), the Company shall reasonably coordinate and reasonably cooperate with the Administrative Agent and the Lenders to timely engage a replacement Backup Servicer.

SECTION 6. NEGATIVE COVENANTS

Company covenants and agrees that, until the Termination Date, Company, Seller and Parent shall perform (or cause to be performed, as applicable) all covenants in this Section 6.

6.1 Indebtedness. None of Seller, Parent or Company shall directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness other than:

- (a) the Obligations;
- (b) solely with respect to the Seller, the Second Warehouse Facility;
- (c) solely with respect to the Seller, unsecured lines of credit to finance the purchase of Merchandise not to exceed \$5,000,000 in the aggregate at any time outstanding;
- (d) solely with respect to the Seller, Indebtedness consisting of unpaid insurance premiums owing to insurance companies and insurance brokers incurred in connection with the financing of insurance premiums in the ordinary course of business;
- (e) solely with respect to the Seller, Indebtedness consisting of capital lease obligations entered into in the ordinary course of business; and
- (f) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument in the ordinary course of business and Indebtedness in the ordinary course of business in respect of overdraft protections and otherwise in connection with deposit accounts or other customary cash management services.

6.2 Liens. None of Seller, Parent or Company shall directly or indirectly, create, incur, assume or permit to exist any Lien, including but not limited to in connection with any trade credit or other lines of credit, on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of such entity, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, except Permitted Liens.

6.3 Equitable Lien. If any of Seller, Parent or Company shall create or assume any Lien (other than a Permitted Lien) upon any of its properties or assets, whether now owned or hereafter acquired, it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Lenders to the creation or assumption of any such Lien not otherwise permitted hereby.

6.4 No Further Negative Pledges. Except pursuant to the Credit Documents none of Parent, Seller or Company shall enter into any Contractual Obligation prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than the Second Warehouse Facility.

6.5 Subsidiaries. None of Parent, Seller or Company shall form, create, organize, incorporate or otherwise have any Subsidiaries except for Subsidiaries created by Seller in connection with the Second Warehouse Facility.

6.6 Investments. Company shall not, directly or indirectly, make or own any Investment in any Person except Investments in Cash and Cash Equivalents, Permitted Investments and Leases (and property received from time to time in connection with the workout or insolvency of any Obligor), and Permitted Investments in the Controlled Accounts.

6.7 Fundamental Changes; Disposition of Assets; Acquisitions. None of Seller, Parent or Company shall enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person (other than acquisitions of Eligible Leases and property received from time to time in connection with the workout or insolvency of any Obligor) or Permitted Investments, including Permitted Investments in a Controlled Account).

6.8 Sales and Lease-Backs. None of Seller, Parent or Company shall directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which Company (a) has sold or transferred or is to sell or to transfer to any other Person, or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by Company to any Person in connection with such lease .

6.9 Transactions with Shareholders and Affiliates. None of Seller, Parent or Company shall directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, Lease or exchange of any property or the rendering of any service) with any holder of ten percent (10%) or more of any class of Capital Stock of Parent or any of its Subsidiaries or with any Affiliate of Seller or of any such holder other than the transactions contemplated or permitted by the Credit Documents and the Related Agreements, including, without limitation, the Asset Sale Agreement, the Asset Purchase Agreement and employment agreements.

6.10 Conduct of Business. From and after the Closing Date, none of Seller, Parent or Company shall engage in any business other than the businesses engaged in by such entity on the Closing Date and business reasonably related thereto.

6.11 Fiscal Year. Company shall not change its Fiscal Year-end from December 31.

6.12 Servicer; Backup Servicer; Verification Agent.

(a) Company shall use its commercially reasonable efforts to cause Servicer, the Backup Servicer and the Verification Agent to comply at all times with the applicable terms of the Servicing Agreement, the Backup Servicing Agreement and the Verification Agent Agreement. Company may not (i) terminate, remove, replace Servicer, Backup Servicer or the Verification Agent or (ii) subcontract out any portion of the servicing or permit third party servicing other than the Backup Servicer, except, in each case, with the consent of the Requisite Lenders. The Administrative Agent may not terminate, remove, or replace the Servicer except in accordance with the Servicing Agreement. The Administrative Agent may terminate, remove, or replace the Backup Servicer or the Verification Agent at any time.

6.13 Acquisitions of Leases. Company may not acquire Leases from any Person other than Intermediate Seller pursuant to the Asset Sale Agreement.

6.14 Independent Manager. Company shall not fail at any time to have at least one independent manager (an “**Independent Manager**”) who is natural person who:

(a) for the five-year period prior to his or her appointment as Independent Manager has not been, and during the continuation of his or her service as Independent Manager is not:

(i) an employee, director, stockholder, member, manager, partner or officer of the Company, the Member or any of their respective Affiliates (other than his or her service as an Independent Manager or Special Member of the Company or in a similar capacity for the Member or an Affiliate of the Company or the Member);

(ii) a customer or supplier of the Company, the Member or any of their respective Affiliates (other than his or her service as an Independent Manager or Special Member of Company or in a similar capacity for the Member or an Affiliate of the Company or the Member or in connection with the provision of registered agent, office or similar services for the Company, the Member or any of their respective Affiliates);
or

- (iii) any member of the immediate family of a person described in (i) or (ii); and
- (b) has:

- (i) prior experience as an Independent Manager for a corporation or limited liability company whose charter or organizational documents required the unanimous consent of all Independent Managers thereof before such corporation or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy; and

- (ii) at least three years of employment experience with one or more entities that provide, in the ordinary course of their respective businesses, advisory, management or placement services (including providing independent managers or directors) to issuers of securitization or structured finance instruments, agreements or securities.

Notwithstanding any other provision of this Agreement or the Act, an Independent Manager is not a “manager” of the Company within the meaning of Section 18-101(10) of the Act.

Upon Company learning of the death or incapacity of an Independent Manager, Company shall have ten (10) Business Days following such death or incapacity to appoint a replacement Independent Manager. Any replacement of an Independent Manager will be permitted only upon (a) two (2) Business Days’ prior written notice to the Administrative Agent and each Lender, (b) Company’s certification that any replacement manager will satisfy the criteria set forth in clauses (a)-(b) of this Section 6.14 and (c) the Administrative Agent’ written consent to the appointment of such replacement manager. For the avoidance of doubt, other than in the event of the death or incapacity of an Independent Manager, Company shall at all times have an Independent Manager and may not terminate any Independent Manager without the prior written consent of the Administrative Agent, which consent the Administrative Agent may withhold in its sole discretion.

6.15 Organizational Agreements and Credit Documents. Except as otherwise expressly permitted by other provisions of this Agreement or any other Credit Document, Company shall not (a) enter into any contract with any Person other than the Credit Documents to which it is a party, the Asset Sale Agreement, any Related Agreement, and an agreement related to the appointment of the Independent Manager and process agent, in each case, as of the Closing Date; (b) amend, restate, supplement or modify, or permit any amendment, restatement, supplement or modification to, its Organizational Documents, without obtaining the prior written consent of the Requisite Lenders to such amendment, restatement, supplement or modification, as the case may be; (c) agree to any termination, amendment, restatement, supplement or other modification to, or waiver of, or permit any termination, amendment, restatement, supplement or other modification to, or waivers of, any of the provisions of any Credit Document without the prior written consent of the Requisite Lenders. Company shall not agree to, and shall cause Seller not to, amend, restate, supplement or modify in any material respect any Lease Agreement form without providing prior written notice thereof to the Administrative Agent, each Lender and obtaining the consent thereto of the Requisite Lenders.

6.16 Changes in Underwriting or Other Policies; Certain Methodologies. Company shall not agree to, and shall cause Seller not to, make any change or modification to the Underwriting Policies without providing prior written notice thereof to the Administrative Agent and each Lender (collectively, the “**Notice Parties**”). Company shall not agree to, and shall cause Seller not to, make any Material Underwriting Policy Change (i) where such change makes such policies more restrictive with regard to Leases, without the prior written consent of the Administrative Agent and the Requisite Lenders; provided, however, if such written consent shall not have been obtained within five (5) Business Days following request therefor by Company or Seller, Administrative Agent and the Requisite Lenders shall be deemed to have consented thereto, and (ii) with respect to all other changes with the prior written consent of the Administrative Agent and the Requisite Lenders, provided, however, if such written consent shall not have been obtained within seven (7) Business Days following request therefor by Company or Seller, Administrative Agent and the Requisite Lenders shall be deemed to have consented thereto.

6.17 Tax Treatment. Company will not be treated as an association (or publicly traded partnership) taxable as a corporation.

6.18 Lease Forms. Company shall not acquire Leases which are not entered into on the form of applicable Lease Agreement attached hereto as Exhibit G as amended (to the extent not prohibited hereunder).

6.19 Second Warehouse Facility. Neither the Seller nor the Company will permit any Affiliate or Subsidiary thereof to enter into a Second Warehouse Facility with borrowing base eligibility criteria that are more restrictive on the Seller or any Affiliate or Subsidiary thereof than the terms of this Agreement. If the Seller or any Affiliate of Subsidiary thereof enters into any amendment, waiver or modification to the Second Warehouse Facility to include borrowing base eligibility criteria that are more restrictive on the Seller or any Affiliate or Subsidiary thereof than the terms of this Agreement (such modification being referred to as a “**Warehouse Modification**”), then this Agreement shall automatically be deemed modified to contain such more restricted eligibility criteria. Promptly but in no event more than five Business Days following the execution of any amendment to the Second Warehouse Facility documentation providing for a Warehouse Modification, the Company shall furnish the Administrative Agent and each Lender with a copy of such amendment, including on a redacted basis if required by the confidentiality restrictions of such document.

6.20 Restricted Payments. Neither Seller nor Company will permit Parent to declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so.

SECTION 7. EVENTS OF DEFAULT

7.1 Events of Default. If any one or more of the following events shall occur.

(a) Failure to Make Payments When Due. Other than with respect to a Borrowing Base Deficiency, failure by Company to pay (i) when due, the principal of and premium, if any, on any Loan whether at stated maturity (including on the Maturity Date), by acceleration or otherwise; (ii) within three (3) Business Days after its due date, any interest on any Loan or any fee due hereunder; or (iii) within thirty (30) days after its due date, any other amount due hereunder; or

(b) Default in Other Agreements.

(i) Failure of Seller or any Subsidiary of Seller to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness with a principal amount in excess of \$1,000,000, in each case beyond the grace period, if any, provided therefor; or breach or default by Seller or any Subsidiary of Seller with respect to any other material term of (1) one or more items of Indebtedness with a principal amount in excess of \$1,000,000, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefore; or

(ii) Breach, default or other similar occurrence by Seller or an Affiliate of Seller under any other document or agreement to which Administrative Agent or any Lender is a party to.

(c) Breach of Certain Covenants. Failure of Company to perform or comply with any term or condition contained in Section 5.13;

or

(d) Breach of Representations, etc. Any representation or warranty, certification or other statement made or deemed made by Company or Seller (or Seller as Servicer) in any Credit Document or in any statement or certificate at any time given by Company or Seller (or Seller as Servicer) in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect, other than any representation, warranty, certification or other statement which is qualified by materiality or “Material Adverse Effect”, in which case, such representation, warranty, certification or other statement shall be true and correct in all respects, in each case, as of the date made or deemed made and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an Authorized Officer of Company or Seller becoming aware of such default, or (ii) receipt by Company of written notice from the Administrative Agent or any Lender of such default; or

(e) Other Defaults Under Credit Documents. Company or Seller shall default in the performance of or compliance with any term or covenant contained herein or any of the other Credit Documents other than any such term referred to in any other Section of this Section 7.1 and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an Authorized Officer of Company or Seller becoming aware of such default, or (ii) receipt by Company or Seller of written notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Company or Seller in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Company or Seller under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or Seller, or over all or a substantial part of its respective property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or Seller for all or a substantial part of its respective property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or Seller, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Company or Seller shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its respective property; or Company or Seller shall make any assignment for the benefit of creditors; or (ii) Company or Seller shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Company or Seller (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 7.1(h); or

(h) Judgments and Attachments.

(i) Any money judgment, writ or warrant of attachment or similar process (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Company or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(ii) Any money judgment, writ or warrant of attachment or similar process involving in any individual case or in the aggregate at any time an amount in excess of \$1,000,000 (in any case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Seller (or Seller as Servicer) or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or

(iii) Any tax lien or lien of the PBGC shall be entered or filed against Company or Seller (involving, with respect to Seller only, an amount in excess of \$1,000,000) or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of ten (10) days;

(i) Dissolution. Any order, judgment or decree shall be entered against Company or Seller decreeing the dissolution or split up of Company or Seller, as the case may be, and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results which has a Material Adverse Effect during the term hereof or result in a Lien being imposed on the Collateral; or (ii) Company shall establish or contribute to any Employee Benefit Plan; or

(k) Change of Control. A Change of Control shall occur; or

(l) [Reserved]; or

(m) Key Person Event. A Key Person Event shall have occurred; or

(n) Servicing Agreement. A Servicer Default shall have occurred and be continuing; or

(o) Backup Servicer Default. The Backup Servicer shall resigned or be terminated as a result of any action or inaction of the Company or the Servicer; or

(p) Borrowing Base Deficiency; Repurchase Failure. (i) Failure by Company to pay any Borrowing Base Deficiency within three (3) Business Days after the due date thereof, or (ii) failure of Seller to repurchase any Lease as and when required under the Asset Purchase Agreement or the Intermediate Seller to repurchase any Lease as and when required under the Asset Sale Agreement; or

(q) Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) this Agreement or any Collateral Document ceases to be in full force and effect (other than in accordance with its terms) or shall be declared null and void by a court of competent jurisdiction or the enforceability thereof shall be impaired in any material respect, or the Administrative Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document (in each case, other than (A) by reason of a release of Collateral in accordance with the terms hereof or thereof or (B) the satisfaction in full of the Obligations and any other amount due hereunder or any other Credit Document in accordance with the terms hereof); or (ii) any of the Credit Documents for any reason, other than the satisfaction in full of all Obligations and any other amount due hereunder or any other Credit Document (other than contingent indemnification obligations for which demand has not been made), shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void by a court of competent jurisdiction or a party thereto or Seller, as the case may be, shall repudiate its obligations thereunder or shall contest the validity or enforceability of any Credit Document in writing; or

(r) Breach of Financial Covenants. A breach of any Financial Covenant shall have occurred;

(s) Proof of Purchase Verification Event and Verification Event. With respect to any Proof of Purchase Verification Event or Verification Event, the Administrative Agent, Verification Agent or its respective designee has noted errors, exceptions or discrepancies with respect to the reconciliation of the delivered documents to the Lease File and such errors, exceptions or discrepancies have not been remedied within thirty (30) Business Days following receipt of notice of such errors by the Company;

(t) Investment Company Act. Seller or Company become subject to any federal or state statute or regulation which may render all or any portion of the Obligations unenforceable, or Company becomes a required to be register or controlled by an "investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940; or

(u) Payment Processing Expense. For any Monthly Period, the Payment Processing Expense Ratio exceeds 12%.

