SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2018

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 12 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 001-37945

FLEXSHOPPER, INC.
(Exact name of Registrant as specified in its charter)

Delaware	20-5456087
(State of jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
2700 North Military Trail, Ste. 200 Boca Raton, FL	33431
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (855) 353-9289

Securities registered pursuant to Section 12 (b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, $0.0001 Par Value	The NASDAQ Stock Market LLC
Warrants, each to purchase one share of Common Stock	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12 (g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large Accelerated Filer:	☐	Accelerated Filer:	☐
Non-accelerated Filer:	☒	Smaller Reporting Company:	☒
		Emerging Growth Company:	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, as of the last business day of the Registrant's most recently completed second fiscal quarter, was approximately $6,864,280.28 (based on the closing price of the Registrant's Common Stock on June 29, 2018 of $3.19 per share).

The number of shares outstanding of the Registrant's Common Stock, as of March 11, 2019, was 17,579,870.

Documents incorporated by reference: The Registrant intends to file a definitive proxy statement pursuant to Regulation 14A within 120 days after the end of the fiscal year ended December 31, 2018. Portions of such proxy statement are incorporated by reference into Part III of this Form 10-K.

FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that are intended to be covered by the "safe harbor" created by those sections. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, can generally be identified by the use of forward-looking terms such as "believe," "expect," "may," "will," "should," "could," "would," "seek," "intend," "plan," "goal," "project," "estimate," "anticipate" "strategy," "future," "likely" or other comparable terms and references to future periods. All statements other than statements of historical facts included in this Annual Report on Form 10-K regarding our strategies, prospects, financial condition, operations, costs, plans and objectives are forward-looking statements. Examples of forward-looking statements include, among others, statements we make regarding: the expansion of our lease-to-own program; expectation concerning our partnerships with retail partners; investments in, and the success of, our underwriting technology and risk analytics platform; our ability to collect payments due from customers; expected future operating results and; expectations concerning our business strategy.

Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Because forward-looking statements relate to the future, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict and many of which are outside of our control. Our actual results and financial condition may differ materially from those indicated in the forward-looking statements. Therefore, you should not rely on any of these forward-looking statements. Important factors that could cause our actual results and financial condition to differ materially from those indicated in the forward-looking statements include, among others, the following:

- our limited operating history, limited cash and history of losses;
- our ability to obtain adequate financing to fund our business operations in the future;
- the failure to successfully manage and grow our FlexShopper.com e-commerce platform;
- our ability to maintain compliance with financial covenants under our credit agreement;
- our dependence on the success of our third-party retail partners and our continued relationships with them;
- our compliance with various federal, state and local laws and regulations, including those related to consumer protection;
- our ability to regain compliance with the listing standards of the Nasdaq Capital Market;
- the failure to protect the integrity and security of customer and employee information; and
- the other risks and uncertainties described in the Risk Factors and in Management's Discussion; and Analysis of Financial Condition and Results of Operations sections of this Annual Report on Form 10-K.

Any forward-looking statement made by us in this report is based only on information currently available to us and speaks only as of the date on which it is made. We undertake no obligation to publicly update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise.

PART I

Item 1. Business

Introduction

FlexShopper, Inc. ("we," "us," "our," "FlexShopper" or the "Company") is a corporation organized under the laws of the State of Delaware in 2006 with its common stock and warrants trading on the Nasdaq Capital Market under the symbols "FPAY" and "FPAYW," respectively. FlexShopper is a holding corporation that conducts its business through its wholly-owned subsidiary, FlexShopper, LLC, a limited liability company organized under the laws of North Carolina in 2013. FlexShopper, LLC wholly owns, directly or indirectly, two Delaware subsidiaries, FlexShopper 1, LLC and FlexShopper 2, LLC. All references to our business operations refer to FlexShopper, LLC and its wholly-owned subsidiaries, unless the context indicates otherwise.

Since December 2013, we have developed a business that focuses on improving the quality of life of our customers by providing them the opportunity to obtain ownership of high-quality durable products, such as consumer electronics, home appliances, computers (including tablets and wearables), smartphones, tires, jewelry and furniture (including accessories), under affordable payment lease-to-own ("LTO") purchase agreements with no long-term obligation, including through an extensive online experience. Our customers can acquire well-known brands such as Samsung, Frigidaire, Hewlett-Packard, LG, Whirlpool, Simmons, Philips, Ashley, Apple and more. We believe that the introduction of FlexShopper's LTO programs support broad untapped expansion opportunities within the U.S. consumer e-commerce and retail marketplaces. We have successfully developed and are currently processing LTO transactions using our "LTO Engine," FlexShopper's proprietary technology that automates the process of consumers receiving spending limits and entering into leases for durable goods to within seconds. The LTO Engine is the basis for FlexShopper's primary sales channels, which include business to consumer ("B2C") and business to business ("B2B") channels, as described in further detail below. Concurrently, e-tailers and retailers that work with FlexShopper may increase their sales by utilizing FlexShopper's online channels to connect with consumers that want to acquire products on an LTO basis. FlexShopper's sales channels include (1) selling directly to consumers via the online FlexShopper.com LTO Marketplace featuring thousands of durable goods, (2) utilizing FlexShopper's LTO payment method at check out on e-commerce sites and through in-store terminals and (3) facilitating LTO transactions with retailers that have not yet become part of the FlexShopper.com LTO Marketplace.

INDUSTRY OVERVIEW

The LTO industry offers consumers an alternative to traditional methods of obtaining electronics, computers, home furnishings, appliances and other durable goods. FlexShopper's customers typically do not have sufficient cash or credit to obtain these goods, so they find the short-term nature and affordable payments of LTO attractive.

The Lease-Purchase Transaction

A lease-purchase transaction is a flexible alternative for consumers to obtain and enjoy brand name merchandise with no long-term obligation. Key features of our lease-purchase transactions include:

Brand name merchandise. FlexShopper offers well-known brands such as LG, Samsung, Sony and Vizio home electronics; Frigidaire, General Electric, LG, Samsung and Whirlpool appliances; Acer, Apple, Asus, Samsung and Toshiba computers and/or tablets; Samsung and Apple smartphones; and Ashley, Powell and Standard furniture, among other brands.

Convenient payment options. Our customers make payments on a weekly, bi-weekly or monthly basis. Payments are automatically deducted from the customer's authorized checking account or debit card. Additionally, customers may make additional payments or exercise early payment options, which enable them to save money.

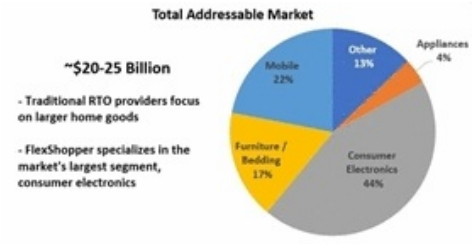
No long-term commitment. A customer may terminate a lease-purchase agreement at any time with no long-term obligation by paying amounts due under the lease-purchase agreement and returning the leased item to FlexShopper.

Applying has no impact on credit or FICO score. We do not use FICO scores to determine customers' spending limits so our underwriting does not impact consumers' credit with the three main credit bureaus.

Flexible options to obtain ownership. Ownership of the merchandise generally transfers to the customer if the customer makes all payments during the lease term, which is one year, or exercises early payment options, which typically save the customer money.

Key Trends Driving the Industry:

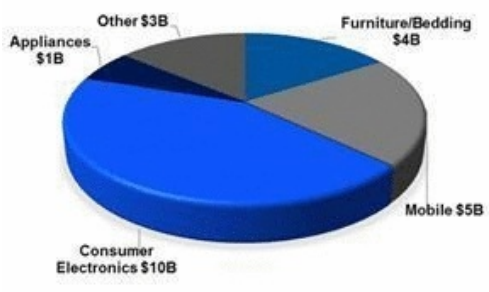
Non-prime consumers represent the largest segment of the credit market. Today, 38% of Americans have low credit scores according to Experian, and approximately 50 million American households are underbanked, sub-prime or credit invisible, or have no credit history. This segment of consumers represents a significant and underserved market.



According to Wall Street and industry research, the current addressable market size for non-prime consumers is between $20 and $25 billion, with consumer electronics constituting 44% of such amount. We believe that underwriting consumer electronics online is one of our competitive advantages since this is the majority of our business and has not been a focus of our peers.

Additional industry trends include:

- Consumers recognizing that they have more convenient options to acquire the products they want.
- The difficult retail climate leading retailers to embrace "save the sale" financing to increase sales with new consumers.
- Technology advances in online underwriting and LTO digital functionality continuing to drive the B2B market segment by making it easier for retailers and consumers to transact on an LTO basis in an efficient and timely manner.



GROWTH OPPORTUNITIES AND STRATEGIES

Like many industries, the internet and other technology is transforming the LTO industry. FlexShopper has positioned itself to take advantage of this transformation by focusing on the expansion of the LTO industry online and into mainstream retail and e-tail. The brick-and-mortar LTO industry currently serves approximately 3.4 million consumers annually, generating approximately $6.1 billion in sales primarily through approximately 6,700 LTO brick and mortar stores. Through its strategic sales channels, FlexShopper believes it can expand the LTO industry, also known as the rent-to-own or RTO industry. FlexShopper has successfully developed and is currently processing LTO transactions using its "LTO Engine," FlexShopper's proprietary technology that automates the process of consumers receiving spending limits and entering into leases for durable goods to within seconds. The LTO Engine is the basis for FlexShopper's primary sales channels, which include B2C and B2B channels, illustrated in the diagram below:

We believe we have created a unique platform whereby our B2B and B2C sales channels beneficially advance each other. For our B2C channels, we directly market to our consumers LTO opportunities at FlexShopper.com, where they can choose from over 150,000 of the latest products shipped directly to them by certain of the nation's largest retailers. This generates sales for our retail partners, which encourages them to incorporate our B2B solutions into their online and in-store sales channels. The lease originations by our retail partners using our B2B channels, which have no customer acquisition cost to us, subsidize our B2C customer acquisition costs. Meanwhile, our B2C marketing promotes FlexShopper.com, which provides incremental sales for our retail partners as well as benefitting our FlexShopper.com business.

To achieve our goal of being the preeminent "pure play" virtual LTO leader, we intend to execute the following strategies:

Continue to grow FlexShopper into a dominant LTO brand. Given strong consumer demand and organic growth potential for our LTO solutions, we believe that significant opportunities exist to expand our presence within current markets via existing marketing channels. As non-prime consumers become increasingly familiar and comfortable with our retail kiosk partnerships, online marketplace and mobile solutions, we plan to capture the new business generated as they migrate away from less convenient legacy brick-and-mortar LTO stores.

Expand the range of customers served. We continue to evaluate new product and market opportunities that fit into our overall strategic objective of delivering next-generation retail, online and mobile LTO terms that span the non-prime/near-prime credit spectrum. For example, we are evaluating products with lower fees that would be more focused on the needs of more creditworthy subprime consumers that prefer a less expensive LTO option. In addition, we are continually focused on improving our analytics to effectively underwrite and serve consumers within those segments of the non-prime credit spectrum that we do not currently reach, including profitable deeper penetration of the sub-prime spectrum. We believe the current generation of our underwriting model is performing well and will continue to improve over time as its data set expands.

Pursue additional strategic retail partnerships. We intend to continue targeting regional and national retailers to expand our B2B sales channels. As illustrated in the diagram above, we believe we have the best omnichannel solution for retailers to "save the sale" with LTO options. In retail, the phrase "save the sale" means offering consumers other finance options when they don't qualify for traditional credit. We expect these partnerships to provide us with access to a broad range of potential new customers, with low customer acquisition costs.

Expand our relationships with existing customers and retail partners. Customer acquisition costs represent one of the most significant expenses for us due to our high percentage of online customers. In comparison, no acquisition cost is incurred for customers acquired through our retail partnerships. We will seek to expand our strong relationships with existing customers by providing qualified customers with increased spending limits or offering other products and services to them, as well as seek to grow our retail partnerships to reduce our overall acquisition cost.

Continue to optimize marketing across all channels. Since we began marketing our services to consumers in 2014, we have made significant progress in targeting our customers and lowering our customer acquisition costs. This is across different media including direct response television and digital channels such as social media, email, and search engines.

OUR COMPETITIVE STRENGTHS

The LTO industry is highly competitive. Our operation competes with other national, regional and local LTO businesses, as well as with rental stores that do not offer their customers a purchase option. Some of these companies have, or may develop, systems that enable consumers to obtain through online facilities spending limits and payment terms and to enter into leases nearly instantaneously, in a manner similar to that provided by FlexShopper's proprietary technology. We believe the following competitive strengths differentiate us:

Underwriting and Risk Management

Specialized technology and proprietary risk analytics optimized for the non-prime credit market. We have made substantial investments in our underwriting technology and analytics platforms to support rapid scaling, innovation and regulatory compliance. Our team of data scientists and risk analysts uses our risk infrastructure to build and test strategies across the entire underwriting process, using alternative credit data, device authentication, identity verification, and many more data elements. We believe our real-time proprietary technology and risk analytics platform is better than our competitors' in underwriting online consumers and consumer electronics; most of our peers focus on in-store consumers that acquire furniture and appliances, which we believe are easier to underwrite based on our own experiences. In addition, all our applications are processed instantly with approvals and spending limits provided within seconds of submission.

LTO Products for Consumers and Retailers

Expansive online LTO marketplace. We have made substantial investments in our custom e-commerce platform to provide consumers the greatest selection of popular brands delivered by certain of the nation's largest retailers, including Best Buy, Amazon, Walmart, Overstock, Serta and many more. Our platform is custom-built for online LTO transactions, which include underwriting our consumers, serving them LTO leases, syncing and communicating with our retail partners to fulfill orders and all front- and back-end customer relationship management functions, including collections and billing. The result is a comprehensive technology platform that manages all facets of our business and enables us to scale with hundreds of thousands of visitors and products.

Omnichannel "save the sale" product for retailers. In retail, the phrase "save the sale" means offering consumers other finance options when they do not qualify for traditional credit. We believe that we have the best omnichannel solution for retailers to "save the sale" with LTO options. To our knowledge, no competitor has an LTO marketplace that provides retailers incremental sales with no acquisition cost. In addition, compared to our peers, our product for consumers requires no money down and typically fewer application fields. We believe this leads to more in-store and online sales. We also believe that we have the best LTO payment technology at checkout for e-tailers, whereby consumers can seamlessly checkout out on a third party's e-commerce site with our LTO payment plugin. In addition, our "integrationless" in-store technology was a strong selling point for our recent 726-store rollout since it required no equipment or technology investment from either party.

Providing LTO consumers an "endless aisle" of products for lease-to-own. As illustrated by our B2C channels in the above diagram, we offer consumers three ways to acquire products on an LTO basis. At FlexShopper.com our customers can choose from over 150,000 of the latest products shipped by certain of the nation's largest retailers. If customers want products that are not available on our marketplace, they may use our "personal shopper" service and simply complete a form with a link to the webpage of the desired durable good. We will then facilitate their purchase by providing an LTO arrangement. We also offer consumers the ability to acquire durable goods with our FlexShopper Wallet smartphone application available on Apple and Android devices. With FlexShopper Wallet, consumers may apply for a spending limit and take a picture of a qualifying item in any major retail store and we will fill the order for them. With our B2C channels we believe we are providing LTO consumers with a superior LTO experience and fulfilling our mission to help improve their quality of life by shopping for what they want where they want.

A Lean and Scalable Model

Compared to the brick-and-mortar LTO industry, which is suffering from the same headwinds as traditional retail stores and declining sales, we have been successful in addressing the LTO consumer through online channels as illustrated in the above diagram illustrating our B2C and B2B sales channels.

We believe our model is more efficient and scalable for the following reasons:

We have no inventory risk and are completely drop-ship. We do not have any of the costs associated with buying, storing and shipping inventory. Instead, our suppliers ship goods directly to consumers.

We serve LTO consumers across the United States without brick-and-mortar stores. We do not have any of the costs associated with physical stores and the personnel needed to operate them.

As our sales grow we achieve more operating leverage. Our model is primarily driven by a technology platform that does not require significant increases in operating overhead to support sales growth.

SALES AND MARKETING

B2C Channels

We use a multi-channel, analytics-powered approach to marketing our products and services, with both broad-reach and highly-targeted channels, including television, digital, telemarketing and marketing affiliates. The goal of our marketing is to promote our brand and primarily to directly acquire new customers at a targeted acquisition cost. Our marketing strategies include the following:

Direct response television advertising. We use television advertising supported by our internal analytics and media buys from a key agency to drive and optimize website traffic and lease originations.

Digital acquisition. Our online marketing efforts include pay-per-click, keyword advertising, search engine optimization, marketing affiliate partnerships, social media programs and mobile advertising integrated with our operating systems and technology from vendors that allow us to optimize customer acquisition tactics within the daily operations cycle.

User experience and conversion. We measure and monitor website visitor usage metrics and regularly test website design strategies to improve customer experience and conversion rates.

B2B Channels

We use internal business development personnel and outside consultants that focus on engaging retailers and e-tailers to use our services. This includes promoting FlexShopper at key trade shows and conferences.

MANAGEMENT INFORMATION SYSTEMS

FlexShopper uses computer-based management information systems to facilitate its entire business model, including underwriting, processing transactions through its sales channels, managing collections and monitoring leased inventory. Through the use of our proprietary software developed in-house, each of our retail partners uses our online merchant portal that automates the process of consumers receiving spending limits and entering into leases for durable goods generally to within seconds. The management information system generates reports which enable us to meet our financial reporting requirements.

GOVERNMENT REGULATIONS

The LTO industry is regulated by and subject to the requirements of various federal, state and local laws and regulations, many of which are in place for consumer protection. In general, such laws regulate, among other items, applications for leases, late fees, finance rates, disclosure statements, the substance and sequence of required disclosures, the content of advertising materials and certain collection procedures. Violations of certain provisions of these laws and regulations may result in penalties ranging from nominal amounts up to and including forfeiture of fees and other amounts due on leases. We are unable to predict the nature or effect on our operations or earnings of unknown future legislation, regulations and judicial decisions or future interpretations of existing and future legislation or regulations relating to our operations, and there can be no assurance that future laws, decisions or interpretations will not have a material adverse effect on our operations and earnings. In 2016, the Company enhanced its compliance department by hiring a Chief Compliance Counsel. See the section of this report captioned “Risk Factors” below for more information with respect to governmental laws and regulations and their effect on our business.

INTELLECTUAL PROPERTY

FlexShopper was granted U.S. Patent Number 10,089,682 by the U.S. Patent and Trademark Office (the "USPTO"), on October 2, 2018, for its system that enables e-commerce servers to complete LTO transactions through their e-commerce websites. Moreover, FlexShopper has received a notice of allowance from the USPTO for additional systems that enable retailer devices to complete LTO transactions through their retailer web pages, as well as systems that further enable consumer devices to modify received retailer web pages to indicate LTO payments in association with transaction-eligible products as part of LTO transactions through the retailer web pages. FlexShopper may file additional patent applications in the future. We can provide no assurances that FlexShopper will be granted any additional patents by the USPTO. We believe certain proprietary information, including but not limited to our underwriting model, and our patented and patent-pending systems are central to our business model and we believe they give us a key competitive advantage. We also rely on trademark and copyright law, trade secret protection, and confidentiality, license and work product agreements with our employees, customers, and others to protect our proprietary rights. See the section captioned "Risk Factors" below for more information on and risk associated with respect to our intellectual property.

OPERATIONS AND EMPLOYEES OF FLEXSHOPPER

Brad Bernstein, our Chief Executive Officer and President, manages our day-to-day operations and internal growth and oversees our growth strategy. FlexShopper's management also includes a Chief Financial Officer and a Chief Risk Officer. In addition, FlexShopper has a customer service and collections call center. As of December 31, 2018, FlexShopper had 135 employees, all of whom were full time.

Item 1A. Risk Factors

You should carefully consider the following risk factors, in addition to the other information presented in this Form 10-K, in evaluating us and our business. Any of the following risks, as well as other risks and uncertainties, could harm our business and financial results and cause the value of our securities to decline.

Our limited operating history makes it difficult to evaluate our business to date and assess our future viability. FlexShopper, LLC, which was formed in June 2013 to enter the LTO business, has a limited operating history upon which investors may judge our performance and has incurred net losses. Our ability to achieve profitability in this business will depend upon many factors, including, without limitation, our ability to execute our growth strategy and technology development, obtain sufficient capital, develop relationships with third-party retail partners, adapt to fluctuations in the economy and modify our strategy based on the degree and nature of competition. Our senior management team has very limited experience in the LTO industry. While we believe our FlexShopper business model will be successful, prior success of our senior management in other businesses should not viewed as an indication that we will be profitable. We can provide no assurances that our operations will ever be profitable.

Our business liquidity and capital resources are dependent upon our credit agreement with an institutional lender and our compliance with the terms thereof. We may lose access to new loans under our credit agreement in June 2019, in which case we would need to extend or replace the credit agreement before its maturity in June 2020. If we are unable to successfully extend or replace the credit agreement in a timely manner, our future financial condition and liquidity would be materially adversely affected.

FlexShopper, through FlexShopper 2, LLC (the "Borrower"), is party to a credit agreement (as amended, the "Credit Agreement") with Wells Fargo Bank, National Association, various lenders from time to time party thereto and WE2014-1, LLC (the "Lender"). Under the terms of the Credit Agreement, subject to the satisfaction of certain conditions, the Borrower may borrow up to $32,500,000 from the Lender, based on the Borrower's cash on hand and Amortized Order Value of its Eligible Leases (as such terms are defined in the Credit Agreement). As of February 28, 2019 there was $6,409,373 in additional availability under the Credit Agreement and the outstanding balance under the Credit Agreement was $26,090,627.

Upon the Commitment Termination Date, which is June 30, 2019 or such later date determined by the Lender in its sole discretion by notice to the Borrower on or before April 1, 2019, but no later than February 28, 2021, the Lender will no longer be obligated to lend money to the Borrower and all amounts outstanding under the Credit Agreement will be due on the twelve-month anniversary thereof. We will explore various possible financing options that may be available to us, which may include new financings and extension, modification or refinancing of the Credit Agreement. However, we have no commitments to obtain any additional funds and may not incur additional indebtedness (subject to certain exceptions) without the permission of the Lender, and there can be no assurance such funds will be available on acceptable terms or at all. If we are unable to obtain such needed capital to service our future obligations under the Credit Agreement, we may be forced to significantly curtail or suspend our operations.

If we fail to regain compliance with the minimum closing bid requirements of the Nasdaq Capital Market or to satisfy other requirements for continued listing, including stockholder equity requirements, our common stock may be delisted and the price of our common stock and our ability to access the capital markets could be negatively impacted.

Our common stock and warrants are listed for trading on the Nasdaq Capital Market ("Nasdaq"). To maintain these listings, we must satisfy Nasdaq's continued listing requirements, including, among other things, a minimum closing bid price requirement of $1.00 per share.

On November 21, 2018, we received a notification letter from Nasdaq informing us that for the last 30 consecutive business days, the bid price of our common stock had closed below $1.00 per share. This notice had no immediate effect on our Nasdaq listing and we have 180 calendar days, or until May 20, 2019, to regain compliance. The closing bid price of our common stock must be at least $1.00 per share for a minimum of ten consecutive business days to regain compliance. If by that time we have not regained compliance with the bid price requirement, a second 180-day compliance period may be available, provided (i) we meet the continued listing requirement for market value of publicly held shares and all other applicable requirements for initial listing on Nasdaq, including stockholder equity requirements (except for the bid price requirement), and (ii) we provide written notice to Nasdaq of its intention to cure this deficiency during the second compliance period by effecting a reverse stock split, if necessary.

If we are unable to regain compliance with the minimum closing bid price requirement by May 20, 2019, or such further extended period as may be provided by Nasdaq, or if we fail to meet any of the other continued listing requirements, including stockholder equity requirements, our securities may be delisted from Nasdaq, which could reduce the liquidity of our common stock materially and result in a corresponding material reduction in the price of our common stock. In addition, delisting could harm our ability to raise capital through alternative financing sources on terms acceptable to us, or at all, and may result in the potential loss of confidence by investors, employees and business development opportunities. Such a delisting likely would impair your ability to sell or purchase our common stock when you wish to do so. Further, if we were to be delisted from Nasdaq, our common stock may no longer be recognized as a "covered security" and we would be subject to regulation in each state in which we offer our securities. Thus, delisting from Nasdaq could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly impact the ability of investors to trade our securities and would negatively impact the value and liquidity of our common stock.

Failure to effectively manage our costs could have a material adverse effect on our profitability. Certain elements of our cost structure are largely fixed in nature while consumer spending remains uncertain, which makes it challenging for us to maintain or increase our operating income. The competitiveness in our industry and increasing price transparency mean that the need to achieve efficient operations is greater than ever. As a result, we must continuously focus on managing our cost structure. Failure to manage our labor and benefit rates, advertising and marketing expenses, operating leases, charge-offs or indirect spending could materially adversely affect our profitability.

Our LTO business depends on the success of our third-party retail partners and our continued relationships with them. Our revenues depend in part on the relationships we have with third-party retailers we work with to offer our LTO services. We have entered into a variety of such arrangements and expect to seek additional such relationships in the future. However, for a variety of reasons we not be successful in these efforts. If our retail partners do not satisfy their obligations to us, we are unable to meet our retail partners' expectations and demands or we are unable to reach agreements with additional suitable retail partners, we may fail to meet our business objectives. The terms of any additional retail partnerships or other strategic arrangements that we establish may not be favorable to us. Our inability to successfully implement retail partnerships and strategic arrangements could adversely affect our business, financial condition and results of operations. In addition, in most cases, our agreements with such third-party retailers may be terminated at the retailer's election. There can be no assurance that we will be able to continue our relationships with our retail partners on the same or more favorable terms in future periods or that these relationships will continue beyond the terms of our existing contracts with our retail partners. The failure of our third-party retail partners to maintain quality and consistency in their operations and their ability to continue to provide products and services, or the loss of the relationship with any of these third-party retailers and an inability to replace them, could cause our business to lose customers, substantially decreasing our revenues and earnings growth.

Our growth will depend on our ability to develop our brands, and these efforts may be costly. Our ability to develop the FlexShopper brand will be critical to achieving widespread acceptance of our services and will require a continued focus on active marketing efforts. We will need to continue to spend substantial amounts of money on, and devote substantial resources to, advertising, marketing, and other efforts to create and maintain brand loyalty among our customers. If we fail to promote and maintain our brand, or if we incur substantial expenses in an unsuccessful attempt to do so, our business would be harmed.

Our LTO business depends on the continued growth of online and mobile commerce. The business of selling goods over the internet and mobile networks is dynamic and relatively new. Concerns about fraud, privacy and other problems or lack of access may discourage additional consumers from adopting the internet or mobile devices as modes of commerce or may prompt consumers to offline channels. In order to expand our user base, we must appeal to and acquire consumers who historically have used traditional means of commerce to purchase goods and may prefer internet analogues to such traditional retail means, such as the retailer's own website, to our offerings. If these consumers prove to be less active than we expect due to lower levels of willingness or ability to use the internet or mobile devices for commerce for any reason, including lack of access to high-speed communications equipment, traffic congestion on the internet or mobile network outages or delays, disruptions or other damage to users' computers or mobile devices, and we are unable to gain efficiencies in our operating costs, including our cost of acquiring new users, our business could be adversely impacted.

Failure to successfully manage and grow our FlexShopper.com e-commerce platform could materially adversely affect our business and future prospects. Our FlexShopper.com e-commerce platform provides customers the ability to apply, shop, review our product offerings and prices and enter into lease agreements as well as make payments on existing leases from the comfort of their homes and on their mobile devices. Our e-commerce platform is a significant and essential component of our strategic plan and we believe will drive future growth of our business. In order to promote our products and services and allow customers to transact online and reach new customers, we must effectively maintain, improve and grow our e-commerce platform. There can be no assurance that we will be able to maintain, improve or grow our e-commerce platform in a profitable manner.

The success of our business is dependent on factors affecting consumer spending that are not under our control. Consumer spending is affected by general economic conditions and other factors including levels of employment, disposable consumer income, prevailing interest rates, consumer debt and availability of credit, inflation, recession and fears of recession, tax rates and rate increases, timing of receipt of tax refunds, consumer confidence in future economic conditions and political conditions, and consumer perceptions of personal well-being and security. Unfavorable changes in factors affecting discretionary spending could reduce demand for our products and services, such as consumer electronics and residential furniture, resulting in lower revenue and negatively impacting our business and its financial results.

Our customer base presents significant risk of default for non-payment. We bear the risk of non-payment or late payments by our customers. The nature of our customer base makes it sensitive to adverse economic conditions and, in the event of an economic downturn, less likely to meet our prevailing underwriting standards, which may be more restrictive in an adverse economic environment. As a result, during such periods we may experience decreases in the growth of new customers, and we may curtail spending limits to existing customers, which may adversely affect our net sales and potential profitability.

Our customers can return merchandise without penalty. When our customers acquire merchandise through the FlexShopper LTO program, we purchase the merchandise from the retailer and enter the lease-to-own relationship with the customer. Because our customers can return merchandise without penalty, there is risk that we may end up owning a significant amount of merchandise that is difficult to monetize. While we have factored customer returns into our business model, customer return volume may exceed the levels we expect, which could adversely impact our collections, revenues and our financial performance. Returns totaled less than four percent of leased merchandise at December 31, 2018.

We rely on third-party credit/debit card and ACH (Automated Clearing House) processors to process collections from customers on a weekly basis. Our ability to collect from customers could be impaired if these processors do not work with us. These third-party payment processors may consider our business a high risk since our customer base has a high incidence of insufficient funds and rejected payments. This could cause a processor to discontinue its services to us, and we may not be able to find a replacement processor. If this occurs, we would have to collect from our customers using less efficient methods, which would adversely impact our collections, revenues and our financial performance.

We rely on internal models to manage risk, to provide accounting estimates and to make other business decisions. Our results could be adversely affected if those models do not provide reliable estimates or predictions of future activity. The accurate modeling of risks is critical to our business, particularly with respect to managing underwriting and spending limits for our customers. Our expectations regarding customer repayment levels, as well as our allowances for doubtful accounts and other accounting estimates, are based in large part on internal modeling. We also rely heavily on internal models in making a variety of other decisions crucial to the successful operation of our business. It is therefore important that our models are accurate, and any failure in this regard could have a material adverse effect on our results. However, models are inherently imperfect predictors of actual results because they are based on historical data available to us and our assumptions about factors such as demand, payment rates, default rates, delinquency rates and other factors that may overstate or understate future experience. Our models could produce unreliable results for a number of reasons, including the limitations or lack of historical data to predict results, invalid or incorrect underlying assumptions or data, the need for manual adjustments in response to rapid changes in economic conditions, incorrect coding of the models or inappropriate application of a model to products or events outside of the model's intended use. In particular, models are less dependable when the economic environment is outside of historical experience, as has been the case recently. Due to the factors described above, resulting unanticipated and excessive default and charge-off experience can adversely affect our profitability and financial condition, breach covenants in our credit agreement, limit our ability to secure a future credit facility and adversely affect our ability to finance our business.

Our operations are regulated by and subject to the requirements of various federal and state laws and regulations. These laws and regulations, which may be amended or supplemented or interpreted by the courts from time to time, could expose us to significant compliance costs or burdens or force us to change our business practices in a manner that may be materially adverse to our operations, prospects or financial condition. Currently, nearly every state and the District of Columbia specifically regulate LTO transactions. At the present time, no federal law specifically regulates the LTO industry, although federal legislation to regulate the industry has been proposed from time to time. Any adverse changes in existing laws, or the passage of new adverse legislation by states or the federal government could materially increase both our costs of complying with laws and the risk that we could be sued or be subject to government sanctions if we are not in compliance. In addition, new burdensome legislation might force us to change our business model and might reduce the economic potential of our sales and lease ownership operations. Most of the states that regulate LTO transactions have enacted disclosure laws that require LTO companies to disclose to their customers the total number of payments, the total amount and timing of all payments to acquire ownership of any item, any other charges that may be imposed and miscellaneous other items. In addition, certain restrictive state lease purchase laws limit the total amount that a customer may be charged for an item, or regulate the "cost-of-rental" amount that LTO companies may charge on LTO transactions, generally defining "cost-of-rental" as lease fees paid in excess of the "retail" price of the goods. There has been increased legislative attention in the United States, at both the federal and state levels, on consumer debt transactions in general, which may result in an increase in legislative regulatory efforts directed at the LTO industry. We cannot guarantee that the federal government or states will not enact additional or different legislation that would be disadvantageous or otherwise materially adverse to us. In addition to the risk of lawsuits related to the laws that regulate LTO transactions, we could be subject to lawsuits alleging violations of federal and/or state laws and regulations relating to consumer tort law, including fraud, consumer protection, information security and privacy. A large judgment against us could adversely affect our financial condition and results of operations. Moreover, an adverse outcome from a lawsuit, even one against one of our competitors, could result in changes in the way we and others in the industry do business, possibly leading to significant costs or decreased revenues or profitability.

Our virtual LTO business differs in some potentially significant respects from the risks of a typical LTO brick-and-mortar store business, which implicates certain additional regulatory risks.

We offer LTO products directly to consumers through our e-commerce marketplace and through the stores and e-commerce sites of third-party retailers. This novel business model implicates certain regulatory risk including, among others:

- possibly different regulatory risks than applicable to traditional brick-and-mortar LTO stores, whether arising from the offer by third-party retailers of FlexShopper's B2B solutions alongside traditional cash, check or credit payment options or otherwise, including the risk that regulators may mistakenly treat virtual LTO transactions as some other type of transaction that would face different and more burdensome and complex regulations;

- reliance on automatic bank account drafts for lease payments, which may become disfavored as a payment method for these transactions by regulators;

- potential that regulators may target the virtual LTO transaction and/or adopt new regulations or legislation (or existing laws and regulations may be interpreted in a manner) that negatively impact FlexShopper's ability to offer virtual LTO programs through third-party retail partners;

- potential that regulators may attempt to force the application of laws and regulations on FlexShopper's virtual LTO business in inconsistent and unpredictable ways that could increase the compliance-related costs incurred by FlexShopper, and negatively impact FlexShopper's financial and operational performance; and

- indemnification obligations to FlexShopper retail partners and their service providers for losses stemming from FlexShopper's failure to perform with respect to its products and services.

Any of these risks could have a material adverse effect on FlexShopper's business.

Changes in regulations or customer concerns, in particular as they relate to privacy and protection of customer data, could adversely affect our business. Our business is subject to laws relating to the collection, use, retention, security and transfer of personally identifiable information about our customers. The interpretation and application of privacy and customer data protection laws are in a state of flux and may vary from jurisdiction to jurisdiction. These laws may be interpreted and applied inconsistently and our current data protection policies and practices may not be consistent with those interpretations and applications. Complying with these varying requirements could cause us to incur substantial costs or require us to change our business practices in a manner adverse to our business. Any failure, or perceived failure, by us to comply with our own privacy policies or with any regulatory requirements or orders or other privacy or consumer protection related laws and regulations could result in proceedings or actions against us by governmental entities or others, subject us to significant penalties and negative publicity and adversely affect our operating results.

The transactions offered to consumers by our businesses may be negatively characterized by consumer advocacy groups, the media and certain federal, state and local government officials, and if those negative characterizations become increasingly accepted by consumers and/or FlexShopper's retail partners, demand for our goods and the transactions we offer could decrease and our business could be materially adversely affected. Certain consumer advocacy groups, media reports and federal and state legislators have asserted that laws and regulations should be broader and more restrictive regarding LTO transactions. The consumer advocacy groups and media reports generally focus on the total cost to a consumer to acquire an item, which is often alleged to be higher than the interest typically charged by banks or similar lending institutions to consumers with better credit histories. This "cost-of-rental" amount, which is generally defined as lease fees paid in excess of the "retail" price of the goods, is from time to time characterized by consumer advocacy groups and media reports as predatory or abusive without discussing benefits associated with LTO programs or the lack of viable alternatives for our customers' needs. If the negative characterization of these types of LTO transactions becomes increasingly accepted by consumers or FlexShopper's retail and merchant partners, demand for our products and services could significantly decrease, which could have a material adverse effect on our business, results of operations and financial condition. Additionally, if the negative characterization of these types of transactions is accepted by legislators and regulators, we could become subject to more restrictive laws and regulations, which could have a material adverse effect on our business, results of operations and financial condition. The vast expansion and reach of technology, including social media platforms, has increased the risk that our reputation could be significantly impacted by these negative characterizations in a relatively short amount of time. If we are unable to quickly and effectively respond to such characterizations, we may experience declines in customer loyalty and traffic and our relationships with our retail partners may suffer, which could have a material adverse effect on our business, results of operations and financial condition.

The loss of any of our key personnel could harm our business. Our future financial performance will depend to a significant extent on our ability to motivate and retain key management personnel. Competition for qualified management personnel is intense, and there can be no assurance that we will be able to hire additional qualified management on terms satisfactory to FlexShopper. Further, in the event we experience turnover in our senior management positions, we cannot assure you that we will be able to recruit suitable replacements. We must also successfully integrate all new management and other key positions within our organization to achieve our operating objectives. Even if we are successful, turnover in key management positions may temporarily harm our financial performance and results of operations until new management becomes familiar with our business. At present, we do not maintain key-man life insurance on any of our executive officers, although we entered into employment contracts with Brad Bernstein, our Chief Executive Officer and President, Russ Heiser, our Chief Financial Officer, and Ravi Radhakrishnan, our Chief Risk Officer. Our Board of Directors is responsible for approval of all future employment contracts with our executive officers. We can provide no assurances that said future employment contracts and/or their current compensation is or will be on commercially reasonable terms to us in order to retain our key personnel. The loss of any of our key personnel could harm our business.