THEN, upon the occurrence of any Event of Default, the Administrative Agent may, and shall, at the written request of the Requisite Lenders, take any of the following actions: (w) upon written notice to Company, terminate the Commitments, if any, of each Lender having such Commitments, (x) upon written notice to Company, declare the unpaid principal amount of and accrued interest on the Loans and all other Obligations immediately due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company; (y) direct the Administrative Agent to enforce any and all Liens and security interests created pursuant to the Collateral Documents and (z) take any and all other actions and exercise any and all other rights and remedies of the Administrative Agent under the Credit Documents; provided that upon the occurrence of any Event of Default described in Section 7.1(g) or 7.1(h), the unpaid principal amount of and accrued interest on the Loans and all other Obligations shall immediately become due and payable, and the Commitments shall automatically and immediately terminate, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company. In addition, pursuant to the Servicing Agreement, the Administrative Agent may terminate the Servicing Agreement and appoint a Successor Servicer upon the occurrence of a Servicer Default.

Notwithstanding the foregoing or anything to the contrary contained herein, no Default or Event of Default shall be deemed to have occurred or declared as such if such Default or Event of Default would be based on the occurrence or the expectation of an occurrence of a Material Adverse Effect unless the act, omission, event or circumstance giving rise thereto would be expected to have a material adverse effect as determined by a reasonable person (as opposed to Administrative Agent in its sole and absolute discretion) on: (i) the business, operations, properties, assets, financial condition or results of operations of Parent, Seller and its subsidiaries, taken as a whole; (ii) the ability of Company to pay any Obligations or Company or Seller to fully and timely perform, in any material respect, its obligations under any Credit Document; (iii) the legality, validity, binding effect, or enforceability against Company or Seller of any Credit Document to which it is a party; (iv) the existence, perfection, priority or enforceability of any security interest in the Pledged Leases; (v) the validity, collectability, or enforceability of the Pledged Leases taken as a whole or in any material part, or (vi) the rights, remedies and benefits available to, or conferred upon, the Administrative Agent and any Lender or any Secured Party under any Credit Document.

SECTION 8. ADMINISTRATIVE AGENT

8.1 Appointment of Administrative Agent. Each Lender hereby authorizes WE 2014-1, LLC to act as Administrative Agent to the Lenders hereunder and under the other Credit Documents and each Lender hereby authorizes WE 2014-1, LLC, in such capacity, to act as its agent in accordance with the terms hereof and the other Credit Documents. The provisions of this Section 8 are solely for the benefit of Administrative Agent and Lenders and neither Company nor Seller shall have any rights as a third party beneficiary of any of the provisions thereof (other than Section 8.6 with respect to which the Company shall have the right to enforce). In performing its functions and duties hereunder, Administrative Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Lender, Seller or any of its Subsidiaries.

8.2 Powers and Duties. Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto.

8.3 General Immunity.

(a) Exculpatory Provisions Relating to Administrative Agent. Neither Administrative Agent nor any of its officers, partners, directors, employees or agents shall be liable to any Lender for any action taken or omitted by Administrative Agent under or in connection with any of the Credit Documents except to the extent caused by Administrative Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Administrative Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 9.4) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), Administrative Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Seller and Company), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 9.4).

8.4 Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Seller and Company in connection with Loans hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Seller and Company. The Administrative Agent shall have no duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and the Administrative Agent shall have no responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) The Administrative Agent and each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by the Administrative Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

8.5 Right to Indemnity.

(a) Administrative Agent. The Lenders severally agree to indemnify Administrative Agent, its Affiliates and their respective officers, partners, directors, trustees, employees and agents (each, an “**Indemnitee Agent Party**”), to the extent that such Indemnitee Agent Party shall not have been reimbursed by Company or Seller, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Credit Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY**; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party’s gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final non-appealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender’s Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

8.6 Successor Administrative Agent.

(a) Administrative Agent.

(i) Administrative Agent may resign at any time by giving thirty (30) days’ prior written notice thereof to Company. Upon any such written notice of resignation, Requisite Lenders shall have the right, upon five (5) Business Days’ notice to Company, to appoint a successor Administrative Agent provided, that the appointment of a successor Administrative Agent shall require (so long as no Default or Event of Default has occurred and is continuing) Company’s approval, which approval shall not be unreasonably withheld, delayed or conditioned. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the appointment of such successor Administrative Agent, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

(ii) Notwithstanding anything herein to the contrary, Administrative Agent may assign its rights and duties as Administrative Agent hereunder to one of its Affiliates without the prior written consent of, or prior written notice to, Company or the Lenders; provided that Company and the Lenders may deem and treat such assigning Administrative Agent as Administrative Agent for all purposes hereof, unless and until such assigning Administrative Agent provides written notice to Company and Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent hereunder and under the other Credit Documents.

8.7 Collateral Documents. Each Lender hereby further authorizes Administrative Agent, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Collateral and the Collateral Documents. Subject to Section 9.4, without further written consent or authorization from Lenders, Administrative Agent may execute any documents or instruments necessary to release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 9.4) have otherwise consented. Anything contained in any of the Credit Documents to the contrary notwithstanding, Company and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Administrative Agent, and (ii) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale, Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Administrative Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations or any other amount due hereunder as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale.

SECTION 9. MISCELLANEOUS

9.1 Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to Company or Administrative Agent shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to the Administrative Agent shall be effective until received by the Administrative Agent, provided, however, that Company may deliver, or cause to be delivered, the Borrowing Base Certificate, Borrowing Base Report, any Funding Notice and any financial statements or reports (including any collateral performance tests) by electronic mail pursuant to procedures approved by the Administrative Agent until any Lender notifies Company that it can no longer receive such documents using electronic mail. Any Borrowing Base Certificate, Borrowing Base Report, Funding Notice or financial statements or reports sent to an electronic mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, if available, return electronic mail or other written acknowledgement), provided, that if such document is sent after 5:00 p.m. Eastern Standard time, such document shall be deemed to have been sent at the opening of business on the next Business Day.

9.2 Expenses. Company agrees to pay promptly (a) (i) all the Administrative Agent's actual, reasonable and documented out-of-pocket costs and expenses (including reasonable and customary fees and expenses of Mayer Brown LLP, counsel to the Administrative Agent) of negotiation, preparation, execution and administration of the Credit Documents and any consents, waivers or other amendments or modifications to the Credit Documents; (b) all the actual, documented out-of-pocket costs and reasonable out-of-pocket expenses of creating, perfecting and enforcing Liens in favor of Administrative Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable and documented out-of-pocket fees, expenses and disbursements of a single counsel for all Secured Parties; (c) subject to the terms of this Agreement (including any limitations set forth in Section 5.5), all the Administrative Agent's actual, reasonable and documented out-of-pocket costs and reasonable fees, expenses for, and disbursements of any of Administrative Agent's, auditors, accountants, consultants or appraisers incurred by Administrative Agent; and (d) after the occurrence of a Default or an Event of Default, all documented, out-of-pocket costs and expenses, including reasonable attorneys' fees, and costs of settlement, incurred by the Administrative Agent or any Lender in enforcing any Obligations of or in collecting any payments due from Company or Seller hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings.

9.3 Indemnity.

(a) In addition to the payment of expenses pursuant to Section 9.2 and the indemnification provided pursuant to Sections 2.19(e) and 8.5, whether or not the transactions contemplated hereby shall be consummated, Company agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Affected Party and each Lender, their Affiliates and their respective officers, partners, directors, trustees, employees and agents and persons identified in the last sentence of Section 2.4(b) hereof (each, an "Indemnitee"), from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE** excluding any amounts in respect of claims for taxes not otherwise payable by Company under Section 2.16(b)(iii); provided, Company shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction in a final non-appealable order of that Indemnitee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 9.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Company shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. Indemnification of an Affected Party is subject to and not in addition to the indemnification provided pursuant to Section 2.19(e) and 8.5.

(b) To the extent permitted by applicable law, Company shall not assert, and Company hereby waives, any claim against any Affected Party or Lender and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Company hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

9.4 Amendments and Waivers.

(a) **Requisite Lenders' Consent.** Subject to Sections 9.4(b) and 9.4(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by Company or Seller therefrom, shall in any event be effective without the written concurrence of Company, Administrative Agent and the Requisite Lenders.

(b) **Affected Lenders' Consent.** Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the scheduled final maturity of any Loan;
- (ii) waive, reduce or postpone any scheduled repayment (but not prepayment);
- (iii) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.8) or any fee payable hereunder;
- (iv) extend the time for payment of any such interest or fees;
- (v) reduce the principal amount of any Loan;
- (vi) (x) amend the definition of "Borrowing Base" or (y) amend, modify, terminate or waive Section 2.12, Section 2.13 or Section 2.14 or any provision of this Section 9.4(b) or Section 9.4(c);
- (vii) amend the definition of "**Requisite Lenders**" "**Exposure**," "**Pro Rata Share**," "**Advance Rate**," "**Availability**," or any definition used therein; provided, with the consent of Administrative Agent, Company and the Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of "**Requisite Lenders**" or "**Pro Rata Share**" on substantially the same basis as the Commitments and the Loans are included on the Closing Date;
- (viii) release all or substantially all of the Collateral except as expressly provided in the Credit Documents; or
- (ix) consent to the assignment or transfer by Company or Seller of any of its respective rights and obligations under any Credit Document.

(c) **Other Consents.** No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by Company or Seller therefrom, shall:

- (i) increase any Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Commitment of any Lender;
- (ii) amend, modify, terminate or waive any provision of Section 3.2(a) with regard to any Loan of the Lenders without the consent of the Requisite Lenders;
- (iii) amend the definitions of "**Eligibility Criteria**" or "**Eligible Obligor**" or amend any portion of Appendix C without the consent of the Requisite Lenders;
- (iv) amend or modify any provision of Sections 2.11 without the consent of the Requisite Lenders; provided, however, that, notwithstanding the foregoing, any such amendment or modification during the continuance of any Event of Default or Servicer Default shall only require the consent of the Requisite Lenders; or
- (v) amend or modify any provision of Section 7.1 without the consent of the Requisite Lenders; provided, however, that, notwithstanding the foregoing, any waiver of the occurrence of a Default or an Event of Default shall only require the consent of the Requisite Lenders.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of the Requisite Lenders, execute amendments, modifications, waivers or consents on behalf of the Lenders. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Company or Seller in any case shall entitle Company or Seller to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9.4 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by Company, on Company. Notwithstanding anything to the contrary contained in this Section 9.4, if the Administrative Agent and Company shall have jointly identified an obvious error or any error or omission of a technical nature, in each case that is immaterial (as determined by the Administrative Agent in its reasonable discretion), in any provision of the Credit Documents, then the Administrative Agent and Company shall be permitted to amend such provision and such amendment shall become effective without any further action or consent by the Requisite Lenders if the same is not objected to in writing by the Requisite Lenders within five (5) Business Days following receipt of notice thereof.

9.5 Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. Neither Company's rights or obligations hereunder nor any interest therein may be assigned or delegated by it without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitor Agent Parties under Section 8.5, Indemnitors under Section 9.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company, Paying Agent, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 9.5(e). Prior to such recordation, all amounts owed with respect to the applicable Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Commitment or Loans owing to it or other Obligations (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitments) to any Person constituting an Eligible Assignee. Each such assignment pursuant to this Section 9.5(c) (other than an assignment to any Person meeting the criteria of clause (i) of the definition of the term of "Eligible Assignee") shall be in an aggregate amount of not less than \$5,000,000 (or such lesser amount as may be agreed to by Company and Administrative Agent or as shall constitute the aggregate amount of the Commitments and Loans of the assigning Lender) with respect to the assignment of the Commitments and Loans.

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent an Assignment Agreement, together with such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to Section 2.16(e).

(e) Notice of Assignment. Upon the Administrative Agent's receipt and acceptance of a duly executed and completed Assignment Agreement and any forms, certificates or other evidence required by this Agreement in connection therewith, Administrative Agent shall (i) provide Paying Agent with written notice of such assignment, (ii) give prompt written notice thereof to Company, and (iii) maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery of the Agreement or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 9.5, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(g) Effect of Assignment. Subject to the terms and conditions of this Section 9.5, as of the “Effective Date” specified in the applicable Assignment Agreement: (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 9.7) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising prior to the effective date of such assignment; (iii) the Commitments shall be modified to reflect the Commitment of such assignee and any Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Loan Notes to Administrative Agent for cancellation, and thereupon Company shall issue and deliver new Loan Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(h) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than Seller, any of its Subsidiaries or any of its Affiliates) in all or any part of its Commitments, Loans or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Loan or Loan Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant’s participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant’s participation is not increased as a result thereof), (ii) consent to the assignment or transfer by Company of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating. Company agrees that each participant shall be entitled to the benefits of Sections 2.15 and 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (c) of this Section; provided, (i) a participant shall not be entitled to receive any greater payment under Section 2.15 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation, unless the sale of the participation to such participant is made with Company’s prior written consent, and (ii) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless Company (through a Designated Officer) is notified of the participation at the time it is sold to such participant and such participant agrees, for the benefit of Company, to comply with Section 2.16 as though it were a Lender. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 9.3 as though it were a Lender, provided such Participant agrees to be subject to Section 2.14 as though it were a Lender. Any Lender that sells such a participation shall, acting solely for this purpose as an agent of Company, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in such participation and other obligations under this Agreement (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person other than Company (through a Designated Officer), including the identity of any Participant or any information relating to a Participant’s interest or obligations under any Credit Document, except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, neither the Administrative Agent nor the Paying Agent shall have responsibility for maintaining a Participant Register. The Register shall be available for inspection by any Designated Officer of Company at any reasonable time and from time to time upon reasonable prior notice. Company shall not disclose the identity of any Participant of any Lender or any information relating to such Participant’s interest or obligation to any Person, provided that Company may make (1) disclosures of such information to Affiliates of such Lender and to their agents and advisors provided that such Persons are informed of the confidential nature of the information and will be instructed to keep such information confidential, and (2) disclosures required or requested by any Governmental Authority or representative thereof or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, that unless specifically prohibited by applicable law or court order, Company shall make reasonable efforts to notify the applicable Lender of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of Company by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information.

(i) **Certain Other Assignments.** In addition to any other assignment permitted pursuant to this Section 9.5 any Lender may assign, pledge and/or grant a security interest in, all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Loan Notes, if any, to secure obligations of such Lender including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Company and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a “Lender” or be entitled to require the assigning Lender to take or omit to take any action hereunder; and

9.6 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

9.7 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Loan. Notwithstanding anything herein or implied by law to the contrary, the agreements of Company set forth in Sections 2.15, 2.16, 9.2, 9.3, and 9.9 and the agreements of Lenders set forth in Sections 2.14, 8.3(b) and 8.5 shall survive the payment of the Loans and the termination hereof.

9.8 No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to the Administrative Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

9.9 Marshalling; Payments Set Aside. Neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of Company or any other Person or against or in payment of any or all of the Obligations or any other amount due hereunder. To the extent that Company makes a payment or payments to Administrative Agent or Lenders, Administrative Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

9.10 Severability. In case any provision in or obligation hereunder or any Loan Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

9.11 Obligations Several; Actions in Concert. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Credit Document to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any Loan Note or otherwise with respect to the Obligations without first obtaining the prior written consent of the applicable Agent (other than the Administrative Agent) or Requisite Lenders (as applicable), it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and any Loan Note or otherwise with respect to the Obligations shall be taken in concert and at the direction or with the consent of Agent or Requisite Lenders (as applicable).

9.12 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

9.13 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CHOICE OF LAW PRINCIPLES THEREOF OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK.

9.14 CONSENT TO JURISDICTION.

(A) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST COMPANY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, COMPANY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (b) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO COMPANY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.1 AND TO ANY PROCESS AGENT ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER COMPANY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (d) AGREES THAT ADMINISTRATIVE AGENT AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST COMPANY IN THE COURTS OF ANY OTHER JURISDICTION.

(B) COMPANY HEREBY AGREES THAT PROCESS MAY BE SERVED ON IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES PERTAINING TO IT AS SPECIFIED IN SECTION 9.1 OR ON CORPORATION SERVICE COMPANY, 1180 AVENUE OF THE AMERICAS, SUITE 210, NEW YORK, NEW YORK 10036, AND HEREBY APPOINTS CORPORATION SERVICE COMPANY, AS ITS AGENT TO RECEIVE SUCH SERVICE OF PROCESS. ANY AND ALL SERVICE OF PROCESS AND ANY OTHER NOTICE IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE EFFECTIVE AGAINST COMPANY IF GIVEN BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY OTHER MEANS OR MAIL WHICH REQUIRES A SIGNED RECEIPT, POSTAGE PREPAID, MAILED AS PROVIDED ABOVE. IN THE EVENT CORPORATION SERVICE COMPANY SHALL NOT BE ABLE TO ACCEPT SERVICE OF PROCESS AS AFORESAID AND IF COMPANY SHALL NOT MAINTAIN AN OFFICE IN NEW YORK CITY, COMPANY SHALL PROMPTLY APPOINT AND MAINTAIN AN AGENT QUALIFIED TO ACT AS AN AGENT FOR SERVICE OF PROCESS WITH RESPECT TO THE COURTS SPECIFIED IN THIS SECTION 9.14 ABOVE, AND ACCEPTABLE TO THE ADMINISTRATIVE AGENT, AS COMPANY'S AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON COMPANY'S BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH ACTION, SUIT OR PROCEEDING.

9.15 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.15 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.16 Confidentiality. The Administrative Agent and Lender shall hold all non-public information regarding Seller and its Subsidiaries and their businesses obtained by such Lender or Administrative Agent confidential and shall not disclose such information; provided, however, that, in any event, a Lender or Administrative Agent may make (a) disclosures of such information to Affiliates of such Lender or Administrative Agent and to their agents, auditors, attorneys and advisors (and to other persons authorized by a Lender or Administrative Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 9.16) provided that such Persons are informed of the confidential nature of the information and agree to keep, or with respect to the Administrative Agent such Persons will be instructed to keep, such information confidential, (b) disclosures of such information to any other Lender or Administrative Agent, (c) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any Loans or any participations therein, (d) disclosure to any rating agency when required by it, (e) disclosure to any Lender's financing source or the directors, trustees, officers, employees, agents, attorneys, independent or internal auditors, financial advisors or other professional advisors of such financing source who, in each case, agree to hold confidential such confidential information substantially in accordance with this Section 9.16, (f) disclosures required by any applicable statute, law, rule or regulation or requested by any Governmental Authority or representative thereof or by any regulatory body or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, that unless specifically prohibited by applicable law or court order, each Lender or Administrative Agent shall make reasonable efforts to notify Company of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender or Administrative Agent by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information, and (g) any other disclosure authorized by Company in writing in advance. Notwithstanding the foregoing, (i) the foregoing shall not be construed to prohibit the disclosure of any information that is or becomes publicly known or information obtained by a Lender or Administrative Agent from sources other than Company other than as a result of a disclosure by the Administrative Agent or Lender known (or that should have reasonably been known) to be in violation of this Section 9.16, and (ii) on or after the Closing Date, the Administrative Agent may, at its own expense issue news releases and publish "tombstone" advertisements and other announcements generally describing this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of Company or Seller) (collectively, "**Trade Announcements**"). Company shall not issue, and shall cause Seller not to issue, any Trade Announcement using the name of the Administrative Agent or Lender, or their respective Affiliates or referring to this Agreement or the other Credit Documents, or the transactions contemplated thereunder except (x) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (y) with the prior approval of Administrative Agent (such approval not to be unreasonably withheld). The Company hereby acknowledges and agrees (for itself and on behalf of its Affiliates) to keep all fee, pricing and other economic terms related to this Agreement and each other Credit Document confidential and not disclose such information except that the Company may make (a) disclosures of such information to Affiliates and to its and their agents, auditors, attorneys and advisors (and to other persons authorized by the Company to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 9.16) provided that such Persons are informed of the confidential nature of the information, and are instructed to keep, such information confidential, (b) disclosure to any rating agency when required by it, (c) disclosures required by any applicable statute, law, rule or regulation (including the rules of the Securities and Exchange Commission) or requested by any Governmental Authority or representative thereof or by any regulatory body or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, that unless specifically prohibited by applicable law or court order, the Company shall make reasonable efforts to notify the Administrative Agent of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of the Company by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information, and (d) any other disclosure authorized by Administrative Agent and the Company in writing in advance.

9.17 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Company shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Company to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Company. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest and (b) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

9.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

9.19 Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

9.20 Patriot Act. Each Lender, Paying Agent and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Company that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies Company, which information includes the name and address of Company and other information that will allow such Lender or Administrative Agent, as applicable, to identify Company in accordance with the Act.

[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 officers thereunto duly authorized as of the date first written above.

FLEXSHOPPER 2, LLC, as Company

By: /s/ Brad Bernstein

Name: Brad Bernstein
Title: CEO

WELLS FARGO BANK, N.A.,
as Paying Agent

By: /s/ Brett Hudson

Name: Brett Hudson
Title: Vice President

WE 2014-1, LLC,
as Administrative Agent and Lender

By: /s/ Patrick Lo

Name: Patrick Lo
Title: Managing Director

INVESTOR RIGHTS AGREEMENT

THIS INVESTOR RIGHTS AGREEMENT, dated as of March 6, 2015 (this "Agreement"), by and among FlexShopper, Inc., a Delaware corporation (the "Company"), the Management Stockholders and the investors listed on the signature pages hereto (the "Investors") for which Waterfall Asset Management, LLC, a Delaware limited liability company ("Waterfall") serves as the investment advisor. Each of the Investors, the Company and the Management Stockholders are from time to time referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the Investors and the Company have entered into those certain Subscription Agreements, dated as of March 6, 2015 (the "Subscription Agreements"), pursuant to which the Investors have agreed to purchase, subject to the satisfaction and/or waiver of the conditions set forth therein, 14,545,455 shares of common stock, par value \$0.0001 per share, of the Company (the "Common Stock"); and

WHEREAS, it is a condition precedent to the Investors' obligations to purchase such Common Stock that the Company enter into this Agreement with the Investors to provide for certain rights and obligations of the Parties following the closing of the transactions contemplated by the Subscription Agreements (the "Closing").

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.1. Definitions. The following terms shall have the meanings ascribed to them below:

"Affiliate" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" means this Agreement, as amended, modified or supplemented from time to time, in accordance with the terms hereof, together with any exhibits, schedules or other attachments hereto.

"Beneficially Own" with respect to any securities means having "beneficial ownership" of such securities (as determined pursuant to Rule 13d-3 under the Exchange Act, including without limitation, the 60-day provision in paragraph (d)(1)(i) thereof). The terms "Beneficial Ownership" and "Beneficial Owner" have correlative meanings.

“Business Day” means any day other than (i) any Saturday or Sunday or (ii) any other day on which banks located in New York, New York are authorized or required by Law to be closed.

“Capital Stock” means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (in each case however designated) stock issued by the Company.

“Closing” has the meaning ascribed thereto in the recitals of this Agreement.

“Common Stock” has the meaning ascribed thereto in the recitals of this Agreement.

“Company” has the meaning set forth in the preamble of this Agreement.

“Demand Notice” has the meaning set forth in Section 2.2(a).

“Demand Registration” has the meaning set forth in Section 2.2(a).

“Demand Registration Statement” has the meaning set forth in Section 2.2(a).

“Electronic Delivery” has the meaning set forth in Section 4.7.

“Equity Securities” means any Common Stock, Options or Convertible Securities.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“FINRA” means the U.S. Financial Industry Regulatory Authority.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Governmental Entity” means any domestic (federal, state, municipal or local) or foreign or multinational government or governmental, regulatory, political, judicial or quasi-judicial or administrative subdivision, department, authority, entity, agency, regulator, commission, board, bureau, court, or instrumentality.

“Indemnified Party” has the meaning set forth in Section 2.6(c).

“Indemnifying Party” has the meaning set forth in Section 2.6(c).

“Investors” has the meaning set forth in the preamble of this Agreement.

“Investor Director” has the meaning set forth in Section 3.3(a).

“Investor Parties” means the Investors, and their respective Affiliate transferees.

“Investor Party Indemnitees” has the meaning set forth in Section 2.6(a).

“Law” means any applicable federal, state, local or foreign law, statute, ordinance, rule, guideline, regulation, order, writ, decree, agency requirement, license or permit of any Governmental Entity.

“Losses” has the meaning set forth in Section 2.6(a).

“Management Stockholder” means each of Morry F. Rubin, George Rubin and Brad Bernstein and their respective Affiliates.

“Notice and Questionnaire” means a written notice executed by the Investor Parties and delivered to the Company containing the information required by Item 507 of Regulation S-K to be included in any Shelf Registration Statement regarding the Investor Parties seeking to sell Common Stock pursuant thereto.

“Options” means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

“Other Securities” means the Common Stock or other securities of the Company which the Company is registering pursuant to a Registration Statement covered by Section 2.3.

“Ownership Percentage” has the meaning ascribed thereto in Section 3.3(a) of this Agreement.

“Parties” has the meaning ascribed thereto in the recitals of this Agreement.

“Permitted Issuance” means any issuance by the Company of Equity Securities (1) to the Company or a Subsidiary of the Company, (2) to officers, employees, directors or consultants of the Company and its Subsidiaries pursuant to the Company’s Board-approved equity incentive plans and the securities issued upon exercise of such grants, (3) as consideration in a merger or acquisition of the stock or assets of another Person, (4) upon the occurrence of a stock split, stock dividend or any subdivision of the Common Stock, or any other reclassification, reorganization or other similar recapitalization, (5) pursuant to the conversion or exchange of any securities of the Company into Capital Stock, or the exercise of any warrants or other rights to acquire Capital Stock; (6) pursuant to a bona fide firm commitment underwritten public offering; (7) in connection with any private placement of warrants to purchase Capital Stock to lenders or other institutional investors (excluding the Company’s stockholders) in any arm’s length transaction approved by the Board in which such lenders or investors provide debt financing to the Company or any Company Subsidiary; (8) in connection with a joint venture, strategic alliance or other commercial relationship with any Person (including Persons that are customers, suppliers and strategic partners of the Company or any Subsidiary) relating to the operation of the Company’s or any Subsidiary’s business and for which a primary purpose thereof is not raising capital; or (9) in connection with any office lease or equipment lease or similar equipment financing transaction approved by the Board in which the Company or any Subsidiary obtains from a lessor or vendor the use of such office space or equipment for its business.

“Permitted Investor Transferee” has the meaning set forth in Section 4.2.

“Permitted Transferee” means any Affiliate or family member of a Management Stockholder.

“Person” means any individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, Governmental Entity or other entity.

“Piggyback Notice” has the meaning set forth in Section 2.3(a).

“Piggyback Registration” has the meaning set forth in Section 2.3(a).

“Pro Rata Share” means, for any Investor Party at any time of determination, the quotient of (i) the number of shares of Common Stock Beneficially Owned by such Investor Party, divided by, (ii) the number of shares of Common Stock outstanding at such time of determination.

“Proposed Transfer” has the meaning set forth in Section 3.5(a).

“Proposed Transferee” has the meaning set forth in Section 3.5(a).

“Prospectus” means the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such prospectus.