We depend on hiring an adequate number of hourly employees to run our business and are subject to government regulations concerning these and our other employees, including wage and hour regulations. Our workforce is comprised primarily of employees who work on an hourly basis. To grow our operations and meet the needs and expectations of our customers, we must attract, train, and retain a large number of hourly associates, while at the same time controlling labor costs. These positions have historically had high turnover rates, which can lead to increased training, retention and other costs. In certain areas where we operate, there is significant competition for employees, including from retailers and the restaurant industries. The lack of availability of an adequate number of hourly employees, or our inability to attract and retain them, or an increase in wages and benefits to current employees could adversely affect our business, results of operations, cash flows and financial condition. We are subject to applicable rules and regulations relating to our relationship with our employees, including wage and hour regulations, health benefits, unemployment and payroll taxes, overtime and working conditions and immigration status. Accordingly, federal, state or local legislated increases in the minimum wage, as well as increases in additional labor cost components such as employee benefit costs, workers' compensation insurance rates, compliance costs and fines, would increase our labor costs, which could have a material adverse effect on our business, prospects, results of operations and financial condition.

Employee misconduct or misconduct by third parties acting on our behalf could harm us by subjecting us to monetary loss, significant legal liability, regulatory scrutiny and reputational harm. Our reputation is critical to maintaining and developing relationships with our existing and potential customers and third parties with whom we do business. There is a risk that our employees or the employees of a third-party retailer with whom we partner could engage in misconduct that adversely affects our reputation and business. For example, if an employee or a third party associated with our business were to engage in, or be accused of engaging in, illegal or suspicious activities including fraud or theft of our customers' information, we could suffer direct losses from the activity and, in addition, we could be subject to regulatory sanctions and suffer serious harm to our reputation, financial condition, customer relationships and ability to attract future customers. Employee or third-party misconduct could prompt regulators to allege or to determine based upon such misconduct that we have not established adequate supervisory systems and procedures to inform employees of applicable rules or to detect violations of such rules. The precautions that we take to detect and prevent misconduct may not be effective in all cases. Misconduct by our employees or third-party contractors, or even unsubstantiated allegations of misconduct, could result in a material adverse effect on our reputation and our business. Our operations are subject to certain laws generally prohibiting companies and their intermediaries from making improper payments to government officials for the purpose of obtaining or retaining business, such as the U.S. Foreign Corrupt Practices Act, and similar anti-bribery laws in other jurisdictions. Our employees, contractors or agents may violate the policies and procedures we have implemented to ensure compliance with these laws. Any such improper actions could subject us to civil or criminal investigations, could lead to substantial civil and criminal, monetary and non-monetary penalties, and related shareholder lawsuits, could cause us to incur significant legal fees, and could damage our reputation.

Competition in the LTO business is intense. The LTO industry is highly competitive. Our operation competes with other national, regional and local LTO businesses, as well as with rental stores that do not offer their customers a purchase option. Some of these companies have, or may develop, systems that enable consumers to obtain through online facilities spending limits and payment terms and to enter into leases nearly instantaneously, in a manner similar to that provided by FlexShopper's proprietary technology. Greater financial resources may allow our competitors to grow faster than us, including through acquisitions. This in turn may enable them to enter new markets before we can, which may decrease our opportunities in those markets. Greater name recognition, or better public perception of a competitor's reputation, may help them divert market share away from us, even in our established markets. Some competitors may be willing to offer competing products on an unprofitable basis in an effort to gain market share, which could compel us to match their pricing strategy or lose business. With respect to customers desiring to purchase merchandise for cash or on credit, we also compete with retail stores. Competition is based primarily on store location, product selection and availability, customer service and lease rates and terms. We believe we do not currently have significant competition for our online LTO marketplace and patent-pending LTO payment method. However, such competition is likely to develop over time, and we may be unable to successfully compete in our target markets. We can provide no assurances that we will be able to successfully compete in the LTO industry.

Continuation or worsening of current economic conditions faced by a portion of our customer base could result in decreased revenues. The geographic concentration of our retail partners may magnify the impact of conditions in a particular region, including economic downturns and other occurrences. Although we believe an economic downturn can result in increased business in the LTO market as consumers increasingly find it difficult to purchase home furnishings, electronics and appliances from traditional retailers on store installment credit, it is possible that if the conditions continue for a significant period of time, or get worse, consumers may curtail spending on all or some of the types of merchandise we offer, in which event our revenues may suffer.

Much of our customer base continues to experience prolonged economic uncertainty and, in certain areas, unfavorable economic conditions. We believe that the extended duration of that economic uncertainty and unfavorable economic conditions may be resulting in our customers curtailing purchases of the types of merchandise we offer, or entering into agreements that generate smaller amounts of revenue for us (i.e., a 90-day same-as-cash option), resulting in decreased revenues for FlexShopper. Any increases in unemployment or underemployment within our customer base may result in increased defaults on lease payments, resulting in increased merchandise return costs and merchandise losses. In addition, our retail partners as well as our online customer base are subject to the effects of adverse acts of nature, such as winter storms, hurricanes, hail storms, strong winds, earthquakes and tornadoes, which have in the past caused damage such as flooding and other damage to our retail partners and online customers.

We are subject to sales, income and other taxes, which can be difficult and complex to calculate due to the nature of our business. A failure to correctly calculate and pay such taxes could result in substantial tax liabilities and a material adverse effect on our results of operations. The application of indirect taxes, such as sales tax, is a complex and evolving issue, particularly with respect to the LTO industry generally and our virtual LTO business more specifically. Many of the fundamental statutes and regulations that impose these taxes were established before the growth of the LTO industry and e-commerce and, therefore, in many cases it is not clear how existing statutes apply to our various businesses. In addition, governments are increasingly looking for ways to increase revenues, which has resulted in discussions about tax reform and other legislative action to increase tax revenues, including through indirect taxes. This also could result in other adverse changes in or interpretations of existing sales, income and other tax regulations. For example, from time to time, some taxing authorities in the United States have notified us that they believe we owe them certain taxes imposed on transactions with our customers. Although these notifications have not resulted in material tax liabilities to date, there is a risk that one or more jurisdictions may be successful in the future, which could have a material adverse effect on our results of operations.

System interruption and the lack of integration and redundancy in our order entry and online systems may adversely affect our net sales. Customer access to our customer service center and websites is key to the continued flow of new orders. Anything that would hamper or interrupt such access could adversely affect our net sales, operating results and customer satisfaction. Examples of risks that could affect access include problems with the internet or telecommunication infrastructure, limited web access by our customers, local or more systemic impairment of computer systems due to viruses or malware, or impaired access due to breaches of internet security or denial of service attacks. Changes in the policies of service providers or others that increase the cost of telephone or internet access could inhibit our ability to market our products or transact orders with customers. In addition, our ability to operate our business from day-to-day largely depends on the efficient operation of our computer hardware and software systems and communications systems. Our computer and communications systems and operations could be damaged or interrupted by fire, flood, power loss, telecommunications failure, earthquakes, acts of war or terrorism, acts of God, computer viruses, physical or electronic break-ins or denial of service attacks, improper operation by employees and similar events or disruptions. Any of these events could cause system interruption, delays and loss of critical data and could prevent us from accepting and fulfilling customer orders and providing services, which would impair our operations. Certain of our systems are not redundant, and we have not fully implemented a disaster recovery plan. In addition, we may have inadequate insurance coverage to compensate us for any related losses. Interruptions to customer ordering, particularly if prolonged, could damage our reputation and be expensive to remedy and have significant adverse effects on our financial results.

We face risk related to the strength of our operational, technological and organizational infrastructure. We are exposed to operational risks that can be manifested in many ways, such as errors related to failed or inadequate processes, faulty or disabled computer systems, fraud by employees, contractors or third parties and exposure to external events. In addition, we are heavily dependent on the strength and capability of our technology systems that we use to manage our internal financial, credit and other systems, interface with our customers and develop and implement effective marketing campaigns. Our ability to operate our business to meet the needs of our existing customers and attract new ones and to run our business in compliance with applicable laws and regulations depends on the functionality of our operational and technology systems. Any disruptions or failures of our operational and technology systems, including those associated with improvements or modifications to such systems, could cause us to be unable to market and manage our products and services and to report our financial results in a timely and accurate manner, all of which could have a negative impact on our results of operations. In some cases, we outsource delivery, maintenance and development of our operational and technological functionality to third parties. These third parties may experience errors or disruptions that could adversely impact us and over which we may have limited control. Any increase in the amount of our infrastructure that we outsource to third parties may increase our exposure to these risks.

If we do not respond to technological changes, our services could become obsolete, and we could lose customers. To remain competitive, we must continue to enhance and improve the functionality and features of our e-commerce websites and other technologies. We may face material delays in introducing new products and enhancements. If this happens, our customers may forego the use of our websites and use those of our competitors. The internet and the online commerce industry are rapidly changing. If competitors introduce new products and services using new technologies or if new industry standards and practices emerge, our existing websites and our proprietary technology and systems may become obsolete. Our failure to respond to technological change or to adequately maintain, upgrade and develop our computer network and the systems used to process customers' orders and payments could harm our business, prospects, financial condition and results of operations.

We may not be able to adequately protect our intellectual property rights or may be accused of infringing intellectual property rights of third parties. We have been granted a patent for our system that enables e-commerce servers to complete LTO transactions through their e-commerce websites. Moreover, we have been issued a notice of allowance for additional systems that enable retailer devices to complete LTO transactions through their retailer web pages, as well as systems that further enable consumer devices to modify received retailer web pages to indicate LTO payments in association with transaction-eligible products as part of LTO transactions through the retailer web pages. However, we can provide no assurances that we will be granted any additional patents by the USPTO. We believe certain proprietary information, including but not limited to our underwriting model, and patented and patent-pending systems are central to our business model, and we believe give us a key competitive advantage. We rely on trademark and copyright law, trade secret protection, and confidentiality, license and work product agreements with our employees, customers and others to protect our proprietary rights. We may be unable to prevent third parties from acquiring trademarks, service marks and domain names that are similar to, infringe upon, or diminish the value of our trademarks and other proprietary rights. Failure to protect our domain names could affect adversely our reputation and brand, and make it more difficult for users to find our website. We may be unable to discover or determine the extent of any unauthorized use of our proprietary rights. The protection of our intellectual property may require the expenditure of significant financial and managerial resources. In addition, the steps we take to protect our intellectual property may not adequately protect our rights or prevent parties from infringing or misappropriating our proprietary rights. We can be at risk that others will independently develop or acquire equivalent or superior technology or other intellectual property rights. The use of our technology or similar technology by others could reduce or eliminate any competitive advantage we have developed, cause us to lose sales or otherwise harm our business. We cannot be certain that the intellectual property used in our business does not and will not infringe the intellectual property rights of others, and we are from time to time subject to third party infringement claims. Due to recent changes in patent law, we face the risk of a temporary increase in patent litigation due to new restrictions on including unrelated defendants in patent infringement lawsuits in the future particularly from entities that own patents but that do not make products or services covered by the patents. Any third party infringement claims against us, whether or not meritorious, may result in the expenditure of significant financial and managerial resources, injunctions against us or the payment of damages. Moreover, should we be found liable for infringement, we may be required to seek to enter into licensing agreements, which may not be available on acceptable terms or at all.

In deciding whether to provide a spending limit to customers, we rely on the accuracy and completeness of information furnished to us by or on behalf of our customers. If we and our systems are unable to detect any misrepresentations in this information, this could have a material adverse effect on our results of operations and financial condition. In deciding whether to provide a customer with a spending amount, we rely heavily on information furnished to us by or on behalf of our customers and our ability to validate such information through third-party services, including personal financial information. If a significant percentage of our customers intentionally or negligently misrepresent any of this information, and we or our systems do not or did not detect such misrepresentations, it could have a material adverse effect on our ability to effectively manage our risk, which could have a material adverse effect on our results of operations and financial condition.

If we fail to timely contact delinquent customers, then the number of delinquent customer receivables eventually being charged off could increase. We contact customers with delinquent account balances soon after the account becomes delinquent. During periods of increased delinquencies, it is important that we are proactive in dealing with these customers rather than simply allowing customer receivables to go to charge-off. During periods of increased delinquencies, it becomes extremely important that we are properly staffed and trained to assist customers in bringing the delinquent balance current and ultimately avoiding charge-off. If we do not properly staff and train our collections personnel, or if we incur any downtime or other issues with our information systems that assist us with our collection efforts, then the number of accounts in a delinquent status or charged-off could increase. In addition, managing a substantially higher volume of delinquent customer receivables typically increases our operational costs. A rise in delinquencies or charge-offs could have a material adverse effect on our business, financial condition, liquidity and results of operations.

Our management information systems may not be adequate to meet our evolving business and emerging regulatory needs and the failure to successfully implement them could negatively impact the business and its financial results. We are investing significant capital in new information technology systems to support our growth plan. These investments include redundancies and acquiring new systems and hardware with updated functionality. We are taking appropriate actions to ensure the successful implementation of these initiatives, including the testing of new systems, with minimal disruptions to the business. These efforts may take longer and may require greater financial and other resources than anticipated, may cause distraction of key personnel, may cause disruptions to our systems and our business, and may not provide the anticipated benefits. The disruption in our information technology systems, or our inability to improve, integrate or expand our systems to meet our evolving business and emerging regulatory requirements, could impair our ability to achieve critical strategic initiatives and could adversely impact our sales, collections efforts, cash flows and financial condition.

If we do not maintain the privacy and security of customer, retail partner, employee or other confidential information, due to cybersecurity-related "hacking" attacks, intrusions into our systems by unauthorized parties or otherwise, we could incur significant costs, litigation, regulatory enforcement actions and damage to our reputation, any one of which could have a material adverse impact on our business, operating results and financial condition. Our business involves the collection, processing, transmission and storage of customers' personal and confidential information, including dates of birth, banking information, credit and debit card information, data we receive from consumer reporting companies, including credit report information, as well as confidential information about our retail partners and employees, among others. Much of this data constitutes confidential personally identifiable information ("PII") which, if unlawfully accessed, either through a "hacking" attack or otherwise, could subject us to significant liabilities as further discussed below. Companies like us that possess significant amounts of PII and/or other confidential information have experienced a significant increase in cyber security risks in recent years from increasingly aggressive and sophisticated cyberattacks, including hacking, computer viruses, malicious or destructive code, ransomware, social engineering attacks (including phishing and impersonation), denial-of-service attacks and other attacks and similar disruptions from the unauthorized use of or access to information technology ("IT") systems. Our IT systems are subject to constant attempts to gain unauthorized access in order to disrupt our business operations and capture, destroy or manipulate various types of information that we rely on, including PII and/or other confidential information. In addition, various third parties, including employees, contractors or others with whom we do business may attempt to circumvent our security measures in order to obtain such information, or inadvertently cause a breach involving such information. Any significant compromise or breach of our data security, whether external or internal, or misuse of PII and/or other confidential information may result in significant costs, litigation and regulatory enforcement actions and, therefore, may have a material adverse impact on our business, operating results and financial condition. Further, if any such compromise, breach or misuse is not detected quickly, the effect could be compounded. While we have implemented network security systems and processes to protect against unauthorized access to or use of secured data and to prevent data loss and theft, there is no guarantee that these procedures are adequate to safeguard against all data security breaches or misuse of the data. We maintain private liability insurance intended to help mitigate the financial risks of such incidents, but there can be no guarantee that insurance will be sufficient to cover all losses related to such incidents, and our exposure resulting from any serious unauthorized access to, or use of, secured data, or serious data loss or theft, could far exceed the limits of our insurance coverage for such events. Further, a significant compromise of PII and/or other confidential information could result in regulatory penalties and harm our reputation with our customers, retail partners and others, potentially resulting in a material adverse impact on our business, operating results and financial condition. The regulatory environment related to information security, data collection and use, and privacy is increasingly rigorous, with new and constantly changing requirements applicable to our business, and compliance with those requirements could result in additional costs. We also believe successful data breaches or cybersecurity incidents at other companies, whether or not we are involved, could lead to a general loss of customer confidence that could negatively affect us, including harming the market perception of the effectiveness of our security measures or financial technology in general. We believe our exposure to this risk will increase as we expand our use of financial technology to communicate with our customers and retail partners and as we increase the number of retail partners with whom we work.

If we fail to maintain adequate systems and processes to detect and prevent fraudulent activity, our business could be adversely impacted. Criminals are using increasingly sophisticated methods to engage in illegal activities such as paper instrument counterfeiting, fraudulent payment or refund schemes and identity theft. As we make more of our services available over the internet and other media we subject ourselves to consumer fraud risk. We use a variety of tools to protect against fraud; however, these tools may not always be successful.

Our failure to maintain an effective system of internal controls could result in inaccurate reporting of financial results and harm our business. We are required to comply with a variety of reporting, accounting and other rules and regulations. As a public reporting company subject to the rules and regulations established from time to time by the SEC and the Nasdaq Capital Market, we are required to, among other things, establish and periodically evaluate procedures with respect to our disclosure controls and procedures. In addition, as a public company, we are required to document and test our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 so that our management can certify, on an annual basis, that our internal control over financial reporting is effective. As such, we maintain a system of internal control over financial reporting, but there are limitations inherent in internal control systems. A control system can provide only reasonable, not absolute, assurance that the objectives of the control system are met. In addition, the design of a control system must reflect the fact that there are resource constraints and the benefit of controls must be appropriate relative to their costs. Furthermore, compliance with existing requirements is expensive and we may need to implement additional finance and accounting and other systems, procedures and controls to satisfy our reporting requirements. If our internal control over financial reporting is determined to be ineffective, such failure could cause investors to lose confidence in our reported financial information, negatively affect the market price of our common stock, subject us to regulatory investigations and penalties, and adversely impact our business and financial condition.

Because of their significant stock ownership and ability to select a nominee to our Board of Directors, certain beneficial owners of our stock, as well as our executive officers and directors, will be able to exert control over the Company and significant corporate decisions. B2 FIE V LLC ("B2 FIE"), a holder of Series 2 Convertible Preferred Stock described under "Recent Financings" in Item 7 below, beneficially owns 20.9% of the voting power of our outstanding stock as of March 11, 2019. Our secured lender described under this Item 1A and Item 7 below beneficially owns 6.6% of the voting power of our outstanding stock as of March 11, 2019. Also, our executive officers and directors beneficially own an additional 17.4% of the voting power of our outstanding stock as of the same date. In the event that they act in concert on future stockholder matters, such persons may have the ability to affect the election of all of our directors and the outcome of all issues submitted to our stockholders. Such concentration of ownership could limit the price that certain investors might be willing to pay in the future for shares of Common Stock and could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, control of us. Additionally, pursuant to Investor Rights Agreement entered into in connection with its investment in the Company, B2 FIE currently has the right to designate on our Board of Directors one nominee. As a result, the presence of directors on our Board of Directors nominated by these investors enables such investors to influence and impact future actions taken by our Board of Directors.

The price of our common stock may fluctuate significantly. During the fiscal year ended December 31, 2018, the price for our common stock on the Nasdaq Capital Market ranged from $0.66 to $4.80. The market price for our common stock can fluctuate as a result of a variety of factors, including the factors listed in this Risk Factors section, many of which are beyond our control. These factors include: actual or anticipated variations in quarterly operating results; announcements of new services by our competitors or us; announcements relating to strategic relationships or acquisitions; dilution caused by additional equity issuances; our ability to meet market expectations with respect to the growth and profitability of each of our operating segments; quarterly variations in our competitors' results of operations; state or federal legislative or regulatory proposals, initiatives, actions or changes that are, or are perceived to be, adverse to our operations; changes in financial estimates or other statements by securities analysts; and other changes in general economic conditions. Because of this, we may fail to meet or exceed the expectations of our stockholders or others, and the market price for our common stock could fluctuate as a result. In addition, the securities markets have from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. These market fluctuations may also materially and adversely affect the market price of our common stock.

We have never declared or paid cash dividends on our Common Stock, and we do not anticipate paying any cash dividends on our Common Stock in the foreseeable future. We currently intend to retain future earnings, if any, to fund the development and growth of our business. Any future determination to pay cash dividends will be dependent upon our financial condition, operating results, capital requirements, applicable contractual restrictions and other such factors as our Board of Directors may deem relevant.

Product safety and quality control issues, including product recalls, could harm our reputation, divert resources, reduce sales and increase costs. The products we lease are subject to regulation by the U.S. Consumer Product Safety Commission and similar state regulatory authorities. Such products could be subject to recalls and other actions by these authorities. Product safety or quality concerns may require us to voluntarily remove selected products from our e-commerce site, or from our customers' homes. Such recalls and voluntary removal of products can result in, among other things, lost sales, diverted resources, potential harm to our reputation and increased customer service costs, which could have a material adverse effect on our financial condition. In addition, given the terms of our lease agreements with our customers, in the event of such a product quality or safety issue, our customers who have leased the defective merchandise from us could terminate their lease agreements for that merchandise and/or not renew those lease arrangements, which could have a material adverse effect on our financial condition if we are unable to recover those losses from the vendor who supplied us with the defective merchandise.

Increased costs associated with corporate governance compliance may significantly impact our results of operations. Changing laws, regulations and standards relating to corporate governance, public disclosure and compliance practices, including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Sarbanes-Oxley Act of 2002, and new SEC regulations, may create difficulties for companies such as ours in understanding and complying with these laws and regulations. As a result of these difficulties and other factors, devoting the necessary resources to comply with evolving corporate governance and public disclosure standards has resulted in and may in the future result in increased general and administrative expenses and a diversion of management time and attention to compliance activities. We also expect these developments to increase our legal compliance and financial reporting costs. In addition, these developments may make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. Moreover, we may be unable to comply with these new laws and regulations on a timely basis. These developments could make it more difficult for us to retain qualified members of our board of directors, or qualified executive officers. We are presently evaluating and monitoring regulatory developments and cannot estimate the timing or magnitude of additional costs we may incur as a result. To the extent these costs are significant, our general and administrative expenses are likely to increase.

If we sell shares of our common stock or securities convertible into our common stock in future financings, the ownership interest of existing shareholders will be diluted and, as a result, our stock price may go down. We may from time to time issue additional shares of common stock, possibly at a discount from the current trading price of our common stock, or securities convertible into our common stock. As a result, our existing shareholders will experience immediate dilution upon the purchase of any shares of our Common Stock sold at a discount. For example, in September 2018, FlexShopper raised approximately $8.9 million in net proceeds through the sale of 10,000,000 units issued at a price of $1.00 per unit, each unit consisting of one share of the Company's common stock and one-half (1/2) of one warrant, each whole warrant exercisable for one share of common stock at an exercise price of $1.25 per warrant. As other capital raising opportunities present themselves, we may enter into financing or similar arrangements in the future. If we issue common stock or securities convertible into common stock, our shareholders will experience dilution and this dilution will be greater if we find it necessary to sell securities at a discount to prevailing market prices.

Our certificate of incorporation allows for our Board of Directors to create new series of preferred stock without further approval by our stockholders, which could adversely affect the rights of the holders of our common stock.

Our Board of Directors has the authority to fix and determine the relative rights and preferences of preferred stock and to issue up to 500,000 shares of our preferred stock (of which 250,000 shares have been designated as Series 1 Convertible Preferred Stock and 25,000 shares have been designated as Series 2 Convertible Preferred Stock) without further stockholder approval. As a result, our Board of Directors could authorize the issuance of additional series of preferred stock that would grant to holders the preferred right to our assets upon liquidation, the right to receive dividend payments before dividends are distributed to the holders of common stock and the right to the redemption of the shares, together with a premium, prior to the redemption of our common stock. In addition, our Board of Directors could authorize the issuance of additional series of preferred stock that has greater voting power than our common stock or that is convertible into our common stock, which could decrease the relative voting power of our common stock or result in dilution to our existing stockholders. Although we have no present intention to issue any additional shares of preferred stock or to create any additional series of preferred stock, we may decide to issue such shares in the future.

Item 1B. Unresolved Staff Comments

None

Item 2. Properties

Our principal office is located in Boca Raton, Florida, where we currently lease 8,836 square feet of office space to accommodate FlexShopper's business and its employees. The monthly rent for this space is approximately $14,000 with annual three percent increases throughout the lease term, which expires in June 2019. FlexShopper does not intend to renew the lease upon expiration.

In September 2015, we entered into a 48-month lease for additional office space in Fort Lauderdale, Florida to accommodate our call and customer service center. The monthly base rent including operating expenses is approximately $5,200 with annual three percent increases throughout the lease term. FlexShopper does not intend to renew the lease upon expiration in September 2019.

In August 2017, FlexShopper entered into a 12 month lease with options for two additional three year terms for storefront space in West Palm Beach, Florida to accommodate FlexShopper's repossession retail sales operation. The monthly base rent including operating expenses is approximately $2,000 with annual four percent increases throughout the lease term. In April 2018, FlexShopper exercised its option to extend the term of the lease to September 30, 2021.

In January 2019, FlexShopper entered into a 108 month lease with an option for one additional five year term for 21,622 square feet of office space in Boca Raton, Florida to accommodate FlexShopper's business and its employees. The monthly rent for this space is approximately $31,500 with annual three percent increases throughout the lease term on the anniversary of the commencement date throughout the initial 108 month term.

Item 3. Legal Proceedings

We are not currently a party to any material pending legal proceedings. To our knowledge, no governmental authority is contemplating commencing a legal proceeding in which we would be named as a party. We may, however, be subject to various claims and legal actions arising in the ordinary course of business from time to time.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Market for Registrant's Common Equity Related Stockholder Matters and Issuer Purchases of Equity Securities.

Our common stock is listed on the Nasdaq Capital Market under the symbol "FPAY." Our warrants have been listed on the Nasdaq Capital Market since September 26, 2018 under the symbol "FPAYW."

Holders of Record

As of March 1, 2019, there were 132 holders of record of shares of our common stock.

Dividend Policy

We have not paid or declared any cash dividends on our common stock. We currently intend to retain any earnings for future growth and, therefore, do not expect to pay cash dividends on our common stock in the foreseeable future. Any future determination to pay dividends will be at the discretion of our Board of Directors and will depend upon various factors, including our results of operations, financial condition, capital requirements, investment opportunities and other factors that our Board of Directors deems relevant.

Item 6. Selected Financial Data

The information required by Item 6 is not required to be provided by issuers that satisfy the definition of "smaller reporting company" under SEC rules.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion should be read in conjunction with our consolidated financial statements and the notes thereto appearing elsewhere in this Form 10-K.

Executive Overview

FlexShopper, Inc. ("we," "us," "our," "FlexShopper" or the "Company") is a corporation organized under the laws of the State of Delaware in 2006 with its common stock and warrants trading on the Nasdaq Capital Market under the symbols "FPAY" and "FPAYW," respectively. All references to our business operations refer to FlexShopper, LLC and its wholly-owned subsidiaries, unless the context indicates otherwise.

Since December 2013, we have developed a business that focuses on improving the quality of life of our customers by providing them the opportunity to obtain ownership of high-quality durable products, such as consumer electronics, home appliances, computers (including tablets and wearables), smartphones, tires, jewelry and furniture (including accessories), under affordable payment lease-to-own ("LTO") purchase agreements with no long-term obligation, including through an extensive online experience. Our customers can acquire well-known brands such as Samsung, Frigidaire, Hewlett-Packard, LG, Whirlpool, Simmons, Philips, Ashley, Apple and more. We believe that the introduction of FlexShopper's LTO programs support broad untapped expansion opportunities within the U.S. consumer e-commerce and retail marketplaces. We have successfully developed and are currently processing LTO transactions using our "LTO Engine," FlexShopper's proprietary technology that automates the process of consumers receiving spending limits and entering into leases for durable goods to within seconds. The LTO Engine is the basis for FlexShopper's primary sales channels, which include business to consumer ("B2C") and business to business ("B2B") channels, as described in further detail below. Concurrently, e-tailers and retailers that work with FlexShopper may increase their sales by utilizing FlexShopper's online channels to connect with consumers that want to acquire products on an LTO basis. FlexShopper's sales channels include (1) selling directly to consumers via the online FlexShopper.com LTO Marketplace featuring thousands of durable goods, (2) utilizing FlexShopper's patented LTO payment method at check out on e-commerce sites and through in-store terminals and (3) facilitating LTO transactions with retailers that have not yet become part of the FlexShopper.com LTO marketplace.

Summary of Critical Accounting Policies

Management's Discussion and Analysis of Financial Condition and Results of Operations discusses our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. On an on-going basis, management evaluates its estimates and judgments, including those related to credit provisions, intangible assets, contingencies, litigation and income taxes. Management bases its estimates and judgments on historical experience as well as various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. Management believes the following critical accounting policies, among others, reflect the more significant judgments and estimates used in the preparation of our financial statements.

Accounts Receivable and Allowance for Doubtful Accounts - FlexShopper seeks to collect amounts owed under its leases from each customer on a weekly basis by charging their bank accounts or credit cards. Accounts receivable are principally comprised of lease payments currently owed to FlexShopper which are past due as FlexShopper has been unable to successfully collect in the aforementioned manner. The accounts receivable balances consisted of the following as of December 31, 2018 and December 31, 2017:

	December 31, 2018	December 31, 2017
Accounts receivable	$ 10,130,269	$ 6,399,233
Allowance for doubtful accounts	(3,754,306)	(2,139,765)
Accounts receivable, net	$ 6,375,963	$ 4,259,468

The allowance for doubtful accounts is a significant percentage of the balance because FlexShopper does not charge off any customer account until it has exhausted all collection efforts with respect to each account, including attempts to repossess items. In addition, while collections are pursued, the same delinquent customers will continue to accrue weekly charges until all collection efforts are exhausted. The allowance for bad debt at January 1, 2017 was $9,508,708. During the years ended December 31, 2018 and 2017, $21,624,648 and $26,504,150 of accounts receivable balances, respectively, were charged off against the allowance.

Lease Merchandise - Until all payment obligations for ownership are satisfied under the lease agreement, the Company maintains ownership of the lease merchandise. Lease merchandise consists primarily of residential furniture, consumer electronics, computers, appliances and household accessories and is recorded at cost net of accumulated depreciation. The Company depreciates leased merchandise using the straight-line method over the applicable agreement period for a consumer to acquire ownership, generally twelve months with no salvage value. Upon transfer of ownership of merchandise to customers resulting from satisfaction of their lease obligations, the related cost and accumulated depreciation are eliminated from lease merchandise. For lease merchandise returned or anticipated to be returned either voluntarily or through repossession, the Company provides an impairment reserve for the undepreciated balance of the merchandise net of any estimated salvage value with a corresponding charge to cost of lease revenue. The cost, accumulated depreciation and impairment reserve related to such merchandise are written off upon determination that no salvage value is obtainable. The impairment charge amounted to approximately $5,987,000 and $4,575,000 for the years ended December 31, 2018 and 2017 respectively. The net leased merchandise balances consisted of the following as of December 31, 2018 and 2017:

	December 31, 2018	December 31, 2017
Lease merchandise at cost	$ 48,893,012	$ 34,501,555
Accumulated depreciation	(14,338,295)	(11,974,953)
Impairment reserve	(2,190,020)	(1,111,280)
Lease merchandise, net	$ 32,364,697	$ 21,415,322

Cost of lease merchandise sold represents the undepreciated cost of rental merchandise at the time of sale.

Stock Based Compensation - The fair value of transactions in which the Company exchanges its equity instruments for employee services (share-based payment transactions) is recognized as an expense in the financial statements as services are performed. Compensation expense is determined by reference to the fair value of an award on the date of grant and is amortized on a straight-line basis over the vesting period. We have elected to use the Black Scholes pricing model (BSM) to determine the fair value of all stock option awards.

Key Performance Metrics

We regularly review a number of metrics, including the following key metrics, to evaluate our business, measure our performance, identify trends affecting our business, formulate financial projections and make strategic decisions. Key performance metrics for the years ended December 31, 2018 and 2017 are as follows:

	Year ended December 31,			
Adjusted Gross Profit	2018	2017	$ Change	% Change
Lease revenues and fees	$ 82,458,661	$ 65,412,131	$ 17,046,530	26.1
Lease merchandise sold	2,269,708	1,634,233	635,475	38.9
Cost of merchandise sold	(1,423,526)	(998,800)	(424,726)	42.5
Provision for doubtful accounts	(23,239,189)	(19,135,207)	(4,103,982)	21.4
Net revenues	60,065,654	46,912,357	13,153,297	28.0
Cost of lease revenues, consisting of depreciation and impairment of lease merchandise	(40,639,232)	(31,453,246)	(9,185,986)	29.2
Adjusted Gross Profit	$ 19,426,422	$ 15,459,111	$ 3,967,311	25.7
Gross profit margin	32%	33%		

	Year ended December 31,			
Adjusted EBITDA	2018	2017	$ Change	% Change
Net Loss	$ (9,461,262)	$ (8,330,761)	$ (1,130,501)	(13.6)
Amortization of debt costs	511,085	473,616	37,469	7.9
Other amortization and depreciation	1,914,084	1,616,964	297,120	18.4
Interest expense, excluding amortization of debt costs	3,645,339	1,694,645	1,950,694	115.1
Loss on debt extinguishment	126,622	-	126,622	-
Stock compensation	133,428	113,952	19,476	17.1
Adjusted EBITDA	$ (3,130,704)*	$ (4,431,584)*	$ 1,300,880	(29.4)

* Represents loss

We refer to Adjusted Gross Profit and Adjusted EBITDA in the above tables as we use these measures to evaluate our operating performance and make strategic decisions about the Company. Management believes that Adjusted Gross Profit and Adjusted EBITDA provide relevant and useful information which is widely used by analysts, investors and competitors in our industry in assessing performance.

Adjusted Gross Profit represents GAAP revenue less the provision for doubtful accounts and cost of leased inventory and inventory sold as a percentage of cost of these revenues. Adjusted Gross Profit provides us with an understanding of the results from the primary operations of our business. We use Adjusted Gross Profit to evaluate our period-over-period operating performance. This measure may be useful to an investor in evaluating the underlying operating performance of our business.

Adjusted EBITDA represents net income before interest, stock-based compensation, taxes, depreciation (other than depreciation of leased inventory) and amortization. We believe that Adjusted EBITDA provides us with an understanding of one aspect of earnings before the impact of investing and financing charges and income taxes. Adjusted EBITDA may be useful to an investor in evaluating our operating performance and liquidity because this measure:

- is widely used by investors to measure a company's operating performance without regard to items excluded from the calculation of such measure, which can vary substantially from company to company.
- is a financial measurement that is used by rating agencies, lenders and other parties to evaluate our credit worthiness; and
- is used by our management for various purposes, including as a measure of performance and as a basis for strategic planning and forecasting.

Adjusted Gross Profit and Adjusted EBITDA are supplemental measures of FlexShopper's performance that are neither required by, nor presented in accordance with, GAAP. Adjusted Gross Profit and Adjusted EBITDA should not be considered as substitutes for GAAP metrics such as operating loss, net income or any other performance measures derived in accordance with GAAP.

Results of Operations

The following table details the operating results from operations for the years ended December 31, 2018 and 2017.

	Year ended December 31,			
	2018	2017	$ Change	% Change
Total revenues	$ 84,728,369	$ 67,046,364	$ 17,682,005	26.4
Cost of lease revenue and merchandise sold	42,062,758	32,452,046	9,610,712	29.6
Provision for doubtful accounts	23,239,189	19,135,207	4,103,982	21.4
Marketing	7,046,812	6,094,330	952,482	15.6
Salaries and benefits	8,796,011	7,862,714	933,297	11.9
Operating expenses	8,761,815	7,664,566	1,097,249	14.3
Operating loss	(5,178,216)	(6,162,499)	984,283	16.0
Loss on debt extinguishment	126,622	-	126,622	-
Interest expense	4,156,424	2,168,262	1,988,162	91.7
Net loss	$ (9,461,262)	$ (8,330,761)	$ (1,130,501)	13.6

Lease revenues for the years ended December 31, 2018 were $84,728,369 compared to $67,046,364 for the year ended December 31, 2017, representing an increase of 26.4%. FlexShopper originated 139,949 gross leases not including same day modifications and cancellations with an average origination value of $416 in the year ended December 31, 2018 compared to 97,073 gross leases not including same day modifications and cancellations (87,031 net leases as of the filing of the 2017 annual report) with an average origination value of $411 in the year ended December 31, 2017. Growth in new and repeat customers is primarily responsible for the increase in revenue and leases.

Cost of lease revenue and merchandise sold for the year ended December 31, 2018 was $42,062,758 compared to $32,452,046 for the year ended December 31, 2017, representing an increase of 29.6%. Cost of lease revenue and merchandise sold for the year ended December 31, 2018 was comprised of depreciation expense on lease merchandise of $40,639,232 and the net book value of merchandise sold of $1,423,526. Cost of lease revenue and merchandise sold for the year ended December 31, 2017 was comprised of depreciation expense on lease merchandise of $31,453,246 and the net book value of merchandise sold of $998,800. As the Company's lease revenues increase, the associated direct costs also increase.

Provision for doubtful accounts was $23,239,189 and $19,135,207 for the years ended December 31, 2018 and 2017, respectively representing an increase of 21.4%. The primary reason for the increase in the provision for doubtful accounts is due to the increase in revenue partially offset by the proceeds of the debt sale which occurs after all collection efforts have been exhausted. While collection efforts are pursued, delinquent customers continue to accrue weekly charges resulting in a significant balance requiring a reserve. The Company anticipates continued improvement as it continues to refine its underwriting model, enhances its risk department and accumulates additional lease data. The Company has charged off $21,624,648 and $26,504,150 of customer accounts to the allowance for doubtful accounts in the years ended December 31, 2018 and 2017 respectively, after it exhausted all collection efforts with respect to such accounts. The decrease was due to a policy change that occurred in 2017 to reduce the timeline of when a lease is charged off against the allowance for doubtful accounts from 12 months to 9 months.

Marketing expenses for the year ended December 31, 2018 were $7,046,812, compared to $6,094,330 in 2017 for an increase of $952,482 or 15.6%. The Company strategically increased marketing expenditures in its digital channels where it is acquiring customers efficiently at its targeted acquisition cost.