“Purchase Rights” has the meaning set forth in Section 3.2.

“Registrable Securities” means shares of Common Stock issued by the Company at the Closing, as well as any shares of Common Stock or other securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange generally for, or in replacement generally of, such Common Stock or other Registrable Securities and any securities issued in exchange for such Common Stock or other Registrable Securities in any merger, reorganization, consolidation, share exchange, recapitalization, restructuring or other comparable transaction of the Company. As to any particular Registrable Securities, once issued such securities shall cease to be Registrable Securities when (a) a Registration Statement with respect to the sale by the Investor Parties holding such securities has been declared effective by the SEC and such securities have been disposed of pursuant to such effective Registration Statement, (b) such securities shall have been or could be sold by the holder, without being subject to any holding period or volume limitations pursuant to Rule 144, under circumstances in which all of the applicable conditions (including any holding period or volume limitations) of Rule 144 (or any similar provisions then in force) under the Securities Act are met, (c) such securities have been otherwise transferred and the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a restrictive legend and not subject to any stop order, and such securities may be publicly resold by the Person receiving such certificate without restriction, or (d) such securities shall have ceased to be outstanding.

“Registration Statement” means any registration statement of the Company under the Securities Act which permits the public offering of any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Shelf Demand Notice” has the meaning set forth in Section 2.1(a).

“Shelf Filing Date” has the meaning set forth in Section 2.1(a).

“Shelf Registration Statement” has the meaning set forth in Section 2.1(a).

“Shelf Take-Down Notice” has the meaning set forth in Section 2.1(b).

“Subscription Agreements” has the meaning ascribed thereto in the recitals of this Agreement.

“Subsidiary” means, when used with respect to any Person, any other Person of which (a) in the case of a corporation, at least (i) a majority of the equity and (ii) a majority of the voting interests are owned or controlled, directly or indirectly, by such first Person, by any one or more of its Subsidiaries, or by any combination of such first Person and one or more of its Subsidiaries or (b) in the case of any Person other than a corporation, such first Person, one or more of its Subsidiaries, or such first Person and one or more of its Subsidiaries combined (i) owns a majority of the equity interests thereof and (ii) has the power to elect or direct the election of a majority of the members of the governing body thereof. As used in this Agreement, unless the context requires otherwise, references to a Subsidiary or Subsidiaries shall mean a Subsidiary or the Subsidiaries of the Company.

“Tag-Along Notice” has the meaning set forth in Section 3.5(b).

“Tagging Stockholder” has the meaning set forth in Section 3.5(a).

“Transfer” means, with respect to any shares of Common Stock, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation or other encumbrance or other disposition of such shares, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily or by operation of Law; and “Transferred” shall have a correlative meaning.

“Transferring Stockholder” has the meaning set forth in Section 3.5(a).

“Voting Stock” means Capital Stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors).

SECTION 1.2. General Interpretive Principles. Unless the context otherwise requires: (i) words in the singular include the plural, and in the plural include the singular; (ii) “including” means including without limitation; (iii) references to any Section or clause refer to the corresponding Section or clause, respectively, of this Agreement; (iv) any reference to a day or number of days, unless expressly referred to as a business day shall mean the respective calendar day or number of calendar days; (v) references to Sections of or Rules under the Exchange Act shall be deemed to include substitute, replacement or successor Sections or Rules, and any term defined by reference to a Section of or Rule under the Exchange Act shall include SEC and judicial interpretations of such Section or Rule; and (vi) headings are for convenience of reference only.

ARTICLE II REGISTRATION RIGHTS

SECTION 2.1. Shelf Registration.

(a) Following the Company’s becoming eligible to use Form S-3 (or any comparable or successor form or forms then in effect) for a secondary offering, Waterfall shall have the right, by delivering a written notice to the Company (a “Shelf Demand Notice”), to require the Company to file a Registration Statement to register for resale, on a continuous or delayed basis pursuant to Rule 415 under the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC, of all of the Registrable Securities (the “Shelf Registration Statement”). The Company shall use its reasonable best efforts to prepare and file with the SEC the Shelf Registration Statement within 90 days after receipt of the Shelf Demand Notice (the “Shelf Filing Date”). The Shelf Registration Statement shall be on Form S-3 (or any comparable or successor form or forms then in effect) under the Securities Act. The Company shall use its reasonable best efforts to cause the Shelf Registration Statement to be declared effective under the Securities Act by the SEC within 90 days after the Shelf Filing Date. The Company shall use its reasonable best efforts to keep the Shelf Registration Statement (or any successor Shelf Registration Statement) continuously effective under the Securities Act until the earlier of (i) the date when all of the Registrable Securities covered by such Shelf Registration Statement have been sold and (ii) the date on which the Investor Parties cease to own any Registrable Securities.

(b) If any Investor Party wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so in accordance with this Section 2.1(b) and Section 2.5. Any Investor Party wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, whether in an underwritten offering or otherwise, shall notify the Company of such intent (a “Shelf Take-Down Notice”) and shall deliver a Notice and Questionnaire to the Company at least five (5) Business Days prior to any intended distribution of Registrable Securities under the Shelf Registration Statement, it being agreed that if any such Investor Party intends to distribute any Registrable Securities by means of an underwritten offering it shall promptly so advise the Company and the Company shall take all reasonable steps to facilitate such distribution, including the actions required pursuant to Section 2.5(a)(vii). From and after the date the Shelf Registration Statement is declared effective, the Company shall, as promptly as practicable after the date a Notice and Questionnaire is delivered to it in connection with a Shelf Take-Down Notice:

(i) if required by applicable Law, file with the SEC a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable Law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Investor Parties are named as a selling security holder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit the Investor Parties to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable Law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its reasonable best efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable;

(ii) provide the Investor Parties copies of any documents to filed pursuant to Section 2.1(b)(i) a reasonable period of time prior to such filing; and

(iii) notify the Investor Parties as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2.1(b)(i).

Notwithstanding anything contained herein to the contrary, the Company shall be under no obligation to name any Investor Party as a selling security holder in any Shelf Registration Statement or related Prospectus if such Investor Party has not delivered a Notice and Questionnaire to the Company.

(c) If any of the Registrable Securities to be sold pursuant to a Shelf Registration Statement are to be sold in a firm commitment underwritten offering which underwritten offering was initially requested by any Investor Party pursuant to a Shelf Take-Down Notice, and the managing underwriter(s) of such underwritten offering advise the Investor Parties in writing that it is their good faith opinion that the total number or dollar amount of Registrable Securities proposed to be sold in such offering, together with any Other Securities proposed to be included by holders thereof which are entitled to include securities in such Registration Statement, exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included, together with all such Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows:

(i) first, the Registrable Securities for which inclusion in such underwritten offering was requested by any Investor Party based on the number of Registrable Securities Beneficially Owned by such Investor Party; and

(ii) second, among any holders of Other Securities, pro rata, based on the number of Other Securities Beneficially Owned by each such holder of Other Securities.

SECTION 2.2. Demand Registration.

(a) Waterfall shall have the right, by delivering a written notice to the Company (a “Demand Notice”), to require the Company to register under and in accordance with the provisions of the Securities Act the resale of the number of Registrable Securities Beneficially Owned by the Investor Parties and requested by such Demand Notice to be so registered (a “Demand Registration”); provided, however, that the Company shall not be required to effect a Demand Registration pursuant to this Section 2.2(a) after the Company has effected two (2) Demand Registrations pursuant to this Section 2.2(a); and provided further, that the Investor Parties shall not be entitled to deliver to the Company more than two (2) Demand Registrations in any 12-month period and, in any event, a Demand Notice may only be made if the sale of the Registrable Securities requested to be registered by the Investor Parties includes at least 20% of the originally issued shares of the Registrable Securities originally issued to Investor Parties or is reasonably expected to result in aggregate gross cash proceeds in excess of \$1,000,000 (without regard to any underwriting discount or commission). A Demand Notice shall also specify the expected method or methods of disposition of the applicable Registrable Securities. Following receipt of a Demand Notice, the Company shall use its reasonable best efforts to file, as promptly as reasonably practicable, but not later than 30 days after receipt by the Company of such Demand Notice, a Registration Statement relating to the offer and sale of the Registrable Securities requested to be included therein by the Investor Parties in accordance with the methods of distribution elected by Waterfall (a “Demand Registration Statement”) and shall use its reasonable best efforts to cause such Registration Statement to be declared effective under the Securities Act as promptly as practicable after the filing thereof.

(b) If any of the Registrable Securities registered pursuant to a Demand Registration are to be sold in a firm commitment underwritten offering, and the managing underwriter(s) of such underwritten offering advise the Investor Parties in writing that it is their good faith opinion that the total number or dollar amount of Registrable Securities proposed to be sold in such offering, together with any Other Securities proposed to be included by holders thereof which are entitled to include securities in such Registration Statement, exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all such Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows:

(i) first, the Registrable Securities for which inclusion in such underwritten offering was requested by any Investor Party based on the number of Registrable Securities Beneficially Owned by such Investor Party; and

(ii) second, among any holders of Other Securities, pro rata, based on the number of Other Securities Beneficially Owned by each such holder of Other Securities.

(c) In the event of a Demand Registration, the Company shall be required to maintain the continuous effectiveness of the applicable Registration Statement (or any successor Registration Statement) continuously effective under the Securities Act until the earlier of (i) the date when all of the Registrable Securities covered by such Registration Statement have been sold and (ii) the date on which the Investor Parties cease to own any Registrable Securities.

(d) Waterfall shall have the right to notify the Company that it has determined that the Registration Statement relating to a Demand Registration be abandoned or withdrawn, in which event the Company shall promptly abandon or withdraw such Registration Statement. The Company shall not be required to pay for the expenses of the Investor Parties in connection with any registration proceeding begun pursuant to Section 2.2(a) that has been subsequently withdrawn pursuant to this Section 2.2(d) at the request of Waterfall, unless the withdrawal is based upon material adverse information concerning the Company that the Company had not publicly disclosed at least two (2) Business Days prior to the Company's receipt of such Demand Notice.

(e) With the prior written consent of Waterfall (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall be entitled to coordinate any offerings under this Section 2.2 with any offerings to be effected pursuant to similar agreements with the holders of Other Securities, including, if practicable, by filing one Registration Statement for any Registrable Securities being registered pursuant to this Section 2.2 and all Other Securities.

SECTION 2.3. Piggyback Registration.

(a) At any time after the Closing if, other than pursuant to Sections 2.1 and 2.2, the Company proposes to file a registration statement under the Securities Act with respect to an offering by the Company for its own account (other than a registration statement (a) on Form S-4, Form S-8 or any successor forms thereto, (b) filed solely in connection with any employee benefit or dividend reinvestment plan (c) for the purpose of effecting a rights offering relating to the Common Stock, (d) on Form S-3 (universal shelf) to register on an unallocated and continuous basis the primary offering of securities by the Company or (e) the registration statement on Form S-1 (registration no. 333-201644) initially filed on January 22, 2015) or for the account of any of its security holders, the Company will give to the Investor Parties written notice of such filing at least fifteen (15) days prior to the anticipated filing date (the "Piggyback Notice"). The Piggyback Notice shall offer the Investor Parties the opportunity to include in such registration statement the number of Registrable Securities (for purposes of this Section 2.3, "Registrable Securities" shall be deemed to mean solely securities of the same type and class as those proposed to be offered by the Company for its own account) as it may request (a "Piggyback Registration"). Subject to Section 2.3(b), the Company shall include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within seven (7) days after notice has been given to the Investor Parties. The Company shall be required to maintain the effectiveness of the Registration Statement for a Piggyback Registration for a period of 360 days after the effective date thereof or such shorter period in which all Registrable Securities included in such Registration Statement have actually been sold.

(b) If any of the securities to be registered pursuant to the registration giving rise to the Investor Parties' rights under this Section 2.3 are to be sold in an underwritten offering, the Investor Parties shall be permitted to include all Registrable Securities requested to be included in such registration in such offering on the same terms and conditions as any other shares of Capital Stock, if any, of the Company included therein; provided, however, that if such offering involves a firm commitment underwritten offering and the managing underwriter(s) of such underwritten offering advise the Investor Parties in writing that it is their good faith opinion that the total number or dollar amount of Registrable Securities proposed to be sold in such offering, together with all Other Securities that the Company and any other Persons having rights to participate in such registration intend to include in such offering, exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all such Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows:

(i) first, all Other Securities being sold by the Company or by any Person (other than the Investor Parties) exercising a contractual right to demand registration pursuant to which such registration statement was filed; and

(ii) second, among any other holders of Registrable Securities or Other Securities requesting such registration, pro rata, based on the aggregate number of Registrable Securities and Other Securities Beneficially Owned by each such holder.

(c) The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.3 prior to the effectiveness of the related Registration Statement and shall have no obligation to register any Registrable Securities in connection with such registration, except to the extent provided herein.

(d) Each Investor Party shall have the right to withdraw its request for inclusion of its Registrable Securities in any Piggyback Registration by giving written notice to the Company of its request to withdraw at least two (2) Business Days prior to the planned effective date of the related Registration Statement. Notwithstanding Section 2.4, the Company shall not be required to pay for the expenses of any Investor Party in connection with any registration proceeding begun pursuant to this Section 2.3 from which the Investor Parties has subsequently withdrawn pursuant to this Section 2.3(d), unless such Investor Party's withdrawal is based upon material adverse information concerning the Company that the Company had not publicly disclosed at least two (2) Business Days prior to the Company's delivery of such Piggyback Notice.

SECTION 2.4. Registration Expenses. In connection with registrations pursuant to Sections 2.1, 2.2 and 2.3 (including any subsequently abandoned or withdrawn registration statement), the Company shall pay all of the registration expenses incurred in connection with the registration thereunder, including, without limitation, all: (a) registration and filing fees, (b) fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities), (c) processing, duplicating and printing expenses, (d) internal expenses of the Company (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), (e) fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation system, (f) reasonable fees and disbursements of counsel for the Company, reasonable fees and expenses for independent certified public accountants retained by the Company (including the expenses of any comfort letters or costs associated with the delivery by any registered public accounting firms of a comfort letter or comfort letters requested but not the cost of any audit other than a year end audit) and reasonable fees and expenses of one counsel (and applicable local counsel as necessary) for the Investor Parties and (g) reasonable fees and expenses of any special experts retained by the Company in connection with such registration. Notwithstanding the foregoing, the Investor Parties shall be responsible for (i) any underwriting fees, discounts or commissions, (ii) any commissions of brokers and dealers, and (iii) capital gains, income and transfer taxes, if any, relating to the sale of Registrable Securities of the Investor Parties.