Salary and benefits expenses for the year ended December 31, 2018 were $8,796,011, compared to $7,862,714 in 2017 for an increase of $933,297 or 11.9%. Investments in our software engineering team, much of which occurred throughout 2017, and certain key management hires are the primary reasons for the increase in salaries and benefits expenses.

Other operating expenses for the years ended December 31, 2018 and 2017 were $8,761,815 and $7,664,566 respectively.

Key operating expenses for the years ended December 31, 2018 and 2017 included the following:

	Year ended December 31, 2018	Year ended December 31, 2017
Amortization and depreciation	$ 1,914,084	$ 1,616,964
Computer and internet expenses	1,350,858	1,254,967
Legal and professional fees	859,533	890,022
Merchant bank fees	1,316,978	998,940
Stock compensation expense	133,428	113,952
Customer verification expense	1,411,657	873,257
Other	1,775,277	1,916,464
Total	$ 8,761,815	$ 7,664,566

The increased revenues were offset by the increase in expenses to enhance and scale the Company's LTO channels and support its growth resulting in net losses of $9,461,262 and $8,330,761 for the years ended December 31, 2018 and 2017, respectively.

Plan of Operation

We plan to promote our FlexShopper products and services across all sales channels through strategic partnerships, direct response marketing, and affiliate and internet marketing, all of which are designed to increase our lease transactions and name recognition. Our advertisements emphasize such features as instant spending limits, and affordable weekly payments. We believe that as the FlexShopper name gains familiarity and national recognition through our advertising efforts, we will continue to educate our customers and potential customers about the LTO payment alternative as well as solidify our reputation as a leading provider of high quality branded merchandise and services.

For each of our sales channels, FlexShopper has a multichannel, analytics-powered marketing strategy that includes the following:

Online LTO Marketplace	Patented LTO Payment Method	In-store LTO technology platform
Search engine optimization; pay-per click	Direct to retailers/e-tailers	Direct to retailers/e-tailers
Online affiliate networks	Partnerships with payment aggregators	Consultants & strategic relationships
Direct response television campaigns	Consultants & strategic relationships	
Direct mail		

The Company believes it has a competitive advantage over competitors in the LTO industry by providing all three channels as a bundled package to retailers and e-tailers. Management is anticipating a rapid development of the FlexShopper business as we are able to penetrate each of our sales channels. To support our anticipated growth, FlexShopper will need the availability of substantial capital resources. See the section captioned "Liquidity and Capital Resources" below.

Liquidity and Capital Resources

As of December 31, 2018, the Company had cash of $6,141,210 compared to $4,968,915 as of December 31, 2017.

As of December 31, 2018, the Company had accounts receivables of $10,130,269 net of an allowance for doubtful accounts of $3,754,306 totaling $6,375,963. Accounts receivable are principally comprised of lease payments owed to the Company. An allowance for doubtful accounts is estimated based upon historical collection and delinquency percentages.

Credit Agreement

On March 6, 2015, the Company, through its wholly-owned indirect subsidiary (the "Borrower"), is party to a credit agreement (the "Credit Agreement") with Wells Fargo Bank, National Association, various lenders from time to time party thereto and WE2014-LLC (the "Lender), an affiliate of a large stockholder. Under the Credit Agreement, the Borrower is permitted to borrow funds 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 $32,500,000 from the Lender under the Credit Agreement. As of February 28, 2019 there was $6,409,373 in additional availability under the Credit Agreement and the outstanding balance under the Credit Agreement was $26,090,623.

Pursuant to the Credit Agreement, the Borrower must maintain a reserve amount of $1,000,000, which amount may be withdrawn by the Administrative Agent to pay any amounts not paid by the Borrower when due under the Credit Agreement or, in the discretion of the Administrative Agent, to pay any other commercially reasonable costs or expenses of the Borrower. If any portion of the reserve amount is used in such manner, such reserve will be replenished up to $1,000,000 in connection with the monthly applications of proceeds under the Credit Agreement. The Lender holds 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 (subject to certain exceptions) without the permission of the Lender. In addition, the Lender and its affiliates have a right of first refusal on certain FlexShopper transactions involving leases or other financial products. 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.

Upon the Commitment Termination Date, which is June 30, 2019 or such later date determined by the Lender in its sole discretion by notice to the Borrower on or before April 1, 2019, but no later than February 28, 2021, the Lender will no longer be obligated to lend money to the Borrower and all amounts outstanding under the Credit Agreement will be due on the twelve-month anniversary thereof.

Recent Financings

During the year ended December 31, 2018, the Company completed the following financing transactions, each of which has provided liquidity and cash resources to the Company.

Subordinated Promissory Notes. On January 29, 2018 and January 30, 2018, FlexShopper, LLC entered into letter agreements with Russ Heiser, FlexShopper's Chief Financial Officer, and NRNS Capital Holdings LLC ("NRNS"), the manager of which is the Chairman of the Company's Board of Directors, respectively (such letter agreements, together, the "Commitment Letters"), pursuant to which FlexShopper, LLC issued a subordinated promissory note to each of Mr. Heiser and NRNS (together, the "Notes"). The Commitment Letters provided that Mr. Heiser and NRNS would each make advances to FlexShopper, LLC under the applicable Note in aggregate amounts up to $1,000,000 and $2,500,000, respectively. Upon issuance of the Notes, FlexShopper, LLC drew $500,000 and a subsequent $500,000 on February 20, 2018 on the Note held by Mr. Heiser and $2,500,000 on the Note held by NRNS. On August 29, 2018, FlexShopper, LLC issued amended and restated Notes to Mr. Heiser and NRNS under which (1) the maturity date for such Notes was set at June 30, 2019 and (2) in connection with the completion of an Equity Financing (as defined in the Notes) , the holders of such Notes were granted the option to convert up to 50% of the outstanding principal of the Notes plus accrued and unpaid interest thereon into shares of common stock at a conversion price equal to the price paid to the Company by the underwriters for shares sold in the Equity Financing, net of the underwriting discount. In connection with the offering of units described below, Mr. Heiser and NRNS elected to convert the convertible portion of the Notes, resulting in the issuance by the Company of 602,974 shares of common stock and 301,487 warrants to Mr. Heiser and 1,507,395 shares of common stock and 753,697 warrants to NRNS.

Underwritten Public Offering. On September 25, 2018, the Company completed an underwritten public offering of 10,000,000 units sold at a price to the public of $1.00 per unit. Each unit consisted of one share of common stock and one-half of one warrant, each whole warrant exercisable for one share of common stock. The warrants have a per share exercise price of $1.25, are exercisable immediately, and expire five years from the date of issuance. The warrants began trading on the Nasdaq Capital Market on September 26, 2018 under the symbol "FPAYW." In connection with the closing of the offering, the underwriters exercised their over-allotment option to purchase an additional 750,000 warrants. The net proceeds from the offering were approximately $8.9 million, after deducting underwriting discounts and commissions and other offering expenses.

Cash Flow Summary

Cash Flows from Operating Activities

Net cash used by operating activities was $18,160,258 for the year ended December 31, 2018 and was primarily due to the net loss for the period combined with cash used for the purchases of leased merchandise.

Net cash used by operating activities was $6,598,834 for the year ended December 31, 2017 and was primarily due to the net loss for the period combined with cash used for the purchases of leased merchandise.

Cash Flows from Investing Activities

For the year ended December 31, 2018, net cash used in investing activities was $2,284,876 comprised of $14,164 for the purchase of property and equipment and $2,270,712 for capitalized software costs.

For the year ended December 31, 2017, net cash used in investing activities was $2,021,538 comprised of $127,367 for the purchase of property and equipment and $1,894,171 for capitalized software costs.

Cash Flows from Financing Activities

Net cash provided by financing activities was $21,617,429 for the year ended December 31, 2018 primarily due to the funds drawn on the Credit Agreement of $19,366,359, $3,465,000 of funds drawn on promissory notes and $8,884,081 of net proceeds from the public offering of units, offset by repayments of amounts borrowed under the Credit Agreement of $9,959,607.

Net cash provided by financing activities was $8,176,792 for the year ended December 31, 2017 primarily due to the funds drawn on the Credit Agreement of $10,450,000, offset by repayments of amounts borrowed under the Credit Agreement of $2,288,208.

Capital Resources and Financial Condition

To date, funds derived from the sale of FlexShopper's common stock, warrants and Series 2 Convertible Preferred Stock and the Company's ability to borrow funds against the lease portfolio have provided the liquidity and capital resources necessary to fund its operations.

The Company must maintain $1.5 million in Unrestricted Cash at all times under the Credit Agreement covenants (see Note 5).

Under the Credit Agreement, upon the Commitment Termination Date, which is June 30, 2019 or such later date determined by the Lender in its sole discretion by notice to the Company on or before April 1, 2019, but no later than February 28, 2021, the Lender will no longer be obligated to lend money to the Company and all amounts outstanding under the Credit Agreement will be due on the twelve-month anniversary thereof. We will explore various possible financing options that may be available to us, which may include new financings and extension, modification or refinancing of the Credit Agreement.

Impact of Inflation and Changing Prices

During the two most recent fiscal years, inflation and changing prices have not had a material effect on our business and we do not expect that inflation or changing prices will materially affect our business in the foreseeable future.

Off-Balance Sheet Arrangements

The Company does not have any off-balance sheet arrangements.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

The information required by Item 7A is not required to be provided by issuers that satisfy the definition of "smaller reporting company" under SEC rules.

Item 8. Financial Statements and Supplementary Data.

Consolidated Financial Statements

The reports of the Independent Registered Public Accounting Firm, Consolidated Financial Statements and Schedules are set forth beginning on the following page.

FLEXSHOPPER, INC.

CONTENTS

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of
FlexShopper, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of FlexShopper, Inc. and subsidiaries (the "Company") as of December 31, 2018 and 2017, the related consolidated statements of operations, stockholders' equity, and cash flows for each of the years then ended, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2018 and 2017, and the consolidated results of their operations and their cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

We have served as the Company's auditor since 2014.

/s/ EisnerAmper LLP

EISNERAMPER LLP
New York, New York
March 11, 2019

FLEXSHOPPER, INC.
CONSOLIDATED BALANCE SHEETS

	December 31, 2018	December 31, 2017
ASSETS		
CURRENT ASSETS:		
Cash	$ 6,141,210	$ 4,968,915
Accounts receivable, net	6,375,963	4,259,468
Prepaid expenses	317,160	321,035
Lease merchandise, net	32,364,697	21,415,322
Total current assets	45,199,030	30,964,740
PROPERTY AND EQUIPMENT, net	3,336,664	2,948,164
OTHER ASSETS, net	90,621	95,722
	$ 48,626,315	$ 34,008,626
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Current portion of loan payable under credit agreement to beneficial shareholder net of $167,483 at 2018 and $118,404 at 2017 of unamortized issuance costs	$ 14,252,717	$ 14,094,096
Accounts payable	8,317,216	7,702,145
Accrued payroll and related taxes	393,095	404,346
Promissory notes to related parties, including interest of $64,771	1,814,771	-
Accrued expenses	1,335,505	786,095
Total current liabilities	26,113,304	22,986,682
Loan payable under credit agreement to beneficial shareholder net of $164,752 at 2018 and $39,468 at 2017 of unamortized issuance costs and current portion	14,020,335	4,698,032
Total liabilities	40,133,639	27,684,714
STOCKHOLDERS' EQUITY		
Series 1 Convertible Preferred Stock, $0.001 par value- authorized 250,000 shares, issued and outstanding 239,405 shares at $5.00 stated value	1,197,025	1,197,025
Series 2 Convertible Preferred Stock, $0.001 par value- authorized 25,000 shares, issued and outstanding 21,952 shares at $1,000 stated value	21,952,000	21,952,000
Common stock, $0.0001 par value- authorized 40,000,000 and 15,000,000 shares, issued and outstanding: 17,579,870 shares at 2018 and 5,294,501 at 2017	1,758	529
Additional paid in capital	34,074,488	22,445,691
Accumulated deficit	(48,732,595)	(39,271,333)
Total stockholders' equity	8,492,676	6,323,912
	$ 48,626,315	$ 34,008,626

The accompanying notes to consolidated financial statements are an integral part of these statements.

FLEXSHOPPER, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

	For the years ended December 31,	
	2018	2017
Revenues:		
Lease revenues and fees	$ 82,458,661	$ 65,412,131
Lease merchandise sold	2,269,708	1,634,233
Total revenues	84,728,369	67,046,364
Costs and expenses:		
Cost of lease revenues, consisting of depreciation and impairment of lease merchandise	40,639,232	31,453,246
Cost of lease merchandise sold	1,423,526	998,800
Provision for doubtful accounts	23,239,189	19,135,207
Marketing	7,046,812	6,094,330
Salaries and benefits	8,796,011	7,862,714
Other operating expenses	8,761,815	7,664,566
Total costs and expenses	89,906,585	73,208,863
Operating loss	(5,178,216)	(6,162,499)
Loss on extinguishment of debt	126,622	-
Interest expense including amortization of debt issuance costs	4,156,424	2,168,262
Net loss	(9,461,262)	(8,330,761)
Dividends on Series 2 Convertible Preferred Stock	2,426,840	2,316,396
Net loss attributable to common stockholders	$ (11,888,102)	$ (10,647,157)
Basic and diluted (loss) per common share:		
Net loss	$ (1.39)	$ (2.01)
Weighted average common shares outstanding:		
Basic and diluted	8,574,569	5,290,944

The accompanying notes to consolidated financial statements are an integral part of these statements.

FLEXSHOPPER, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
For the years ended December 31, 2018 and 2017

	Series 1 Convertible Preferred Stock		Series 2 Convertible Preferred Stock		Common Stock		Additional Paid in	Accumulated	
	Shares	Amount	Shares	Amount	Shares	Amount	Capital	Deficit	Total
Balance, January 1, 2017	243,065	$1,215,325	21,952	$21,952,000	5,287,281	$ 529	$22,298,439	$(30,940,572)	$14,525,721
Provision for compensation expense related to stock options	-	-	-	-	-	-	113,952	-	113,952
Exercise of stock options	-	-	-	-	5,000	-	15,000	-	15,000
Conversion of preferred stock to common stock	(3,660)	(18,300)	-	-	2,220		18,300	-	-
Net loss	-	-	-	-	-	-	-	(8,330,761)	(8,330,761)
Balance, December 31, 2017	239,405	1,197,025	21,952	21,952,000	5,294,501	529	22,445,691	(39,271,333)	6,323,912
Provision for compensation expense related to stock options	-	-	-	-	-	-	133,428	-	133,428
Warrants issued in connection with amended credit agreement and subsequent issuance of common stock upon exercise of the warrants	-	-	-	-	175,000	18	523,233	-	523,251
Issuance of shares and warrants in connection with equity raise	-	-	-	-	10,000,000	1,000	10,006,500	-	10,007,500
Offering costs related to equity raise	-	-	-	-	-	-	(1,123,419)	-	(1,123,419)
Conversion of debt and accrued interest to common shares and warrants	-	-	-	-	2,110,369	211	2,089,055	-	2,089,266
Net loss	-	-	-	-	-	-	-	(9,461,262)	(9,461,262)
Balance, December 31, 2018	239,405	$1,197,025	21,952	$21,952,000	17,579,870	$ 1,758	$34,074,488	$(48,732,595)	$ 8,492,676

The accompanying notes to consolidated financial statements are an integral part of these statements.

FLEXSHOPPER, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the years ended December 31,	
	2018	2017
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (9,461,262)	$ (8,330,761)
Adjustments to reconcile net loss to net cash (used in) operating activities:		
Depreciation and impairment of lease merchandise	40,639,232	31,453,246
Other depreciation and amortization	2,410,537	2,090,581
Compensation expense related to issuance of stock options	133,428	113,952
Provision for doubtful accounts	23,239,189	19,135,207
Loss on debt extinguishment	126,622	-
Payment of interest in kind under promissory notes	64,771	-
Payment of interest in kind under credit agreement	248,535	-
Changes in operating assets and liabilities:		
Accounts receivable	(25,355,684)	(21,212,888)
Prepaid expenses and other	6,844	32,296
Lease merchandise	(51,588,607)	(34,298,108)
Security deposits	2,025	(10,206)
Accounts payable	827,715	3,784,397
Accrued payroll and related taxes	(11,251)	108,013
Accrued expenses	557,648	535,437
Net cash (used in) operating activities	(18,160,258)	(6,598,834)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of property and equipment, including capitalized software costs	(2,284,876)	(2,021,538)
Net cash (used in) investing activities	(2,284,876)	(2,021,538)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from exercise of stock options	-	15,000
Proceeds from exercise of warrants	1,750	-
Proceeds from public offering	10,007,500	-
Costs incurred from public offering	(1,123,419)	-
Proceeds from promissory notes	3,465,000	-
Proceeds from loan payable under credit agreement	19,366,359	10,450,000
Repayment of loan payable under credit agreement	(9,959,607)	(2,288,208)
Repayment of installment loan	(11,208)	-
Debt issuance related costs	(128,946)	-
Net cash provided by financing activities	21,617,429	8,176,792
INCREASE/(DECREASE) IN CASH	1,172,295	(443,580)
CASH, beginning of year	4,968,915	5,412,495
CASH, end of year	$ 6,141,210	$ 4,968,915
Supplemental cash flow information:		
Interest paid	$ 2,806,285	$ 1,649,795
Non-cash financing activities:		
Issuance of common stock and warrants to extinguish debt and accrued interest	$ 2,089,266	$ -
Conversion of preferred stock to common stock	$ -	$ 18,300
Warrants issued for debt issuance costs	$ 523,251	$ -

The accompanying notes to consolidated financial statements are an integral part of these statements.

1. BUSINESS:

FlexShopper, Inc. (the "Company") is a corporation organized under the laws of the State of Delaware on August 16, 2006. The Company owns 100% of FlexShopper, LLC, a limited liability company incorporated under the laws of North Carolina on June 24, 2013. The Company is a holding corporation with no operations except for those conducted by FlexShopper LLC. FlexShopper LLC provides through e-commerce sites, certain types of durable goods to consumers on a lease-to-own basis ("LTO") including consumers of third-party retailers and e-tailers.

In January 2015, in connection with the credit agreement entered into in March 2015 (see Note 5), FlexShopper 1 LLC and FlexShopper 2 LLC were organized as wholly owned Delaware subsidiaries of FlexShopper LLC to conduct operations. FlexShopper LLC together with its subsidiaries are hereafter referred to as "FlexShopper."

FlexShopper through FlexShopper 2, LLC (the "Borrower"), is party to a credit agreement (as amended, the "Credit Agreement") with WE2014-1, LLC (the "Lender") (see Note 5). Upon the Commitment Termination Date, which is June 30, 2019 or such later date determined by the Lender in its sole discretion by notice to the Borrower on or before April 1, 2019, but no later than February 28, 2021, the Lender will no longer be obligated to lend money to the Borrower for new leases and all amounts outstanding under the Credit Agreement will be due by the twelve-month anniversary thereof. FlexShopper will have, in the earliest Commitment Termination Date scenario, at least 90 days from the date of notice to the Commitment Termination Date to arrange for a new senior lending facility. If necessary, the Company would curtail marketing expenditures and new lease originations to optimize operating cash flow until a new facility is obtained or the old facility is retired.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation - The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries after elimination of intercompany balances and transactions.

Estimates - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Revenue Recognition - Merchandise is leased to customers pursuant to lease purchase agreements which provide for weekly lease terms with non-refundable lease payments. Generally, the customer has the right to acquire title either through a 90 day same as cash option, an early purchase option, or through payments of all required lease payments, generally 52 weeks, for ownership. On any current lease, customers have the option to cancel the agreement in accordance with lease terms and return the merchandise. Accordingly, customer agreements are accounted for as operating leases with lease revenues recognized in the month they are due on the accrual basis of accounting. Merchandise sales revenue is recognized when the customer exercises the purchase option and pays the purchase price. Revenue from processing fees earned upon exercise by the customer of the 90-day purchase option is recorded upon recognition of the related merchandise sales. Revenue for lease payments received prior to their due date is deferred and recognized as revenue in the period to which the payments relate. Revenues from leases and sales are reported net of sales taxes.

Accounts Receivable and Allowance for Doubtful Accounts - FlexShopper seeks to collect amounts owed under its leases from each customer on a weekly basis by charging his or her bank account or credit card. Accounts receivable are principally comprised of lease payments currently owed to FlexShopper which are past due as FlexShopper has been unable to successfully collect in the aforementioned manner. An allowance for doubtful accounts is estimated based upon revenues and historical experience of balances charged off as a percentage of revenues. The accounts receivable balances consisted of the following as of December 31, 2018 and December 31, 2017:

	December 31, 2018	December 31, 2017
Accounts receivable	$ 10,130,269	$ 6,399,233
Allowance for doubtful accounts	(3,754,306)	(2,139,765)
Accounts receivable, net	$ 6,375,963	$ 4,259,468

The allowance is a significant percentage of the balance because FlexShopper does not charge off any customer account until it has exhausted all collection efforts with respect to each account including attempts to repossess items. In addition, while collections are pursued, the same delinquent customers will continue to accrue weekly charges until they are charged off. The allowance for bad debt at January 1, 2017 was $9,508,708. During the years ended December 31, 2018 and 2017, $21,624,648 and $26,504,150 of accounts receivable balances, respectively, were charged off against the allowance. During the years ended December 31, 2018 and 2017, the provision for bad debts was $23,239,189 and $19,135,207, respectively. The following table shows the activity in the allowance for doubtful accounts:

	December 31, 2018	December 31, 2017
Beginning balance	$ 2,139,765	$ 9,508,708
Provision for write-offs	23,239,189	19,135,207
Accounts written off	(21,624,648)	(26,504,150)
Ending balance	$ 3,754,306	$ 2,139,765

Lease Merchandise - Until all payment obligations for ownership are satisfied under the lease agreement, the Company maintains ownership of the lease merchandise. Lease merchandise consists primarily of residential furniture, consumer electronics, computers, appliances and household accessories and is recorded at cost net of accumulated depreciation. The Company depreciates leased merchandise using the straight-line method over the applicable agreement period for a consumer to acquire ownership, generally twelve months with no salvage value. Upon transfer of ownership of merchandise to customers resulting from satisfaction of their lease obligations, the related cost and accumulated depreciation are eliminated from lease merchandise. For lease merchandise returned or anticipated to be returned either voluntarily or through repossession, the Company provides an impairment reserve for the undepreciated balance of the merchandise net of any estimated salvage value with a corresponding charge to cost of lease revenue. The cost, accumulated depreciation and impairment reserve related to such merchandise are written off upon determination that no salvage value is obtainable. The impairment charge amounted to approximately $5,987,000 and $4,575,000 for the years ended December 31, 2018 and 2017 respectively. The net leased merchandise balances consisted of the following as of December 31, 2018 and 2017:

	December 31, 2018	December 31, 2017
Lease merchandise at cost	$ 48,893,012	$ 34,501,555
Accumulated depreciation	(14,338,295)	(11,974,953)
Impairment reserve	(2,190,020)	(1,111,280)
Lease merchandise, net	$ 32,364,697	$ 21,415,322

Cost of lease merchandise sold represents the undepreciated cost of rental merchandise at the time of sale.

Deferred Debt Issuance Costs - Debt issuance costs incurred in conjunction with the Credit Agreement entered into on March 6, 2015 (see Note 5) are offset against the outstanding balance of the loan payable and are amortized using the straight-line method over the remaining term of the related debt, which approximates the effective interest method. Amortization which is included in interest expense was $476,085 and $473,616 for the years ended December 31, 2018 and 2017, respectively.

Debt issuance costs of $35,000 incurred in conjunction with the subordinated Promissory Notes entered into on January 29, 2018 and January 30, 2018 (see Note 4) are offset against the outstanding balance of the loan payable and are amortized using the straight-line method over the remaining term of the related debt, which approximates the effective interest method. Amortization, which is included in interest expense, was $35,000 for the year ended December 31, 2018.

Software Costs - Costs related to developing or obtaining internal-use software incurred during the preliminary project and post-implementation stages of an internal use software project are expensed as incurred and certain costs incurred in the project's application development stage are capitalized as property and equipment. The Company expenses costs related to the planning and operating stages of a website. Costs associated with minor enhancements and maintenance for the website are included in expenses as incurred. Direct costs incurred in the website's development stage are capitalized as property and equipment. Capitalized software costs amounted to $2,270,712 and $1,894,172 for the years ended December 31, 2018 and 2017, respectively.

Operating Expenses - Operating expenses include corporate overhead expenses such as, stock-based compensation, insurance, occupancy, and other administrative expenses.

Marketing - Marketing costs which primarily consist of advertising are charged to expense as incurred.

Per Share Data - Per share data is computed by use of the two-class method as a result of outstanding Series 1 Convertible Preferred Stock which participates in dividends with the common stock and accordingly, has participation rights in undistributed earnings as if all such earnings had been distributed during the period (see Note 6). Under such method, income available to common stockholders is computed by deducting both dividends declared or, if not declared, accumulated on Series 2 Convertible Preferred Stock from income from continuing operations and from net income. Loss attributable to common stockholders is computed by increasing loss from continuing operations and net loss by such dividends. Where the Company has undistributed net income available to common stockholders , basic earnings per common share is computed based on the total of any dividends paid or declared per common share plus undistributed income per common share determined by dividing net income available to common stockholders reduced by any dividends paid or declared on common and participating Series 1 Convertible Preferred Stock by the total of the weighted average number of common shares outstanding plus the weighted average number of common shares issuable upon conversion of outstanding participating Series 1 Convertible Preferred Stock during the period. Where the Company has a net loss, basic per share data (including income from continuing operations) is computed based solely on the weighted average number of common shares outstanding during the period. As the convertible participating preferred stock has no contractual obligation to share in the losses of the Company, common shares issuable upon conversion of such preferred stock are not included in such computations.

Diluted earnings per share is based on the more dilutive of the if-converted method (which assumes conversion of the participating preferred stock as of the beginning of the period) or the two-class method (which assumes that the participating preferred stock is not converted) plus the potential impact of dilutive non-participating Series 2 Convertible Preferred Stock, options and warrants. The dilutive effect of stock options and warrants is computed using the treasury stock method, which assumes the repurchase of common shares at the average market price during the period. Under the treasury stock method, options and warrants will have a dilutive effect when the average price of common stock during the period exceeds the exercise price of options or warrants. When there is a loss from continuing operations, potential common shares are not included in the computation of diluted loss per share, since they have an anti-dilutive effect.

In computing diluted loss per share, no effect has been given to the issuance of common stock upon conversion or exercise of the following securities as their effect is anti-dilutive:

	Year ended December 31,	
	2018	2017
Series 1 Convertible Preferred Stock	302,960	145,197
Series 2 Convertible Preferred Stock	5,639,745	2,710,124
Series 2 Convertible Preferred Stock issuable upon exercise of warrants	112,785	54,217
Common Stock Options	620,900	335,900
Common Stock Warrants	7,182,488	511,553
	13,858,878	3,756,991

Stock Based Compensation - The fair value of transactions in which the Company exchanges its equity instruments for employee services (share-based payment transactions) is recognized as an expense in the financial statements as services are performed.

Compensation expense is determined by reference to the fair value of an award on the date of grant and is amortized on a straight-line basis over the vesting period. The Company uses the Black-Scholes-Merton (BSM) pricing model to determine the fair value of all stock option awards. See Note 7.

Fair Value of Financial Instruments – The carrying value of certain financial instruments such as cash, accounts receivable, and accounts payable approximate their fair value due to their short-term nature. The carrying value of loans payable under the Credit Agreement increased by unamortized issuance costs (see Note 5) approximates fair value. The carrying value of promissory notes to related parties approximates fair value based upon their interest rates, which approximate current market interest rates.

Income Taxes - Deferred tax assets and liabilities are determined based on the estimated future tax effects of net operating loss carryforwards and temporary differences between the tax bases of assets and liabilities and their respective financial reporting amounts measured at the current enacted tax rates. The Company records a valuation allowance for its deferred tax assets when management concludes that it is not more likely than not that such assets will be recognized.

The Company recognizes a tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the consolidated financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. As of December 31, 2018 and 2017, the Company has not recorded any unrecognized tax benefits.

Interest and penalties related to liabilities for uncertain tax positions will be charged to interest and operating expenses, respectively.

Recent Accounting Pronouncements - In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers, on revenue recognition. The new standard provides for a single five-step model to be applied to all revenue contracts with customers as well as requires additional financial statement disclosures that will enable users to understand the nature, amount, timing and uncertainty of revenue and cash flows relating to customer contracts. The Company adopted this guidance on January 1, 2018. The Company evaluated the impact of the new guidance, but it does not have a material impact on its financial statements as a majority of the Company's revenue generating activities are leasing arrangements which are outside the scope of the guidance.

In February 2016, the FASB issued ASU No. 2016-02, Leases, which is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018. Under ASU 2016-02, lessees will be required to recognize for all leases at the commencement date a lease liability, which is a lessee's obligation to make lease payments arising from a lease measured on a discounted basis, and a right-to-use asset, which is an asset that represents the lessee's right to use or control the use of a specified asset for the lease term. The Company has determined that the new standard will not materially impact the timing of revenue recognition. The new standard will result in the Company classifying bad debt expense incurred as a reduction of lease revenue and fees within the consolidated statements of earnings.

The new standard will also impact the Company as a lessee by requiring all of its operating leases to be recognized on the balance sheet as a right-to-use asset and lease liability. The Company has elected a package of optional practical expedients which includes the option to retain the current classification of leases entered into prior to January 1, 2019. The Company has performed the proper analysis and has concluded that there is no material impact to the consolidated balance sheets, consolidated statements of operations, or consolidated statements of cash flows. The Company will adopt the new standard in the first quarter of 2019.

3. PROPERTY AND EQUIPMENT:

Property and equipment consist of the following:

	Estimated Useful Lives	December 31, 2018	December 31, 2017
Furniture, fixtures and vehicle	2-5 years	$ 155,165	$ 153,909
Website and internal use software	3 years	8,098,483	5,827,771
Computers and software	3-7 years	704,407	691,499
		8,958,055	6,673,179
Less: accumulated depreciation and amortization		(5,621,391)	(3,725,015)
		$ 3,336,664	$ 2,948,164

Depreciation and amortization expense was $1,896,376 and $1,613,888 for the years ended December 31, 2018 and 2017, respectively.

4. LOANS PAYABLE TO RELATED PARTIES:

On January 29, 2018 and January 30, 2018, the Company entered into letter agreements with Russ Heiser, the Company's Chief Financial Officer, and NRNS Capital Holdings LLC ("NRNS") the manager of which is the Chairman of the Company's Board, respectively (such letter agreements, together, the "Commitment Letters"), for consideration of a one-time commitment fee of 1% of the lenders' aggregate commitment, totaling $35,000, pursuant to which the Company issued a subordinated promissory note to each of Mr. Heiser and NRNS (together, the "Notes"). The Commitment Letters provide that Mr. Heiser and NRNS each shall make advances to the Company under the applicable Note in aggregate amounts up to $1,000,000 and $2,500,000, respectively. Payments of principal and accrued interest are due and payable by the Company upon 30 days' prior written notice from the applicable noteholder and the Company can prepay principal and interest at any time without penalty. However, repayment is not permitted without the consent of the Credit Agreement Lender. Upon issuance of the Notes, the Company drew $500,000 and a subsequent $500,000 on February 20, 2018 on the Note held by Mr. Heiser and $2,500,000 on the Note held by NRNS. The Notes bear interest at a rate equal to five (5%) per annum in excess of the non-default rate of interest from time to time in effect under the Credit Agreement entered into on March 6, 2015 (see Note 5) computed on the basis of a 360-day year, which equaled 21.46% at December 31, 2018. Interest expense incurred under the Notes amounted to $161,081 for Mr. Heiser's Note and $413,753 for NRNS' Note, totaling $574,834 for the year ended 2018.

On August 29, 2018, the Company amended and restated the Notes such that (1) the maturity date for the Notes was set at June 30, 2019 and (2) in connection with the completion of the offering described in the Registration Statement on Form S-1 initially filed by the Company with the SEC on August 13, 2018, holders of the Notes may elect to convert up to 50% of the outstanding principal of the Notes plus accrued and unpaid interest thereon into shares of the Company's common stock at a conversion price equal to the price paid to the Company by the underwriters for shares of common stock sold in such offering, net of the underwriting discount.

On September 28, 2018, each of Mr, Heiser and NRNS exercised its option to convert 50% of the outstanding principal and accrued interest to equity. Mr. Heiser elected to convert $500,000 of outstanding principal and $60,766 of accrued interest into 602,974 shares of common stock and warrants exercisable for 301,487 shares of common stock based on a $0.93 conversion price. NRNS converted $1,250,000 of outstanding principal and $151,878 of accrued interest into 1,507,395 shares of common stock and warrants exercisable for 753,697 shares of common stock based on a $0.93 conversion price. As a result of this conversion, the Company recorded a loss on extinguishment of debt of $126,622 in the year ended December 31, 2018 representing the difference between the conversion price and the price per unit offered in the September 2018 equity raise.

5. LOAN PAYABLE UNDER CREDIT AGREEMENT

On March 6, 2015, FlexShopper, through a wholly-owned subsidiary, entered into a credit agreement (as amended from time to time, and including the Fee Letter (as defined therein), the "Credit Agreement") with Wells Fargo Bank, National Association as paying agent, various lenders from time to time party thereto and WE 2014-1, LLC as administrative agent and lender (the "Lender"). FlexShopper is permitted to borrow funds under the Credit Agreement based on FlexShopper's cash on hand and the Amortized Order Value of its Eligible Leases (as such terms are defined in the Credit Agreement) less certain deductions described in the Credit Agreement. As of December 31, 2018, under the terms of the Credit Agreement, subject to the satisfaction of certain conditions, FlexShopper could borrow up to $32,500,000 from the Lender.

The Credit Agreement provides that FlexShopper may not incur additional indebtedness (other than expressly permitted indebtedness) without the permission of the Lender and also prohibits dividends on common stock. 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 FlexShopper in the Credit Agreement and related documents (including certain financial and expense covenants), deficiencies in the borrowing base, certain judgments against FlexShopper and bankruptcy events.

On January 27, 2017, FlexShopper entered into a fifth amendment to the Credit Agreement (the "Omnibus Amendment"). The Omnibus Amendment amended the Credit Agreement to, among other things, (1) extend the Commitment Termination Date, (2) require the Company to refinance the debt under the Credit Agreement upon a Permitted Change of Control (as defined in the Credit Agreement), subject to the payment of an early termination fee, (3) reduce the interest rate charged on amounts borrowed to be LIBOR plus 14% per annum and reduce the non-usage fee on undrawn amounts if the facility is less than 75% drawn on average, and (4) modify certain permitted debt and financial covenants including the covenant of the Borrower to maintain at least $1.5 million in Unrestricted Cash (as defined in the Credit Agreement).

On April 3, 2018, FlexShopper entered into a sixth amendment to the Credit Agreement (the "Sixth Amendment"). The Sixth Amendment, among other things, modified certain financial covenants, including the covenants that Equity Book Value shall not be less than the sum of $8 million and 50% of any positive Net Income (as defined in the Credit Agreement) of the Company; and that the ratio of Consolidated Senior Debt to Equity Book Value shall not exceed 4.75:1. The Company was in compliance with its covenants under the Credit Agreement as of December 31, 2018. The Company had $3,894,713 available under the Credit Agreement as of December 31, 2018.

In August and September 2018, FlexShopper entered into a series of amendments to the Credit Agreement (the "Offering Amendments") to extend the deadline to complete an Equity Raise (as defined in the Credit Agreement) and reduce the required amount of proceeds for such a raise to qualify as an "Equity Raise." If the Equity Raise was consummated on or before September 30, 2018, the Scheduled Commitment Termination Date would be extended to June 30, 2019 or such later date to be determined by the Administrative Agent in its sole discretion, but not later than February 28, 2021, by notice to the Borrower on or before April 1, 2019. The Commitment Maturity Date (as defined in the Credit Agreement) is one year after the Commitment Termination Date. Pursuant to the Offering Amendments, proceeds of a successful Equity Raise were required to be used to prepay loans under the Credit Agreement in an amount necessary such that the outstanding principal balance thereof was less than or equal to 95% of the Borrowing Base (as defined in the Credit Agreement). Additionally, following the Equity Raise, the Borrower must maintain a reserve amount of $1,000,000, which amount may be withdrawn by the Administrative Agent to pay any amounts not paid by the Borrower when due under the Credit Agreement or, in the discretion of the Administrative Agent, to pay any other commercially reasonable costs or expenses of the Borrower. If any portion of the reserve amount is used in such manner, such reserve will be replenished up to $1,000,000 in connection with the monthly applications of proceeds under the Credit Agreement. Additionally, the Offering Amendments amended the Credit Agreement to provide that, among other things, (a) following the Equity Raise, the interest rate on loans under the Credit Agreement will be reduced to a low double-digit percentage per annum beginning on February 1, 2019; and (b) certain increased advance rates established by a previous Credit Agreement amendment were extended through September 30, 2018. On September 25, 2018, FlexShopper completed the Equity Raise.

Principal payable within twelve months of the balance sheet date based on the outstanding loan balance at such date is reflected as a current liability in the accompanying balance sheets. Interest expense incurred under the Credit Agreement for the years ended December 31, 2018 and 2017 was $3,067,569 and $1,694,096, respectively. As of December 31, 2018, the outstanding balance under the Credit Agreement was $28,605,287.

6. CAPITAL STRUCTURE:

The Company's capital structure consists of preferred and common stock as described below:

Preferred Stock

The Company is authorized to issue 500,000 shares of $0.001 par value preferred stock. Of this amount, 250,000 shares have been designated as Series 1 Convertible Preferred Stock and 25,000 shares have been designated as Series 2 Convertible Preferred Stock. The Company's Board of Directors determines the rights and preferences of the Company's preferred stock.

- Series 1 Convertible Preferred Stock - Series 1 Convertible Preferred Stock ranks senior to common stock.

  As of December 31, 2018, each share of Series 1 Convertible Preferred Stock was convertible into 1.26547 shares of the Company's common stock, subject to certain anti-dilution rights. The holders of the Series 1 Convertible Preferred Stock have the option to convert the shares to common stock at any time. Upon conversion, all accumulated and unpaid dividends, if any, will be paid as additional shares of common stock. The holders of Series 1 Convertible Preferred Stock have the same dividend rights as holders of common stock, as if the Series 1 Convertible Preferred Stock had been converted to common stock.

  During the year ended December 31, 2017, 3,660 shares of Series 1 Convertible Preferred Stock were converted into 2,220 shares of common stock. As of December 31, 2017, there were 239,405 shares of Series 1 Convertible Preferred Stock outstanding, which were convertible at a conversion rate of 0.6065 into 145,197 shares of common stock. No shares of Series 1 Convertible Preferred Stock were converted into shares of common stock in the twelve months ended December 31, 2018. As of December 31, 2018, there were 239,405 shares of Series 1 Convertible Preferred Stock outstanding, which are convertible at a conversion rate of 1.27 into 302,960 shares of common stock. The increase in the conversion price from 2017 to 2018 is due to the Series 1 Convertible Preferred Stock anti-dilution adjustment as a result of the September 2018 Equity Raise.

- Series 2 Convertible Preferred Stock - On June 10, 2016, the Company entered into a Subscription Agreement with B2 FIE V LLC (the "Investor"), an entity affiliated with Pacific Investment Management Company LLC, providing for the issuance and sale of 20,000 shares of Series 2 Convertible Preferred Stock "Series 2 Preferred Stock" for gross proceeds of $20.0 million. The Company sold an additional 1,952 shares of Series 2 Convertible Preferred Stock to a different investor for gross proceeds of $1.95 million at a subsequent closing.

  The Series 2 Preferred Shares were sold for $1,000 per share (the "Stated Value") and accrue dividends on the Stated Value at an annual rate of 10% compounded annually. Cumulative accrued dividends as of December 31, 2018 totaled approximately $5,955,201. As of December 31, 2017, each Series 2 Preferred Share was convertible into approximately 124 shares. As of December 31, 2018, each Series 2 Preferred Share was convertible into approximately 257 shares of common stock; provided, the conversion rate is subject to further increase pursuant to a weighted average anti-dilution provision. The increase in the convertible shares from 2017 to 2018 is due to the Series 2 Convertible Preferred Stock anti-dilution adjustment as a result of the September 2018 Equity Raise. The holders of the Series 2 Preferred Shares have the option to convert such shares into shares of common stock and have the right to vote with holders of common stock on an as-converted basis. If the average closing price during any 45-day consecutive trading day period or change of control transaction values the common stock at a price equal to or greater than $23.00 per share, then conversion shall be automatic. Upon a Liquidation Event or Deemed Liquidation Event (each as defined in the Certificate of Designations for the Series 2 Preferred Stock), holders of Series 2 Preferred Shares shall be entitled to receive out of the assets of the Company prior to and in preference to the common stock and Series 1 Convertible Preferred Stock an amount equal to the greater of (1) the Stated Value, plus any accrued and unpaid dividends thereon, and (2) the amount per share as would have been payable had all Series 2 Preferred Shares been converted to common stock immediately before the Liquidation Event or Deemed Liquidation Event.

Common Stock

The Company is authorized to issue 40,000,000 shares of $0.0001 par value common stock. On September 18, 2018, the Company filed with the Secretary of State of the State of Delaware a Certificate of Amendment to its Certificate of Incorporation that increased the authorized shares of common stock of the Company from 15,000,000 shares to 25,000,000 shares. On November 2, 2018, the Company filed with the Secretary of State of the State of Delaware another Certificate of Amendment to its Certificate of Incorporation that increased the authorized shares of common stock of the Company from 25,000,000 to 40,000,000. Each share of common stock entitles the holder to one vote at all stockholder meetings.

In September 2018, the Company completed an offering of 10,000,000 units (the "Offering") issued at a price of $1.00 per unit, each unit consisting of one share of the Company's common stock and one-half (1/2) of one warrant, each whole warrant exercisable for one share of common stock at an exercise price $1.25 per warrant. The common stock and warrants included in the units sold in the Offering were immediately separable and issued separately. The Company raised gross proceeds of $10,007,500, less underwriting fees and commissions of 7%, or approximately $0.7 million, and incurred other offering expenses of approximately $0.4 million paid from the proceeds of the offering, resulting in net proceeds of $8.9 million. In connection with the closing of the Offering, the underwriters exercised their over-allotment option to purchase an additional 750,000 warrants for $7,500 with an exercise price of $1.25 per share (see Note 8).

On September 28, 2018, both Mr. Heiser and NRNS elected to convert 50% of the outstanding principal and accrued interest on their promissory notes into equity interests issued in the Offering (see Note 4). As a result, the Company issued 602,974 shares of common stock and 301,487 warrants to Mr. Heiser and 1,507,395 shares of common stock and 753,697 warrants to NRNS.

7. STOCK OPTIONS

On April 26, 2018 at the Company's annual meeting, the Company's stockholders approved the FlexShopper, Inc. 2018 Omnibus Equity Compensation Plan (the "2018 Plan"). Upon the 2018 Plan's approval, approximately 1,057,000 shares of Company common stock were available for issuance, consisting of 750,000 shares authorized for issuance under the 2018 Plan and an aggregate 307,000 shares then remaining available for issuance under the Company's 2007 Omnibus Equity Compensation Plan (the "2007 Plan") and 2015 Omnibus Equity Compensation Plan (the "2015 Plan", and together with the 2007 Plan, the "Prior Plans"). The 2018 Plan replaced the Prior Plans. No new awards will be granted under the Prior Plans; however, awards outstanding under the Prior Plans upon approval of the 2018 Plan remain subject to and will be paid under the applicable Prior Plan.

Grants under the 2018 Plan and the Prior Plans consist of incentive stock options, non-qualified stock options, stock appreciation rights, stock awards, stock unit awards, dividend equivalents and other stock-based awards. Employees, directors and consultants and other service providers are eligible to participate in the 2018 Plan and the Prior Plans. Options granted under the 2018 Plan and the Prior Plans vest over periods ranging from immediately upon grant to a three-year period and expire ten years from date of grant.

Activity in stock options for the year ended December 31, 2017 and 2018 is as follows:

	Number of options	Weighted average exercise price	Weighted average contractual term (years)	Aggregate intrinsic value
Outstanding at January 1, 2017	411,600	$ 8.63		
Granted	106,000	4.24		
Forfeited	(16,700)	6.01		
Expired	(160,000)	12.50		
Exercised	(5,000)	3.00		
Outstanding at December 31, 2017	335,900	$ 5.61		
Granted	308,000	1.80		
Forfeited	(23,000)	4.99		
Outstanding at December 31, 2018	620,900	$ 3.75	7.78	$ -
Vested and exercisable at December 31, 2018	278,567	$ 5.82	5.81	$ -

The weighted average grant date fair value of options granted during the twelve-month period ending December 31, 2018 and 2017 was $0.69 and $1.65 per share. The Company measured the fair value of each option award on the date of grant using the Black-Scholes-Merton (BSM) pricing model with the following assumptions:

	2018	2017
Exercise price	$ 0.79 to $4.35	$ 4.02 to$ 5.25
Expected life	6.0 years	5.8 years
Expected volatility	38%	38%
Dividend yield	0%	0%
Risk-free interest rate	2.27% to 2.99%	1.89% to 2.06%

The expected dividend yield is based on the Company's historical dividend yield. The expected volatility is based on the historical volatility of the Company's common stock. The expected life is based on the simplified expected term calculation permitted by the Securities and Exchange Commission (the "SEC"), which defines the expected life as the average of the contractual term of the options and the weighted-average vesting period for all option tranches. The risk-free interest rate is based on the annual yield on the grant date of a zero-coupon U.S. Treasury bond the maturity of which equals the option's expected life.

The value of stock options is recognized as compensation expense by the straight-line method over the vesting period. Compensation expense recorded was $133,428 and $113,952 for the year ended December 31, 2018 and December 31, 2017, respectively. Unrecognized compensation cost related to non-vested options at December 31, 2018 amounted to approximately $183,000, which is expected to be recognized over a weighted average period of 2.18 years.

8. WARRANTS:

On April 3, 2018, FlexShopper entered into the Sixth Amendment to the Credit Agreement (see Note 5). The Sixth Amendment provided for warrants exercisable for 175,000 shares of common stock with an exercise price per share of $0.01 to be issued to the Lender. On May 23, 2018, the Lender exercised the warrants. The warrants were accounted for at fair value based on the date of issuance. The $523,233 in proceeds allocated to the warrants was accounted for as paid-in capital with a corresponding discount to the loan payable which was amortized over the remaining life of the agreement.

As part of the Offering in September 2018, the Company issued warrants exercisable for 5,000,000 shares of common stock at an exercise price of $1.25 per share. In connection with the closing of the Offering, the underwriters exercised their over-allotment option to purchase an additional 750,000 warrants for $7,500 with an exercise price of $1.25 per share. The warrants are immediately exercisable and expire five years from the date of issuance. The warrants are listed on the Nasdaq Capital Market under the symbol "FPAYW".

The Company has issued additional warrants exercisable for an aggregate 1,055,184 shares of common stock at an exercise price of $1.25 per warrant to Mr. Heiser and NRNS in connection with partial conversions of their promissory notes. The warrants are immediately exercisable at $1.25 per share of common stock and expire on September 28, 2023.

In connection with the issuance of Series 2 Convertible Preferred Stock in June 2016, the Company issued to the placement agent in such offering warrants exercisable for 439 shares of Series 2 Convertible Preferred Stock at an initial exercise price of $1,250 per share, which expire seven years after the date of issuance.

The following table summarizes information about outstanding stock warrants as of December 31, 2018, all of which are exercisable:

Exercise Price	Common Stock Warrants Outstanding	Series 2 Preferred Stock Warrants Outstanding	Weighted Average Remaining Contractual Life
$ 10.00	200,000		1 years
$ 5.50	177,303		3 years
$ 1.25	6,805,185		5 years
$ 1,250	-	439	5 years
	7,182,488	439	

9. INCOME TAXES:

Reconciliation of the benefit for income taxes from continuing operations recorded in the consolidated statements of operations with the amounts computed at the statutory federal tax rates for each year:

	2018	2017
Federal tax benefit at statutory rate	$ (2,080,000)	$ (2,830,000)
State tax benefit, net of federal tax	(207,000)	(142,000)
Permanent differences	66,000	39,000
Change in statutory rate	7,000	86,000
Change in valuation allowance	2,545,000	(1,934,000)
Change in federal tax rate	-	4,747,000
Other	(331,000)	34,000
Benefit for income taxes	$ -	$ -

Tax affected components of deferred tax assets and deferred tax liabilities at December 31, 2018 and 2017 were as follows:

	2018	2017
Deferred tax assets:		
Equity based compensation	$ 177,000	$ 170,000
Allowance for doubtful accounts	870,000	493,000
Lease merchandise	-	779,000
Fixed assets	(7,034,000)	4,000
Lease impairment	507,000	256,000
Deferred rent	1,000	2,000
Accrued expenses	12,000	45,000
Interest expense carryforward	88,000	-
Tax credit carryforward	32,000	-
Federal loss carry-forwards	15,823,000	6,302,000
State loss carry forward	816,000	696,000
Gross deferred tax assets	11,292,000	8,747,000
Valuation allowance	(11,292,000)	(8,747,000)
Net deferred tax assets	$ -	$ -

Based on consideration of the available evidence including historical losses a valuation allowance has been recognized to offset deferred tax assets, as management was unable to conclude that realization of deferred tax assets were more likely than not.

As of December 31, 2018, the Company has federal net operating loss carryforwards of approximately $75,400,000 and state net operating loss carryforwards of approximately $18,600,000 available to offset future taxable income Losses incurred prior to January 1, 2018, expire from 2024 to 2037. Losses incurred after January 1, 2018 do not expire.

Section 382 of the Internal Revenue Code imposes a limitation on a corporation's ability to utilize net operating loss carryforwards ("NOLs") if it experiences an "ownership change." In general, an ownership change may result from transactions increasing the ownership of certain stockholders in the stock of a corporation by more than 50 percentage points over a three-year period. If such a change were to occur, certain NOLs available to be used could be disallowed and an annual limitation on utilization of other NOLs would occur.

The Company files tax returns in the U.S. federal jurisdiction and various states. At December 31, 2018, federal tax returns remained open for Internal Revenue Service review for tax years after 2014, while state tax returns remain open for review by state taxing authorities for tax years after 2013. The IRS completed an examination of the Company's 2016 tax return during 2018, resulting in a reduction to the net operating loss carryforward of approximately $50,000. There were no other federal or state income tax audits being conducted as of December 31, 2018.

The Company completed its analysis and review of all tax positions taken through December 31, 2018 and does not believe that there are any unrecognized tax benefits related to tax positions taken on its income tax returns.

The Tax Act, among other things, (i) lowered the U.S. corporate income tax rate from 35% to 21% effective January 1, 2018; (ii) provided for 100% expense deduction of certain qualified depreciable assets, including lease merchandise inventory, purchased after September 27, 2017 (but would be phased down starting in 2023); and (iii) failed to extend the manufacturing deduction that expired in 2017 under the terms of previous tax law. The effects of the change in tax rates on deferred tax balances were recognized through continuing operations in the period in which the new legislation was enacted. As the law was enacted on December 22, 2017, the impact to the net deferred tax assets due to the change in tax rate was recognized in the financial statements period ending December 31, 2017 which consisted of a reduction in deferred tax assets and a corresponding reduction in the valuation allowance of $4,747,000.

10. COMMITMENTS:

Lease Commitments

FlexShopper is party to a lease, as amended, for office space through June 2019. In September 2015, FlexShopper entered into a 48-month lease for additional office space in Fort Lauderdale, Florida to accommodate its call and customer service center.

In August 2017, FlexShopper entered into a 12-month lease with two additional three-year options for retail store space in West Palm Beach, Florida. In April 2018, FlexShopper exercised its option to extend the term of the lease to September 30, 2021.

In January 2019, FlexShopper entered into a 108-month lease with an option for one additional five-year term for 21,622 square feet of office space in Boca Raton, FL to accommodate FlexShopper's business and its employees (the "January 2019 Lease"). The monthly rent for this space is approximately $31,500 with annual three percent increases throughout the initial 108-month lease term beginning on the anniversary of the commencement date.

The rental expense for the years ended December 31, 2018 and 2017 was approximately $389,900 and $331,900, respectively. At December 31, 2018, including January 2019 Lease, the future minimum annual lease payments are approximately as follows:

2019	$ 164,000
2020	410,000
2021	421,000
2022	413,000
2023	426,000
Thereafter	2,082,000
	$ 3,916,000

11. SUBSEQUENT EVENTS:

On January 25, 2019, FlexShopper, LLC, a wholly-owned subsidiary of FlexShopper, entered into a letter agreement with 122 Partners, LLC (the lender), pursuant to which FlexShopper, LLC issued a subordinated promissory note to 122 Partners, LLC (the "January Note") in the principal amount of $1,000,000. H. Russell Heiser, Jr., FlexShopper's Chief Financial Officer, is a member of 122 Partners, LLC. Payment of principal and accrued interest under the January Note is due and payable by FlexShopper, LLC on April 30, 2020 and FlexShopper, LLC can prepay principal and interest at any time without penalty. Amounts outstanding under the January Note bear interest at a rate equal to five percent (5.00%) per annum in excess of the non-default rate of interest from time to time in effect under the Credit Agreement. Obligations under the January Note are subordinated to obligations under the Credit Agreement. The January Note is subject to customary representations and warranties and events of default. If an event of default occurs and is continuing, the Borrower may be required to repay all amounts outstanding under the January Note. Obligations under the January Note are secured by essentially all of FlexShopper, LLC's assets, subject to rights of the lenders under the Credit Agreement.

On January 29, 2019, FlexShopper, LLC (the "Tenant") entered into an Office Lease (the "Lease") with Mainstreet CV North 40, LLC (the "Landlord") for the leasing of approximately 21,622 rentable square feet, which the Company expects to use for its new principal executive offices and for its call center, located at 901 Yamato Road, Boca Raton, Florida 33431 (the "New Headquarters"). The term of the Lease and the Tenant's obligation to pay rent thereunder will commence on the later of: (i) July 1, 2019 or (ii) substantial completion of certain improvements to the New Headquarters to be made by the Landlord pursuant to the terms of the Lease (the "Commencement Date"). Under the Lease, the Tenant will lease the New Headquarters from the Landlord for an initial term of nine years (the "Initial Term"), with a one-time option held by the Tenant to extend the term of the Lease for an additional five years. Under the Lease, the Tenant will pay to the Landlord base annual rent in the first year in monthly installments of $31,532, with payments under the Lease increasing by 3% on each yearly anniversary of the Commencement Date throughout the Initial Term.

On February 19, 2019, FlexShopper, LLC entered into a letter agreement with NRNS Capital Holdings LLC ("NRNS"), pursuant to which FlexShopper, LLC issued a subordinated promissory note to NRNS (the "February Note") in the principal amount of $2,000,000. Payment of principal and accrued interest under the February Note is due and payable by FlexShopper, LLC on June 30, 2021 and FlexShopper, LLC can prepay principal and interest at any time without penalty. Amounts outstanding under the February Note bear interest at a rate equal to five percent (5.00%) per annum in excess of the non-default rate of interest from time to time in effect under the Credit Agreement. Obligations under the February Note are subordinated to obligations under the Credit Agreement. The February Note is subject to customary representations and warranties and events of default. If an event of default occurs and is continuing, FlexShopper, LLC may be required to repay all amounts outstanding under the February Note. Obligations under the February Note are secured by essentially all of FlexShopper, LLC's assets, subject to rights of the lenders under the Credit Agreement.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

Not applicable.

Item 9.A Controls and Procedures.

As required by Rule 13a-15(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), our management, including our principal executive officer and principal financial officer, conducted an evaluation as of the end of the period covered by this report, of the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) under the Exchange Act. Based on that evaluation, our principal executive officer and principal financial officer have concluded that these disclosure controls and procedures were effective as of December 31, 2018 to provide reasonable assurance that information required to be disclosed by us in reports that we file under the Exchange Act is recorded, processed, summarized, and reported, within the time periods specified in Securities and Exchange Commission rules and forms and that material information relating to the Company is accumulated and communicated to management, including our principal executive officer and our principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

Report of Management on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining effective internal control over financial reporting as defined in Rule 13a-15(f) of the Exchange Act. Internal control over financial reporting is a process designed to provide reasonable assurance to the Company's management and board of directors regarding the reliability of our financial reporting for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes those policies and procedures that: maintain records that in reasonable detail accurately and fairly reflect our transactions and dispositions of assets; provide reasonable assurance that transactions are recorded as necessary for preparation of our consolidated financial statements in accordance with generally accepted accounting principles; provide reasonable assurance that our receipts and expenditures are made only in accordance with authorizations of management and directors of the Company; and provide reasonable assurance that unauthorized acquisition, use or disposition of Company assets that could have a material effect on our financial statements would be prevented or detected on a timely basis. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a misstatement of our consolidated financial statements would be prevented or detected. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Therefore, even those systems determined to be effective can only provide reasonable assurance with respect to financial statement preparation and presentation.

Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2018. There were no changes in our internal control over financial reporting during the quarter ended December 31, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Our independent auditors have not audited and are not required to audit this assessment of our internal control over financial reporting for the fiscal year ended December 31, 2018.

Item 9.B. Other Information.

Effective as of March 11, 2019, our Board of Directors adopted an amendment to our Amended and Restated Bylaws (the "Bylaws Amendment"), which corrected an inconsistency between our Certificate of Incorporation and Amended and Restated Bylaws, clarifying that a quorum for a meeting of stockholders consists of the holders of a majority of the shares entitled to vote at such meeting.

A copy of our Amended and Restated Bylaws, as amended by the Bylaws Amendment, is filed as Exhibit 3.2 to this Annual Report on Form 10-K and incorporated by reference herein. The preceding summary of the changes effected by the adoption of the Bylaws Amendment is qualified in its entirety by reference to such copy of our Amended and Restated Bylaws filed as Exhibit 3.2 hereto.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required under this item is incorporated by reference to the following sections of our proxy statement for our 2019 Annual Meeting of Stockholders: "Information Concerning Directors and Nominees for Director," "Information Concerning Executive Officers," "Section 16(a) Beneficial Ownership Reporting Compliance," "Corporate Governance Principles and Board Matters," and "The Board of Directors and Its Committees."

Item 11. Executive Compensation.

The information required under this item is incorporated by reference to the following sections of our proxy statement for our 2019 Annual Meeting of Stockholders: "Compensation and Other Information Concerning Directors and Officers" and "The Board of Directors and Its Committees."

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required under this item is incorporated by reference to the following sections of our proxy statement for our 2019 Annual Meeting of Stockholders: "Equity Compensation Plan Table" and "Securities Ownership of Certain Beneficial Owners and Management."

Item 13. Certain Relationships and Related Transactions and Director Independence.

The information required under this item is incorporated by reference to the following sections of our proxy statement for our 2019 Annual Meeting of Stockholders: "Certain Relationships and Related Transactions" and "Corporate Governance Principles and Board Matters."

Item 14. Principal Accounting Fees and Services.

The information required under this item is incorporated by reference to the following sections of our proxy statement for our 2019 Annual Meeting of Stockholders: "Proposal 4–Ratification of Appointment of Independent Registered Public Accounting Firm."

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) The following documents are filed as part of this Form 10-K:

(1) Financial Statements: see "Consolidated Financial Statements" at Item 8 and incorporated herein by reference.

(2) Financial Statement Schedules: Schedules to the Financial Statements have been omitted because the information required to be set forth therein is not applicable or is shown in the accompanying Financial Statements or notes thereto.

(3) Exhibits: The following is a list of exhibits filed as a part of this Annual Report:

Exhibit Number	Description
3.1	Restated Certificate of Incorporation of FlexShopper, Inc. (previously filed as Exhibit 3.1 to the Company's Annual Report on Form 10-K filed on March 8, 2018 and incorporated herein by reference)
3.2	Amended and Restated Bylaws*
3.3	Certificate of Amendment to the Certificate of Incorporation of the Company (previously filed as Exhibit 3.1 to the Company's Current Report on Form 8-K filed on September 21, 2018 and incorporated herein by reference)
3.4	Certificate of Amendment to the Certificate of Incorporation of the Company (previously filed as Exhibit 3.4 to the Company's Quarterly Report on Form 10-Q filed on November 5, 2018 and incorporated herein by reference)
4.1	Certificate of Designations of Series 1 Convertible Preferred Stock (previously filed as Exhibit 3.4 to the Company's General Form of Registration on Form 10-SB filed on April 30, 2007 and incorporated herein by reference)
4.2	Certificate of Decrease of the Number of Authorized Shares of Preferred Stock of FlexShopper, Inc. Designated as Series 1 Preferred Stock (previously filed as Exhibit 4.6 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017 and incorporated herein by reference)
4.3	Certificate of Designations for Series 2 Convertible Preferred Stock (previously filed as Exhibit 4.1 to the Company's Current Report on Form 8-K filed on June 13, 2016 and incorporated herein by reference)
4.4	Common Stock Purchase Warrant, dated October 9, 2014, issued by FlexShopper, Inc. to Fordham Financial Management, Inc. (previously filed as Exhibit 4.1 to the Company's Registration Statement on Form S-1 (File No. 333-201644) and incorporated herein by reference)
4.5	Common Stock Purchase Warrant, dated October 9, 2014, issued by FlexShopper, Inc. to Paulson Investment Company, Inc. (previously filed as Exhibit 4.2 to the Company's Registration Statement on Form S-1 (File No. 333-201644) and incorporated herein by reference)
4.6	Common Stock Purchase Warrant, dated October 9, 2014, issued by FlexShopper, Inc. to Spartan Capital Securities, LLC (previously filed as Exhibit 4.3 to the Company's Registration Statement on Form S-1 (File No. 333-201644) and incorporated herein by reference)
10.1	Office Lease, dated August 7, 2013, by and between Fountain Square Acquisition Company LLC and FlexShopper, LLC (previously filed as Exhibit 10.1 to the Company's Annual Report on Form 10-K filed on March 8, 2018 and incorporated herein by reference)
10.2	First Amendment to Lease Agreement, dated January 24, 2014, by and between Fountain Square Acquisition Company LLC and FlexShopper, LLC (previously filed as Exhibit 10.34 to the Company's Annual Report on Form 10-K for the year ended December 31, 2014 and incorporated herein by reference)
10.3	Second Amendment to Lease Agreement, dated March 14, 2017, by and between Fountain Square Acquisition Company LLC and FlexShopper, LLC (previously filed as Exhibit 10.3 to the Company's Annual Report on Form 10-K filed on March 8, 2018 and incorporated herein by reference)
10.4	Agreement of Lease, dated September 1, 2015, by and between the Oakland Commerce Center, LLC and FlexShopper, LLC (previously filed as Exhibit 10.02 to the Company's Annual Report on Form 10-K filed on March 30, 2016 and incorporated herein by reference)
10.5	Standard Retail Space Lease, dated August 25, 2017, by and between FlexShopper LLC and 1014 Pepper, Inc. (previously filed as Exhibit 10.5 to the Company's Annual Report on Form 10-K filed on March 8, 2018 and incorporated herein by reference)
10.6+	Executive Employment Agreement, dated January 31, 2007, by and between the Company and Brad Bernstein (previously filed as Exhibit 10.3 to the Company's General Form of Registration on Form 10-SB filed on April 30, 2007 and incorporated herein by reference)
10.7	Credit Agreement, dated as of March 6, 2015, by and among FlexShopper 2, LLC, Wells Fargo Bank, N.A., various Lenders from time to time party thereto and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 12, 2015 and incorporated herein by reference)

Exhibit Number	Description
10.8	Investor Rights Agreement, dated as of March 6, 2015, by and among the Company, the Management Stockholders and affiliates of Waterfall (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on March 12, 2015 and incorporated herein by reference)
10.9	Form of Investor Rights Agreement, dated as of March 6, 2015, by and among the Company and the Investors party thereto (previously filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed on March 12, 2015 and incorporated herein by reference)
10.10	Amendment No. 1 to the Credit Agreement, dated November 6, 2015, by and among FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 12, 2015 and incorporated herein by reference)
10.11	Amendment No. 2 to the Credit Agreement, dated November 6, 2015, by and among FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on November 12, 2015 and incorporated herein by reference)
10.12+	Executive Employment Agreement, dated December 1, 2015, by and between the Company and Russ Heiser (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on December 7, 2015 and incorporated herein by reference)
10.13	Amendment No. 3 to the Credit Agreement, Consent and Temporary Waiver, dated February 11, 2016, by and among FlexShopper 2, LLC and WE-2014-1, LLC (previously filed as Exhibit 10.12 to the Company's Annual Report on Form 10-K filed on March 30, 2016 and incorporated herein by reference)
10.14+	2007 Omnibus Equity Compensation Plan (previously filed as Exhibit 99.1 to the Company's General Form of Registration on Form 10-SB filed on April 30, 2007 and incorporated herein by reference)
10.15+	Form of Non-Qualified Stock Option Grant issuable under 2007 Omnibus Equity Compensation Plan (previously filed as Exhibit 99.2 to the Company's General Form of Registration on Form 10-SB filed on April 30, 2007 and incorporated herein by reference)
10.16+	Amendment to 2007 Omnibus Equity Compensation Plan (previously filed as Exhibit 99.3 to the Company's Annual Report on Form 10-K filed on March 29, 2012 and incorporated herein by reference)
10.17+	2015 Omnibus Equity Compensation Plan (previously filed as Exhibit 99.1 to the Company's Current Report on Form 8-K filed on September 21, 2015 and incorporated herein by reference)
10.18+	Form of Stock Option Agreement issuable under 2015 Omnibus Equity Compensation Plan (previously filed as Exhibit 10.18 to the Company's Annual Report on Form 10-K filed on March 30, 2016 and incorporated herein by reference)
10.19	Amendment No. 4 to the Credit Agreement and Waiver, dated March 29, 2016, by and among FlexShopper 2, LLC and WE-2014-1, LLC (previously filed as Exhibit 10.19 to the Company's Annual Report on Form 10-K filed on March 30, 2016 and incorporated herein by reference)
10.20	Investor Rights Agreement, dated as of June 10, 2016, by and among FlexShopper, Inc., B2 FIE V LLC and the other parties thereto (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 13, 2016 and incorporated herein by reference).
10.21	Omnibus Amendment, dated January 27, 2017, by and among FlexShopper 2, LLC, FlexShopper, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 31, 2017 and incorporated herein by reference)
10.22+	Non-Employee Director Compensation Policy (previously filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on August 11, 2017 and incorporated herein by reference)
10.23	Letter Agreement, dated January 9, 2018, by and between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 12, 2018 and incorporated herein by reference)
10.24	Form of Commitment Letter and Subordinated Promissory Note issued by FlexShopper, LLC to each of Russ Heiser and NRNS Capital Holdings LLC (previously filed as Exhibit 10.23 to the Company's Annual Report on Form 10-K filed on March 8, 2018 and incorporated herein by reference)
10.25+	2018 Omnibus Equity Compensation Plan (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 30, 2018)
10.26	Amendment No. 6 to Credit Agreement, dated April 3, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 6, 2018 and incorporated herein by reference)
10.27	Amendment No. 1 to Investor Rights Agreement, dated April 3, 2018, by and among the Company, the Management Stockholders and affiliates of Waterfall (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed April 6, 2018 and incorporated herein by reference)

Exhibit Number	Description
10.29	Amendment No. 7 to Credit Agreement, dated July 31, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed August 6, 2018 and incorporated herein by reference)
10.30	Amendment No. 8 to Credit Agreement, dated August 29, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 31, 2018 and incorporated herein by reference)
10.31	Amendment No. 2 to Investor Rights Agreement, dated August 27, 2018, by and among the Company, B2 FIE V LLC and the other parties thereto (previously filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed August 31, 2018 and incorporated herein by reference)
10.32	Form of Amended and Restated Subordinated Promissory Note issued by FlexShopper, LLC to each of Russ Heiser and NRNS Capital Holdings LLC (previously filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed August 31, 2018 and incorporated herein by reference)
10.33	Amendment No. 9 to Credit Agreement, dated September 22, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 24, 2018 and incorporated herein by reference)
10.34	Amendment No. 10 to Credit Agreement, dated September 24, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC (previously filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed October 1, 2018 and incorporated herein by reference)
10.35	Amendment No. 11 to Credit Agreement, dated September 24, 2018, between FlexShopper 2, LLC and WE 2014-1, LLC*
10.36+	Employment Agreement, dated October 5, 2017, by and between the Company and Ravikumar Radhakrishnan*
10.37	Form of Commitment Letter and Subordinated Promissory Note, dated January 25, 2019, issued by FlexShopper, LLC to 122 Partners, LLC*
10.38	Office Lease, dated January 29, 2019, between FlexShopper, LLC and Mainstreet CV North 40, LLC*
10.39	Consulting Agreement, dated February 19, 2019, between the Company and XLR8 Capital Partners LLC*
10.40	Form of Commitment Letter and Subordinated Promissory Note, dated February 19, 2019, issued by FlexShopper, LLC to NRNS Capital Holdings LLC*
14.1	Code of Ethics for Senior Financial Officers (previously filed as Exhibit 14.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2014 and incorporated herein by reference)
21.0	Subsidiaries of the Company*
23.1	Consent of EisnerAmper LLP*
31.1	Rule 13a-14(a) Certification - Principal Executive Officer*
31.2	Rule 13a-14(a) Certification - Principal Financial Officer*
32.1	Section 1350 Certification - Principal Executive Officer*
32.2	Section 1350 Certification - Principal Financial Officer*
101.INS	XBRL Instance Document,XBRL Taxonomy Extension Schema*
101.SCH	Document, XBRL Taxonomy Extension*
101.CAL	Calculation Linkbase, XBRL Taxonomy Extension Definition*
101.DEF	Linkbase, XBRL Taxonomy Extension Labels*
101.LAB	Linkbase, XBRL Taxonomy Extension*
101.PRE	Presentation Linkbase*

\+ Indicates a management contract or any compensatory plan contract or arrangement.
* Filed herewith.

Item 16. Form 10-K Summary

Not applicable

SIGNATURES

Pursuant to the requirements Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

FLEXSHOPPER, INC.

Dated: March 11, 2019

By: /s/ Brad Bernstein
Brad Bernstein
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

Signatures	Title	Date
/s/ Brad Bernstein Brad Bernstein	President and Chief Executive Officer (Principal Executive Officer)	March 11, 2019
/s/ Russ Heiser Russ Heiser	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 11, 2019
/s/ James D. Allen James D. Allen	Director	March 11, 2019
/s/ Daniel Ballen Daniel Ballen	Director	March 11, 2019
/s/ Howard S. Dvorkin Howard S. Dvorkin	Chairman of the Board of Directors	March 11, 2019
/s/ Sean Hinze Sean Hinze	Director	March 11, 2019
/s/ T. Scott King T. Scott King	Director	March 11, 2019
/s/ Carl Pradelli Carl Pradelli	Director	March 11, 2019

Exhibit 3.2

AMENDED AND RESTATED

BYLAWS OF FLEXSHOPPER, INC.

ARTICLE I

Meeting of Stockholders

Section 1.1. *Annual Meetings*. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Delaware, as may be designated by resolution of the board of directors (the "Board of Directors") of FlexShopper, Inc. (the "Corporation") from time to time. Any other proper business may be transacted at the annual meeting.

Section 1.2. *Special Meetings*.

(A) Special meetings of stockholders for any purpose or purposes, unless otherwise prescribed by statute or by the Corporation's certificate of incorporation, as amended, restated, supplemented or otherwise modified (the "Certificate of Incorporation"), (1) may be called at any time by the order of a majority of the Whole Board (defined below), the Chairman of the Board, the Chief Executive Officer or the President (in the absence of a chief executive officer), and (2) shall be called by the Secretary upon the written request of the holders of record of at least a majority in voting power of the issued and outstanding shares of stock of the Corporation (the "Requisite Percentage"), subject to and in compliance with these Bylaws. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. For purposes of these Bylaws, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

(B) Any request by stockholders to call a special meeting in accordance with Section 1.2(A)(2) of these Bylaws shall (1) be delivered to, or mailed to and received by, the Secretary of the Corporation at the Corporation's principal executive offices, (2) be signed by each stockholder, or a duly authorized agent of such stockholder, requesting the special meeting, (3) set forth the purpose or purposes of the meeting, and (3) include all of the information required by Section 1.13(A)(2) as to any nominations proposed to be presented and any other business proposed to be conducted at such special meeting and as to the stockholder(s) proposing such business or nominations,. Any such request shall also include a representation by the stockholder(s) proposing such business that within five business days after the record date for any such special meeting such stockholder(s) will supplementally provide such information as of the record date for such special meeting. A special meeting requested by stockholders shall be held at such date, time and place within or without the State of Delaware as may be fixed by the Board of Directors; provided, however, that the date of any such special meeting shall not be more than ninety (90) days after the request to call the special meeting is received by the Corporate Secretary.

(C) Notwithstanding the foregoing, a special meeting requested by stockholders in accordance with Section 1.2(A)(2) of these Bylaws shall not be held if: (1) the stated business to be brought before the special meeting is not a proper subject for stockholder action under applicable law, (2) the Board of Directors has called or calls for an annual or special meeting of stockholders to be held within one hundred twenty (120) days after the request for the special meeting is delivered to or received by the Secretary and the Board of Directors determines in good faith that the business of such annual or special meeting includes (among any other matters properly brought before the annual or special meeting) the purpose specified in the request, (3) an annual or special meeting was held not more than one hundred twenty (120) days before the request to call the special meeting was received by the Corporation which included the purpose specified in the request, and (4) the special meeting requested by stockholders involves or was made in a manner that involved a violation of or does or did not comply with the Certificate of Incorporation, these Bylaws, Regulation 14A under the Exchange Act (as hereinafter defined) or other applicable law.

(D) A stockholder may revoke a request for a special meeting at any time by written revocation delivered to, or mailed to and received by, the Secretary. If, at any time after receipt by the Secretary of the Corporation of a proper request for a special meeting of stockholders, there are no longer valid requests from stockholders holding in the aggregate at least the Requisite Percentage, whether because of revoked requests or otherwise, the Board of Directors, in its discretion, may cancel the special meeting (or, if the special meeting has not yet been called, may direct the Chairman of the Board or the Secretary of the Corporation not to call such a meeting).

Section 1.3. *Notice of Meetings*. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

Section 1.4. *Adjournments*. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.5. *Quorum*. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding voting power of the shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. In the absence of a quorum, then either (i) the chairperson of the meeting or (ii) a majority in voting power of the stockholders so present (in person or by proxy) and entitled to vote may adjourn the meeting from time to time in the manner provided in Section 1.4 of these Bylaws until a quorum shall attend. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. *Organization*. Meetings of stockholders shall be presided over by the Chairman of the Board of Directors or, in his or her absence, by the Chief Executive Officer or, in his or her absence, by the President or, in his or her absence, by a Vice President or, in the absence of the foregoing persons, by a chairman designated by the Board of Directors or, in the absence of such designation, by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7. *Voting; Proxies*. Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, be approved by the affirmative vote of a majority of the votes cast on the matter.

Section 1.8. *Fixing Date for Determination of Stockholders of Record*.

(A) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 1.9. *List of Stockholders Entitled to Vote*. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.9 or to vote in person or by proxy at any meeting of stockholders.