SECTION 2.5. Registration Procedures.

(a) In connection with the registration of any Registrable Securities pursuant to this Agreement:

(i) The Company shall prepare and file with the SEC a Registration Statement with respect to such Registrable Securities as provided herein, make all required filings with FINRA and use its reasonable best efforts to keep each Registration Statement continuously effective during the period such Registration Statement is required to remain effective pursuant to the terms of this Agreement; upon the occurrence of any event that would cause the Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not to be effective and usable for resale of Registrable Securities during the period such Registration Statement is required to remain effective pursuant to the terms of this Agreement, the Company shall file promptly an appropriate amendment to the Registration Statement, a supplement to the Prospectus or a report filed with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), the Company shall use its reasonable best efforts to cause such amendment to be declared effective and the Registration Statement and the related Prospectus to become usable for their intended purposes as soon as practicable thereafter.

(ii) The Company shall prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement effective during the periods provided herein.

(iii) The Company shall advise the Investor Parties promptly (which notice pursuant to clauses (B) through (D) below shall be accompanied by an instruction to suspend the use of the Prospectus until the Company shall have remedied the basis for such suspension):

(A) when the Prospectus or any Prospectus supplement or post-effective amendment is proposed to be or has been filed, and, with respect to the Registration Statement or any post-effective amendment thereto, when the same has become effective;

(B) of any request by the SEC or any other Governmental Entity for amendments to the Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto;

(C) of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Registrable Securities for offering or sale in any jurisdiction, or the threatening or initiation of any proceeding for any of the preceding purposes;

(D) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose; or

(E) of the existence of any fact or the happening of any event, during the period in which a Registration Statement remains effective under the Securities Act, that makes any statement of a material fact made in such Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading.

(iv) The Company shall, unless any Registrable Securities shall be in book-entry form only, cooperate with the Investor Parties to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends (unless required by applicable securities Laws), and enable such Registrable Securities to be in such denominations and registered in such names as the Investor Parties may request at least two (2) Business Days before any sale of Registrable Securities. In connection therewith, if reasonably required by the Company's transfer agent, the Company shall promptly deliver any authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without legend upon sale by the holder of such shares of Registrable Securities under the Registration Statement.

(v) The Company shall use its reasonable best efforts to promptly register or qualify any Registrable Securities under such other securities or blue sky laws of such jurisdictions within the United States as any Investor Party reasonably requests and which may be reasonably necessary or advisable to enable such Investor Party to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Investor Parties, keep such registrations or qualifications in effect for so long as the Registration Statement remains in effect and do any and all other acts and things which may be reasonably necessary or advisable to enable such Investor Parties to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Investor Parties; provided, however, that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Agreement, (B) subject itself to taxation in any jurisdiction where it would not otherwise be subject to taxation but for this Agreement or (C) consent to general service of process in any jurisdiction where it would not otherwise be subject to such service but for this Agreement.

(vi) The Company shall use its reasonable best efforts to promptly cause any Registrable Securities covered by a Registration Statement to be registered with or approved by such other Governmental Entity within the United States as may be necessary to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities in accordance with the intended methods of disposition set forth in such Registration Statement.

(vii) The Company shall, in the event that any Investor Party advises the Company that the Investor Party intends to distribute any Registrable Securities by means of an underwritten offering, whether pursuant to Sections 2.1, 2.2 or 2.3, enter into an underwriting agreement in customary form, scope and substance and take all such other actions reasonably requested by such Investor Party or by the managing underwriter(s), if any, to expedite or facilitate the underwritten disposition of such Registrable Securities and deliver such documents and certificates as may be reasonably requested by such Investor Party, its counsel and the managing underwriter(s), if any.

(b) No Investor Party by acquisition of a Registrable Security shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement, or to receive a Prospectus relating thereto, unless it has furnished the Company with a Notice and Questionnaire (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. The Company may require the Investor Parties selling Registrable Securities pursuant to a Registration Statement to furnish to the Company such information regarding the Investor Parties and the distribution of such Common Stock as the Company may from time to time reasonably require for inclusion in such Registration Statement. The Investor Parties shall promptly furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by the Investor Parties not misleading. Any sale of any Registrable Securities by such Investor Parties shall constitute a representation and warranty by such Investor Party that the information relating to the Investor Party and its plan of distribution is as set forth in the Prospectus delivered in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Investor Party or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by the Investor Party or its plan of distribution necessary to make the statements in such Prospectus, in light of the circumstances under which they were made, not misleading. The Company may exclude from such Registration Statement the Registrable Securities of any Investor Party that fails to furnish such information within a reasonable time after receiving such request. The Company shall not include in any Registration Statement any information regarding, relating to or referring to such Investor Party or its plan of distribution without the approval of such Investor Party in writing.

(c) No Investor Party shall use any free writing prospectus (as defined in Rule 405 under the Securities Act) in connection with the sale of Registrable Securities without the prior written consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed).

SECTION 2.6. Indemnification.

(a) The Company shall indemnify and hold harmless, to the fullest extent permitted by Law, the Investor Parties, the officers, directors, partners (limited and general), members, managers, representatives, agents and employees of the Investor Parties, each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Investor Parties, each underwriter (including the Investor Parties if they are deemed to be an underwriter pursuant to any SEC comments or policies), if any, and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriter (collectively, the “Investor Party Indemnitees”), from and against all losses, claims, damages, liabilities and expenses (collectively, “Losses”) in connection with any sale of Registrable Securities pursuant to a Registration Statement arising out of or based upon (i) any violation or alleged violation of the Securities Act or any rule or regulation promulgated thereunder by the Company or any of its Affiliates, employees, officers, directors or agents or (ii) any untrue or alleged untrue statement of a material fact contained in any Registration Statement or preliminary or final Prospectus relating to the registration of such Registrable Securities or any amendment or supplement thereto or any document incorporated by reference therein or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading; provided, however, that the Company shall not be liable to such Investor Party Indemnitee in any such case to the extent that any such loss, claim, damage, liability or expense arises out of or is based upon (A) an untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement, including any such preliminary or final Prospectus contained therein or any such amendments or supplements thereto, or contained in any free writing prospectus (as such term is defined in Rule 405 under the Securities Act) prepared by the Company or authorized by it in writing for use by such Investor Party Indemnitee (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Investor Party Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company by the Investor Party expressly for inclusion in such Registration Statement, including any such preliminary or final Prospectus contained therein or any such amendments or supplements thereto, (B) offers or sales effected by or on behalf of such Investor Party Indemnitee “by means of” (as defined in Rule 159A under the Securities Act) a “free writing prospectus” (as defined in Rule 405 under the Securities Act) that was not authorized in writing by the Company or (C) the failure of any Investor Party Indemnitee to deliver or make available to a purchaser of Registrable Securities a copy of any Registration Statement, including any preliminary or final Prospectus contained therein or any amendments or supplements thereto (if the same was required by applicable Law to be delivered or made available); provided that the Company shall have delivered to such Investor Party Indemnitee such Registration Statement, including such preliminary or final Prospectus contained therein and any amendments or supplements thereto.

(b) In connection with any Registration Statement in which an Investor Party is participating by registering Registrable Securities, such Investor Party shall indemnify and hold harmless, to the fullest extent permitted by Law, severally and not jointly, the Company, the officers, directors, agents, representatives or other employees of the Company, each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Company, each underwriter, if any, and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriter, from and against all Losses, as incurred, arising out of or based on any untrue or alleged untrue statement of a material fact contained in any such Registration Statement or preliminary or final Prospectus relating to the registration of such Registrable Securities or any amendment or supplement thereto or any document incorporated by reference therein, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, in each case solely to the extent that such untrue or alleged untrue statement or omission or alleged omission is made in such Registration Statement or in any preliminary or final Prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405 under the Securities Act) in reliance upon and in conformity with written information furnished to the Company by the Investor Parties expressly for inclusion in such document.

(c) If any Person shall be entitled to indemnity hereunder (an “Indemnified Party”), such Indemnified Party shall give prompt notice to the party from which such indemnity is sought (the “Indemnifying Party”) of any claim or of the commencement of any Action with respect to which such Indemnified Party seeks indemnification or contribution pursuant hereto; provided, however, that the delay or failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any obligation or liability except to the extent that the Indemnifying Party has been actually prejudiced by such delay or failure. The Indemnifying Party shall have the right, exercisable by giving written notice to an Indemnified Party promptly after the receipt of written notice from such Indemnified Party of such claim or Action, to assume, at the Indemnifying Party’s expense, the defense of any such Action, with counsel reasonably satisfactory to such Indemnified Party; provided, however, that an Indemnified Party shall have the right to employ separate counsel in any such Action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless: (i) the Indemnifying Party agrees to pay such fees and expenses; (ii) the Indemnifying Party fails promptly to assume, or in the event of a conflict of interest cannot assume, the defense of such Action or fails to employ counsel reasonably satisfactory to such Indemnified Party, in which case the Indemnified Party shall also have the right to employ counsel and to assume the defense of such Action or (iii) in the Indemnified Party’s reasonable judgment a conflict of interest between such Indemnified Party and Indemnifying Party may exist in respect of such Action; provided, further, that the Indemnifying Party shall not, in connection with any one such Action or separate but substantially similar or related Actions in the same jurisdiction, arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one firm of attorneys (together with appropriate local counsel) at any time for all of the Indemnified Parties. Whether or not such defense is assumed by the Indemnifying Party, neither the Indemnifying Party nor the Indemnified Party will be subject to any liability for, or otherwise effect, any settlement made without the consent of the other (but such consent shall not be unreasonably withheld, conditioned or delayed).

(d) Neither Party shall settle, compromise, discharge or consent to an entry of judgment with respect to a claim or liability subject to indemnification under this Section 2.6 without the other Parties’ prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed); provided that the Indemnifying Party may agree without the prior written consent of the Indemnified Party to any settlement, compromise, discharge or consent to an entry of judgment, in each case that relates only to money damages and by its terms obligates the Indemnifying Party to pay the full amount of the liability in connection with such claim and which unconditionally releases the Indemnified Party from all liability in connection with such claim.

(e) If the indemnification provided for in this Section 2.6 is unavailable to hold harmless each of the Indemnified Parties against any losses, claims, damages, liabilities and expenses to which such parties may become subject under the Securities Act, then the Indemnifying Party shall, in lieu of indemnifying each party entitled to indemnification hereunder, contribute to the amount paid or payable by such party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and such Indemnified Parties on the other in connection with the statements or omissions or alleged statements or omissions that resulted in such losses, claims, damages, liabilities or expenses. The relative fault of such parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact, or omission or alleged omission to state a material fact, relates to information supplied by or concerning the Indemnifying Party on the one hand, or by such Indemnified Party on the other, and such party's relative intent, knowledge, access to information and opportunity to have corrected or prevented such statement or omission. No Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) shall be entitled to contribution from any Person that is not guilty of such fraudulent misrepresentation.

SECTION 2.7. Miscellaneous.

(a) With a view to making available the benefits of certain rules and regulations of the SEC which may at any time permit the sale of the Registrable Securities to the public without registration, the Company agrees, so long as there are outstanding Registrable Securities, to use its reasonable best efforts to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of this Agreement;

(ii) file with the SEC in a timely manner all reports and other documents as the SEC may prescribe under the Exchange Act at any time while the Company is subject to such reporting requirements of the Exchange Act; and

(iii) furnish to the Investor Parties upon a reasonable request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as any Investor Party may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such Registrable Securities without registration.

(b) Subject to the provisions hereof, in the event the Company proposes to enter into an underwritten public offering, the Investor Parties shall enter into a customary agreement with the managing underwriters not to effect any sale or distribution of equity securities of the Company, or any securities convertible, exchangeable or exercisable for or into such securities, during the period beginning up to two (2) days prior to the date of such offering and extending for up to 180 days following the effective date of such offering if so requested by the Company and the underwriters. The Company may impose stop-transfer restrictions with respect to the securities subject to the foregoing restriction until the end of the required stand-off period and shall lift such stop-transfer restrictions immediately upon the end of such period.

ARTICLE III
OTHER RIGHTS

SECTION 3.1. Board Observation/Information Rights. So long as the Investor Parties own in the aggregate, a number of shares of Common Stock which together represent at least five percent (5%) of the total number of shares of Common Stock issued and outstanding:

(a) provided that Waterfall shall not have a nominee serving on the Company's Board of Directors, Waterfall shall be entitled to designate a representative who the Company shall permit to attend all meetings of its Board of Directors and its committees and those of its Subsidiaries as well as the Credit Committee, if there is one (subject to the same limitations and considerations set forth in Section 3.4(b)) in a nonvoting observer capacity and, in this respect, shall give such representatives copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that such representatives shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest; and

(b) provided that Waterfall shall not have a nominee serving on the Company's Board of Directors or a representative serving as an observer pursuant to Section 3.1(a), the Company shall provide the Investor Parties with (i) as soon as available, but within 30 days after the end of each fiscal month, consolidated unaudited financial statements of the Company and its Subsidiaries consisting of an unaudited income statement for such month, statement of cash flows for such month and balance sheet as of the end of such month and, in each case, prepared in accordance with GAAP; (ii) as soon as available, but in any event within forty-five (45) days after the end of each of the first three quarters of each fiscal year of the Company, consolidated unaudited financial statements of the Company and its Subsidiaries consisting of an unaudited income statement for such quarter, statement of cash flows for such quarter and balance sheet as of the end of such quarter and, in each case, prepared in accordance with GAAP; (iii) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Company, consolidated audited financial statements of the Company and its Subsidiaries consisting of an audited income statement for such fiscal year, statement of cash flows for such fiscal year and balance sheet as of the end of such fiscal year and, in each case, prepared in accordance with GAAP; (iv) a copy of the financial plan of the Company and its Subsidiaries in the form approved by the Board prior to the beginning of each fiscal year and any Board-approved revisions thereof, and (v) such other financial information the Investor Parties may reasonably request; provided that any documents or other information that is filed with the SEC need not be separately provided by the Company to the Investor Parties.

SECTION 3.2. Preemptive Rights; Certain Approval Rights.

(a) If at any time the Company proposes to grant, issue or sell any Equity Securities (in each case, other than any Permitted Issuances) to any Person (the "Purchase Rights") then it shall give the Investor Parties written notice of its intention to do so, describing the Equity Securities and the price and the terms and conditions upon which the Company proposes to issue the same. Each Investor Party shall be entitled to acquire, upon the terms applicable to such Purchase Rights, its Pro Rata Share of the Equity Securities proposed to be granted, issued or sold by the Company triggering the Purchase Rights. Each Investor Party shall have ten (10) Business Days from the giving of such notice to agree to purchase its Pro Rata Share of the Equity Securities for the price and upon the terms and conditions specified in the notice by giving written notice to the Company and stating therein the quantity of such Equity Securities to be purchased. If not all of the Investor Parties elect to purchase their Pro Rata Share of the Equity Securities subject to the Purchase Rights, then the Company shall promptly notify in writing the Investor Parties who have elected to purchase their full Pro Rata Share of such Equity Securities and shall offer such Investor Parties the right to acquire such unsubscribed shares on a pro rata basis (based on Pro Rata Shares). The Investor Parties shall have five (5) Business Days after receipt of such notice to notify the Company of their election to purchase all or a portion thereof of the unsubscribed shares. If the Investor Parties have, in the aggregate elected to purchase more than the number of unsubscribed shares being offered in such notice, then the unsubscribed shares shall be allocated according to each Investor Party's Pro Rata Share up to the number of unsubscribed shares set forth in the notice to the Investor Parties. If the Investor Parties fail to exercise in full its Purchase Rights, the Company shall have ninety (90) days thereafter to sell the Equity Securities in respect of which the purchasers' rights were not exercised, at a price and upon terms and conditions no more favorable to the purchasers thereof than specified in the Company's notice to the Investor Parties pursuant to this Section 3.2. If the Company has not sold such Equity Securities within such ninety (90) days, the Company shall not thereafter issue or sell any Equity Securities (other than Permitted Issuances) without first again complying with this Section 3.2. The provisions of this Section 3.2 shall terminate upon the Investor Parties ceasing to own in the aggregate, a number of shares of Common Stock which together represent at least five percent (5%) of the total number of shares of Common Stock issued and outstanding.

(b) The Company covenants and agrees that it will not enter into a joint venture, equity arrangement or other strategic transaction with the MacFarlane Group without the prior written approval of same by Waterfall.

SECTION 3.3. Investor Director.

(a) Investor Party Nomination. For so long as the Ownership Percentage (calculated as described below) of the Investor Parties equals or exceeds ten percent (10%), Waterfall shall be entitled to nominate one (1) director to the Board (the "Investor Director"). For purposes of this Section 3.3(a), "Ownership Percentage" of the Investor Parties shall mean, at any time of determination, the percentage equal to (i) the number of shares of Common Stock issued and outstanding that the Investor Parties Beneficially Own, divided by (ii) the total number of shares of Common Stock issued and outstanding.

(b) Company Nomination. In accordance with the provisions of Section 3.3(a), at each meeting of the Company's stockholders at which the election of directors is to be considered, the Company shall nominate the Investor Director designated by Waterfall for election to the Board by the holders of Voting Stock and solicit proxies from the Company's stockholders in favor of the election of the Investor Director. The Company shall use reasonable best efforts to cause each Investor Director to be elected to the Board (including voting all unrestricted proxies in favor of the election of such the Investor Director and including recommending approval of such Investor Director's appointment to the Board) and shall not take any action designed to diminish the prospects of such the Investor Director of being elected to the Board.

(c) Removal. Each Investor Director appointed pursuant to this Section 3.3 shall continue to hold office until the next annual meeting of the stockholders of the Company and until his or her successor is elected and qualified in accordance with this Section 3.3 and the Bylaws, unless such Investor Director is earlier removed from office or at such time as such Investor Director's death, resignation, retirement or disqualification. The Company shall use reasonable best efforts to ensure that an Investor Director is removed only if so directed in writing by Waterfall, unless otherwise required by this Section 3.3 or applicable Law.

(d) Vacancies. In the event of a vacancy on the Board resulting from the death, disqualification, resignation, retirement or termination of the term of office of the Investor Director, the Company shall use reasonable best efforts to cause the Board to fill such vacancy or new directorship with a representative designated by Waterfall as provided hereunder, in either case, to serve until the next annual or special meeting of the stockholders (and at such meeting, such representative, or another representative designated by such holders, will be nominated to be elected to the Board in the manner set forth in Section 3.3(b)). If Waterfall fails or declines to fill the vacancy, then the directorship shall remain open until such time as Waterfall elects to fill it with a representative designated hereunder.

SECTION 3.4. Director Provisions.

(a) Fees and Expenses. Each Investor Director shall be entitled to reimbursement of expenses incurred in such capacities on the same basis as the Company provides such reimbursement to the other non-management members of its Board but such Investor Directors shall not otherwise be entitled to compensation for their service on the Board.

(b) Committees; Subsidiary Boards. At the request of Waterfall, the Company shall use its reasonable best efforts to cause the Investor Director to have representation on each committee of the Board, so long as consistent with the independence and other applicable requirements of the principal trading market of the Company's Common Stock or under applicable Law. At the request of Waterfall, the Company shall use its reasonable best efforts to cause the Investor Director to have representation the boards (or equivalent governing body) and committees of each Subsidiary of the Company.

SECTION 3.5. Tag-Along Rights.

(a) If a Management Stockholder (the "Transferring Stockholder") proposes to Transfer all or any portion of its shares of Common Stock (a "Proposed Transfer") (other than (i) to a Permitted Transferee, (ii) pursuant to Rule 144, or (iii) pursuant to a offering registered under the Securities Act), each Investor Party shall have the right to participate in the Transferring Stockholder's Transfer by Transferring up to a pro rata portion of its shares (determined by multiplying the number of shares owned by such Tagging Stockholder (as defined below) by a fraction, the numerator of which is the number of shares owned by such Investor Party and the denominator of which is the total number of shares owned by the Transferring Stockholders and the Investor Parties) to the proposed transferee (the "Proposed Transferee") (each Investor Party that exercises its rights under this Section 3.5, a "Tagging Stockholder").

(b) The Transferring Stockholder shall give written notice (a “Tag-Along Notice”) to each Investor Party of a Proposed Transfer, setting forth the number of shares of Common Stock proposed to be so Transferred, the name and address of the Proposed Transferee, the proposed amount and form of consideration and other terms and conditions of payment offered by the Proposed Transferee. The Transferring Stockholder shall deliver or cause to be delivered to each Investor Party copies of all transaction documents relating to the Proposed Transfer as the same become available. The tag-along rights provided by this Section 3.5 must be exercised by an Investor Party within a period of three (3) Business Days from the date of the Tag-Along Notice, by delivery of a written notice to the Transferring Stockholder indicating its desire to exercise its rights and specifying the number of shares of Common Stock it desires to Transfer. If the Transferring Stockholder is unable to cause the Proposed Transferee to purchase all the shares of Common Stock proposed to be Transferred by the Transferring Stockholder and the Tagging Stockholders, then the number of shares of Common Stock that each such stockholder is permitted to sell in such Proposed Transfer shall be reduced pro rata based on the number of shares of Common Stock proposed to be Transferred by such stockholder relative to the aggregate number of shares of Common Stock proposed to be Transferred by all stockholders participating in such Proposed Transfer. The Transferring Stockholder shall have a period of ninety (90) days following the expiration of the three (3) Business Day period mentioned above to enter into a definitive agreement to sell all the shares of Common Stock agreed to be purchased by the Proposed Transferee on the terms specified in the notice required by the first sentence of this Section 3.5(b). If the Proposed Transferee agrees to purchase more shares of Common Stock than specified in the Tag-Along Notice in the Proposed Transfer, the Investor Parties shall also have the same right to participate in the Transfer of such shares of Common Stock that are in excess of the amount set forth on the Tag-Along Notice in accordance with this Section 3.5.

(c) Any Transfer of shares of Common Stock by a Tagging Stockholder to a Proposed Transferee pursuant to this Section 3.5 shall be on the same terms and conditions (including, without limitation, price, time of payment and form of consideration) as to be paid to the Transferring Stockholder; provided that in order to be entitled to exercise its tag-along right pursuant to this Section 3.5, each Tagging Stockholder must agree to make to the Proposed Transferee representations, warranties, covenants, indemnities and agreements the same *mutatis mutandis* as those made by the Transferring Stockholder in connection with the Proposed Transfer (other than any non-competition, non-solicitation or similar agreements or covenants that would bind the Tagging Stockholder or its Affiliates), and agree to the same conditions to the Proposed Transfer as the Transferring Stockholder agrees, it being understood that all such representations, warranties, covenants, indemnities and agreements shall be made by the Transferring Stockholder and each Tagging Stockholder severally and not jointly and that the aggregate amount of the liability of the Tagging Stockholder shall not exceed, except with respect to individual representations, warranties, covenants, indemnities and other agreements of the Tagging Stockholder as to the unencumbered title to its shares of Common Stock and the power, authority and legal right to Transfer such Common Shares, such Tagging Stockholder’s pro rata share of any such liability to be determined in accordance with such Tagging Stockholder’s portion of the total number of shares of Common Stock included in such Transfer; provided that, in any event the amount of liability of any Tagging Stockholder shall not exceed the proceeds such Tagging Stockholder received in connection with such Transfer. Each Tagging Stockholder shall be responsible for its proportionate share of the costs of the Proposed Transfer to the extent not paid or reimbursed by the Proposed Transferee or the Company.

(d) The provisions of this Section 3.5 shall terminate upon the listing of the shares of Common Stock, including all shares Beneficially Owned by the Investor Parties, on a national securities exchange registered under the Exchange Act.

ARTICLE IV
MISCELLANEOUS

SECTION 4.1. Amendment and Modification. No term of this Agreement may be amended or modified without the prior written consent of the Company and Investor Parties holding a majority of the Registrable Securities held by all Investor Parties. No provision of this Agreement may be waived except in a writing executed and delivered by the Party against whom such waiver is sought to be enforced. Any amendment or waiver effected in accordance with this Section 4.1 shall be binding upon the Investor Parties and the Company.

SECTION 4.2. Successors and Assigns; Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Investor Parties and their respective successors and assigns. This Agreement may not be assigned by any Party hereto without the prior written consent of the Company and Waterfall, except that (1) in connection with the transfer of its shares of Common Stock to an Affiliate any Investor Party may transfer or assign, its rights hereunder to such Permitted Investor Transferee and (2) in connection with the sale of its shares of Common Stock to a Person that together with its Affiliates is acquiring from the Investor Parties Registrable Securities which together represent at least five percent (5%) of the total number of shares of Common Stock issued and outstanding, any Investor Party may transfer or assign its rights with respect to such Registrable Securities under Article II hereof to such purchaser (any such transferees under the forgoing clause (1) or (2), a "Permitted Investor Transferee"); provided that (a) such Investor Party complies with all Laws applicable thereto and provides written notice of assignment to the Company promptly after such assignment is effected and (b) the transferee agrees in writing to be bound by this Agreement as if it were a party hereto and an Investor Party hereunder. For the avoidance of doubt, the rights set forth herein applicable to Investor and/or any Investor Party shall, as contemplated by this Section 4.2, inure to any Permitted Investor Transferee of an Investor Party.

SECTION 4.3. Severability. If any provision of this Agreement or the application of any such provision to any Person or circumstance shall be declared by any court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, all other provisions of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it has been held invalid, illegal, void or unenforceable, shall nevertheless remain in full force and effect and will in no way be affected, impaired or invalidated thereby. Upon such determination that any provision, or the application of any such provision, is invalid, illegal, void or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by Law in an acceptable manner.

SECTION 4.4. Notices and Addresses. Unless otherwise provided, any notice or request required or permitted to be delivered under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (a) if given by personal or electronic delivery, upon actual delivery, (b) if given by facsimile, upon receipt of confirmation of a completed transmittal, (c) if given by mail, upon the earlier of (i) actual receipt of such notice by the intended recipient or (ii) three (3) Business Days after such notice is deposited in first class mail, postage prepaid, and (d) if by an internationally recognized overnight air courier, one (1) Business Day after delivery to such carrier. All notices shall be addressed to the Party to be notified at the address as follows, or at such other address as such Party may designate by ten (10) days' advance written notice to the other Party:

If to the Company or the Management Stockholders:

FlexShopper, Inc.
2700 North Military Trail, Ste. 200
Boca Raton, FL 33431
Attention: Chief Executive Officer
Email: brad.bernstein@flexshopper.com
Facsimile: 212-214-0881

With a copy to (which shall not constitute notice to the Company):

K&L Gates, LLP
214 N. Tryon Street, 47th Floor
Charlotte, NC 28202
Attention: Mark Busch
Email: mark.busch@klgates.com
Facsimile: 704-353-3140

If to the Investor Parties:

Waterfall Asset Management, LLC
1140 Avenue of Americas, 7th Floor
New York, NY 10036
Attention: Kenny Nick, General Counsel
Email: knick@waterfallam.com
Facsimile: 212-257-4699

With a copy to (which shall not constitute notice to the Investor Parties):

Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
Attention: Bruce F. Perce
Stuart M. Litwin
Email: bperce@mayerbrown.com; slitwin@mayerbrown.com
Facsimile: (312) 706-8165

SECTION 4.5. Governing Law; CONSENT TO JURISDICTION. This Agreement and any Action or dispute arising under or related in any way to this Agreement, the relationship of the Parties, the transactions leading to this Agreement or contemplated hereby and/or the interpretation and enforcement of the rights and duties of the Parties hereunder or related in any way to the foregoing, shall be governed by and construed in accordance with the internal, substantive Laws of the State of New York applicable to agreements entered into and to be performed solely within such state without giving effect to the principles of conflict of Laws thereof. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES THAT JURISDICTION AND VENUE IN ANY SUIT, ACTION OR PROCEEDING BROUGHT BY ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY SUIT, ACTION OR PROCEEDING SEEKING EQUITABLE RELIEF) SHALL PROPERLY AND EXCLUSIVELY LIE IN THE COURTS OF THE STATE OF NEW YORK OR, TO THE EXTENT THE COURTS OF NEW YORK DO NOT HAVE SUBJECT MATTER JURISDICTION, THE UNITED STATES DISTRICT COURT LOCATED IN NEW YORK CITY. EACH PARTY HERETO FURTHER AGREES NOT TO BRING ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY COURT OTHER THAN THE COURTS IDENTIFIED IN THE FOREGOING SENTENCE. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS IN NEW YORK CITY FOR ITSELF AND IN RESPECT OF ITS PROPERTY WITH RESPECT TO SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES HERETO IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN EACH OF THE FOREGOING COURTS, AND HEREBY WAIVE ANY OBJECTION THAT ANY SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH SUIT, ACTION OR PROCEEDING.