Section 1.10. *Action by Written or Electronic Consent of Stockholders*. Any action which is required to be or may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice to stockholders and without a vote if consents in writing or by electronic communication, setting forth the action so taken, shall have been signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or to take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Section 1.11. *Inspectors of Election*. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 1.12. *Conduct of Meetings*. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.13. *Notice of Stockholder Business and Nominations.*

(A) *Annual Meetings of Stockholders.* (1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors or any committee thereof, or (c) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 1.13 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.13.

(2) For any nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 1.13, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90^{th}) day, nor earlier than the close of business on the one hundred twentieth (120^{th}) day, prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120^{th}) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to such annual meeting or the tenth (10^{th}) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

Such stockholder's notice shall set forth: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, and (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the Corporation, (v) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination, and (vii) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The foregoing notice requirements of this Section 1.13 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act, and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. The Corporation may require any proposed nominee to furnish such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 1.13 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at the annual meeting is increased effective after the time period for which nominations would otherwise be due under paragraph (A)(2) of this Section 1.13 and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.13 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10^{th}) day following the day on which such public announcement is first made by the Corporation.

(B) *Special Meetings of Stockholders*. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or any committee thereof or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 1.13 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 1.13. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 1.13 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120^{th}) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to such special meeting or the tenth (10^{th}) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) *General*. (1) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 1.13 shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.13. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.13 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(2)(c)(vi) of this Section 1.13) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 1.13, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.13, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.13, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Section 1.13, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service, or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 1.13, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 1.13; provided however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 1.13 (including paragraphs (A)(1)(c) and (B) hereof), and compliance with paragraphs (A)(1)(c) and (B) of this Section 1.13 shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the penultimate sentence of (A)(2), business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 1.13 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the Corporation’s proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

ARTICLE II

Board of Directors

Section 2.1. *Number; Qualifications*. Subject to the Certificate of Incorporation, the Board of Directors shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Whole Board. Directors need not be stockholders.

Section 2.2. *Election; Resignation; Vacancies*. The Board of Directors shall initially consist of the persons named as directors in the Certificate of Incorporation or elected by the incorporator of the Corporation, and each director so elected shall hold office until the first annual meeting of stockholders or until his or her successor is duly elected and qualified. At the first annual meeting of stockholders and at each annual meeting thereafter, the stockholders shall elect directors each of whom shall hold office for a term of one year or until his or her successor is duly elected and qualified, subject to such director's earlier death, resignation, disqualification or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Such resignation shall take effect when such notice is given unless the notice specifies (a) a later effective date, or (b) an effective date determined upon the happening of an event or events, such as the failure to receive the required vote for reelection as a director and the acceptance of such resignation by the Board of Directors. Unless otherwise specified in the notice of resignation, the acceptance of such resignation shall not be necessary to make it effective. Unless otherwise provided by law or the Certificate of Incorporation, any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled only by a majority of the remaining members of the Board of Directors, although such majority is less than a quorum, and each director so elected shall hold office until the expiration of the term of office of the director whom he or she has replaced or until his or her successor is elected and qualified.

Section 2.3. *Regular Meetings*. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine.

Section 2.4. *Special Meetings*. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chief Executive Officer, the Secretary, or by any two members of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting either by first class United States mail at least four days before such special meeting, or by overnight mail, courier service, electronic transmission, or hand delivery at least 24 hours before the special meeting or such shorter period as is reasonable under the circumstances.

Section 2.5. *Telephonic Meetings Permitted*. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to these Bylaws shall constitute presence in person at such meeting.

Section 2.6. *Quorum; Vote Required for Action*. At all meetings of the Board of Directors the directors entitled to cast a majority of the votes of the Whole Board shall constitute a quorum for the transaction of business. Except in cases in which the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.7. *Organization*. Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors or, in his or her absence, by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. *Action by Unanimous Consent of Directors*. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the board or committee in accordance with applicable law.

Section 2.9. *Chairman of the Board and Vice-Chairman of the Board*. The Board of Directors may elect one or more of its members to serve as Chairman or Vice-Chairman of the Board and may fill any vacancy in such position at such time and in such manner as the Board of Directors shall determine. The Chairman of the Board, if any, shall preside at all meetings of the Board of Directors at which he or she is present and shall perform such duties and possess such powers as are designated by the Board of Directors. If the Board of Directors appoints a Vice-Chairman of the Board, he or she shall, in the absence or disability of the Chairman of the Board, perform the duties and exercise the powers of the Chairman of the Board and shall perform such other duties and possess such other powers as may from time to time be designated by the Board of Directors. The fact that a person serves as either Chairman of Vice-Chairman of the Board shall not make such person considered an Officer of the Corporation.

ARTICLE III

Committees

Section 3.1. *Committees*. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

Section 3.2. *Committee Rules*. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

ARTICLE IV

Officers

Section 4.1 *Officers*. The officers of the Corporation may consist of a Chief Executive Officer, a Chief Financial Officer, a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time determine, which may include, without limitation, one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. Each of the Corporation's officers shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be chosen by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly chosen and qualified, or until such person's earlier death, disqualification, resignation or removal.

Section 4.2 *Removal, Resignation and Vacancies*. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Such resignation shall take effect when such notice is given unless the notice specifies (a) a later effective date, or (b) an effective date determined upon the happening of an event or events, such as the failure to receive the required vote for reelection as a director and the acceptance of such resignation by the Board of Directors. Unless otherwise specified in the notice of resignation, the acceptance of such resignation shall not be necessary to make it effective. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly chosen and qualified.

Section 4.3 *Chief Executive Officer*. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Chairman of the Board of Directors. Unless otherwise provided in these Bylaws, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders and of the Board of Directors.

Section 4.4 *President*. The President shall be the chief operating officer of the Corporation, with general responsibility for the management and control of the operations of the Corporation. The President shall have the power to affix the signature of the Corporation to all contracts that have been authorized by the Board of Directors or the Chief Executive Officer. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine. In the absence of a separately appointed President, the Chief Executive Officer shall be the President.

Section 4.5 *Chief Financial Officer*. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine. In the absence of a separately appointed Treasurer, the Chief Financial Officer shall be the Treasurer.

Section 4.6 *Vice Presidents*. The Vice President shall have such powers and duties as shall be prescribed by his or her superior officer or the Chief Executive Officer. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.7 *Treasurer*. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.8 *Secretary*. The powers and duties of the Secretary are to: (i) act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders, and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) see that all notices required to be given by the Corporation are duly given and served; (iii) act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) have charge of the books, records and papers of the Corporation, and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.9 *Additional Matters*. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 4.10 *Execution of Contracts and Instruments*. All contracts, deeds, mortgages, bonds, certificates, checks, drafts, bills of exchange, notes and other instruments or documents to be executed by or in the name of the Corporation shall be signed on the corporation's behalf by such officer or officers, or other person or persons, as may be so authorized (i) by the Board of Directors, or (ii) subject to such limitations, if any, as the Board of Directors may impose, by the Chief Executive Officer. Such authority may be general or confined to specific instances and, if the Board of Directors or Chief Executive Officer (whichever grants authority) so authorizes or otherwise directs, may be delegated by the authorized officers to other persons. Unless otherwise provided in such resolution, any resolution of the Board of Directors or a committee thereof authorizing the Corporation to enter into any such instruments or documents or authorizing their execution by or on behalf of the Corporation shall be deemed to authorize the execution thereof on its behalf by the Chief Executive Officer, the President, Chief Financial Officer or any Vice President (an "Authorized Officer"). Furthermore, each Authorized Officer shall be authorized to enter into any contract or execute any instrument in the name of and on behalf of the Corporation in matters arising in the ordinary course of the Corporation's business and to the extent incident to the normal performance of such Authorized Officer's duties.

ARTICLE V

Stock

Section 5.1. *Certificates*. The shares of the Corporation may be certificated or uncertificated in accordance with the Delaware General Corporation Law, and shall be entered in the books of the Corporation and registered as they are issued. The issue of shares in uncertificated form shall not affect shares represented by a certificate until the certificate is surrendered to the Corporation. Any certificates representing shares of the Corporation's stock shall be in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by such stockholder in the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by any two authorized officers of the Corporation certifying the number of shares owned by such holder in the Corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Section 5.2. *Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates*. The Corporation may issue (i) a new certificate of stock or (ii) uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

ARTICLE VI

Indemnification and Advancement of Expenses

Section 6.1. *Right to Indemnification*. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the Corporation.

Section 6.2. *Prepayment of Expenses*. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, *provided*, *however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 6.3. *Claims*. If a claim for indemnification (following the final disposition of such proceeding) or advancement of expenses under this Article VI is not paid in full within thirty (30) days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.4. *Nonexclusivity of Rights*. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5. *Other Sources*. The Corporation’s obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6.6. *Amendment or Repeal*. Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these Bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

Section 6.7. *Other Indemnification and Advancement of Expenses*. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII

Forum for Adjudication of Disputes

Section 7.1. *Forum Selection*. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for all "internal corporate claims"; provided the Court of Chancery possesses personal jurisdiction over the indispensable parties named as defendants. In the event that the Court of Chancery does not possess personal jurisdiction over the indispensable parties named as defendants, then the internal corporate claims shall be brought in another state or federal court located in the State of Delaware; provided that such other court possesses personal jurisdiction over the indispensable parties named as defendants. For purposes of this Section 7.1, "internal corporate claims" mean claims, including claims in the right of the Corporation (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which Title 8 of the Delaware Code confers jurisdiction upon the Court of Chancery.

ARTICLE VIII

Miscellaneous

Section 8.1. *Fiscal Year*. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 8.2. *Seal*. The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 8.3. *Method of Notice*. Whenever notice is required by law, the Certificate of Incorporation or these Bylaws to be given by the Corporation to any director, committee member or stockholder, personal notice shall not be required and any such notice may be given in writing (a) by mail, addressed to such director, committee member or stockholder at his or her address as it appears on the books of the Corporation, or (b) by any other method permitted by law (including, but not limited to, overnight courier service, facsimile, electronic mail or other means of electronic transmission) directed to the addressee at his, her or its address most recently provided to the Corporation. Any notice given by the Corporation by mail shall be deemed to have been given at the time when deposited in the United States mail. Any notice given by the Corporation by overnight courier service shall be deemed to have been given when delivered to such service. Any notice given by the Corporation by facsimile, electronic mail or other means of electronic transmission that generally can be accessed by or on behalf of the receiving party at substantially the same time as it is transmitted shall be deemed to have been given when transmitted, unless the Corporation receives a prompt reply that such transmission is undeliverable to the address to which it was directed.

Section 8.4. *Waiver of Notice*. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 8.5. *Form of Records*. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

Section 8.6. *Amendment of Bylaws*. Subject to any additional votes set forth in the Certificate of Incorporation, these Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the stockholders or by the Board of Directors.

Section 8.7. *Registered Stockholders*. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 8.8. *Facsimile Signature*. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Approved effective: March 11, 2019

Exhibit 10.35

AMENDMENT NO. 11 TO CREDIT AGREEMENT

This **AMENDMENT NO. 11 TO CREDIT AGREEMENT** (this "Agreement") is made and entered into as of December 28, 2018 between FLEXSHOPPER 2, LLC (the "Company") and WE 2014-1, LLC (the "Administrative Agent" and "Lender").

BACKGROUND

WHEREAS, the Company, the Administrative Agent, Wells Fargo Bank, National Association, as paying agent (the " Paying Agent") and various lenders from time to time party thereto (the "Lenders") are party to a certain Credit Agreement, dated March 6, 2015 (as amended, supplemented and otherwise modified as of the date hereof, the "Credit Agreement");

WHEREAS, the parties to the Credit Agreement desire to amend the Credit Agreement;

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

SECTION 1. Defined Terms. Capitalized definitional terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

SECTION 2. Amendment to the Credit Agreement. Effective as of the date first written above, upon the satisfaction of the conditions set forth in Section 3 below, the Credit Agreement is hereby amended as follows:

(a) Appendix A to the Credit Agreement is hereby deleted in its entirety and Appendix A attached hereto is substituted therefor.

SECTION 3. Effectiveness. This Agreement shall become effective as of the date first written above upon delivery to the Administrative Agent of counterparts of this Agreement duly executed by each of the parties hereto.

SECTION 4. Binding Effect; Ratification.

(a) The Credit Agreement, as amended hereby, remains in full force and effect. Any reference to the Credit Agreement from and after the date hereof shall be deemed to refer to the Credit Agreement as amended hereby, unless otherwise expressly stated.

(b) Except as expressly amended hereby, the Credit Agreement shall remain in full force and effect and each is hereby ratified and confirmed by the parties hereto.

(c) The Company represents and warrants to each Lender that each and every of its representations and warranties contained in Section 4 of the Credit Agreement, as amended hereby, are true and correct as of the date hereof.

(d) Notwithstanding anything to the contrary herein or in the Credit Document, by signing this Agreement, neither the Lender nor the Administrative Agent is waiving or consenting, nor has either of them agreed to waive or consent to in the future, the breach of (or any rights and remedies related to the breach of) any provisions of any of the Credit Documents.

(e) The Company agrees to promptly reimburse the Administrative Agent for all of the reasonable out-of-pocket expenses, including, without limitation, reasonable legal fees, it has heretofore or hereafter incurred or incurs in connection with the preparation, negotiation and execution of this Agreement and all other instruments, documents and agreements executed and delivered in connection with this Agreement.

SECTION 5. Miscellaneous.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF NEW YORK GENERAL OBLIGATIONS LAW).

(b) The captions and headings used herein are for convenience of reference only and shall not affect the interpretation hereof.

(c) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(d) Executed counterparts of this Agreement may be delivered electronically.

[SIGNATURES FOLLOW]

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

ADMINISTRATIVE AGENT and LENDER:

WE 2014-1, LLC

By: /s/ Brian Breakstone
Name: Brian Breakstone
Title: Authorized Person

COMPANY:

FlexShopper 2, LLC

By: /s/ Brad Bernstein
Name: Brad Bernstein
Title: CEO & President

Exhibit 10.36

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered as of October 5, 2017, ("Effective Date") by and between FlexShopper, LLC, a North Carolina limited liability company ("Employer"), and Ravikumar Radhakrishnan ("Employee").

WHEREAS, Employer desires to hire Employee, and Employee desires to accept employment with Employer pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of Employee's employment or continued employment by Employer, the parties agree as follows:

1. Employment. Employer hereby employs the Employee and the Employee hereby accepts such employment, upon the terms and conditions hereinafter set forth.

2. Definitions.

2.1. "Company Documentation" shall mean notes, memoranda, reports, lists, records, calendars, sketches, schematics, models, client information, specifications, software programs/applications/ algorithms/code, books, files, forms, papers, emails, accounts, data, documentation and other materials of any nature and in any form, whether written, printed, digital or otherwise, whether prepared by Employee or anyone else, relating to any matter within the scope of the business of Employer, its affiliates or concerning any of their dealings or affairs.

2.2. "Competitive Business" shall mean:

2.2.1. The rent-to-own ("RTO"), also referred to as a lease-to-own, business operated through the internet, smart phones, smart phone applications or any other remote device; and

2.2.2. Engaging in a business activity that is the same as, similar to, or in any way may be construed as being competitive with Employer's activities, products or services of the type conducted, offered or provided by Employer within the twelve (12) month period prior to the termination of Employee's employment with Employer.

2.3. "Confidential Information" shall mean any information concerning the organization, business, operations, technology, intellectual property, clients, referral sources or finances of Employer that is maintained by it as confidential. Such Confidential Information shall include, but is not limited to, information regarding accounting, production, operations, software programs/applications/algorithms/ code, customer lists, price lists, pricing information, cost data, contracts, bids, financial reports, procedures, business plans and strategies, personnel records, projects, plans, proposals, inventions, products, quotes to clients, job details, designs, market research and development data or analyses, technical information, training and operational materials, research and development, marketing activities and procedures, methods, know-how, techniques, systems, processes and credit, financial and other data concerning Employer or its customers.

2.4. "Intellectual Property Rights" shall mean all rights in and to U.S. and foreign (i) patents, patent disclosures and inventions (whether patentable or not); (ii) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing; (iii) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (iv) trade secrets, know-how and other confidential information; and (v) all other intellectual property rights, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

2.5. "Pre-Existing Intellectual Property Rights" shall mean all Intellectual Property Rights owned by Employee or by Employee jointly with any third parties, that were created or invented by Employee prior to the period of his/her employment by Employer and relate in any way to the business or contemplated business, products, activities, research or development of Employer including, but not limited to, any invention and works of authorship of any registrations and applications arising from or related to the foregoing.

2.6. "Protected Customer" shall mean any person or entity: (i) to which Employer provided any service; (ii) to which Employer sold any product; (iii) to which Employer marketed or solicited; or (iv) with whom Employee had material contact, within the twelve (12) month period prior to the termination of Employee's employment with Employer. For the purposes of this Agreement, Employee had "material contact" with a customer if: (i) Employee marketed, solicited or dealt with such person or entity on behalf of Employer; (ii) such person or entity's dealings with Employer were coordinated by Employee; (iii) Employee was provided or had access to Confidential Information regarding such person or entity as a result of Employee's employment with Employer; or (iv) such person or entity received products or services from Employer with respect to which Employee received commissions, compensation or other earnings within the twelve (12) month period prior to the termination of Employee's employment with Employer.

2.7. "Restricted Area" shall mean within the United States.

2.8. "Work Product" shall mean all writings, works of authorship, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, materials and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, amended, conceived or reduced to practice by Employee individually or jointly with others during the period of his/her employment by Employer and relate in any way to the business or contemplated business, products, activities, research or development of Employer or result from any work performed by Employee for Employer (in each case, regardless of when or where the work product is prepared or whose equipment or other resources is used in preparing the same), all rights and claims related to the foregoing and all printed, physical and electronic copies and other tangible embodiments thereof.

3. Term; Termination. Employee shall begin employment with Employer on the Effective Date. Such employment shall continue until terminated by either Employee or Employer. This employment shall be at-will.

3.1. Nothing herein shall be deemed to create an agreement for employment of Employee for any specified term or period of time. Employer expressly agrees that at any time the Employee may resign or otherwise terminate the Employee's employment with Employer, for any reason or for no reason. Likewise, the Employee expressly agrees that at any time the Employer may terminate the employment of the Employee for any reason or for no reason.

3.2. In the event the Employee's employment is terminated, by either party, for any reason or no reason, with or without cause, Employee shall be entitled to accrued but unpaid base compensation through the effective date of termination, and shall not be entitled to any other base compensation whatsoever. Employee acknowledges and agrees that commission, bonus, incentive or other contingent compensation ("Additional Compensation") are only paid to employees who are actively employed on the day the Additional Compensation is paid and, therefore, that any Additional Compensation (including commissions or bonuses related to work completed prior to termination) that has not been paid to Employee as of the effective date of termination will be forfeited.

4 . Position; Compensation. Employee initially shall be employed in the position, and for the compensation, described on Exhibit A attached hereto. Employee expressly understands and agrees that from time to time Employer in its sole discretion may change the job responsibilities or title of Employee, and may modify the compensation payable to Employee.

5. Benefits. Employee shall be entitled to participate in those employee benefit plans and programs of Employer, to the extent Employee qualifies, pursuant to and in accordance with the terms of such plans and programs. Employee expressly understands and agrees that Employer in its sole discretion may from time to time modify, add, or terminate plans or programs made available to or offered for the benefit of the Employee and other employees of Employer.

6. Employer Policies. Employee acknowledges that the Employer maintains a handbook containing the required policies and procedures of the Employer, that a copy of this handbook is made available to each employee, and that from time to time the Employer may modify or add policies and procedures. Employee acknowledges receipt of a copy of the policy and procedure handbook; agrees to read all such policies and procedures contained therein and all modifications or additions thereto as issued; shall remain familiar with them; and agrees to abide by all such policies and procedures of Employer.

7 . Obligations to Others. Employee understands that Employer prohibits its employees from utilizing any confidential information or trade secrets of any prior employer of Employee or any third party during the term or course of employment by Employer. Employee expressly covenants and represents that Employee has not retained any materials containing any confidential or trade secret information of any prior employer; and Employee agrees not to utilize any confidential or trade secret information of any prior employer, or of any other third party, at any time while employed by the Employer.

Employee represents and warrants that Employee is not now, and will not be on the date Employee starts working at Employer, a party to any agreement, contract or understanding, whether of employment, agency, or otherwise, that would in any way conflict with, restrict or prohibit Employee from undertaking and performing Employee's job responsibilities with Employer, and that Employee has the full right, power and authority to enter into this Agreement.

Employee agrees to defend, indemnify and hold harmless Employer from all costs (including attorneys' fees), damages and/or liabilities that Employer incurs arising out of or relating to Employee's breach of the foregoing representations and warranties or any suit or claim based on any restrictive contract, covenant or agreement to which Employee is subject to on the date of this Agreement.

8. Confidentiality. Employee acknowledges that the Confidential Information is valuable, special and a unique asset of Employer, access to and knowledge of which is essential to Employee's performance of his/her duties with Employer. Employee shall not at any time, whether during or after Employee's employment with Employer, disclose to any person or entity any Confidential Information, except as authorized by Employer in writing, and shall not use or attempt to use any Confidential Information, except as may be required in the course of his/her employment with Employer.

Additionally, Employee shall not disclose, copy, use or permit to be used any Company Documentation other than for the benefit of Employer. Moreover, Employee shall not, after the termination of his/her employment with Employer, disclose, use or permit others to use any such Company Documentation, it being agreed that all Company Documentation shall be and remain the sole and exclusive property of Employer.

Immediately upon the termination of Employee's employment with Employer and at any other time Employer requests, Employee shall deliver all Confidential Information and/or Company Documentation in his/her possession, custody or control (and all copies thereof) to Employer at its main office or such other location as directed by Employer. Employee further agrees that upon termination of Employee's employment with Employer, Employee shall return to Employer at its main office all of Employer's property including but not limited to computers, keys, passwords, phones, personal data assistants and credit cards. Further, to the extent that Employee used his/her own personal email accounts, computers, cell phones, personal data assistants, thumb drives or other electronic memory or storage devices to access, store or transmit the Company Documentation, immediately upon the termination of Employee's employment with Employer and at any other time Employer requests, Employee shall delete all Confidential Information and Company Documentation from Employee's property and Employee agrees Employer shall have the right upon forty-eight (48) hours written notice to inspect Employee's property to verify that Employer's Confidential Information and Company Documentation has been deleted.

9. Customer Proprietary and Confidential Information. Employee acknowledges he/she will have access to certain confidential, privileged and/or proprietary information of Employer's customers. Employee acknowledges that all information and documentation received from Employer's customers is considered confidential and/or proprietary to the customer, regardless of its form or whether the documents are marked as such, and except to the extent that such information or documentation has been intentionally publicly disclosed by the customer. Realizing the significance of Employer's ability to maintain the confidentiality of its customer information to overall success, Employee agrees to all of following.

9.1. Employee shall not use or duplicate customer information or documentation except as is reasonably required and only for the purposes of completing assigned job responsibilities for Employer.

9.2. Except to the extent authorized in the course of performing his/her employment duties, Employee shall not disclose customer information or documentation for any reason or in any manner to any person who is not actively employed by Employer or the customer to whom the information belongs. Employee shall obtain specific written authorization from Employer prior to disclosing customer information or documentation to any person who is not actively employed by Employer or the customer to whom the information belongs.

9.3. Employee shall not use or allow the use of customer information or documentation, or any portion thereof, for the personal benefit or advantage of Employee or any other person or entity except Employer.

9.4. Employee shall immediately notify Employer in writing if customer information or documentation was purposely or inadvertently disclosed to unauthorized third parties.

9.5. Upon the termination of Employee's employment with Employer, Employee shall immediately return all customer information or documentation in the Employee's possession, custody or control.

10. Full-Time Employment. Employee is employed on a full-time basis by Employer, and Employee agrees that while Employee is employed by Employer, Employee shall not directly or indirectly in any capacity engage in any business other than Employer's business without Employer's prior written consent. Under no circumstances shall Employee render any services to or be employed by any other person, firm, corporation or other entity engaged in a Competitive Business while employed by Employer.

11. Restrictive Covenants. During Employee's employment with Employer and for a period of twelve (12) month immediately following the termination of such employment, whether termination by Employer or Employee, with or without cause, or otherwise, Employee shall not, except on behalf of Employer, directly or indirectly:

11.1. Own or have a financial or other interest, direct or indirect, as an actual or beneficial owner, in any Competitive Business operating anywhere within the Restricted Area, except nothing herein shall prohibit Employee from owning less than 5% of the outstanding shares in a publicly traded corporation;

11.2. Engage in a Competitive Business, as an employee, proprietor, owner, stockholder, partner, agent, contractor, employer, consultant, affiliate, director, officer, associate or member within the Restricted Area;

11.3. Provide financial or other assistance, act as an agent of, consultant for or advisor to any entity or person(s) who are developing a Competitive Business within the Restricted Area;

11.4. Cause, solicit, induce, persuade or attempt to persuade any Protected Customer or other person who has a business relationship with Employer to: purchase from any person or entity other than Employer services or products that are competitive with or a substitute for the services or products offered by Employer; cease to do business with Employer, reduce the amount of business that it does with Employer; or otherwise adversely alter its business relationship with Employer;

11.5. Induce, recruit, solicit, persuade, or attempt to persuade, any person who either is or has been an employee or independent contractor of Employer to terminate his or her employment or relationship for the purpose of working for Employee or any other person or entity, whether or not a competitor of Employer; or hire or offer to hire any such person; provided, however, that a person shall not be considered an employee or independent contractor of Employer after such person has not been employed or used as an independent contractor, respectively, by Employer for six (6) months; or

11.6. Provide services or products in competition with Employer to any Protected Customer.

12. Necessity, Enforceability and Duration of the Restrictive Covenants. Employee's obligations to Employer in Paragraphs 8, 9 and 11 of this Agreement are independent of any other obligation of Employer (including any promise or agreement contained in this Agreement or any other agreement between Employee and Employer or any obligation that otherwise arises from any aspect of the employment relationship). The existence of any claim or cause of action of Employee against Employer, whether predicated on this Agreement or any other basis, shall not constitute a defense to the enforcement of Paragraphs 8, 9 and 11 of this Agreement.

Employee agrees to the restrictive covenants in this Agreement in consideration of and as a necessary inducement for Employer to employ or continue to employ Employee. Employee expressly stipulates and acknowledges that Employer conducts business throughout the United States and that the restrictive covenants are reasonable as to time, geographic area, and line of business and are reasonably necessary to protect the legitimate business interests of Employer, including trade secrets, other valuable and confidential business information, substantial relationships with customers, and the goodwill that customers associate with Employer's name and business. Employee acknowledges that despite the restrictive covenants herein, he/she will still be able to earn a living, that enforcement of the restrictions as drafted will not impose an economic hardship upon Employee and that the restrictions are reasonable in time and scope and not punitive.

Employee agrees that the duration of the restrictive covenants of this Agreement shall be extended by any period of time during which Employee is in breach of any provision(s) in this Agreement. Further, to the extent that any provision(s) of this Agreement are declared overbroad, void or unenforceable by an authority of competent jurisdiction in a particular jurisdiction, the provision(s) shall be modified by such authority for purposes of enforcement in that jurisdiction to the extent necessary to make the applicable provision(s) valid and enforceable. Modification of a provision of this Agreement to validate its enforcement in any particular jurisdiction, however, will not affect the enforcement of the provision as stated in any other jurisdiction in which it is enforceable. Also, the invalidity of a provision of this Agreement in any particular jurisdiction will not affect the validity or enforcement of that provision in any other jurisdiction where it is otherwise valid.

13. Inventions, Developments and Work Product.

13.1. Intellectual Property Rights.

13.1.1. Pre-Existing Intellectual Property Rights.

13.1.1.1. Employee has attached as Exhibit "B" to this Agreement a list describing with particularity any Pre-Existing Intellectual Property rights including, if applicable, titles and registration and application numbers. The Pre-Existing Intellectual Property will be retained by Employee and will not be owned by or assigned to Employer under this Agreement. If no list is attached as Exhibit "B," Employee hereby represents and warrants that there are no Pre-Existing Intellectual Property Rights.

13.1.1.2. To the extent that Employee incorporates any Pre-Existing Intellectual Property Rights into any Work Product during the period of his/her employment by Employer, Employee hereby irrevocably grants to Employer a royalty-free, fully paid-up, perpetual, transferable, worldwide non-exclusive license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, offer to sell, sell, import and otherwise distribute such Pre-Existing Intellectual Property Rights as part of or in connection with such Work Product and to practice any method related thereto.

13.1.1.3. Employee shall not incorporate any Pre-Existing Intellectual Property Rights or any Intellectual Property Rights that are owned by any third party, including any former employers, into any Work Product without obtaining the prior written consent of Employer.

13.1.2. Work Product. Employee hereby acknowledges and agrees that:

13.1.2.1. All right, title and interest in and to all Work Product as well as any and all Intellectual Property Rights therein and all improvements thereto shall be the sole and exclusive property of Employer.

13.1.2.2. Employer shall have the unrestricted right (but not any obligation), in its sole and absolute discretion, to use, commercialize or market any Work Product or file an application for patent, copyright registration or any other Intellectual Property Rights and prosecute or abandon such application prior to issuances or registration. No royalty or other consideration shall be due or owing to Employee now nor or in the future as a result of such activities.

13.1.2.3. The Work Product is and shall at all times remains the Confidential Information of Employer.

13.2. Work Made for Hire; Assignment. Employee acknowledges that, by reason of being employed by Employer at the relevant times, to the extent permitted by law, all Work Product consisting of copyrightable subject matter is "work made for hire" as defined in the Copyright Act of 1976 (17 U.S.C. §101) and such copyrights are therefore owned by Employer. To the extent that the foregoing does not apply, Employee hereby irrevocably assigns to Employer, and its successors and assigns, for no additional consideration, Employee's entire right, title and interest in and to all Work Product and Intellectual Property Rights therein including, without limitation, the right to sue, counterclaim and recover for all past, present and future infringement, misappropriation or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit Employer's right, title or interest in any Work Product or Intellectual Property Rights so as to be less in any respect than Employer would have had in the absence of this Agreement.

13.3. State Law Limitations on Assignment. Employee understands and acknowledges that Work Product does not include, and any provision of this Agreement requiring Employee to assign (or otherwise providing for ownership by Employer of) rights to an invention does not apply to, any invention that Employee develops entirely on his/her own time without using Employer's equipment, supplies, facilities or trade secret information, except for those inventions that either (i) relate at the time of conception or reduction to practice of the invention directly to Employer's business or actual or demonstrably anticipated research or development of Employer; or (ii) result from any work performed by Employee for Employer.

13.4. Disclosure of Work Product; Maintenance of Records. During his/her employment, Employee shall, from time to time, make written disclosures to Employer of all Work Product and shall at all times keep and maintain adequate, current, accurate and authentic records of all Work Product. Such records may be in the form of notes, sketches, drawings, flow charts, electronic files, reports or any other format that may be specified by Employer. The records shall at all times be the sole and exclusive property of Employer and Employee agrees not to remove such records from Employer's premises except as may be expressly permitted by Employer in its written policies or by its prior written consent.

13.5. Representations and Warranties.

13.5.1. No Conflicts. Employee hereby represents and warrants that he/she is not subject to any obligation to others, including any former employers, that would be inconsistent with any provision of this Paragraph, including with respect to any Pre-Existing Intellectual Property rights and that he/she has the right to grant the license in Paragraph 13(a)(i)(B).

13.5.2. No Infringement. Employee hereby represents and warrants that, to Employee's knowledge, all Pre-Existing Intellectual Property licensed to Employer pursuant to Paragraph 13(a)(i)(B) and all Work Product will not infringe, misappropriate, dilute or otherwise violate any third party's Intellectual Property Rights or other rights; provided that Employee shall not be liable for any infringement, misappropriation, dilution or other violations to the extent arising out of any instructions or materials supplied to Employee by Employer.

13.6. Further Assurances; Power of Attorney. During and after his/her employment, Employee agrees to reasonably cooperate with Employer at Employer's expense to (i) apply for, obtain, perfect and transfer to Employer the Work Product as well as any and all Intellectual Property Rights in the Work Product in any jurisdiction throughout the world; and (ii) maintain, protect and enforce the same including, without limitation, giving testimony and executing and delivering to Employer any and all applications, oaths, declarations, affidavits, waivers, assignments and other documents and instruments as may be requested by Employer. Employee hereby irrevocably grants Employer power of attorney to execute and deliver any such documents on Employee's behalf in his/her name and to do all other lawfully permitted acts to transfer the Work Product to Employer and further the transfer, prosecution, issuance and maintenance of all Intellectual Property Rights therein, to the full extent permitted by law, if Employee does not promptly cooperate with Employer's request (without limiting the rights Employer shall have in such circumstances by operation of law). This power of attorney is coupled with an interest and shall not be affected by Employee's subsequent incapacity.

13.7. Moral Rights. To the extent any copyrights are assigned under this Paragraph, Employee hereby irrevocably waives in favor of Employer, to the extent permitted by applicable law, any and all claims Employee may now or hereafter have in any jurisdiction to all rights of paternity or attribution, integrity, disclosure and withdrawal and any other rights that may be known as "moral rights" in relation to all works of authorship to which the assigned copyrights apply.

14. Remedies. Employee stipulates that a breach or threatened breach by Employee of any of the provisions set forth in Paragraphs 8, 9 and 11 of this Agreement will diminish the value of Employer and will cause irreparable and continuing injury to Employer and its customers for which an adequate legal remedy will not exist. Accordingly, Employee stipulates that, if Employee breaches or threatens to breach any of the provisions of Paragraphs 8, 9 and 11 of this Agreement, Employer will be entitled to the following remedies:

14.1. The entry, by a court having jurisdiction, of an order granting specific performance or injunctive relief, upon the posting of any requisite bond and the filing with the court of an appropriate pleading and evidence specifying the provision(s) of this Agreement breached by Employee; and

14.2. An accounting of and recovery from Employee of all revenue, compensation or other consideration that Employee or any third-party gains from Employee's violating or breaching the provision(s) of this Agreement.

Nothing in this Agreement shall be construed as prohibiting Employer from pursuing any other remedies available for a breach or threatened breach of this Agreement. In addition to the remedies provided in this Agreement, Employee acknowledges that his/her breach of any of the provisions of this Agreement during his/her employment may lead to disciplinary action, up to and including immediate termination.

15. Notification of Future Employer. Employee agrees to disclose this Agreement to all prospective employers whether or not such prospective employer's business is competitive with, or related to, the business of Employer at any time. Employee hereby consents to and agrees that Employer may disclose this Agreement to anyone, at any time, whether or not it has reason to believe that Employee has breached, or threatened to breach, any provision of this Agreement.

16. Legal Matters. The validity, construction, enforcement, and interpretation of this Agreement are governed by the laws of the State of Florida and the federal laws of the United States of America, excluding the laws of those jurisdictions pertaining to resolution of conflicts with laws of other jurisdictions. The parties to this Agreement: (a) consent to the exclusive personal and subject matter jurisdiction of the state and federal courts having jurisdiction over Palm Beach or County, Florida, (b) stipulate that the proper, exclusive, and convenient venue for every legal proceeding arising out of or related to this Agreement or Employee's employment is Palm Beach County, Florida, for a state court proceeding and the Southern District of Florida, West Palm Beach Division, for a federal court proceeding, and (c) waive any defense, whether asserted by motion or pleading, that Palm Beach County, Florida, or the Southern District of Florida, West Palm Beach Division, is an improper or inconvenient venue. Except as otherwise expressly provided in this Agreement, in any litigation or other proceeding between Employee and Employer arising out of or related to this Agreement, the losing party shall reimburse the prevailing party for all attorneys' fees, costs and expenses incurred by that prevailing party.

Employee knowingly, voluntarily and intentionally waives his/her right to a jury trial in any lawsuit between Employee, on the one hand, and Employer, on the other hand, that arises out of or is related to this Agreement or Employee's employment, whether at law or in equity, whether based on a claim or counterclaim arising before or after the effective date of this Agreement, regardless of the nature of the claim or counterclaim and, including but not limited to, tort, contract, corporate and employment claims.

17. Waiver; Modification; Severability. Except as provided above regarding the modification of this Agreement by a competent authority to make any overbroad, void or unenforceable restriction enforceable, an amendment or modification of this Agreement will be valid and effective only if it is in writing and signed by each party to this Agreement. In addition, a waiver of any duty, obligation, or responsibility of a party under this Agreement will be valid and effective only if it is evidenced by a writing signed by or on behalf of the party against whom the waiver is sought to be enforced. No course of dealing or delay by either party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of any right, power, or remedy of that party, except to the extent expressly manifested in writing by that party. Whenever possible, each provision of this Agreement should be construed and interpreted so that it is valid and enforceable under applicable law. However, if a provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable (subject to the above provision regarding the modification of this Agreement by a competent authority to make an overbroad, void or unenforceable restriction valid and enforceable), that provision will be deemed severable from the remaining provisions of this Agreement and will not affect the validity, interpretation, or effect of the other provisions of this Agreement or the application of that provision to other circumstances in which it is valid and enforceable.

18. Assignment; Successors; Survival of Covenants. Employee shall not assign any of his/her rights or delegate any of his/her duties, obligations, or responsibilities under this Agreement without the advance written consent of Employer (which it may refuse to give, in its sole discretion). Employer may assign its rights under this Agreement to any assignee or any successor in interest of all or any part of their business, whether pursuant to a merger, reorganization, or sale, lease, or exchange of assets or stock. This Agreement is binding on, and inures to the benefit of, Employer's assignees and successors in interest and such successors and assignees are authorized to enforce all provisions and restrictive covenants herein.

19. Entire Agreement; Miscellaneous. This Agreement contains the entire agreement of Employer and Employee regarding the subject matter contained herein and supersedes any prior understanding or agreement, whether written or oral, between Employer and Employee with respect to the subject matter contained herein. Employer hereby provides notice to Employee pursuant to 18 U.S.C. §1833 that an individual may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state or local government official, either directly or indirectly, or to any attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer's trade secrets to the attorney and use the trade secret information in the court proceeding if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order. Employee is advised to consult an attorney prior to disclosing any trade secrets or Confidential Information as such immunity is only applicable in limited situations. Employee further understands that nothing contained in this Agreement limits his/her ability to communicate with, or file a complaint or charge with the Equal Employment Opportunity Commission ("EEOC"), the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission ("SEC"), the Department of Justice ("DOJ") or any other federal, state, or local governmental agency or commission (collectively, "Government Agencies"), or otherwise participate in any investigation or proceeding that may be conducted by Government Agencies, including providing documents or other information, without notice to Employer; provided, however, that Employee may not disclose Employer information that is protected by the attorney-client privilege, except as expressly authorized by law. Employee retains the right to communicate with the Government Agencies and such communication can be initiated by him/her or in response to the government and is not limited by any non-disparagement or confidentiality obligation under this Agreement. This Agreement does not limit Employee's right to receive an award from the SEC or DOJ for information provided to the SEC or DOJ.

20. Counterparts/Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of executed copies of this Agreement, or subsequent addendums to this Agreement, by one party to the other using facsimile or any other scanning or imaging technique, shall constitute delivery of original signed counterparts for purposes of binding the parties hereto. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that an electronically signed version of this Agreement shall be deemed (a) to be "written" or "in writing;" (b) to have been signed; and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files.

21. Construction. In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretation that written documents be construed against the party preparing the same shall not be applicable. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party hereto.

22. Acknowledgment. By signing this Agreement, Employee is hereby acknowledging that:

22.1. Employee received a copy of this Agreement for review before signing it;

22.2. Employee read this Agreement carefully before signing it;

22.3. Employee had sufficient opportunity to confer with legal counsel of Employee's choice before signing it; and

22.4. Employee understands his/her obligations under this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year set forth herein.

FLEXSHOPPER, LLC	EMPLOYEE
/s/ Brad Bernstein	/s/ Ravikumar Radhakrishnan
Brad Bernstein, CEO & President	Ravikumar Radhakrishnan

Exhibit 10.37

January 25, 2019

FlexShopper, LLC
2700 N. Military Trail, Suite 200
Boca Raton, Florida 33431

Ladies and Gentlemen:

The purpose of this letter is to advise FlexShopper, LLC, a North Carolina limited liability company ("Borrower"), that Lender hereby commits to provide to Borrower $1,000,000 of subordinated debt financing on the terms set forth in the form of promissory note attached hereto as Exhibit A (the "Subordinated Promissory Note") and on the terms set forth herein. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Subordinated Promissory Note.

Commitment. Lender's commitment is subject only to the following conditions:

(1) On or before January 25, 2019, Borrower shall have paid to Lender a one-time commitment fee in an aggregate amount equal to $20,000 (representing 2% of Lender's aggregate commitment);

(2) Lender's commitment shall be available during the period commencing on the date hereof and ending on May 1, 2020 (the "Commitment Period");

(3) Lender's commitment may be drawn by Borrower in one or more advances (each, a "Subordinated Loan Advance") by delivery of not less than thirty (30) days' prior notice to Lender, which notice shall specify the amount of the Subordinated Loan Advance being requested and the proposed date therefor;

(4) On or prior to the initial Subordinated Loan Advance, Borrower shall have duly executed and delivered to Lender the Subordinated Promissory Note;

(5) Each Subordinated Loan Advance shall be in a minimum amount of $500,000 (or, if less, the entire remaining available commitment); and

(6) Borrower shall provide to Lender copies of the monthly covenant reporting package delivered to, and notices of default received from, the lender under Senior Credit Agreement.

Notwithstanding anything to the contrary contained in the Subordinated Promissory Note, Lender shall be obligated to make Subordinated Loan Advances to Borrower in an aggregate amount equal to $1,000,000 (which shall represent the Maximum Amount under (and as defined in) the Subordinated Promissory Note) subject only to satisfaction of the conditions set forth in this letter agreement.

Representations. Lender hereby represents and warrants that the following are true and correct: (a) Lender is not acquiring the Subordinated Promissory Note (or making any Subordinated Loan Advance) with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act of 1933, as amended, and (b) Lender (i) is an "accredited investor" as defined in Rule 501 promulgated under the Securities Exchange Act of 1934, as amended, and (ii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment in the Subordinated Promissory Note. Further, Lender is familiar with the business and affairs of Borrower and its subsidiaries and has conducted such due diligence as it has deemed necessary and desirable in making its investment decision.

Miscellaneous.

Each party shall be responsible for its own fees and expenses, including, without limitation, legal fees, incurred by it in connection with the Subordinated Promissory Note and the Subordinated Loan Advances.

This letter agreement shall not be assignable by any party hereto without the prior written consent of the other party hereto (and any purported assignment without such consent shall be null and void), and is solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. This letter agreement may not be amended or waived except in a written instrument signed by Borrower and Lender. The provisions of this letter agreement shall remain in full force and effect following the making of all Subordinated Loan Advances. This letter agreement and the Subordinated Promissory Note constitute the entire agreement among the parties hereto with respect to the subject matter hereof and there are no promises, undertakings, representations or warranties by any party hereto or thereto relative to the subject matter hereof not expressly set forth or referred to herein or in the Subordinated Promissory Note. In the event of any conflict between the terms and provisions of this letter agreement and the terms and provisions of the Subordinated Promissory Note, the terms and provisions of this letter agreement shall govern and control.

This letter agreement may be executed in counterparts, each of which shall be deemed an original and all of which counterparts shall constitute one and the same document. Delivery of an executed signature page of this letter agreement by facsimile or electronic (including "PDF") transmission shall be effective as delivery of a manually executed counterpart hereof.

This letter agreement, and all matters relating hereto or thereto or arising therefrom (whether sounding in contract law, tort law or otherwise), shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of North Carolina, without regard to conflicts of laws principles.

Lender shall hold all information regarding Borrower, its affiliates and their businesses obtained by Lender confidential and shall not disclose such information; provided, however, the foregoing shall not be construed to prohibit the disclosure of any information that is or becomes publicly known or information obtained by Lender from sources other than Borrower other than as a result of a disclosure by the Lender known (or that should have reasonably been known) to be in violation of this provision.

We are pleased to have been given the opportunity to assist you.

Sincerely,

/s/ Marc Malaga

By: Marc Malaga
Name: 122 Partners, LLC
Title: Managing Member

Acknowledged and Agreed:

FLEXSHOPPER, LLC

By: /s/ Brad Bernstein
Name: Brad Bernstein
Title: CEO & President

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE BORROWER THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT.

SUBORDINATED PROMISSORY NOTE

$1,000,000.00 January 25, 2019

FOR VALUE RECEIVED, FlexShopper, LLC, a North Carolina limited liability company ("Borrower"), hereby promises to pay to 122 Partners, LLC, a Florida Limited Liability Company ("Lender"), the principal sum of up to One Million and 00/100 Dollars ($1,000,000.00) (the "Maximum Amount"), or such lesser amount as shall have been advanced and remain outstanding hereunder, together with interest thereon, subject to the terms and conditions set forth in this Subordinated Promissory Note (this "Note").

1. Payment of Principal and Interest.

(a) Payments of principal, interest and all other amounts payable on this Note shall be due and payable on April 30, 2020 (the "Maturity Date").

(b) The unpaid principal balance of this Note shall bear interest at a rate equal to five percent (5.00%) per annum in excess of the non-default rate of interest from time to time in effect under that certain Credit Agreement dated as of March 6, 2015 among FlexShopper 2, LLC, as borrower, Wells Fargo Bank, National Association, as paying agent, WE 2014-1, LLC, as administrative agent (the "Administrative Agent"), and the lenders party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "Senior Credit Agreement") computed on the basis of a 360 day year.

(c) If the outstanding principal balance of this Note is not equal to the Maximum Amount for at least ten (10) calendar months during the period commencing on the date hereof and ending on the Maturity Date, then the Borrower shall pay to Lender on the Maturity Date additional interest at the rate set forth in, and as calculated pursuant to, Section 1(b) hereof, on the difference between the Maximum Amount and the actual aggregate outstanding principal amount of this Note during the last ten (10) calendar months of the term hereof.

(d) Borrower may prepay this Note in whole or in part at any time, without premium or penalty.

(e) All payments of principal and interest shall be made in lawful money of the United States of America and shall be made to Lender at Lender's address set forth in Section 13 or at such other place as Lender may designate to Borrower in writing.

(f) Upon Borrower's request, and subject to satisfaction of the conditions set forth in the Commitment Letter, Lender shall from time to time after the date hereof advance additional amounts to Borrower up to the Maximum Amount. Lender shall make a notation on Schedule A hereto of each advance made by Lender and of each prepayment or repayment made by Borrower, which schedule shall be conclusive evidence of the principal amount then outstanding hereunder, absent manifest error, subject to the next sentence. In the event that the Lender fails to make a notation on Schedule A, then the amount showing as owing from Borrower to Lender on the books and records of the Lender shall be conclusive evidence of the principal amount then outstanding hereunder, absent manifest error.

The principal amount of this Note at any time shall be equal to the aggregate amount of all such loans and advances made to Borrower through such time, less the aggregate amount of all repayments of principal of this Note made by Borrower through such time.

2. Security. As collateral security for the payment and satisfaction of the unpaid principal balance of this Note and all interest accrued thereon, and subject to the rights of the Senior Creditors as described in Section 12, Borrower hereby grants to Lender a continuing, first-priority security interest in and to all of the Collateral. The Collateral means each and all of the following:

A. the Accounts;

B. the Equipment;

C. the Inventory;

D. the General Intangibles;

E. the Negotiable Collateral;

F. any money, deposit accounts or other assets of Borrower in which Lender receives a security interest or which hereafter come into the possession, custody or control of Lender;

G. all Supporting Obligations;

H. all Investment Property;

I. all Letter of Credit Rights; and

J. the proceeds of any of the foregoing, including, but not limited to, proceeds of insurance covering the Collateral, or any portion thereof, and any and all Accounts, Equipment, Inventory, General Intangibles, Negotiable Collateral, the Investment Property, the Letter of Credit Rights, the Supporting Obligations, money, deposit accounts or other tangible and intangible property resulting from the sale or other disposition of the Collateral, or any portion thereof or interest therein, and the proceeds thereof.

The capitalized terms used in the definition of the Collateral shall have the meanings ascribed to them under the Uniform Commercial Code as adopted in the State of North Carolina (the "UCC").

3. Representations and Warranties. Borrower hereby represents and warrants to Lender that:

(a) Borrower (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina, (ii) has all requisite limited liability company power and authority to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently, or is currently proposed to be, engaged, (iii) is duly qualified as a foreign entity, licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except to the extent that the failure to so qualify would not have a material adverse effect on Borrower, and (iv) has the limited liability company power and authority to execute, deliver and perform its obligations under this Note and to borrow hereunder;

(b) The execution, delivery and performance by Borrower of this Note (i) has been duly authorized by all necessary action, (ii) do not and will not contravene or violate the terms of its corporate constitutional documents or any amendment thereto or any law applicable to Borrower or its assets, business or properties, (iii) do not and will not (1) conflict with, contravene, result in any violation or breach of or default under any material contractual obligation of Borrower (with or without the giving of notice or the lapse of time or both), (2) create in any other person a right or claim of termination or amendment of any material contractual obligation of Borrower, or (3) require modification, acceleration or cancellation of any material contractual obligation of Borrower, and (iv) do not and will not result in the creation of any lien (or obligation to create a lien) against any property, asset or business of Borrower; and

(c) Borrower has duly executed and delivered this Note and this Note constitutes the legal, valid and binding obligations Borrower, enforceable against Borrower in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

4. Events of Default. The following shall constitute "Events of Default" with respect to this Note:

(a) Borrower shall fail to pay the principal of, or interest on, this Note when the same becomes due and payable in accordance with the terms hereof;

(b) Any representation or warranty made by Borrower in Section 3 hereof shall fail to be true and correct in all material respects or Borrower shall default in the performance of any of its obligations under Section 4 hereof; or

(c) Borrower makes a general assignment for the benefit of its creditors or applies to any tribunal for the appointment of a trustee or receiver of a substantial part of the assets of Borrower, or commences any proceedings relating to Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debts, dissolution or other liquidation law of any jurisdiction; or any such application is filed, or any such proceedings are commenced against Borrower and Borrower indicates its consent to such proceedings, or an order or decree is entered by a court of competent jurisdiction appointing such trustee or receiver, or adjudicating Borrower bankrupt or insolvent, or approving the petition in any such proceedings, and such order or decree remains unstayed and in effect for ninety (90) days.

5. Consequences of Event of Default. Upon the occurrence of any such Event of Default and during the continuation thereof, the unpaid principal balance of this Note and accrued and unpaid interest hereon shall become immediately due and payable upon such occurrence without action by Lender and Lender shall have all other rights and remedies provided by applicable law. Lender shall have all of the rights and remedies of a secured party under the UCC.

6. Remedies are Cumulative. No failure on the part of Lender to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Lender or any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any right, power or remedy. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law, in equity, or in other loan documents.

7. Costs of Collection. In the event that this Note is not paid when due, Borrower shall also pay or reimburse Lender for all reasonable costs and expenses of collection, including, without limitation, reasonable attorneys' fees.

8. Default Interest Rate. Upon the occurrence of any Event of Default, any principal balance remaining unpaid under this Note shall bear interest at a rate per annum equal to two percent (2%) above the interest rate otherwise applicable hereto.

9. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to the conflicts of law provisions thereof.

10. Waiver. Borrower waives presentment for payment, demand, protest, notice of dishonor, notice of protest, diligence on bringing suit against any party hereto, and all defenses on the ground of any extension of the time of payment that may be given by Lender to it. Borrower agrees not to assert against Lender as a defense (legal or equitable), as a set-off, as a counterclaim, or otherwise, any claims Borrower may have against any other party liable to Lender for all or any part of the obligations under this Note. All rights of Borrower hereunder, and all obligations of Borrower hereunder, shall be absolute and unconditional, not discharged or impaired irrespective of (and regard less of whether Borrower receives any notice of): (i) any lack of validity or enforceability of any provision of this Note; (ii) any change in the time, manner or place of payment or performance, or in any term, of all or any of the obligations hereunder or any other amendment or waiver of or any consent to any departure from any provision herein; or (iii) any release of or modifications to or insufficiency, unenforceability or enforcement of the obligations of any guarantor or other obligor. To the extent permitted by law, Borrower hereby waives any rights under any valuation, stay, appraisement, extension or redemption laws now existing or which may hereafter exist and any other circumstance which might otherwise constitute a defense available to, or a discharge of any party with respect to the obligations of Borrower hereunder.

11. No Right of Set-Off. As of the date hereof, Borrower represents that it has no claims or offsets against Lender in breach of contract, breach of warranty, express or implied, negligence or for any other type of legal action under this Note or otherwise.

12. Subordination.

(a) Lender agrees that the obligations represented by this Note shall be in all respects subordinate in payment and junior in priority to all indebtedness, liabilities and other obligations (collectively, the "Senior Debt" and the holders of such Senior Debt, the "Senior Creditors") owing under the Senior Credit Agreement and the other agreements, instruments and documents executed and delivered in connection therewith, as amended, modified or increased (collectively, the "Senior Debt Documents").

(b) Until all Senior Debt shall have been paid in full in cash and all commitments to advance Senior Debt have terminated, (i) no payment may be made on this Note, whether of principal or interest or other obligations, at any time that the "Effective Advance Rate" (as defined in the Senior Debt Documents) exceeds 96% or an "Event of Default" (as defined in the Senior Debt Documents) exists, (ii) the Lender shall not (A) take any action or exercise any remedy against the Borrower under this Note (other than the imposition of the default rate of interest as set forth herein); or (B) commence, or join with any other creditor of the Borrower in commencing any insolvency or similar proceeding against the Borrower (iii) the Lender waives all rights of subrogation, reimbursement and any similar rights with respect to the indebtedness evidenced by this Note and (iv) any and all liens and security interests of Lender in any collateral shall be and hereby are subordinated for all purposes and in all respects to the liens and security interests of the Senior Creditors in such collateral, whether or not valid or perfected, regardless of the time, manner or order of attachment, grant or perfection of any such liens and security interests and regardless of any provision of the Uniform Commercial Code of any jurisdiction or any other law or any other circumstance.

(c) In case any funds shall be paid or delivered to the Lender in violation hereof, such funds shall be held in trust by the Lender for, and paid and delivered to, the Senior Creditors (in the form received, together with any necessary endorsements) upon demand.

(d) The priority of the Senior Debt (whether or not such amounts are deemed allowable or recoverable) set forth above shall continue during any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against the Borrower, under any bankruptcy or insolvency law or laws.

(e) The Lender expressly waives all notice of the acceptance by any Senior Creditor of the subordination and other provisions of this Note.

Without limitation of the foregoing, the Senior Creditors (including, without limitation, the Administrative Agent under the Senior Credit Agreement) are express third party beneficiaries of the terms and conditions contained in this Section 12 and shall be entitled to enforce such terms and conditions directly, as if they were parties to this Note. Furthermore, until all Senior Debt shall have been paid in full in cash and all commitments to advance Senior Debt have terminated, this Section 12 may not be amended, restated, supplemented or otherwise modified without the prior written consent of the Administrative Agent and the Required Lenders (as defined in the Senior Credit Agreement).

13. Notices. Any notice pursuant to this Note must be in writing and will be deemed effectively given to another patty on the earliest of the date (a) three (3) business days after such notice is sent by registered U.S. mail, return receipt requested, (b) one (1) business day after receipt of confirmation if such notice is sent by facsimile, (c) one (1) business day after delivery of such notice into the custody and control of an overnight courier service for next day delivery, (d) one (1) business day after delivery of such notice in person and (e) such notice is received by that party; in each case to the appropriate address below (or to such other address as a party may designate by notice to the other party):

If to Borrower:

FlexShopper, LLC
2700 N. Military Trail, Suite 200
Boca Raton, FL 33431
Attn: Brad Bernstein

If to Lender:

122 Partners, LLC
1250 Spanish River Rd
Boca Raton, FL 33432

14. Severability. Any provision of this Note that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision hereof or the invalid or unenforceable provision in any other situation or in any other jurisdiction. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

15. Counterparts. This Note may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Note constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Note by telecopy or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Note.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed, and Lender has accepted this Note, as of the day and year first above written.

Borrower:

FLEXSHOPPER, LLC

By: /s/ Brad Bernstein
Name: Brad Bernstein
Title: CEO & President

ACCEPTED:

LENDER:

/s/ Marc Malaga
By: Marc Malaga
Name: 122 Partners, LLC
Title: Managing Member

Schedule A to Subordinated Promissory Note

Advancement/Payment Schedule

Date	Amount Advanced	Principal Payment	Principal Balance
January 25, 2019	$ 1,000,000.00		$ 1,000,000.00

Exhibit 10.38

OFFICE LEASE

by and between

Mainstreet CV North 40, LLC, a Delaware limited liability company

("Landlord")

and

FlexShopper, LLC, a North Carolina limited liability company

("Tenant")

Dated as of
the date set forth below Landlord's signature

OFFICE LEASE

THIS OFFICE LEASE (this "Lease") is made as of January 29, 2019, by and between MAINSTREET CV NORTH 40, LLC, a Delaware limited liability company ("Landlord"), and FLEXSHOPPER, LLC, a North Carolina limited liability company (the "Tenant").

LEASE OF PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to all of the terms and conditions set forth herein, those certain premises (the "Premises") described in *Item 3* of the Basic Lease Provisions and as shown in the drawing attached hereto as *Exhibit A-1*. The Premises are located in the Building described in *Item 2* of the Basic Lease Provisions. The Building is located on that certain land (the "Land") more particularly described on *Exhibit A-2* attached hereto, which is also improved with landscaping, parking facilities and other improvements, fixtures and common areas and appurtenances now or hereafter placed, constructed or erected on the Land (sometimes hereinafter referred to as the "Project").

BASIC LEASE PROVISIONS

1.	**Tenant:**	FlexShopper, LLC, a North Carolina limited liability company
2.	**Building Address:**	901 Yamato Road Boca Raton, Florida 33431
3.	**Description of Premises:**	A total of 21,622 square feet of Rentable Area located on the 2nd floor of the Building and commonly referred to as Suites 260.
	Rentable Area:	21,622 square feet of Rentable Area. For purposes hereof, the measurement of the Premises was calculated in accordance with the Standard Method of Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1 – 1996.
	Building Size:	149,284 square feet of Rentable Area [subject to Paragraph 18(c)]
4.	**Tenant's Proportionate Share:**	14.48% (i.e. 21,622 square feet of Rentable Area / 149,284 square feet of Rentable Area) [See Paragraphs 3 and 18(c)]
5.	**Base Rent:**	(See Paragraph 2)
	Months 1 to 12, inclusive:	$378,385.00[1] (calculated on the basis of $17.50 per square foot of Rentable Area/annum)[2]
	Monthly Installment:	$31,532.08[3]

1 Subject to increase in the event Tenant elects to request the Additional Tenant Allowance in accordance with Section 4(c).
2 Plus applicable sales tax thereon and subject to the Abatement Period (hereinafter defined).
3 *Id.*

	Escalation	The Base Rent for the Premises shall be increased by three percent (3%) on each yearly anniversary of the Commencement Date throughout the Initial Term
6.	**Installment Payable Upon Execution:**	An amount equal to one (1) month of Base Rent and Tenant's Proportionate Share of Operating Expenses.
7.	**Security Deposit Payable Upon Execution:**	NONE.
8.	(a) **Initial Term:**	One hundred and eight (108) months, commencing on the Commencement Date and ending at midnight on the day immediately preceding the 108th monthly anniversary of the Commencement Date (See Paragraph 1(a)
	(b) **Renewal Term**	One additional term of five (5) years pursuant to Paragraph1(d)
9.	**Commencement Date:**	The later of (i) July 1, 2019; or (ii) substantial completion of all of the Tenant Improvements (as evidenced by the issuance of a temporary or permanent certificate of occupancy for the Premises or its local equivalent by the appropriate governmental authority, subject to punch-list items identified in the written declaration attached hereto as Exhibit E.
10.	**Brokers** (See Paragraph 19(k)):	
	Landlord's Broker:	Avison Young – Florida, LLC
	Tenant's Broker:	The Easton Group

11. **Number of Parking Spaces:** One hundred thirty (130) unreserved parking spaces, on a "first come, first served" basis, in common with other occupants of the Building, in the surface parking area serving the Building at no charge to Tenant. At Tenant's written election, up to two (2) of the parking spaces may be converted to covered parking spaces for Tenant's exclusive use at a cost of $75.00 per space per month.

12. **Addresses for Notices:**

To: TENANT:

Prior to occupancy of the Premises:

FlexShopper, LLC
2700 N. Military Trail, Suite 200
Boca Raton, FL 33431
Attn: H. Russell Heiser, Jr., CFO

and

FlexShopper, LLC
2700 N. Military Trail, Suite 200
Boca Raton, FL 33431
Attn: Peter Lyons, Controller

After occupancy of the Premises to the same individuals listed above, but substitute the Premises address.

With a copy to:

Greenberg & Strelitz, P.A.
2500 N. Military Trail, Suite 235 Boca Raton, FL 33431
Attn: Jeffrey L. Greenberg, Esq.

or such other address as Tenant may designate in writing.

To: LANDLORD:

Mainstreet CV North 40, LLC
c/o Mainstreet Real Estate Services, Inc.
2101 West Commercial Boulevard, Suite 1200
Fort Lauderdale, Florida 33309

With a copy to:

Broad and Cassel
Attn: James J. Wheeler, Esq.
1905 NW Corporate Boulevard, Suite 310
Boca Raton, Florida 33431

13.	**Address for Payment of Rent:**	**All payments payable under this Lease shall be sent to Landlord at:** c/o Mainstreet Real Estate Services, Inc. 2101 West Commercial Boulevard, Suite 1200 Fort Lauderdale, Florida 33309 or to such other address as Landlord may designate in writing.
14.	**Guarantor:**	None applicable
15.	**Effective Date:**	Date of execution by Landlord
16.	**Tenant Allowances:**	Up to $540,550.00 ($25.00 per square foot of Rentable Area of the Premises).
17.	**The "State" is the state, commonwealth, district or jurisdiction in which the Building is located.**	Florida

This Lease consists of the foregoing introductory paragraphs and Basic Lease Provisions, the provisions of the Standard Lease Provisions (the "Standard Lease Provisions") (consisting of Paragraph 1 through Paragraph 26 which follow) and *Exhibits A-1*, *A-2*, *B*, *C-1*, *C-2*, *D*, *E*, and *F*, all of which are incorporated herein by this reference. In the event of any conflict between the provisions of the Basic Lease Provisions and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control.

STANDARD LEASE PROVISIONS

1. TERM

(a) The Initial Term of this Lease and the Rent (defined below) shall commence in accordance with *Item 9* of the Basic Lease Provisions (the "Commencement Date"). Unless earlier terminated in accordance with the provisions hereof, the Initial Term of this Lease shall be the period shown in *Item 9* of the Basic Lease Provisions. As used herein, "Lease Term" shall mean the Initial Term referred to in *Item 9* of the Basic Lease Provisions, and the "Expiration Date" shall mean the last day of the Initial Term, in each case, subject to any extension of the Initial Term hereof exercised in accordance with the terms and conditions expressly set forth herein. Unless Landlord is terminating this Lease prior to the Expiration Date in accordance with the provisions hereof, Landlord shall not be required to provide notice to Tenant of the Expiration Date. This Lease shall be a binding contractual obligation effective upon execution hereof by Landlord and Tenant, notwithstanding the later commencement of the Initial Term of this Lease.

(b) Keys to the Premises will be delivered to Tenant following Landlord's completion of the "Tenant Improvements," as hereinafter defined in Paragraph 4(a). Tenant shall provide Landlord with copies of certificates of insurance complying in all respects with the terms of this Lease for all insurance required to be provided hereunder prior to entering any portion of the Premises. Tenant agrees that Tenant's entry into the Premises prior to the Commencement Date shall be governed by and subject to all terms, covenants, conditions and obligations of this Lease during the period between the date possession is delivered and the Commencement Date, other than the payment of Rent until the Commencement Date. If the Commencement Date is delayed or otherwise does not occur on the Estimated Commencement Date, set forth in *Item 9* of the Basic Lease Provisions, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom.

(c) Upon Substantial Completion of the Tenant Improvements to the entire Premises by Tenant, Landlord shall prepare and deliver to Tenant, Tenant's Commencement Letter in the form of *Exhibit E* attached hereto (the "Commencement Letter") which Tenant shall acknowledge by executing a copy and returning it to Landlord. If Tenant fails to sign and return the Commencement Letter to Landlord within ten (10) days of its receipt from Landlord, the Commencement Letter as sent by Landlord shall be deemed to have correctly set forth the Commencement Date and the other matters addressed in the Commencement Letter. Failure of Landlord to send the Commencement Letter shall have no effect on the Commencement Date.

(d) Renewal. Provided that no event of default exists under this Lease at the time of delivery of a Renewal Notice or at the commencement of the Renewal Term, as such terms are hereinafter defined, Tenant shall have the option to extend (each an "Extension Option") the Initial Term for one (1) additional term of five (5) years ("Renewal Term") which shall commence as of the date immediately following the expiration of the Initial Term, subject to the covenants and conditions of this subparagraph (1)(d).

(i) Tenant shall give Landlord written notice (a "Renewal Notice") of (a) Tenant's election to exercise its Extension Option with respect to the Renewal Term no later than nine (9) months prior to the expiration of the Initial Term; provided that Tenant's failure to give a Renewal Notice by such time and within such period, whether due to Tenant's oversight or failure to cure any existing defaults after notice and applicable grace periods, if any, or otherwise, shall render this Extension Option null and void. Within thirty (30) days of receipt of the Renewal Notice, Landlord shall advise Tenant in writing of the new Base Rent for the Renewal Term, determined in accordance with subparagraph (1)(d)(iii) below.

(ii) Tenant shall be deemed to have accepted the Premises in its "AS-IS" condition as of the commencement of the Renewal Term, as applicable, subject to any other repair and maintenance obligations of Landlord under this Lease.

(iii) The covenants and conditions of this Lease in force during the Initial Term, as the same may be modified from time to time, shall continue to be in effect during the Renewal Term, except the "Base Rent" for the Renewal Term shall be equal to the "Fair Market Rental Value" (hereinafter defined) as determined by Landlord. As used herein, "Fair Market Rental Value" shall mean the then prevailing renewal market rental rate for comparable space in comparable buildings in the Yamato corridor submarket of Boca Raton, Florida area taking into account, among other considerations, (i) the quality, size, and location of the Building and the Premises, (ii) the lease term, (iii) the creditworthiness of Tenant, and (iv) the extent of services provided to the Premises; (v) market inducements, such as rental concessions, and other inducements given to renewing tenants in the submarket.

Within thirty (30) days after receipt of a Renewal Notice, Landlord shall advise Tenant of the applicable Fair Market Rental Value for Base Rent during the Renewal Term. Tenant, within fifteen (15) days after the date that Landlord advises Tenant of the applicable Base Rent during the Renewal Term, shall either: (a) give Landlord a final binding notice ("Binding Notice") of Tenant's exercise of its option at the Landlord's stated Fair Market Rental Value for Base Rent; or (b) if Tenant disagrees with Landlord's determination of the Fair Market Rental Value, provide Landlord with notice of rejection (the "Rejection Notice"). If Tenant fails to provide Landlord with either a Binding Notice or Rejection Notice within the fifteen (15) day period, then Tenant's Renewal Term, at Landlord's option, shall be deemed null and void and of no further force and effect. If Tenant provides Landlord with a Binding Notice, Landlord and Tenant shall promptly enter into an amendment to this Lease to incorporate the terms of the Renewal Terms, as provided herein.

In the event that Tenant provides Landlord with a Rejection Notice and Landlord and Tenant are unable to agree upon the Fair Market Rental Value for Base Rent during the Renewal Term within fifteen (15) days from the date of Tenant's Rejection Notice, both Landlord and Tenant shall then, within five (5) days of the end of said fifteen (15) day period, (i) submit to each other their respective determinations of Fair Market Rental Value and (ii) each shall appoint an arbitrator who must be an independent licensed appraiser, a Member of the Appraisal Institute and has no less than ten (10) years of experience in the commercial real estate market in which the Premises is located; and notify the other of such appointment. If either Landlord or Tenant fails to timely appoint an arbitrator, the arbitrator selected shall select the second (2^{nd}) arbitrator, who shall be impartial, within five (5) days after such party's failure to appoint. The two arbitrators shall, within fifteen (15) days of their appointment, select from the two determinations originally submitted by Landlord and Tenant the one that is closer to the Fair Market Rental Value as determined by the arbitrators, and said selection shall thereafter be deemed the Fair Market Rental Value. If the two arbitrators so appointed fail to agree as to which of the determinations submitted by Landlord and Tenant is the closest to the actual Fair Market Rental Value within thirty (30) days of their appointment, the two arbitrators shall appoint a third (3^{rd}) arbitrator within five (5) days after the failure of the initial arbitrators to agree on a Fair Market Rental Value, to decide upon which of the two determinations submitted is the closest to the actual Fair Market Rental Value. The arbitrators shall not be permitted to choose any results other than the determination presented by either Landlord or Tenant. The fees and expenses of any arbitration shall be borne by the losing party. The arbitrators' determination shall be final and binding on the parties.

(iv) The Extension Option shall not be transferable by Tenant, except in conjunction with a permissible assignment of Tenant's interest in the Lease in accordance with the applicable provisions hereof.

2. BASE RENT AND SECURITY DEPOSIT

(a) Commencing on the Commencement Date, Tenant agrees to pay during each month of the Lease Term as Base Rent ("Base Rent") for the Premises the sums shown for such periods in *Item 5* of the Basic Lease Provisions, subject to increase in the event that Tenant requests the Additional Tenant Allowance in accordance with Section 4(c) hereof.

Notwithstanding anything to the contrary, Landlord will abate Base Rent for the 1st six (6) months (collectively, the "Abatement Period") immediately following the Commencement Date. In the event the Lease is terminated because of a Tenant event of default prior to the expiration of the Term, Tenant shall immediately pay to Landlord the then unamortized portion of the Base Rent abated during the Abatement Period. Tenant shall pay Additional Rent during the Abatement Period.

(b) Except as expressly provided to the contrary herein, Base Rent shall be payable in consecutive monthly installments, in advance, without demand, deduction or offset, commencing on the Commencement Date and continuing on the first day of each calendar month thereafter until the expiration of the Lease Term. The first full monthly installment of Base Rent and Tenant's Proportionate Share of Operating Expenses shall be payable upon Tenant's execution of this Lease and shall be applied to Base Rent and Tenant's Proportionate Share of Operating Expenses plus sales tax thereon due for the month commencing on the Commencement Date. The obligation of Tenant to pay Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. If the Commencement Date is a day other than the first day of a calendar month, or the Lease Term expires on a day other than the last day of a calendar month, then the Rent for such partial month shall be calculated on a per diem basis. In the event Landlord delivers possession of the Premises to Tenant prior to the Commencement Date, Tenant agrees it shall be bound by and subject to all terms, covenants, conditions and obligations of this Lease during the period between the date possession is delivered and the Commencement Date, other than the payment of Base Rent, in the same manner as if delivery had occurred on the Commencement Date.

(c) Security Deposit. Not applicable.

(d) Base Rent shall be paid to Landlord absolutely net of all Operating Expenses. The provisions for payment of Operating Expenses by means of periodic payment of Tenant's Proportionate Share of estimated Operating Expenses and the year end adjustment of such payments are intended to pass on to Tenant and reimburse Landlord for Tenant's Proportionate Share of all costs and expenses of the nature described in Paragraph 3 of this Lease.

3. ADDITIONAL RENT

(a) Commencing on the Commencement Date Tenant shall pay to Landlord each month as additional rent ("Additional Rent") an amount equal to Tenant's Proportionate Share (defined below) of Operating Expenses (defined below), plus applicable sales tax.

(b) "Tenant's Proportionate Share" is, subject to the provisions of Paragraph 18(c), the percentage number described in *Item 4* of the Basic Lease Provisions. Tenant's Proportionate Share represents, subject to the provisions of Paragraph 18(c), a fraction, the numerator of which is the number of square feet of Rentable Area in the Premises and the denominator of which is the number of square feet of Rentable Area in the Building, as determined and adjusted by Landlord pursuant to Paragraph 18(c).

(c) "Operating Expenses" means all costs, expenses and obligations incurred or payable by Landlord in connection with the operation, ownership, management, repair or maintenance of the Building, the Common Areas of the Building, and the Common Areas of the Project allocated by Landlord to the Building during or allocable to the Lease Term, including without limitation, the following:

(i) Any form of assessment, license fee, license tax, business license fee, levy, charge, improvement bond, tax, gross receipts tax, excise tax, water and sewer rents and charges, utilities and communications taxes and charges or similar or dissimilar imposition imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, or any other governmental charge, general and special, ordinary and extraordinary, foreseen and unforeseen, which may be assessed against any legal or equitable interest of Landlord in the Premises, Building and Common Areas of the Building and the Project (collectively, "Taxes"). Landlord shall pay all Taxes so as to obtain all maximum allowable discounts, if any, and any amount for which the Tenant is liable under this Lease shall be based on the maximum allowable discount for payment of such Taxes, regardless of whether Landlord paid such Taxes on a timely basis to receive such maximum allowable discount. Notwithstanding anything to the contrary, Taxes shall not include any inheritance taxes, gift taxes, transfer taxes, franchise taxes, income taxes, profit taxes, capital levies and excise taxes except as set forth in Paragraph 3(f), or gross receipts taxes (as opposed to a sales tax on rent received). Taxes shall also include, without limitation, reasonable attorneys' fees incurred in attempting to protest, reduce or minimize Taxes.

(ii) The cost of services and utilities (including taxes and other charges incurred in connection therewith) provided to the Premises, the Building or the Project, including, without limitation, water, power, gas, sewer, waste disposal, telephone and cable television facilities, fuel, supplies, equipment, tools, materials, service contracts, janitorial services, waste and refuse disposal, window cleaning, maintenance and repair of sidewalks and Building exterior and services areas, gardening and landscaping; insurance, including, but not limited to, public liability, fire, property damage, wind, hurricane, terrorism, flood, rental loss, rent continuation, boiler machinery, business interruption, contractual indemnification and All Risk or Causes of Loss - Special Form coverage insurance for up to the full replacement cost of the Project and such other insurance as is customarily carried by operators of other similar class office buildings in the city in which the Project is located, to the extent carried by Landlord in its discretion, and the deductible portion of any insured loss otherwise covered by such insurance; except for executive's compensation above the grade of building or project manager, the cost of compensation, including employment, welfare and social security taxes, paid vacation days, disability, pension, medical and other fringe benefits of all persons (including independent contractors) who perform services connected with the operation, maintenance, repair or replacement of the Project; any association assessments, costs, dues and/or expenses relating to the Project; personal property taxes on and maintenance and repair of equipment and other personal property used in connection with the operation, maintenance or repair of the Project; repair and replacement of window coverings provided by Landlord in the premises of tenants in the Project; such reasonable auditors' fees and legal fees as are incurred in connection with the operation, maintenance or repair of the Project except as specifically excluded in the following paragraph; administration fees; a property management fee (which fee may be imputed if Landlord has internalized management or otherwise acts as its own property manager provided however, such charges shall not include any costs associated with executive's salaries above the grade of building manager); the maintenance of any easements leases benefiting the Project, a reasonable allowance for depreciation of personal property used in the operation, maintenance or repair of the Project; except as excluded in the paragraph below, license, permit and inspection fees; all costs and expenses required by any governmental or quasi-governmental authority or by applicable law, for any reason, including capital improvements (required in order to comply with Laws enacted after the Effective Date), whether capitalized or not, and the cost of any capital improvements made to the Project by Landlord that improve life-safety systems or reduce operating expenses and the costs to replace items which Landlord would be obligated to maintain under the Lease (such costs to be amortized on a straight line basis over the usable life of the item; the cost of air conditioning, heating, ventilating, plumbing, elevator maintenance and repair (to include the replacement of components) and other mechanical and electrical systems repair and maintenance (including repair and maintenance of life safety components of any back-up generator); sign maintenance; and Common Areas (defined below) repair, resurfacing, operation and maintenance; the reasonable cost for temporary lobby displays and events commensurate with the operation of a similar class building, and the cost of providing security services, if any, deemed appropriate by Landlord.