SECTION 4.6. Headings. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

SECTION 4.7. Counterparts; Electronic Delivery. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a telecopy machine or electronic mail (any such delivery, an "Electronic Delivery"), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise (a) the use of Electronic Delivery to deliver a signature or (b) the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery, as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

SECTION 4.8. Further Assurances. Each Party shall cooperate and take such action as may be reasonably requested by another Party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

SECTION 4.9. Remedies. Each Party hereby acknowledges and agrees that the failure of the other Party to perform its respective agreements and covenants hereunder, including any failure to take all actions as are necessary by such Party to consummate the transactions contemplated hereby (to the extent required to be taken by such Party under this Agreement), will cause irreparable injury to the other Party, for which damages, even if available, will not be an adequate remedy. Accordingly, each Party hereby agrees that any other Party may seek the issuance of equitable relief by any court of competent jurisdiction to compel performance of such Party's obligations without the need to prove actual damages or post a bond or other security.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

FLEXSHOPPER, INC.

By: /s/ Brad Bernstein

Name: Brad Bernstein Title: Chief Executive Officer

The undersigned hereby execute this Agreement solely to agree to be bound by the provisions of Section 3.5 hereof.

MANAGEMENT STOCKHOLDERS

/s/ Morry F. Rubin

Name: Morry F. Rubin

/s/ George Rubin

Name: George Rubin

/s/ Brad Bernstein

Name: Brad Bernstein

Signature Page to the Investor Rights Agreement

Waterfall Eden Master Fund, Ltd.

By: /s/ Thomas Capesse

Name: Thomas Capasse

Title: Principal

Signature Page to the Investor Rights Agreement

Waterfall Delta Offshore Master Fund, LP
By: Waterfall Delta GP, LLC, its general partner

By: /s/ Thomas Capesse

Name: Thomas Capasse
Title: Principal

Signature Page to the Investor Rights Agreement

Waterfall Sandstone Fund, LP
By: Waterfall Sandstone GP, LLC, its general partner

By: /s/ Thomas Capesse

Name: Thomas Capasse
Title: Authorized Signatory

Signature Page to the Investor Rights Agreement

INVESTOR RIGHTS AGREEMENT

THIS INVESTOR RIGHTS AGREEMENT, dated as of March 6, 2015 (this "Agreement"), by and among FlexShopper, Inc., a Delaware corporation (the "Company"), and the undersigned investor (the "Investor"). Each of the Investor and the Company are from time to time referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the Investor and the Company have entered into that certain Subscription Agreement, dated on or about the date hereof (the "Subscription Agreement"), pursuant to which the Investor has agreed to purchase, subject to the satisfaction and/or waiver of the conditions set forth therein, _____ shares of common stock, par value \$0.0001 per share, of the Company (the "Common Stock");

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.1. Definitions. The following terms shall have the meanings ascribed to them below:

"Affiliate" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" means this Agreement, as amended, modified or supplemented from time to time, in accordance with the terms hereof, together with any exhibits, schedules or other attachments hereto.

"Business Day" means any day other than (i) any Saturday or Sunday or (ii) any other day on which banks located in New York, New York are authorized or required by Law to be closed.

"Common Stock" has the meaning ascribed thereto in the recitals of this Agreement.

"Company" has the meaning set forth in the preamble of this Agreement.

"Electronic Delivery" has the meaning set forth in Section 4.7.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

“FINRA” means the U.S. Financial Industry Regulatory Authority.

“Indemnified Party” has the meaning set forth in Section 2.6(c).

“Indemnifying Party” has the meaning set forth in Section 2.6(c).

“Investor” has the meaning set forth in the preamble of this Agreement.

“Investor Parties” means the Investor, and its respective Affiliate transferees.

“Investor Party Indemnitees” has the meaning set forth in Section 2.6(a).

“Law” means any applicable federal, state, local or foreign law, statute, ordinance, rule, guideline, regulation, order, writ, decree, agency requirement, license or permit of any Governmental Entity.

“Losses” has the meaning set forth in Section 2.6(a).

“Notice and Questionnaire” means a written notice executed by the Investor Parties and delivered to the Company containing the information required by Item 507 of Regulation S-K to be included in any Shelf Registration Statement regarding the Investor Parties seeking to sell Common Stock pursuant thereto.

“Parties” has the meaning ascribed thereto in the recitals of this Agreement.

“Permitted Investor Transferee” has the meaning set forth in Section 4.2.

“Person” means any individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, Governmental Entity or other entity.

“Piggyback Notice” has the meaning set forth in Section 2.1(a).

“Piggyback Registration” has the meaning set forth in Section 2.1(a).

“Prospectus” means the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such prospectus.

“Registrable Securities” means shares of Common Stock issued by the Company at the Closing, as well as any shares of Common Stock or other securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange generally for, or in replacement generally of, such Common Stock or other Registrable Securities and any securities issued in exchange for such Common Stock or other Registrable Securities in any merger, reorganization, consolidation, share exchange, recapitalization, restructuring or other comparable transaction of the Company. As to any particular Registrable Securities, once issued such securities shall cease to be Registrable Securities when (a) a Registration Statement with respect to the sale by the Investor Parties holding such securities has been declared effective by the SEC and such securities have been disposed of pursuant to such effective Registration Statement, (b) such securities shall have been or could be sold by the holder, without being subject to any holding period or volume limitations pursuant to Rule 144, under circumstances in which all of the applicable conditions (including any holding period or volume limitations) of Rule 144 (or any similar provisions then in force) under the Securities Act are met, (c) such securities have been otherwise transferred and the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a restrictive legend and not subject to any stop order, and such securities may be publicly resold by the Person receiving such certificate without restriction, or (d) such securities shall have ceased to be outstanding.

“Registration Statement” means any registration statement of the Company under the Securities Act which permits the public offering of any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Subscription Agreement” has the meaning ascribed thereto in the recitals of this Agreement.

SECTION 1.2. General Interpretive Principles. Unless the context otherwise requires: (i) words in the singular include the plural, and in the plural include the singular; (ii) “including” means including without limitation; (iii) references to any Section or clause refer to the corresponding Section or clause, respectively, of this Agreement; (iv) any reference to a day or number of days, unless expressly referred to as a business day shall mean the respective calendar day or number of calendar days; (v) references to Sections of or Rules under the Exchange Act shall be deemed to include substitute, replacement or successor Sections or Rules, and any term defined by reference to a Section of or Rule under the Exchange Act shall include SEC and judicial interpretations of such Section or Rule; and (vi) headings are for convenience of reference only.

ARTICLE II REGISTRATION RIGHTS

SECTION 2.1. Piggyback Registration.

(a) At any time during the two year period commencing on the date hereof if, the Company proposes to file a registration statement under the Securities Act with respect to an offering by the Company for its own account (other than a registration statement (a) on Form S-4, Form S-8 or any successor forms thereto, (b) filed solely in connection with any employee benefit or dividend reinvestment plan (c) for the purpose of effecting a rights offering relating to the Common Stock or (d) on Form S-3 (universal shelf) to register on an unallocated and continuous basis the primary offering of securities by the Company) or for the account of any of its security holders, the Company will give to the Investor Parties written notice of such filing at least fifteen (15) days prior to the anticipated filing date (the “Piggyback Notice”). The Piggyback Notice shall offer the Investor Parties the opportunity to include in such registration statement the number of Registrable Securities (for purposes of this Section 2.1, “Registrable Securities” shall be deemed to mean solely securities of the same type and class as those proposed to be offered by the Company for its own account) as it may request (a “Piggyback Registration”). Subject to Section 2.1(b), the Company shall include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within seven (7) days after notice has been given to the Investor Parties. The Company shall be required to maintain the effectiveness of the Registration Statement for a Piggyback Registration for a period of 360 days after the effective date thereof or such shorter period in which all Registrable Securities included in such Registration Statement have actually been sold.

(b) If any of the securities to be registered pursuant to the registration giving rise to the Investor Parties’ rights under this Section 2.1 are to be sold in an underwritten offering, the Investor Parties shall be permitted to include all Registrable Securities requested to be included in such registration in such offering on the same terms and conditions as any other shares of Capital Stock, if any, of the Company included therein; provided, however, that if such offering involves a firm commitment underwritten offering and the managing underwriter(s) of such underwritten offering advise the Investor Parties in writing that it is their good faith opinion that the total number or dollar amount of Registrable Securities proposed to be sold in such offering, together with all Other Securities that the Company and any other Persons having rights to participate in such registration intend to include in such offering, exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all such Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows:

(i) first, all Other Securities being sold by the Company or by any Person (other than the Investor Parties) exercising a contractual right to demand registration pursuant to which such registration statement was filed; and

(ii) second, among any other holders of Registrable Securities or Other Securities requesting such registration, pro rata, based on the aggregate number of Registrable Securities and Other Securities Beneficially Owned by each such holder.

(c) The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.1 prior to the effectiveness of the related Registration Statement and shall have no obligation to register any Registrable Securities in connection with such registration, except to the extent provided herein.

(d) Each Investor Party shall have the right to withdraw its request for inclusion of its Registrable Securities in any Piggyback Registration by giving written notice to the Company of its request to withdraw at least two (2) Business Days prior to the planned effective date of the related Registration Statement. Notwithstanding Section 2.4, the Company shall not be required to pay for the expenses of any Investor Party in connection with any registration proceeding begun pursuant to this Section 2.1 from which the Investor Parties has subsequently withdrawn pursuant to this Section 2.1(d), unless such Investor Party's withdrawal is based upon material adverse information concerning the Company that the Company had not publicly disclosed at least two (2) Business Days prior to the Company's delivery of such Piggyback Notice.

SECTION 2.2. Registration Procedures.

(a) In connection with the registration of any Registrable Securities pursuant to this Agreement:

(i) The Company shall prepare and file with the SEC a Registration Statement with respect to such Registrable Securities as provided herein, make all required filings with FINRA and use its reasonable best efforts to keep each Registration Statement continuously effective during the period such Registration Statement is required to remain effective pursuant to the terms of this Agreement; upon the occurrence of any event that would cause the Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not to be effective and usable for resale of Registrable Securities during the period such Registration Statement is required to remain effective pursuant to the terms of this Agreement, the Company shall file promptly an appropriate amendment to the Registration Statement, a supplement to the Prospectus or a report filed with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), the Company shall use its reasonable best efforts to cause such amendment to be declared effective and the Registration Statement and the related Prospectus to become usable for their intended purposes as soon as practicable thereafter.

(ii) The Company shall prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement effective during the periods provided herein.

(iii) The Company shall advise the Investor Parties promptly (which notice pursuant to clauses (B) through (D) below shall be accompanied by an instruction to suspend the use of the Prospectus until the Company shall have remedied the basis for such suspension):

(A) when the Prospectus or any Prospectus supplement or post-effective amendment is proposed to be or has been filed, and, with respect to the Registration Statement or any post-effective amendment thereto, when the same has become effective;

(B) of any request by the SEC or any other Governmental Entity for amendments to the Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto;

(C) of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Registrable Securities for offering or sale in any jurisdiction, or the threatening or initiation of any proceeding for any of the preceding purposes;

(D) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose; or

(E) of the existence of any fact or the happening of any event, during the period in which a Registration Statement remains effective under the Securities Act, that makes any statement of a material fact made in such Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading.

(iv) The Company shall, unless any Registrable Securities shall be in book-entry form only, cooperate with the Investor Parties to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends (unless required by applicable securities Laws), and enable such Registrable Securities to be in such denominations and registered in such names as the Investor Parties may request at least two (2) Business Days before any sale of Registrable Securities. In connection therewith, if reasonably required by the Company's transfer agent, the Company shall promptly deliver any authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without legend upon sale by the holder of such shares of Registrable Securities under the Registration Statement.

(v) The Company shall use its reasonable best efforts to promptly register or qualify any Registrable Securities under such other securities or blue sky laws of such jurisdictions within the United States as any Investor Party reasonably requests and which may be reasonably necessary or advisable to enable such Investor Party to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Investor Parties, keep such registrations or qualifications in effect for so long as the Registration Statement remains in effect and do any and all other acts and things which may be reasonably necessary or advisable to enable such Investor Parties to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Investor Parties; provided, however, that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Agreement, (B) subject itself to taxation in any jurisdiction where it would not otherwise be subject to taxation but for this Agreement or (C) consent to general service of process in any jurisdiction where it would not otherwise be subject to such service but for this Agreement.

(vi) The Company shall use its reasonable best efforts to promptly cause any Registrable Securities covered by a Registration Statement to be registered with or approved by such other Governmental Entity within the United States as may be necessary to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities in accordance with the intended methods of disposition set forth in such Registration Statement.

(vii) The Company shall, in the event that any Investor Party advises the Company that the Investor Party intends to distribute any Registrable Securities by means of an underwritten offering, whether pursuant to Sections 2.1, 2.2 or 2.1, enter into an underwriting agreement in customary form, scope and substance and take all such other actions reasonably requested by such Investor Party or by the managing underwriter(s), if any, to expedite or facilitate the underwritten disposition of such Registrable Securities and deliver such documents and certificates as may be reasonably requested by such Investor Party, its counsel and the managing underwriter(s), if any.