The following items shall be excluded from Operating Expenses:

(A) any ground lease rental;

(B) leasing commissions, rent concessions to tenants, attorneys' fees, costs and disbursements and other expenses incurred in connection with leasing, renovating or improving vacant space in the Building or Project for tenants or prospective tenants of the Building or Project;

(C) costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting or redecorating space for tenants or vacant space in the Building or Project;

(D) Landlord's costs of any services provided to tenants for which Landlord is entitled to be reimbursed by such tenants as an additional charge or rental over and above the Base Rent and Operating Expenses payable under the lease with such tenant or other occupant;

(E) any depreciation or amortization of the Premises, Building or Project except as expressly permitted herein;

(F) costs incurred due to a violation of Law (defined below) by Landlord relating to the Building or Project;

(G) interest on debt or amortization payments on any mortgages or deeds of trust or any other debt for borrowed money;

(H) all items and services for which Tenant or other tenants reimburse Landlord outside of Operating Expenses;

(I) repairs or other work occasioned by fire, windstorm or other work paid for through insurance or condemnation proceeds (excluding any deductible);

(J) legal expenses incurred for (i) negotiating lease terms for prospective tenants, (ii) negotiating termination or extension of leases with existing tenants, (iii) proceedings against any other specific tenant relating solely to the collection of rent or other sums due to Landlord from such tenant, or (iv) the development and/or construction of the Building or Project;

(K) interest or other penalties for the late payment of any Taxes;

(L) expenses in connection with services or other benefits that are not offered to Tenant;

(M) costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Building or Project;

(N) cost of items considered capital repairs, replacements, improvements, and equipment under generally accepted accounting principles ("capital items"); except for those capital items specifically permitted in Paragraph 3(c)(ii);

(O) costs incurred by Landlord for repair of damage to the Building and Project, to the extent that Landlord is reimbursed by insurance proceeds, and costs of all capital improvements, regardless of whether such repairs are covered by insurance;

(P) costs, (including all attorneys' fees, and costs of settlement, judgments, and payments) arising from claims, disputes, or potential disputes in connection with potential or actual claims litigation or arbitrations pertaining to this Lease or another lease with a tenant of the Building; and

(Q) repairs resulting from any defect in the original design or construction of the Building and Project.

(d) Operating Expenses for any calendar year during which actual occupancy of the Project is less than one hundred percent (100%) of the Rentable Area of the Project shall be appropriately adjusted to reflect one hundred percent (100%) occupancy of the existing Rentable Area of the Project during such period. In determining Operating Expenses, if any services or utilities are separately charged to tenants of the Project or others, Operating Expenses shall be adjusted by Landlord to reflect the amount of expense which would have been incurred for such services or utilities on a full-time basis for normal Project operating hours. In the event (i) the Commencement Date shall be a date other than January 1, (ii) the date fixed for the expiration of the Lease Term shall be a date other than December 31, (iii) of any early termination of this Lease, or (iv) of any increase or decrease in the size of the Premises, then in each such event, an appropriate adjustment in the application of this Paragraph 3 shall, subject to the provisions of this Lease, be made to reflect such event on a basis determined by Landlord to be consistent with the principles underlying the provisions of this Paragraph 3. In addition, Landlord shall have the right, from time to time, to equitably allocate and prorate some or all of the Operating Expenses among different tenants and/or different buildings of the Project and/or on a building-by-building basis (the "Cost Pools"). Such Cost Pools may include, without limitation, the office space tenants and retail space tenants of the buildings in the Project.

(e) Within a reasonable period after the commencement of each calendar year of the Lease Term following the Commencement Date, Landlord shall give to Tenant a written estimate of Tenant's Proportionate Share of the Operating Expenses for the Building and the Common Areas of the Building and Project for the then current year. Tenant shall pay such estimated amount to Landlord in equal monthly installments, in advance on the first day of each month. Within a reasonable period after the end of each calendar year, Landlord shall furnish Tenant a statement indicating in reasonable detail the Operating Expenses for such period, and the parties shall, within thirty (30) days thereafter, make any payment or allowance necessary to adjust Tenant's estimated payments to Tenant's actual share of such Operating Expenses as indicated by such annual statement. Any amount due Tenant shall be credited against installments next becoming due under this Paragraph 3(e) or refunded to Tenant, if no further sums are due from Tenant.

(f) All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent to be allocated to monthly Operating Expenses.

(g) Tenant shall pay before delinquency, all taxes and assessments (i) levied against any personal property, Alterations, tenant improvements or trade fixtures of Tenant in or about the Premises, (ii) based upon this Lease or any document to which Tenant is a party creating or transferring an interest in this Lease or an estate in all or any portion of the Premises, and (iii) levied for any business, professional, or occupational license fees. If any such taxes or assessments are levied against Landlord or Landlord's property or if the assessed value of the Project is increased by the inclusion therein of a value placed upon such personal property or trade fixtures, Tenant shall upon demand reimburse Landlord for the taxes and assessments so levied against Landlord, or such taxes, levies and assessments resulting from such increase in assessed value. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord.

(h) Any delay or failure of Landlord in (i) delivering any estimate or statement described in this Paragraph 3 or (ii) computing or billing Tenant's Proportionate Share of Operating Expenses shall not constitute a waiver of its right to require an increase in Rent, or in any way impair the continuing obligations of Tenant under this Paragraph 3. In the event of any dispute as to any Additional Rent due under this Paragraph 3, Tenant, an officer of Tenant or Tenant's certified public accountant (but (a) in no event shall Tenant hire or employ an accounting firm or any other person to audit Landlord as set forth under this Paragraph who is compensated or paid for such audit on a contingency basis; and (b) in the event Tenant hires or employs an independent party to perform such audit, Tenant shall provide Landlord with a copy of the engagement letter) shall have the right after reasonable notice and at reasonable times to inspect Landlord's accounting records at Landlord's accounting office. If, after such inspection, Tenant still disputes such Additional Rent, upon Tenant's written request therefor, a certification as to the proper amount of Operating Expenses and the amount due to or payable by Tenant shall be made by an independent certified public accountant mutually agreed to by Landlord and Tenant. If Landlord and Tenant cannot mutually agree to an independent certified public accountant, then the parties agree that Landlord shall choose an independent certified public accountant to conduct the certification as to the proper amount of Tenant's Proportionate Share of Operating Expenses due by Tenant for the period in question; provided, however, such certified public accountant shall not be the accountant who conducted Landlord's initial calculation of Operating Expenses to which Tenant is now objecting. Such certification shall be final and conclusive as to all parties. If the certification reflects that Tenant has overpaid Tenant's Proportionate Share of Operating Expenses for the period in question, then Landlord shall credit such excess to Tenant's next payment of Operating Expenses or, at the request of Tenant, promptly refund such excess to Tenant and conversely, if Tenant has underpaid Tenant's Proportionate Share of Operating Expenses, Tenant shall promptly pay such additional Operating Expenses to Landlord. Tenant agrees to pay the cost of such certification and the investigation with respect thereto and no adjustments in Tenant's favor shall be made unless it is determined that Landlord's original statement was in error in Landlord's favor by more than eight percent (8%). Tenant waives the right to dispute any matter relating to the calculation of Operating Expenses or Additional Rent under this Paragraph 3 if any claim or dispute is not asserted in writing to Landlord within ninety (90) days after delivery to Tenant of the original billing statement with respect thereto. Notwithstanding the foregoing, Tenant shall maintain strict confidentiality of all of Landlord's accounting records and shall not disclose the same to any other person or entity except for (a) Tenant's professional advisory representatives (such as Tenant's employees, accountants, advisors, attorneys and consultants) with a need to know such accounting information, who agree to similarly maintain the confidentiality of such financial information, or (b) disclosure in any action based upon this Agreement; or (c) disclosure pursuant to court order or compulsory process.

(i) Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Proportionate Share of Operating Expenses for the year in which this Lease terminates, Tenant shall within thirty (30) days pay any increase due over the estimated Operating Expenses paid, and conversely, any overpayment made by Tenant shall be promptly refunded to Tenant by Landlord, subject to offset for any amounts due to Landlord from Tenant under this Lease.

(j) The Base Rent, Additional Rent, late fees, and other amounts required to be paid by Tenant to Landlord hereunder are sometimes collectively referred to as, and shall constitute, "Rent."

(k) Further notwithstanding the foregoing, Tenant's share of Operating Expenses, other than Taxes, insurance, government mandated costs (such as increases in minimum wages), and utilities and cost of casualty not covered by insurance (collectively, the "**Non-Controllable Expenses**"), shall not be increased during any calendar year by more than a maximum of five percent (5%) of such expenses for the preceding calendar year, calculated on a cumulative and compounding basis (i.e., Landlord may carry forward unused increases in Operating Expenses). This cap shall not apply to the Non-Controllable Expenses.

4. IMPROVEMENTS AND ALTERATIONS

(a) Landlord shall improve the Premises using standard Building materials equal to or of better quality than those materials currently used in the Premises and finishes in accordance with a space plan being prepared by Treieschmann Dumala Architectural Group (the "Architect"), a draft of which is dated October 17, 2018 (the "Space Plan"), and attached hereto as Exhibit "B." Within ten (10) days from the date hereof, Tenant shall submit an updated Space Plan for Landlord's review and approval, provided however, Tenant shall have no right to request any changes to the Space Plan that would materially alter the exterior appearance or basic nature of the Building or the Building systems. Landlord shall have three (3) business days after receipt of the updated Space Plan to review and to give Tenant written notice of Landlord's approval of the updated Space Plan or its requested changes thereto. If Landlord requests any changes to the updated Space Plan, then Tenant shall make those changes and re-submit within three (3) business days thereof the further revised Space Plan to Landlord for approval. Landlord and Tenant shall continue such process until Tenant addresses Landlord's comments and Landlord issues written approval of the Space Plan (the "Final Space Plan"). Within fifteen (15) days after the date of the Final Space Plan, Tenant shall cause the Architect to prepare and submit construction drawings to Landlord for approval based on the Final Space Plan and in accordance with the same procedure set forth above. Landlord shall not be required to install any partition or improvements which are not in conformity with the Final Space Plan. The improvements referenced in this Paragraph shall be referred to as the "Tenant Improvements." Notwithstanding any provision in this Lease to the contrary, the Tenant Improvements shall be completed in a good and workmanlike manner and shall comply with all laws. In addition to (and not in lieu of) Landlord's obligations under this Lease, Landlord shall cause the general contractor performing the Tenant Improvements to provide a warranty in favor of Tenant against defects in workmanship and materials for a period of twelve (12) months after the Commencement Date. If Tenant notifies Landlord of any such defects within such twelve (12) month period, then Landlord will cause to be repaired, the defects as soon as practicable and shall use commercially reasonable efforts to repair the defects with minimal disruption and interference to Tenant's use of the Premises. At any time after the expiration such twelve (12) month period, Landlord will promptly, upon written request of Tenant, assign to Tenant (to the extent assignable, available and without warranty or representation by Landlord) all rights which Landlord may have under the contract for the construction of the Tenant Improvements against the contractor respecting defects in workmanship and materials.

(b) Except as expressly provided herein and described in the Space Plan, Landlord shall not be responsible for any other renovation, construction or installation of any improvements relating to the Premises. Tenant acknowledges that Landlord has not made any representations or warranties with respect to the condition of the Premises and neither Landlord nor any assignee of Landlord shall be liable for any latent defect therein. The taking of possession of the Premises by Tenant shall be conclusive evidence that the Premises were in good and satisfactory condition at the time such possession was taken. Landlord, through its designated contractor (the "Contractor"), will perform and complete the Tenant Improvements as described in the Space Plan. All costs related to change-orders, alterations and additions to the Space Plan requested by Tenant and approved by Landlord which increase the cost of the Tenant Improvements above the Tenant Allowance shall be borne by Tenant. All work will be scheduled by Landlord in such a manner as to not inconvenience other tenants in the Building. Landlord and its Contractor assume no liability for Tenant's equipment, furniture or other personal property located at the Premises during the construction of the Tenant Improvements and Tenant shall hold Landlord, its contractors and their respective agents and employees ("Landlord's Indemnified Parties") harmless and indemnify same from and against any damage or injury relating to Tenant's equipment, furniture or personal property left in the Premises during the construction of the Tenant Improvements. Tenant hereby acknowledges that Tenant shall be solely responsible for the installation and any other associated costs relating to the use of low voltage wiring, card readers and telephone cabling in the Premises.

(c) Tenant Improvement Allowance. Landlord shall contribute an improvement allowance not to exceed the product of the Rentable Area of the Premises (21,622 rentable square feet of Rentable Area) and $25.00 (i.e. $540,550.00) (the "Tenant Allowance") toward payment for the "hard costs" of the Tenant Improvements, Consultant Fee, and FF&E Costs, subject to the conditions and limitations set forth herein. If the Tenant Allowance is inadequate to pay for the sum total of the "hard costs" for the Tenant Improvements, Consultant Fee, and FF&E Costs, then within five (5) days after the date of the Final Space Plan, Tenant may elect upon delivery of written notice to Landlord to request that Landlord increase the Tenant Allowance by the lesser of (i) the difference between the amount of the Tenant Allowance and the sum total amount of the "hard costs" of the Tenant Improvements, Consultant Fee, and FF&E Costs; or (ii) $5.00 per square foot of Rentable Area in the Premises (the "Additional Tenant Allowance"). In no event shall the Additional Tenant Allowance exceed $108,110.00. Each Monthly Installment of Base Rent for the Premises over the Initial Term shall be increased by an amount calculated based upon the amortized Additional Tenant Allowance [4] over a period of 102 months, together with eight percent (8%) interest per annum. Landlord shall update Section 5 of the Basic Lease Provisions prior to the Commencement Date to account for the Additional Tenant Allowance (if applicable). The Tenant Allowance plus the Additional Tenant Allowance, if any, shall be collectively referred to as the " Maximum Tenant Allowance " which shall not exceed $648,660.00s. As used herein, the phrase "hard costs" means all costs and expenses incurred by Landlord in connection with the construction and design of the Tenant Improvements, including, without limitation, amounts paid to the Architect (including, permitting expeditor fees incurred by Landlord in connection with the Tenant Improvements), engineers, contractors, subcontractors and material suppliers. Except as otherwise provided below, the Maximum Tenant Allowance may not be applied to any other costs such as, but not limited to, the cost of Tenant's trade fixtures, equipment, moving expenses, low voltage wiring, card readers and cabling. Tenant hereby acknowledges that all Tenant Improvements paid for using any portion of the Maximum Tenant Allowance shall be the sole property of Landlord from the date of construction or installation in the Premises and shall remain in the Premises following the expiration of the Lease. Notwithstanding anything to the contrary, Tenant may elect to apply a portion of the unused Maximum Tenant Allowance against the cost and expense of (i) the fees paid to J. Kelly Advisors, Inc., as the Tenant's designated relocation consultant (" Consultant Fee") engaged by Tenant to supervise its relocation into the Premises from Tenant's current office location; and (ii) the purchase or installation of Tenant's equipment including, but not limited to, demountable partitions, furniture, and low voltage wiring (collectively, the "FF&E Costs"), provided that the Consultant Fee and FF&E Costs do not exceed an aggregate of twenty-five percent (25%) of the Maximum Tenant Allowance [5] (to the extent funds are available and have not been exhausted in connection with the construction of the Tenant Improvements), Landlord shall then reimburse Tenant for Consultant Fees and FF&E Costs from the Maximum Tenant Allowance (subject to the limitations set forth herein [6]) within thirty (30) days after the substantial completion of the Tenant Improvements and Tenant's delivery to Landlord true copies of final contractor's affidavit and waivers of lien in accordance with Florida Construction Lien Law (F.S. 713) for work performed and all paid receipts, bills, invoices and supporting information concerning payment for the Consultant Fee, and FF&E Costs that Landlord may reasonably request.

(d) Tenant shall be solely responsible for all costs associated with completing the Tenant Improvements over and above the Maximum Tenant Allowance. If the cost to construct and install the Tenant Improvements will exceed the Maximum Tenant Allowance, Tenant shall deliver to Landlord, within ten (10) days following Landlord's written request, an amount equal to one-half (1/2) of such excess. Within thirty (30) days following substantial completion of the Tenant Improvements, Tenant shall pay to Landlord the remaining balance of any costs in excess of the Maximum Tenant Allowance. Tenant's failure to deliver the payments required in this paragraph shall entitle Landlord to stop the construction and installation of the Tenant Improvements until such payment is received, and any resulting delay shall constitute a Tenant Delay (as hereinafter defined) hereunder. In addition, all delinquent payments required in this sub-section shall accrue interest at 15% per annum. The Maximum Tenant Allowance or portion thereof must be utilized not later than six (6) months after Commencement Date (the "Allowance Period"). If the Maximum Tenant Allowance exceeds the total of the hard costs incurred for the Tenant Improvements, Consultant Fee, and FF&E Costs, then (i) Tenant may elect during the period of time between the Commencement Date and the expiration of the Allowance Period to apply such excess as a credit against Base Rent immediately following the expiration of the Abatement Period as it becomes due (until exhausted in full), provided that such credit shall in no event exceed the product of the Rentable Area of the Premises (21,622 rentable square feet of Rentable Area) and $5.00 (i.e. $108,110.00, the "Credit Cap"); and (ii) any unused portion of the Maximum Tenant Allowance that exceeds the Credit Cap shall be the property of Landlord, it being agreed that Tenant shall not be entitled to any credit, offset, abatement or payment with respect thereto. In addition, if any portion of the Maximum Tenant Allowance remains unused by Tenant prior to the expiration of the Allowance Period, then, upon the expiration of the Allowance Period, such unused portion of the Maximum Tenant Allowance shall be the property of Landlord, it being agreed that Tenant shall not be entitled to any credit, offset, abatement or payment with respect thereto.

4 Escalation shall not apply to any portion of Base Rent attributable to the amortized Additional Tenant Allowance.

5 Not to exceed $162,165.00

6 *Id.*

(e) Tenant shall request in writing Landlord's approval to any changes to the Final Space Plan or corresponding construction documents at any time (each, a "Change Order", and collectively, "Change Orders"), provided such Change Order is accompanied by a copy of the revised Final Plans (incorporating the Change Order) and description of the impact on cost and schedule resulting from said Change Order (the "Change Order Memorandum of Agreement"). Approval of Change Orders shall be subject to the process set forth in Section 4(a) above. At Landlord's option, Tenant shall pay to Landlord (or Landlord's designee), within ten (10) days following Landlord's request, any increase in the cost to construct the Tenant Improvements resulting from the Change Order, as set forth in the Change Order Memorandum of Agreement.

(f) Should a "Tenant Delay" or "Force Majeure Delay" occur, or if the Tenant Improvements have not been substantially completed by the Commencement Date due to any act, omission or default by Tenant, or anyone acting under or for Tenant, or due to any cause other than Landlord's default, Landlord shall have no liability therefor, and the obligations of this Lease (including, without limitation, the obligation to pay Rent) shall nonetheless commence as of the date upon which the Commencement Date would have occurred but for such Tenant Delay, act, omission or default. If the Premises are not substantially completed due to a delay, act, omission or default by Landlord, then as Tenant's sole remedy for the delay in Tenant's occupancy of the Premises, the Commencement Date shall be delayed, and the Rent shall not commence, until the earlier of the date of actual occupancy by Tenant or the date on which the Tenant Improvements which Landlord has agreed to construct are substantially completed

(g) For the purposes hereof, the following terms shall have the following meanings:

(i) "**Tenant Delay**" shall mean any actual delay in the Commencement Date caused as a result of: (i) Change Orders, change by Tenant in the Final Space Plan or Tenant's failure to timely deliver the updated Space Plan and construction documents in compliance with Section 4(a) above; (ii) failure by Tenant to fully incorporate and address Landlord's comments (if any) to the updated Space Plan and deliver the Final Space Plan to Landlord on or before February 15, 2019; (iii) the inability of Landlord to substantially complete the Tenant Improvements solely because of Landlord's inability to purchase any so called long-lead items required pursuant to the Space Plan; (iv) Tenant or any of its employees (or duly authorized contractors) interfering with completion of the Tenant Improvements; (v) Tenant's failure to respond to a request in writing by Landlord for information about the Tenant Improvements within five (5) business days after Landlord delivers such written request to Tenant; and (vi) any work performed or to be performed by Tenant or its duly authorized contractors.

(ii) "**Force Majeure Delay**" shall mean a delay caused by any one or combination of the following events: on-site casualty, act of God, on-site explosion, war, invasion, insurrection, riot, mob violence, sabotage, strikes, lockouts, labor disputes, condemnation, governmental restriction first adopted and effective after the date the Lease has been signed and delivered or laws first adopted and effective after the date the Lease has been signed and delivered.

Landlord shall notify Tenant in writing of any act which Landlord reasonably believes may result in a Tenant Delay or a Force Majeure Delay within five (5) days of its occurrence.

(h) Within ten (10) days after the Commencement Date, Tenant will execute and deliver to Landlord a written declaration stating the Commencement Date and expiration date of the Initial Term pursuant to *Exhibit E*.

(i) Landlord's title is and always will be paramount to the title of Tenant, and Tenant will not do or be empowered to do any act which encumbers or may encumber Landlord's title or which subjects the Premises or the Building or any part of either to any lien. Tenant must immediately remove and cause to be fully released any and all liens or encumbrances which are filed against the Premises or the Building as a result of any act or omission of Tenant or Tenant's Agents (but not if caused by a failure of Landlord to pay the cost of work that is paid by Landlord as part of the Tenant Allowance). If Tenant fails to remove and cause to be fully released any such lien within ten (10) business days following Tenant's receipt of notice thereof, then Landlord may, but is not obligated to, remove such lien, and Tenant shall pay all costs of removal or bonding the lien to Landlord upon demand. Tenant shall never, under any circumstances, have the power to subject the interest of Landlord in the Premises, the Building, or the Land to any mechanic's, materialmen's, or construction liens of any kind. In order to comply with the provisions of Chapter 713.10, Florida Statutes, it is specifically provided that neither Tenant nor anyone claiming by, through or under Tenant, including, but not limited to, contractors, subcontractors, materialmen, mechanics and/or laborers, shall have any right to file or place any mechanics', materialmen's or construction liens of any kind whatsoever upon the Premises, the Building, the Land, or improvements thereon, and any such liens are hereby specifically prohibited. All parties with whom Tenant may deal are put on notice that Tenant has no power to subject Landlord's interest to any mechanics', materialmen's or construction lien of any kind or character, and all such persons so dealing with Tenant must look solely to the credit of Tenant, and not to Landlord's interest or assets. IN ADDITION, THE INTEREST OF LANDLORD IN THE PREMISES, THE BUILDING, AND THE LAND SHALL NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS TO THE PREMISES, THE BUILDING, AND/OR THE LAND MADE BY TENANT, NOTWITHSTANDING ANY APPROVAL BY LANDLORD OF ANY CONTRACT(S) WITH ANY CONTRACTOR(S), AND/OR LANDLORD'S APPROVAL OF ANY SUCH IMPROVEMENT(S) AND/OR PLANS. PRIOR TO ENTERING INTO ANY CONTRACT FOR THE CONSTRUCTION OF ANY ALTERATION OR IMPROVEMENT, TENANT SHALL NOTIFY THE CONTRACTOR MAKING IMPROVEMENTS TO THE PREMISES, THE BUILDING AND/OR THE LAND OF THE FOREGOING PROVISION, AND TENANT'S KNOWING OR WILLFUL FAILURE TO PROVIDE SUCH NOTICE TO THE CONTRACTOR SHALL RENDER THE CONTRACT BETWEEN TENANT AND THE CONTRACTOR VOIDABLE AT THE OPTION OF THE CONTRACTOR. Simultaneously with the Landlord's and Tenant's execution of this Lease, but in no event, later than the filing of any notice of commencement against the Premises, Tenant agrees to execute and deliver to Landlord a memorandum of lease in such form as set forth in Exhibit F attached hereto and made a part hereof, which, among other things, sets forth the covenant against liens as described in this Section for purposes of compliance with Florida Statute 713.10. Tenant agrees that in no event shall a notice of commencement be recorded in the public records of Palm Beach County, Florida against the Premises prior to the recording of the memorandum of lease. Landlord shall have the right, in its sole and absolute discretion, to record the memorandum of lease in the public records of Palm Beach County, Florida. Further, Tenant appoints Landlord its attorney in fact coupled with an interest to terminate any such memorandum of lease which, if any, has been recorded, upon the expiration or termination of this Lease due to the lapse of time or otherwise.

(j) Except for the Tenant Improvements any alterations, additions, or improvements made by or on behalf of Tenant to the Premises (collectively, the "Alterations") shall be subject to Landlord's prior written consent, and shall (i) comply with all applicable laws, ordinances, rules and regulations; (ii) be compatible with the Building and its mechanical, electrical, HVAC and life safety systems; (iii) not interfere with the use and occupancy of any other portion of the Building by any other tenant or their invitees; (iv) not affect the structural portions of the Building; and, (v) not, whether alone or taken together with other improvements, require the construction of any other improvements or alterations within the Building. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Laws and shall construct, at its sole cost and expense, any alteration or modification required by Laws as a result of any Alterations. All Alterations shall be constructed at Tenant's sole cost and expense, in a first class and good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Alterations shall be submitted to Landlord for its approval, which shall not be unreasonably withheld, delayed or conditioned. Landlord may monitor construction of the Alterations, and except for the initial build out before the Commencement Date, Tenant shall reimburse Landlord for any reasonable out-of-pocket costs paid to third parties, which are incurred by Landlord in monitoring such construction. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations. Without limiting the other grounds upon which Landlord may refuse to approve any contractor or subcontractor, Landlord may take into account the desirability of maintaining harmonious labor relations at the Project. Landlord may also require that all life safety related work be performed by contractors designated by Landlord, and all mechanical, electrical, plumbing and roof related work be performed by contractors approved by Landlord, which approval shall not be unreasonably withheld. Landlord shall have the right, in its sole discretion, to instruct Tenant to remove those improvements or Alterations from the Premises upon the expiration of this Lease if Landlord conditions its approval of the Alterations on Tenant's removal of the improvements at the expiration or earlier termination of the Lease. If upon the termination of this Lease Landlord requires Tenant to remove any or all of such Alterations from the Premises, then Tenant, at Tenant's sole cost and expense, shall promptly remove such Alterations and improvements and Tenant shall repair and restore the Premises to its original condition as of the Commencement Date, reasonable wear and tear excepted. Any Alterations remaining in the Premises following the expiration of the Lease Term or following the surrender of the Premises from Tenant to Landlord shall become the property of Landlord unless Landlord notifies Tenant otherwise. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for bodily injury or property damage during construction. Upon completion of any Alterations and upon Landlord's reasonable request, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Alterations and final lien waivers from all such contractors and subcontractors. Additionally, upon completion of any Alteration, Tenant shall provide Landlord, at Tenant's expense, with a complete set of plans in reproducible form and specifications reflecting the actual conditions of the Alterations, together with a copy of such plans on diskette in the AutoCAD format or such other format as may then be in common use for computer assisted design purposes. Tenant shall reimburse Landlord, as additional rent, the reasonable out-of-pocket costs of Landlord's third-party engineers and other consultants for review of all plans, specifications and working drawings for the Alterations and for the incorporation of such Alterations in the Landlord's master Building drawings, within fifteen (15) days after Tenant's receipt of invoices either from Landlord or such consultants. In addition to such costs, Tenant shall pay to Landlord, within ten (10) days after completion of any Alterations, the actual, reasonable costs incurred by Landlord for services rendered by Landlord's management personnel and engineers to coordinate and/or supervise any of the Alterations to the extent such services are provided in excess of or after the normal on-site hours of such engineers and management personnel.

(k) Tenant shall keep the Premises, the Building and the Project free from any and all liens arising out of any Alterations, work performed, materials furnished, or obligations incurred by or for Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to Landlord, Landlord shall have the right, but not the obligation, to cause such lien to be released by such means as it shall deem proper (including payment of or defense against the claim giving rise to such lien); in such case, Tenant shall reimburse Landlord for all amounts so paid by Landlord in connection therewith, together with all of Landlord's costs and expenses, with interest thereon at the Default Rate (defined below) and Tenant shall indemnify and defend each and all of the Landlord Indemnitees (defined below) against any damages, losses or costs arising out of any such claim. Tenant's indemnification of Landlord contained in this Paragraph shall survive the expiration or earlier termination of this Lease. Such rights of Landlord shall be in addition to all other remedies provided herein or by law.

(l) NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES.

(m) Nothing contained in this Lease shall be construed as consent on the part of Landlord to subject the estate of Landlord to liability under the Construction Lien Law of the State of Florida, it being expressly understood that the Landlord's estate shall not be subject to such liability. Tenant shall strictly comply with the Construction Lien Law of the State of Florida as set forth in Chapter 713, Florida Statutes. Tenant agrees to obtain and deliver to Landlord prior to the commencement of any work or Alterations or the delivery of any materials, written and unconditional waivers of contractors' liens with respect to the Premises, the Building and the Project Common Areas for all work, service or materials to be furnished at the request or for the benefit of Tenant to the Premises, and any Notice of Commencement filed by Tenant shall contain, in bold print, the first sentence of this Paragraph 4(e). Such waivers shall be signed by all architects, engineers, designers, contractors, subcontractors, materialmen and laborers to become involved in such work. Notwithstanding the foregoing, Tenant at its expense shall cause any lien filed against the Premises, the Building or the Common Areas of the Building or Project for work, services or materials claimed to have been furnished to or for the benefit of Tenant to be satisfied or transferred to bond within ten (10) days after Tenant's having received notice thereof. In the event that Tenant fails to satisfy or transfer to bond such claim of lien within said ten (10) day period, Landlord may do so and thereafter charge Tenant as Additional Rent, all costs incurred by Landlord in connection with the satisfaction or transfer of such claim, including attorneys' fees. Further, Tenant agrees to indemnify, defend, and save the Landlord harmless from and against any damage to and loss incurred by Landlord as a result of any such contractor's claim of lien. If so requested by Landlord, Tenant, at Tenant's cost, shall execute a short form or memorandum of this Lease, which may, in Landlord's sole discretion be recorded in the Public Records of the County in which the Premises is located for the purpose of protecting Landlord's estate from contractors' Claims of Lien, as provided in Chapter 713.10, Florida Statutes. In the event such short form or memorandum of this Lease is executed, Tenant shall simultaneously execute and deliver to Landlord an instrument in recordable form terminating Tenant's interest in the real property upon which the Premises are located, which instrument may be recorded by Landlord at the expiration or earlier termination of the term of this Lease. The security deposit paid by Tenant may be used by Landlord for the satisfaction or transfer of any Contractor's Claim of Lien, as provided in this Paragraph. This Paragraph shall survive the termination of this Lease.

5. REPAIRS

(a) Landlord's obligation with respect to repair as part of Basic Services shall be limited to (i) the structural portions of the Building including, without limitation, the foundation, (ii) the exterior walls of the Building, including, without limitation, glass and glazing, (iii) the roof, (iv) mechanical, electrical, heating, ventilating and air conditioning, plumbing and life safety systems [except for any lavatory, shower, toilet, wash basin and kitchen facilities that serve Tenant exclusively and any supplemental heating and air conditioning systems (including all plumbing connected to said facilities or systems)], (v) Common Areas (including paving), (vi) utility lines located outside of the Premises and (vii) life safety components of any backup generator for the Premises. Landlord shall not be deemed to have breached any obligation with respect to the condition of any part of the Project unless Tenant has given to Landlord written notice of any required repair and Landlord has not made such repair within a reasonable time following the receipt by Landlord of such notice. The foregoing notwithstanding: (i) Landlord shall not be required to repair damage to any of the foregoing to the extent caused by the acts or omissions of Tenant or it agents, employees or contractors, except to the extent covered by insurance carried by Landlord; and (ii) the obligations of Landlord pertaining to damage or destruction by casualty shall be governed by the provisions of Paragraph 9. Landlord shall have the right but not the obligation to undertake work of repair that Tenant is required to perform under this Lease and that Tenant fails or refuses to perform in a timely and efficient manner. All costs incurred by Landlord in performing any such repair for the account of Tenant (because of Tenant's failure to perform such repair) shall be repaid by Tenant to Landlord upon demand, together with an administration fee equal to ten percent (10%) of such costs. Except as expressly provided in Paragraph 9 of this Lease, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises, the Building or the Project. Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

(b) Tenant, at its expense, (i) shall keep the Premises and all fixtures contained therein in a safe, clean and neat condition, and (ii) shall bear the cost of maintenance and repair, by contractors selected by Landlord, of all facilities which are not expressly required to be maintained or repaired by Landlord and which are located in the Premises, including, without limitation, lavatory, shower, toilet, wash basin and kitchen facilities, and supplemental heating and air conditioning systems (including all plumbing connected to said facilities or systems installed by or on behalf of Tenant or existing in the Premises at the time of Landlord's delivery of the Premises to Tenant). Tenant shall make all repairs to the Premises not required to be made by Landlord under subparagraph (a) above with replacements of any materials to be made by use of materials of equal or better quality. Tenant shall do all decorating, remodeling, alteration and painting required by Tenant during the Lease Term. Tenant shall pay for the cost of any repairs to the Premises, the Building or the Project made necessary by any negligence or willful misconduct of Tenant or any of its assignees, subtenants, employees or their respective agents, representatives, contractors, or other persons permitted in or invited to the Premises or the Project by Tenant. If Tenant fails to make such repairs or replacements within fifteen (15) days after written notice from Landlord, Landlord may at its option make such repairs or replacements, and Tenant shall upon demand pay Landlord for the cost thereof, together with an administration fee equal to fifteen percent (15%) of such costs.

(c) Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in a safe, clean and neat condition, normal wear and tear excepted. Except as otherwise set forth in Paragraph 4(b) of this Lease, Tenant shall remove from the Premises all trade fixtures, furnishings and other personal property of Tenant and all computer and phone cabling and wiring installed by or on behalf of Tenant, shall repair all damage caused by such removal, and shall restore the Premises to its original condition, reasonable wear and tear excepted. Notwithstanding this paragraph, Tenant shall have no obligation to remove the FF&E of the Prior Occupant of the Premises as defined in Paragraph 24 of this Lease. In addition to all other rights Landlord may have, in the event Tenant does not so remove any such fixtures, furnishings or personal property, Tenant shall be deemed to have abandoned the same, in which case Landlord may store or dispose of the same at Tenant's expense, appropriate the same for itself, and/or sell the same in its discretion.

6. USE OF PREMISES

(a) Tenant shall use the Premises only for a corporate headquarters which shall consist of executive offices, and general office space for the following business divisions and departments: administration, accounting, business development, marketing, sales, customer service, information technology and similar uses that are customary for a corporate headquarters facility (collectively, the "Permitted Use"), as permitted by applicable zoning and shall not use the Premises or permit the Premises to be used for any other purpose. Landlord shall have the right to deny its consent to any change in the Permitted Use of the Premises in its reasonable discretion.

(b) Use Contingency. This Lease shall be conditioned upon Tenant obtaining a zoning confirmation letter[7] (the "Use Contingency") on or before February 28, 2019 (the "Contingency Period"), from the City of Boca Raton, Florida, that either (i) confirms the Permitted Use as being permitted at the Premises under applicable zoning designation; or (ii) fails to identify the Permitted Use as prohibited at the Premises under applicable zoning designation. Tenant, within three (3) business days of its execution of this Lease, shall complete and submit all required applications and other necessary documentation to the City of Boca Raton, Florida to request (on an expedited basis, to extent possible) the zoning confirmation letter in satisfaction of the Use Contingency. True and accurate copies of all such applications shall be provided by Tenant to Landlord promptly after submission to the City of Boca Raton, Florida. Tenant shall use its commercially reasonable effort to pursue the satisfaction of the Use Contingency during the Contingency Period. Immediately upon receipt, Tenant shall provide Landlord with a true and accurate copy of the zoning confirmation letter. Following the exhaustion of all commercially reasonable and diligent efforts, in the event Tenant fails to satisfy the Use Contingency on or before the expiration of the Contingency Period, then Tenant may elect to terminate this Lease by delivery of written notice to Landlord prior to the expiration of the Contingency Period. If Tenant elects to terminate the Lease prior to the expiration of the Contingency Period in accordance herewith, then within five (5) business days following the expiration of the Contingency Period and receipt of an invoice from Landlord, Tenant shall reimburse Landlord for the actual costs incurred by Landlord in connection with the preparation of the Space Plan, Final Space Plan and the Tenant Improvements, in an amount not to exceed $10,000.00. If Tenant fails to timely terminate this Lease in accordance with the conditions of this Section, then the Use Contingency and corresponding termination option shall be automatically deemed waived, void and of no further force or effect.