(b) No Investor Party by acquisition of a Registrable Security shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement, or to receive a Prospectus relating thereto, unless it has furnished the Company with a Notice and Questionnaire (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. The Company may require the Investor Parties selling Registrable Securities pursuant to a Registration Statement to furnish to the Company such information regarding the Investor Parties and the distribution of such Common Stock as the Company may from time to time reasonably require for inclusion in such Registration Statement. The Investor Parties shall promptly furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by the Investor Parties not misleading. Any sale of any Registrable Securities by such Investor Parties shall constitute a representation and warranty by such Investor Party that the information relating to the Investor Party and its plan of distribution is as set forth in the Prospectus delivered in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Investor Party or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by the Investor Party or its plan of distribution necessary to make the statements in such Prospectus, in light of the circumstances under which they were made, not misleading. The Company may exclude from such Registration Statement the Registrable Securities of any Investor Party that fails to furnish such information within a reasonable time after receiving such request. The Company shall not include in any Registration Statement any information regarding, relating to or referring to such Investor Party or its plan of distribution without the approval of such Investor Party in writing.

(c) No Investor Party shall use any free writing prospectus (as defined in Rule 405 under the Securities Act) in connection with the sale of Registrable Securities without the prior written consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed).

SECTION 2.3. Indemnification.

(a) The Company shall indemnify and hold harmless, to the fullest extent permitted by Law, the Investor Parties, the officers, directors, partners (limited and general), members, managers, representatives, agents and employees of the Investor Parties, each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Investor Parties, each underwriter (including the Investor Parties if they are deemed to be an underwriter pursuant to any SEC comments or policies), if any, and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriter (collectively, the "Investor Party Indemnitees"), from and against all losses, claims, damages, liabilities and expenses (collectively, "Losses") in connection with any sale of Registrable Securities pursuant to a Registration Statement arising out of or based upon (i) any violation or alleged violation of the Securities Act or any rule or regulation promulgated thereunder by the Company or any of its Affiliates, employees, officers, directors or agents or (ii) any untrue or alleged untrue statement of a material fact contained in any Registration Statement or preliminary or final Prospectus relating to the registration of such Registrable Securities or any amendment or supplement thereto or any document incorporated by reference therein or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading; provided, however, that the Company shall not be liable to such Investor Party Indemnitee in any such case to the extent that any such loss, claim, damage, liability or expense arises out of or is based upon (A) an untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement, including any such preliminary or final Prospectus contained therein or any such amendments or supplements thereto, or contained in any free writing prospectus (as such term is defined in Rule 405 under the Securities Act) prepared by the Company or authorized by it in writing for use by such Investor Party Indemnitee (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Investor Party Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company by the Investor Party expressly for inclusion in such Registration Statement, including any such preliminary or final Prospectus contained therein or any such amendments or supplements thereto, (B) offers or sales effected by or on behalf of such Investor Party Indemnitee "by means of" (as defined in Rule 159A under the Securities Act) a "free writing prospectus" (as defined in Rule 405 under the Securities Act) that was not authorized in writing by the Company or (C) the failure of any Investor Party Indemnitee to deliver or make available to a purchaser of Registrable Securities a copy of any Registration Statement, including any preliminary or final Prospectus contained therein or any amendments or supplements thereto (if the same was required by applicable Law to be delivered or made available); provided that the Company shall have delivered to such Investor Party Indemnitee such Registration Statement, including any such preliminary or final Prospectus contained therein and any amendments or supplements thereto.

(b) In connection with any Registration Statement in which an Investor Party is participating by registering Registrable Securities, such Investor Party shall indemnify and hold harmless, to the fullest extent permitted by Law, severally and not jointly, the Company, the officers, directors, agents, representatives or other employees of the Company, each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Company, each underwriter, if any, and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriter, from and against all Losses, as incurred, arising out of or based on any untrue or alleged untrue statement of a material fact contained in any such Registration Statement or preliminary or final Prospectus relating to the registration of such Registrable Securities or any amendment or supplement thereto or any document incorporated by reference therein, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, in each case solely to the extent that such untrue or alleged untrue statement or omission or alleged omission is made in such Registration Statement or in any preliminary or final Prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405 under the Securities Act) in reliance upon and in conformity with written information furnished to the Company by the Investor Parties expressly for inclusion in such document.

(c) If any Person shall be entitled to indemnity hereunder (an “Indemnified Party”), such Indemnified Party shall give prompt notice to the party from which such indemnity is sought (the “Indemnifying Party”) of any claim or of the commencement of any Action with respect to which such Indemnified Party seeks indemnification or contribution pursuant hereto; provided, however, that the delay or failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any obligation or liability except to the extent that the Indemnifying Party has been actually prejudiced by such delay or failure. The Indemnifying Party shall have the right, exercisable by giving written notice to an Indemnified Party promptly after the receipt of written notice from such Indemnified Party of such claim or Action, to assume, at the Indemnifying Party’s expense, the defense of any such Action, with counsel reasonably satisfactory to such Indemnified Party; provided, however, that an Indemnified Party shall have the right to employ separate counsel in any such Action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless: (i) the Indemnifying Party agrees to pay such fees and expenses; (ii) the Indemnifying Party fails promptly to assume, or in the event of a conflict of interest cannot assume, the defense of such Action or fails to employ counsel reasonably satisfactory to such Indemnified Party, in which case the Indemnified Party shall also have the right to employ counsel and to assume the defense of such Action or (iii) in the Indemnified Party’s reasonable judgment a conflict of interest between such Indemnified Party and Indemnifying Party may exist in respect of such Action; provided, further, that the Indemnifying Party shall not, in connection with any one such Action or separate but substantially similar or related Actions in the same jurisdiction, arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one firm of attorneys (together with appropriate local counsel) at any time for all of the Indemnified Parties. Whether or not such defense is assumed by the Indemnifying Party, neither the Indemnifying Party nor the Indemnified Party will be subject to any liability for, or otherwise effect, any settlement made without the consent of the other (but such consent shall not be unreasonably withheld, conditioned or delayed).

(d) Neither Party shall settle, compromise, discharge or consent to an entry of judgment with respect to a claim or liability subject to indemnification under this Section 2.6 without the other Parties’ prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed); provided that the Indemnifying Party may agree without the prior written consent of the Indemnified Party to any settlement, compromise, discharge or consent to an entry of judgment, in each case that relates only to money damages and by its terms obligates the Indemnifying Party to pay the full amount of the liability in connection with such claim and which unconditionally releases the Indemnified Party from all liability in connection with such claim.

(e) If the indemnification provided for in this Section 2.6 is unavailable to hold harmless each of the Indemnified Parties against any losses, claims, damages, liabilities and expenses to which such parties may become subject under the Securities Act, then the Indemnifying Party shall, in lieu of indemnifying each party entitled to indemnification hereunder, contribute to the amount paid or payable by such party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and such Indemnified Parties on the other in connection with the statements or omissions or alleged statements or omissions that resulted in such losses, claims, damages, liabilities or expenses. The relative fault of such parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact, or omission or alleged omission to state a material fact, relates to information supplied by or concerning the Indemnifying Party on the one hand, or by such Indemnified Party on the other, and such party's relative intent, knowledge, access to information and opportunity to have corrected or prevented such statement or omission. No Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) shall be entitled to contribution from any Person that is not guilty of such fraudulent misrepresentation.

SECTION 2.4. Miscellaneous.

(a) With a view to making available the benefits of certain rules and regulations of the SEC which may at any time permit the sale of the Registrable Securities to the public without registration, the Company agrees, so long as there are outstanding Registrable Securities, to use its reasonable best efforts to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of this Agreement;

(ii) file with the SEC in a timely manner all reports and other documents as the SEC may prescribe under the Exchange Act at any time while the Company is subject to such reporting requirements of the Exchange Act; and

(iii) furnish to the Investor Parties upon a reasonable request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as any Investor Party may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such Registrable Securities without registration.

(b) Subject to the provisions hereof, in the event the Company proposes to enter into an underwritten public offering, the Investor Parties shall enter into a customary agreement with the managing underwriters not to effect any sale or distribution of equity securities of the Company, or any securities convertible, exchangeable or exercisable for or into such securities, during the period beginning up to two (2) days prior to the date of such offering and extending for up to 180 days following the effective date of such offering if so requested by the Company and the underwriters. The Company may impose stop-transfer restrictions with respect to the securities subject to the foregoing restriction until the end of the required stand-off period and shall lift such stop-transfer restrictions immediately upon the end of such period.

ARTICLE III OTHER RIGHTS

SECTION 3.1. Board Observation/Information Rights. The Parties acknowledge and agree that it is contemplated that in connection with, and subject to completion of, a joint venture, equity arrangement or other strategic transaction currently being discussed between the Company and an affiliate of Investor (the "McFarlane Group"), that the McFarlane Group would be granted certain board observer rights.

ARTICLE IV
MISCELLANEOUS

SECTION 4.1. Amendment and Modification. No term of this Agreement may be amended or modified without the prior written consent of the Company and Investor Parties holding a majority of the Registrable Securities held by all Investor Parties. No provision of this Agreement may be waived except in a writing executed and delivered by the Party against whom such waiver is sought to be enforced. Any amendment or waiver effected in accordance with this Section 4.1 shall be binding upon the Investor Parties and the Company.

SECTION 4.2. Successors and Assigns; Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Investor Parties and their respective successors and assigns. This Agreement may not be assigned by any Party hereto without the prior written consent of the Company and Investor, except that in connection with the transfer of its shares of Common Stock to an Affiliate (a "Permitted Investor Transferee") any Investor Party may transfer or assign, its rights hereunder to such Permitted Investor Transferee; provided that (a) such Investor Party complies with all Laws applicable thereto and provides written notice of assignment to the Company promptly after such assignment is effected and (b) the transferee agrees in writing to be bound by this Agreement as if it were a party hereto and an Investor Party hereunder. For the avoidance of doubt, the rights set forth herein applicable to Investor and/or any Investor Party shall inure to any Permitted Transferee of an Investor Party.

SECTION 4.3. Severability. If any provision of this Agreement or the application of any such provision to any Person or circumstance shall be declared by any court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, all other provisions of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it has been held invalid, illegal, void or unenforceable, shall nevertheless remain in full force and effect and will in no way be affected, impaired or invalidated thereby. Upon such determination that any provision, or the application of any such provision, is invalid, illegal, void or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by Law in an acceptable manner.

SECTION 4.4. Notices and Addresses. Unless otherwise provided, any notice or request required or permitted to be delivered under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (a) if given by personal or electronic delivery, upon actual delivery, (b) if given by facsimile, upon receipt of confirmation of a completed transmittal, (c) if given by mail, upon the earlier of (i) actual receipt of such notice by the intended recipient or (ii) three (3) Business Days after such notice is deposited in first class mail, postage prepaid, and (d) if by an internationally recognized overnight air courier, one (1) Business Day after delivery to such carrier. All notices shall be addressed to the Party to be notified at the address as follows, or at such other address as such Party may designate by ten (10) days' advance written notice to the other Party:

If to the Company:

FlexShopper, Inc.
2700 North Military Trail, Ste. 200
Boca Raton, FL 33431
Attention: Chief Executive Officer
Email: brad.bernstein@flexshopper.com

With a copy to (which shall not constitute notice to the Company):

K&L Gates, LLP
214 N. Tryon Street, 47th Floor
Charlotte, NC 28202
Attention: Mark Busch
Email: mark.busch@klgates.com
Facsimile: 704-353-3140

If to the Investor Parties:

Per the notice information contained on the signature page to Investor's subscription agreement with the Company

SECTION 4.5. Governing Law; CONSENT TO JURISDICTION. This Agreement and any Action or dispute arising under or related in any way to this Agreement, the relationship of the Parties, the transactions leading to this Agreement or contemplated hereby and/or the interpretation and enforcement of the rights and duties of the Parties hereunder or related in any way to the foregoing, shall be governed by and construed in accordance with the internal, substantive Laws of the State of New York applicable to agreements entered into and to be performed solely within such state without giving effect to the principles of conflict of Laws thereof. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES THAT JURISDICTION AND VENUE IN ANY SUIT, ACTION OR PROCEEDING BROUGHT BY ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY SUIT, ACTION OR PROCEEDING SEEKING EQUITABLE RELIEF) SHALL PROPERLY AND EXCLUSIVELY LIE IN THE COURTS OF THE STATE OF NEW YORK OR, TO THE EXTENT THE COURTS OF NEW YORK DO NOT HAVE SUBJECT MATTER JURISDICTION, THE UNITED STATES DISTRICT COURT LOCATED IN NEW YORK CITY. EACH PARTY HERETO FURTHER AGREES NOT TO BRING ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY COURT OTHER THAN THE COURTS IDENTIFIED IN THE FOREGOING SENTENCE. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS IN NEW YORK CITY FOR ITSELF AND IN RESPECT OF ITS PROPERTY WITH RESPECT TO SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES HERETO IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN EACH OF THE FOREGOING COURTS, AND HEREBY WAIVE ANY OBJECTION THAT ANY SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH SUIT, ACTION OR PROCEEDING.

SECTION 4.6. Headings. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

SECTION 4.7. Counterparts; Electronic Delivery. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent delivered by means of a telecopy machine or electronic mail (any such delivery, an “Electronic Delivery”), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise (a) the use of Electronic Delivery to deliver a signature or (b) the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery, as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense related to lack of authenticity.

SECTION 4.8. Further Assurances. Each Party shall cooperate and take such action as may be reasonably requested by another Party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

SECTION 4.9. Remedies. Each Party hereby acknowledges and agrees that the failure of the other Party to perform its respective agreements and covenants hereunder, including any failure to take all actions as are necessary by such Party to consummate the transactions contemplated hereby (to the extent required to be taken by such Party under this Agreement), will cause irreparable injury to the other Party, for which damages, even if available, will not be an adequate remedy. Accordingly, each Party hereby agrees that any other Party may seek the issuance of equitable relief by any court of competent jurisdiction to compel performance of such Party’s obligations without the need to prove actual damages or post a bond or other security.

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