7 Or local equivalent, as applicable.

(c) Tenant shall not at any time use or occupy the Premises, or permit any act or omission in or about the Premises in violation of any law, statute, ordinance or any governmental rule, regulation or order (collectively, "Law" or "Laws") and Tenant shall, upon written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority to be a violation of Law. Tenant shall be responsible for compliance with all Laws within the Premises including, without limitation, the Americans with Disabilities Act (which shall be included within the meaning of "Law" or "Laws" hereunder) and the cost of such compliance may be paid from funds available in the Allowance, and if any Law shall, by reason of the nature of Tenant's Permitted Use or particular use or particular manner of use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to (i) modification or other maintenance of the Premises, the Building or the Project, or (ii) the use, Alteration or occupancy thereof, Tenant shall comply with such Law at Tenant's sole cost and expense; provided that Tenant shall not be required to modify or otherwise improve the Premises unless required as a result of any Tenant Improvements or other Alterations or Tenant's particular use of the Premises. Landlord shall be responsible to assure that the Building (excluding the Premises) and the Common Areas of the Building and the Project comply with all Laws at Landlord's sole cost and expense; provided that any costs of such compliance incurred by Landlord as a result of changes to Laws effective subsequent to the Effective Date shall be a component of "Operating Expenses" as defined in Paragraph 3(c).

(d) Tenant shall not at any time use or occupy the Premises in violation of the certificates of occupancy issued for or restrictive covenants pertaining to the Building or the Premises, and in the event that any architectural control committee or department of the state or the city or county in which the Project is located shall at any time contend or declare that the Premises are used or occupied in violation of such certificate or certificates of occupancy or restrictive covenants, Tenant shall, upon ten(10) business days notice from Landlord or any such governmental agency, immediately discontinue such use of the Premises (and otherwise remedy such violation). The failure by Tenant to discontinue such use shall be considered a default under this Lease and Landlord shall have the right to exercise any and all rights and remedies provided herein or by Law. Any statement in this Lease of the nature of the business to be conducted by Tenant in the Premises shall not be deemed or construed to constitute a representation or guaranty by Landlord that such business is or will continue to be lawful or permissible under any certificate of occupancy issued for the Building or the Premises, or otherwise permitted by Law.

(e) Tenant shall not do or permit to be done anything which may invalidate or increase the cost of any fire, All Risk, Causes of Loss - Special Form or other insurance policy covering the Building, the Project and/or property located therein and shall comply with all rules, orders, regulations and requirements of the appropriate fire codes and ordinances or any other organization performing a similar function. In addition to all other remedies of Landlord, Landlord may require Tenant, promptly upon demand, to reimburse Landlord for the full amount of any additional premiums charged for such policy or policies by reason of Tenant's failure to comply with the provisions of this Paragraph 6.

(f) Tenant shall not in any way interfere with the rights or quiet enjoyment of other tenants or occupants of the Premises, the Building or the Project. Tenant shall not use or allow the Premises to be used for any improper, immoral, or unlawful purpose, nor shall Tenant cause, maintain, or permit any nuisance in, on or about the Premises, the Building or the Project. Tenant shall not place weight upon any portion of the Premises exceeding the structural floor load (per square foot of area) which such area was designated (and is permitted by Law) to carry or otherwise use any Building system in excess of its capacity or in any other manner which may damage such system or the Building. Tenant shall not create within the Premises a working environment with a density of greater than the maximum density permitted by Law. Business machines and mechanical equipment shall be placed and maintained by Tenant, at Tenant's expense, in locations and in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not commit or suffer to be committed any waste in, on, upon or about the Premises, the Building or the Project.

(g) Tenant shall take all reasonable steps necessary to adequately secure the Premises from unlawful intrusion, theft, fire and other hazards, and shall keep and maintain any and all security devices in or on the Premises in good working order, including, but not limited to, exterior door locks for the Premises and smoke detectors and burglar alarms located within the Premises and shall cooperate with Landlord and other tenants in the Project with respect to access control and other safety matters.

(h) As used herein, the term "Hazardous Material" means any (a) oil or any other petroleum-based substance, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Project or to persons on or about the Project or (ii) cause the Project to be in violation of any Laws; (b) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. §300, et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. §2601, et seq.; the Federal Hazardous Substances Control Act, as amended, 15 U.S.C. §1261, et seq.; and the Occupational Safety and Health Act, as amended, 29 U.S.C. §651, et seq.; Chapters 373, 376 and 403, Florida Statutes and the regulations promulgated pursuant thereto; (d) other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Project or the owners and/or occupants of property adjacent to or surrounding the Project, or any other Person coming upon the Project or adjacent property; and (e) other chemicals, materials or substances which may or could pose a hazard to the environment. The term "Permitted Hazardous Materials" shall mean Hazardous Materials which are contained in ordinary office supplies of a type and in quantities typically used in the ordinary course of business within general offices and executive offices of similar size in comparable office buildings, but only if and to the extent that such supplies are transported, stored and used in full compliance with all applicable laws, ordinances, orders, rules and regulations and otherwise in a safe and prudent manner. Hazardous Materials which are contained in ordinary office supplies but which are transported, stored and used in a manner which is not in full compliance with all applicable laws, ordinances, orders, rules and regulations or which is not in any respect safe and prudent shall not be deemed to be "Permitted Hazardous Materials" for the purposes of this Lease.

(i) Tenant, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively referred to herein as "Tenant Affiliates") shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant or by Tenant Affiliates without the prior written consent of Landlord (which may be granted, conditioned or withheld in the sole discretion of Landlord), save and except only for Permitted Hazardous Materials, which Tenant or Tenant Affiliates may bring, store and use in reasonable quantities for their intended use in the Premises, but only in full compliance with all applicable Laws. On or before the expiration or earlier termination of this Lease, Tenant shall remove from the Premises all Hazardous Materials (including, without limitation, Permitted Hazardous Materials), regardless of whether such Hazardous Materials are present in concentrations which require removal under applicable Laws.

(ii) Tenant agrees to indemnify, defend and hold Landlord and its Affiliates (defined below) harmless for, from and against any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorneys' fees and expenses, court costs, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature that arise during or after the Lease Term directly or indirectly from or in connection with the presence, suspected presence, or release of any Hazardous Material in or into the air, soil, surface water or groundwater at, on, about, under or within the Premises, or any portion thereof by the Tenant, or Tenant Affiliates.

(iii) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local Law, by any judicial order, or by any governmental entity as the result of operations or activities upon, or any use or occupancy of any portion of the Premises by Tenant or Tenant Affiliates, Landlord shall perform or cause to be performed the Remedial Work in compliance with such Law at Tenant's sole cost and expense. All Remedial Work shall be performed by one or more contractors, selected and approved by Landlord. All costs and expenses of such Remedial Work shall be paid by Tenant, including, without limitation, the charges of such contractor(s), the consulting engineer, and Landlord's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work.

(iv) Each of the covenants and agreements of Tenant set forth in this Paragraph 6(g) shall survive the expiration or earlier termination of this Lease.

7. UTILITIES AND SERVICES

(a) Landlord shall furnish, or cause to be furnished to the Premises, the utilities and services described in this Paragraph 7(a) (collectively the "Basic Services"):

(i) Cold water at those points of supply provided for general use of other tenants in the Building;

(ii) At such times as Landlord normally furnishes these services to other tenants in the Building and if provided in the region, central air conditioning at such temperatures and in such amounts as are considered by Landlord to be standard in comparable in the Yamato corridor submarket of Boca Raton or as may be permitted or controlled by applicable Laws;

(iii) Routine maintenance, repairs, structural and exterior maintenance (including, without limitation, exterior glass and glazing), painting and electric lighting service for all Common Areas of the Project in the manner and to the extent deemed by Landlord to be standard in comparable in the Yamato corridor submarket of Boca Raton, subject to the limitation contained in Paragraph 5(a) above;

(iv) Janitorial service on a five (5) day week basis, excluding Holidays, as hereinafter defined; provided, however, if Tenant's floor covering or other improvements require special treatment that has been requested by Tenant in writing, Tenant shall pay the additional cleaning cost attributable thereto as additional rent upon within fifteen (15) days following presentation of a statement therefor by Landlord;

(v) An electrical system to convey power delivered by public utility providers selected by Landlord in amounts sufficient for normal office operations as provided by Landlord in the Building but not to exceed the standard wattage allowance for the Building per square foot of Rentable Area during normal office hours (which includes an allowance for lighting of the Premises at the maximum wattage per square foot of Rentable Area permitted under applicable laws, ordinances, orders, rules and regulations), provided that no single item of electrical equipment consumes more than 0.5 kilowatts at rated capacity or requires a voltage other than 120 volts, single phase;

(vi) Maintaining and replacing lamps, bulbs, and ballasts in all common areas of the Project and in the Premises; and

(vii) Restroom supplies, window washing with reasonable frequency deemed by Landlord to be standard in comparable buildings in the Yamato corridor submarket of Boca Raton, and

(viii) Public elevator service and a freight elevator serving the floors on which the Premises are situated, 24 hours per day, 365 days per year.

(b) Landlord shall provide to Tenant at Tenant's sole cost and expense (and subject to the limitations hereinafter set forth) the following extra services (collectively the "Extra Services"):

(i) Such extra cleaning and janitorial services requested by Tenant, and agreed to by Landlord, for special improvements or Alterations;

(ii) Subject to Paragraph 7(d) below, additional air conditioning and ventilating capacity required by reason of any electrical, data processing or other equipment or facilities or services required to support the same, in excess of that typically provided by the Building;

(iii) Intentionally omitted;

(iv) Heating, ventilation, air conditioning or extra electrical service provided by Landlord to Tenant (i) during hours other than Business Hours, (ii) on Saturdays, Sundays, or Holidays, said ventilation and air conditioning or extra service to be furnished solely upon the prior written request of Tenant given with such advance notice as Landlord may reasonably require and Tenant shall pay to Landlord Landlord's standard charge for overtime HVAC on an hourly basis. The current overtime HVAC charge is $50.00 per hour (two (2) hour minimum), subject to change at Landlord's discretion based upon operational costs and expenses. Notwithstanding the foregoing and as an accommodation to Tenant, Landlord shall discount the current overtime HVAC charge from $50.00 to $20.00 per hour; and Tenant shall pay, as Additional Rent, overtime HVAC charges at a rate of $20.00 per hour for no less than twenty (20) hours per week (i.e. 80 hours per month) of overtime HVAC during the Initial Term. As a condition to the discounted HVAC charge, Tenant shall pay for twenty (20) hours per week of overtime HVAC, regardless of whether Tenant actually consumes less than twenty hours of overtime HVAC for any week during the Initial Term. In addition, Tenant shall also pay for every hour (at a rate of $20.00 per hour during the Initial Term) of overtime HVAC consumed in excess of the 20 hour per week minimum overtime HVAC charge.

(v) Any Basic Service in amounts determined by Landlord to exceed the amounts required to be provided above, but only if Landlord elects to provide such additional or excess service. Tenant shall pay Landlord the cost of providing such additional services (or an amount equal to Landlord's reasonable estimate of such cost, if the actual cost is not readily ascertainable) together with an administration fee equal to five percent (5%) of such cost, within fifteen (15) days following presentation of an invoice therefore by Landlord to Tenant. The cost chargeable to Tenant for all extra services shall constitute Additional Rent.

(c) Tenant agrees to cooperate fully at all times with Landlord and to comply with all reasonable uniform regulations and requirements which Landlord may from time to time prescribe for the use of the utilities and Basic Services described herein. Landlord shall not be liable to Tenant for the failure of any other tenant, or its assignees, subtenants, employees, or their respective invitees, licensees, agents or other representatives to comply with such regulations and requirements. The term "Business Hours" shall be deemed to be Monday through Friday from 7:00 A.M. to 7:00 P.M. and Saturday from 7:00 A.M. to 1:00 P.M., excepting Holidays. The term "Holidays" shall be deemed to mean and include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

(d) If Tenant requires utilities or services in quantities greater than or at times other than that generally furnished by Landlord as set forth above, Tenant shall pay to Landlord, upon receipt of a written statement therefor, Landlord's charge for such excess use. In the event that Tenant shall require additional electric current, water or gas for use in the Premises and if, in Landlord's judgment, such excess requirements cannot be furnished unless additional risers, conduits, feeders, switchboards and/or appurtenances are installed in the Building, subject to the conditions stated below, Landlord shall proceed to install the same at the sole cost of Tenant, payable upon demand in advance. The installation of such facilities shall be conditioned upon Landlord's consent, and a determination that the installation and use thereof (i) shall be permitted by applicable Law and insurance regulations, (ii) shall not cause permanent damage or injury to the Building or adversely affect the value of the Building or the Project, and (iii) shall not cause or create a dangerous or hazardous condition or interfere with or disturb other tenants in the Building. Subject to the foregoing, Landlord shall, upon reasonable prior notice by Tenant, furnish to the Premises additional elevator, air conditioning and/or cleaning services upon such reasonable terms and conditions as shall be determined by Landlord, including payment of Landlord's charge therefor.

(e) Intentionally omitted.

(f) Landlord shall not be liable for, and Tenant shall not be entitled to, any damages, abatement or reduction of Rent, or other liability by reason of any failure to furnish any services or utilities described herein for any reason beyond Landlord's control including, without limitation, when caused by accident, breakage, casualty, natural disasters, weather, water leakage, flooding, repairs, Alterations or other improvements to the Project, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental regulation, moratorium or other governmental action, inability to obtain electricity, water or fuel, or any other cause beyond Landlord's control. Landlord shall be entitled to cooperate with the mandatory energy conservation efforts of governmental agencies or utility suppliers. No such failure, stoppage or interruption of any such utility or service shall be construed as an eviction of Tenant, nor shall the same relieve Tenant from any obligation to perform any covenant or agreement under this Lease. In the event of any failure, stoppage or interruption thereof, Landlord shall use reasonable efforts to attempt to restore all services promptly. No representation is made by Landlord with respect to the adequacy or fitness of the Building's ventilating, air conditioning or other systems to maintain temperatures as may be required for the operation of any computer, data processing or other special equipment of Tenant.

(g) Landlord reserves the right from time to time to make reasonable and nondiscriminatory among tenants of the Building modifications to the above standards for Basic Services and Extra Services.

(h) Except as is otherwise expressly provided in this Lease and except for emergencies and closures during or in anticipation of natural disasters such as hurricanes, the Building will be accessible to Tenant, its subtenants, agents, servants, employees, contractors, invitees or licensees (collectively, "Tenant's Agents") at all times during Business Hours, and Tenant and its employees shall have access to the Premises twenty four (24) hours per day each day of the year; Tenant's Agents other than its employees shall have access to the Building after Normal Business Hours only in accordance with the security procedures adopted by Landlord from time to time for the Building and its parking area.

8. NON-LIABILITY AND INDEMNIFICATION OF LANDLORD; INSURANCE

(a) To the greatest extent permitted by Law, and except to the extent caused by Landlord's negligence or willful misconduct, Landlord and its Affiliates shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Premises, the Building or the Project from any cause. Without limiting the foregoing, neither Landlord nor any of its partners, officers, trustees, affiliates, directors, employees, contractors, agents or representatives (collectively, "Affiliates") shall be liable for and there shall be no abatement of Rent (except in the event of a casualty loss or a condemnation as set forth in Paragraph 9 and Paragraph 10 of this Lease) for (i) any damage to Tenant's property stored with or entrusted to Affiliates of Landlord, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or the Project or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Building or the Project, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building, whether within or outside of the Project, or (v) any latent or other defect in the Premises, the Building or the Project. Tenant shall give prompt notice to Landlord in the event of (i) the occurrence of a fire or accident in the Premises or in the Building, or (ii) the discovery of a defect therein or in the fixtures or equipment thereof. This Paragraph 8(a) shall survive the expiration or earlier termination of this Lease.

(b) To the greatest extent permitted by Law, Tenant hereby agrees to indemnify, protect, defend and hold harmless Landlord and its designated property management company, and their respective partners, members, affiliates and subsidiaries, and all of their respective officers, trustees, directors, shareholders, employees, servants, partners, representatives, insurers and agents (collectively, "Landlord Indemnitees") for, from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) Tenant's construction of, or use, occupancy or enjoyment of, the Premises, (2) any activity, work or other things done, permitted or suffered by Tenant and its agents and employees in or about the Premises, (3) any breach or default in the performance of any of Tenant's obligations under this Lease, (4) any negligence or willful misconduct of Tenant or any of its agents, contractors, employees, business invitees or licensees, or (5) any damage to Tenant's property, or the property of Tenant's agents, employees, contractors, business invitees or licensees, located in or about the Premises. This Paragraph 8(b) shall survive the expiration or earlier termination of this Lease.

(c) Tenant shall promptly advise Landlord in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Tenant, at Tenant's expense, shall assume on behalf of each and every Landlord Indemnitee and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to Landlord; provided, however, that any Landlord Indemnitee shall have the right, at its option, to be represented therein by advisory counsel of its own selection and at its own expense. In the event of failure by Tenant to fully perform in accordance with this Paragraph, Landlord, at its option, and without relieving Tenant of its obligations hereunder, may so perform, but all costs and expenses so incurred by Landlord in that event shall be reimbursed by Tenant to Landlord, together with interest on the same from the date any such expense was paid by Landlord until reimbursed by Tenant, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Lease is subject. The indemnification provided in Paragraph 8(b) shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

(d) Insurance.

(i) Tenant at all times during the Lease Term shall, at its own expense, keep in full force and effect (A) commercial general liability insurance providing coverage against bodily injury and disease, including death resulting therefrom and property damage to a combined single limit of $3,000,000 to one or more than one person as the result of any one accident or occurrence, which shall include provision for contractual liability coverage insuring Tenant for the performance of its indemnity obligations set forth in this Paragraph 8 and in Paragraph 6(g)(ii) of this Lease, with an Excess Limits (Umbrella) Policy in the amount of $5,000,000, (B) worker's compensation and occupational disease insurance for its employees to the statutory limit required under Florida law, if any, together with employer's liability insurance with a limit of $1,000,000 bodily injury per accident and $1,000,000 disease per each employee with a $1,000,000 disease policy limit, (C) All Risk or Causes of Loss - Special Form property insurance, including fire and extended coverage, sprinkler leakage (including sprinkler leakage), vandalism, malicious mischief, wind and/or hurricane coverage, and flood coverage, covering full replacement value of all of Tenant's personal property, trade fixtures and improvements in the Premises, and (D) to the extent that Tenant offers any service requiring any of its employees, contractors or agents to operate a vehicle owned by a customer (i.e. valet parking), Garage Keepers Liability insurance in a form reasonably satisfactory to Landlord. The Garage Keepers Liability insurance may be provided as an add-on to Tenant's commercial general liability insurance or as a separate liability policy in the amount of $1,000,000.00. Landlord and its designated property management firm shall be named an additional insured on each of said policies (excluding the worker's compensation policy) and said policies shall be issued by an insurance company or companies authorized to do business in the State and which have policyholder ratings not lower than "A-" and financial ratings not lower than "VII" in Best's Insurance Guide (latest edition in effect as of the Effective Date and subsequently in effect as of the date of renewal of the required policies). EACH OF SAID POLICIES SHALL ALSO INCLUDE A WAIVER OF SUBROGATION PROVISION OR ENDORSEMENT IN FAVOR OF LANDLORD, AND AN ENDORSEMENT PROVIDING THAT LANDLORD SHALL RECEIVE THIRTY (30) DAYS PRIOR WRITTEN NOTICE OF ANY CANCELLATION OF, NONRENEWAL OF, REDUCTION OF COVERAGE OR MATERIAL CHANGE IN COVERAGE ON SAID POLICIES. Tenant hereby waives its right of recovery against any Landlord Indemnitee of any amounts paid by Tenant or on Tenant's behalf to satisfy applicable worker's compensation laws. The policies or duly executed certificates showing the material terms for the same, together with satisfactory evidence of the payment of the premiums therefor, shall be deposited with Landlord on the date Tenant first occupies the Premises and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. If certificates are supplied rather than the policies themselves, Tenant shall allow Landlord, at all reasonable times, to inspect the policies of insurance required herein.

(ii) It is expressly understood and agreed that the coverages required represent Landlord's minimum requirements and such are not to be construed to void or limit Tenant's obligations contained in this Lease, including without limitation Tenant's indemnity obligations hereunder. Neither shall (A) the insolvency, bankruptcy or failure of any insurance company carrying Tenant, (B) the failure of any insurance company to pay claims occurring nor (C) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Tenant's indemnity obligations under this Paragraph 8 and Paragraph 6(g)(ii) or any other provision of this Lease. With respect to insurance coverages, except worker's compensation, maintained hereunder by Tenant and insurance coverages separately obtained by Landlord, all insurance coverages afforded by policies of insurance maintained by Tenant shall be primary insurance as such coverages apply to Landlord, and such insurance coverages separately maintained by Landlord shall be excess, and Tenant shall have its insurance policies so endorsed. The amount of liability insurance under insurance policies maintained by Tenant shall not be reduced by the existence of insurance coverage under policies separately maintained by Landlord. Tenant shall be solely responsible for any premiums, assessments, penalties, deductible assumptions, retentions, audits, retrospective adjustments or any other kind of payment due under its policies. Tenant shall increase the amounts of insurance or the insurance coverages as Landlord may reasonably request from time to time, but not in excess of the requirements of prudent landlords or lenders for similar tenants occupying similar premises in the Boca Raton, Florida metropolitan area.

(iii) Tenant's occupancy of the Premises without delivering the certificates of insurance shall not constitute a waiver of Tenant's obligations to provide the required coverages. If Tenant provides to Landlord a certificate that does not evidence the coverages required herein, or that is faulty in any respect, such shall not constitute a waiver of Tenant's obligations to provide the proper insurance

(iv) Throughout the Lease Term, Landlord agrees to maintain (i) fire and extended coverage insurance, and, at Landlord's option, terrorism coverage, wind and hurricane coverage, and such additional property insurance coverage as Landlord deems appropriate, on the insurable portions of Building and the remainder of the Project in an amount not less than the fair replacement value thereof, subject to reasonable deductibles (ii) boiler and machinery insurance amounts and with deductibles that would be considered standard for similar class office building in the metropolitan area in which the Premises is located, and (iii) commercial general liability insurance with a combined single limit coverage of at least $1,000,000.00 per occurrence. All such insurance shall be obtained from insurers Landlord reasonably believes to be financially responsible in light of the risks being insured. The premiums for any such insurance shall be a part of Operating Expenses.

(e) Mutual Waivers of Recovery. Landlord, Tenant, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Premises or by Landlord with respect to the Building or the Project (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Premises, or Landlord with respect to the Building or the Project, shall contain, in the case of Tenant's policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord's policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. Tenant agrees to indemnify, protect, defend and hold harmless each and all of the Landlord Indemnitees from and against any claim, suit or cause of action asserted or brought by Tenant's insurers for, on behalf of, or in the name of Tenant, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR TENANT.

(f) Business Interruption. Landlord shall not be responsible for, and Tenant releases and discharges Landlord and its Affiliates from, and Tenant further waives any right of recovery from Landlord and its Affiliates for, any loss for or from business interruption or loss of use of the Premises suffered by Tenant in connection with Tenant's use or occupancy of the Premises, EVEN IF SUCH LOSS IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR ITS AFFILIATES.

(g) Adjustment of Claims. Tenant shall cooperate with Landlord and Landlord's insurers in the adjustment of any insurance claim pertaining to the Building or the Project or Landlord's use thereof.

(h) Increase in Landlord's Insurance Costs. Tenant agrees to pay to Landlord any increase in premiums for Landlord's insurance policies resulting from Tenant's use or occupancy of the Premises.

(i) Failure to Maintain Insurance. Any failure of Tenant to obtain and maintain the insurance policies and coverages required hereunder or failure by Tenant to meet any of the insurance requirements of this Lease shall constitute an event of default hereunder, and such failure shall entitle Landlord to pursue, exercise or obtain any of the remedies provided for in Paragraph 12(b), and Tenant shall be solely responsible for any loss suffered by Landlord as a result of such failure. In the event of failure by Tenant to maintain the insurance policies and coverages required by this Lease or to meet any of the insurance requirements of this Lease, Landlord, at its option, and without relieving Tenant of its obligations hereunder, may obtain said insurance policies and coverages or perform any other insurance obligation of Tenant, but all costs and expenses incurred by Landlord in obtaining such insurance or performing Tenant's insurance obligations shall be reimbursed by Tenant to Landlord, together with interest on same from the date any such cost or expense was paid by Landlord until reimbursed by Tenant, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Lease is subject.

9. FIRE OR CASUALTY

(a) Subject to the provisions of this Paragraph 9, in the event the Premises, or access thereto, is wholly or partially destroyed by fire or other casualty, Landlord shall (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) rebuild, repair or restore the Premises and access thereto to substantially the same condition as existing immediately prior to such destruction (excluding Tenant's Alterations, trade fixtures, equipment and personal property, which Tenant shall be required to restore) and this Lease shall continue in full force and effect. Notwithstanding the foregoing, (i) Landlord's obligation to rebuild, repair or restore the Premises shall not apply to any personal property, above-standard tenant improvements or other items installed or contained in the Premises, and (ii) Landlord shall have no obligation whatsoever to rebuild, repair or restore the Premises with respect to any damage or destruction occurring during the last twelve (12) months of the term of this Lease or any extension of the term.

(b) Landlord may elect to terminate this Lease in any of the following cases of damage or destruction to the Premises, the Building or the Project: (i) where the cost of rebuilding, repairing and restoring (collectively, "Restoration") of the Building or the Project, would, regardless of the lack of damage to the Premises or access thereto, in the reasonable opinion of Landlord, exceed twenty percent (20%) of the then replacement cost of the Building; (ii) where, in the case of any damage or destruction to any portion of the Building or the Project by uninsured casualty, the cost of Restoration of the Building or the Project, in the reasonable opinion of Landlord, exceeds $500,000; or (iii) where, in the case of any damage or destruction to the Premises or access thereto by uninsured casualty, the cost of Restoration of the Premises or access thereto, in the reasonable opinion of Landlord, exceeds twenty percent (20%) of the replacement cost of the Premises; or (iv) if Landlord has not obtained appropriate zoning approvals for reconstruction of the Project, Building or Premises. Any such termination shall be made by thirty (30) days' prior written notice to Tenant given within one hundred twenty (120) days of the date of such damage or destruction. If this Lease is not terminated by Landlord and as the result of any damage or destruction, the Premises, or a portion thereof, are rendered untenantable, the Base Rent shall abate reasonably during the period of Restoration (based upon the extent to which such damage and Restoration materially interfere with Tenant's business in the Premises). This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, the Building or the Project. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction.

10. EMINENT DOMAIN

In the event the whole of the Premises, the Building or the Project shall be taken under the power of eminent domain, or sold to prevent the exercise thereof (collectively, a "Taking"), this Lease shall automatically terminate as of the date of such Taking. In the event a Taking of a portion of the Project, the Building or the Premises shall, in the reasonable opinion of Landlord, substantially interfere with Landlord's operation thereof, Landlord may terminate this Lease upon thirty (30) days' written notice to Tenant given at any time within sixty (60) days following the date of such Taking. For purposes of this Lease, the date of Taking shall be the earlier of the date of transfer of title resulting from such Taking or the date of transfer of possession resulting from such Taking. In the event that a portion of the Premises is so taken and this Lease is not terminated, Landlord shall, to the extent of proceeds paid to Landlord as a result of the Taking, with reasonable diligence, use commercially reasonable efforts to proceed to restore (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) the Premises (other than Tenant's personal property and fixtures, and above-standard tenant improvements) to a complete, functioning unit. In such case, the Base Rent shall be reduced proportionately based on the portion of the Premises so taken. If all or any portion of the Premises is the subject of a temporary Taking, this Lease shall remain in full force and effect and Tenant shall continue to perform each of its obligations under this Lease; in such case, Tenant shall be entitled to receive the entire award allocable to the temporary Taking of the Premises. Except as provided herein, Tenant shall not assert any claim against Landlord or the condemning authority for, and hereby assigns to Landlord, any compensation in connection with any such Taking, and Landlord shall be entitled to receive the entire amount of any award therefor, without deduction for any estate or interest of Tenant. Nothing contained in this Paragraph 10 shall be deemed to give Landlord any interest in, or prevent Tenant from seeking any award against the condemning authority for the Taking of personal property, fixtures, above standard tenant improvements of Tenant or for relocation or moving expenses recoverable by Tenant from the condemning authority. This Paragraph 10 shall be Tenant's sole and exclusive remedy in the event of a Taking. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of a Taking.

11. ASSIGNMENT AND SUBLETTING

(a) Tenant shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, assign, sublet, mortgage or otherwise encumber all or any portion of its interest in this Lease or in the Premises or grant any license for any person other than Tenant or its employees to use or occupy the Premises or any part thereof without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any such attempted assignment, subletting, license, mortgage, other encumbrance or other use or occupancy without the consent of Landlord shall, at Landlord's option, be null and void and of no effect. Any mortgage or encumbrance of all or any portion of Tenant's interest in this Lease or in the Premises and any grant of a license for any person other than Tenant or its employees to use or occupy the Premises or any part thereof shall be deemed to be an "assignment" of this Lease. In addition, as used in this Paragraph 11, the term "Tenant" shall also mean any entity that has guaranteed Tenant's obligations under this Lease, and the restrictions applicable to Tenant contained herein shall also be applicable to such guarantor.

(b) No assignment or subletting shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be consent to any subletting or assignment. Consent by Landlord to one subletting or assignment shall not be deemed to constitute consent to any other or subsequent attempted subletting or assignment. If Tenant desires at any time to assign this Lease or to sublet the Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord all pertinent information relating to the proposed assignee or sublessee, all pertinent information relating to the proposed assignment or sublease, and all such financial information as Landlord may reasonably request concerning the Tenant and proposed assignee or subtenant. Any assignment or sublease shall be expressly subject to the terms and conditions of this Lease.

(c) At any time within thirty (30) days after Landlord's receipt of the information specified in subparagraph (b) above, Landlord may by written notice to Tenant elect to terminate this Lease as to the portion of the Premises so proposed to be subleased or assigned (which may include all of the Premises), with a proportionate abatement in the Rent payable hereunder.

(d) Tenant acknowledges that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or sublease in any of the following instances:

(i) The assignee or sublessee (or any affiliate of the assignee or sublessee) is not, in Landlord's reasonable opinion, sufficiently creditworthy to perform the obligations such assignee or sublessee will have under this Lease;

(ii) The intended use of the Premises by the assignee or sublessee is not for a permitted use under this Lease;

(iii) The intended use of the Premises by the assignee or sublessee would materially increase the pedestrian or vehicular traffic to the Premises or the Building;

(iv) Occupancy of the Premises by the assignee or sublessee would, in the good faith judgment of Landlord, violate any agreement binding upon Landlord, the Building or the Project with regard to the identity of tenants, usage in the Building, or similar matters;

(v) The assignee or sublessee (or any affiliate of the assignee or sublessee) is then negotiating with Landlord or has negotiated with Landlord within the previous six (6) months, or is a current tenant or subtenant within the Building or Project;

(vi) The identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Building or Project;

(vii) the proposed sublease would result in more than two subleases of portions of the Premises being in effect at any one time during the Lease Term; or

(viii) In the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease.

(e) The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed assignee or sublessee claims that Landlord has unreasonably withheld its consent to a proposed assignment or sublease or otherwise has breached its obligations under this Paragraph 11, their sole remedy shall be to seek a declaratory judgment and/or injunctive relief without any monetary damages, and, with respect thereto, Tenant, on behalf of itself and, to the extent permitted by law, such proposed assignee/sublessee, hereby waives all other remedies against Landlord, including, without limitation, the right to seek monetary damages or to terminate this Lease.

(f) Subject to Paragraph 11(a), if any Tenant is a corporation, partnership or other entity that is not publicly traded on a recognized national stock exchange, any transaction or series of related or unrelated transactions (including, without limitation, any dissolution, merger, consolidation or other reorganization, any withdrawal or admission of a partner or change in a partner's interest, or any issuance, sale, gift, transfer or redemption of any capital stock of or ownership interest in such entity, whether voluntary, involuntary or by operation of law, or any combination of any of the foregoing transactions) resulting in the transfer of control of such Tenant, shall be deemed to be an assignment of this Lease subject to the provisions of this Paragraph 11. The term "control" as used in this Paragraph 11(f) means the power to directly or indirectly direct or cause the direction of the management or policies of Tenant. Any transfer of control of a subtenant which is a corporation or other entity shall be deemed an assignment of any sublease. Notwithstanding anything to the contrary in this Paragraph 11(e), if the original Tenant under this Lease is a corporation, partnership or other entity, a change or series of changes in ownership of stock or other ownership interests which would result in direct or indirect change in ownership of less than ten percent (10%) of the outstanding stock of or other ownership interests in such Tenant as of the date of the execution and delivery of this Lease shall not be considered a change of control.

(g) Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times during the Initial Term, and any subsequent renewals or extensions set forth in this Lease, remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease. In the event that the Rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment, plus any bonus or other consideration therefor or incident thereto) exceeds the Rent payable under this Lease, then Tenant shall be bound and obligated to pay Landlord, as additional rent hereunder, one-half of all such excess Rent and other excess consideration within thirty (30) days following receipt thereof by Tenant.

(h) If this Lease is assigned or if the Premises is subleased (whether in whole or in part), or in the event of the mortgage or pledge of Tenant's leasehold interest, or grant of any concession or license within the Premises, or if the Premises are occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect Rent from the assignee, sublessee, mortgagee, pledgee, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next Rent payable hereunder; and all such Rent collected by Tenant shall be held in deposit for Landlord and immediately forwarded to Landlord. No such transaction or collection of Rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

(i) If Tenant effects an assignment or sublease or requests the consent of Landlord to any proposed assignment or sublease, then Tenant shall, upon demand, pay Landlord a non-refundable administrative fee of One Thousand Dollars ($1,000.00), plus any reasonable attorneys' and paralegal fees and costs incurred by Landlord in connection with such assignment or sublease or request for consent. Acceptance of the One Thousand Dollar ($1,000.00) administrative fee and/or reimbursement of Landlord's attorneys' and paralegal fees shall in no event obligate Landlord to consent to any proposed assignment or sublease.

(j) Notwithstanding any provision of this Lease to the contrary, in the event this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute the property of Tenant or Tenant's estate within the meaning of the Bankruptcy Code. All such money and other consideration not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid or delivered to Landlord.

(k) The joint and several liability of the Tenant named herein and any immediate and remote successor-in-interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not in any way be discharged, released or impaired by any (a) agreement that modifies any of the rights or obligations of the parties under this Lease, (b) stipulation that extends the time within which an obligation under this Lease is to be performed, (c) waiver of the performance of an obligation required under this Lease, or (d) failure to enforce any of the obligations set forth in this Lease.

(l) If Tenant is any form of partnership, a withdrawal or change, voluntary, involuntary or by operation of law of any partner, or the dissolution of the partnership, shall be deemed a voluntary assignment. If Tenant consists of more than one (1) person, a purported assignment, voluntary or involuntary or by operation of law from one (1) person to the other shall be deemed a voluntary assignment. Subject to Paragraph 11(a), if Tenant is a corporation or limited liability entity and is not publicly traded on a recognized national stock exchange, any dissolution, merger, consolidation or other reorganization of Tenant, or sale or other transfer of a controlling percentage of the ownership interest of Tenant, or the sale of at least ten percent (10%) of the value of the assets of Tenant shall be deemed a voluntary assignment.

12. DEFAULT

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an "event of default" or "default" (herein so called) under this Lease by Tenant: (i) Tenant shall fail to pay Rent or any other rental or sums payable by Tenant hereunder within five (5) days after Landlord notifies Tenant of such nonpayment; provided, however, Landlord shall only be obligated to provide such written notice to Tenant one (1) time within any calendar year and in the event Tenant fails to timely pay Rent or any other sums for a second time during any calendar year, then Tenant shall be in default for such late payment after a grace period of five (5) days, and Landlord shall have no obligation or duty to provide notice of such non-payment to Tenant prior to declaring an event of default under this Lease; (ii) the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than monetary failures as specified in Paragraph 12(a)(i) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord; (iii) the making by Tenant or any guarantor hereof of any general assignment for the benefit of creditors, (iv) the filing by or against Tenant or any guarantor hereof of a petition to have Tenant or any guarantor hereof adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant or any guarantor hereof, the same is dismissed within sixty (60) days), (v) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease or of substantially all of guarantor's assets, where possession is not restored to Tenant or guarantor within sixty (60) days, (vi) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of substantially all of guarantor's assets or of Tenant's interest in this Lease where such seizure is not discharged within sixty (60) days; (vii) any material representation or warranty made by Tenant or guarantor in this Lease or any other document delivered in connection with the execution and delivery of this Lease or pursuant to this Lease proves to be incorrect in any material respect; or (viii) Tenant or guarantor shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution; or (ix) the abandonment of the Premises by Tenant in excess of sixty (60) days.

(b) Landlord's Remedies; Termination. In the event of any event of default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord may at its option pursue any one or more of the following remedies, without any notice or demand to the extent permitted by Law or hereinafter specified:

(i) after written notice to Tenant and three (3) days opportunity to cure, commence dispossessory proceedings with or without the termination of this Lease. Tenant shall remain liable for the payment of all Rent accruing after any writ of possession as to the Premises is issued to Landlord;

(ii) after written notice to Tenant and three (3) days opportunity to cure, terminate Tenant's right to possession without terminating this Lease. Upon any such termination of Tenant's right to possession only without termination of the Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as provided below, without such entry and possession terminating the Lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay Rent including any amounts treated as Additional Rent, hereunder for the full Lease Term. In any such case, Tenant shall pay forthwith to Landlord, if and when Landlord so elects, a sum equal to the discounted then present value of the Rent (using a discount rate equal to the discount rate of the Federal Reserve Bank of Atlanta at the time of the calculation plus one percent (1%) (the "Discount Rate")), including any amounts treated as Additional Rent hereunder (calculated for this purpose only in an amount equal to the Additional Rent payable during the calendar year most recently ended prior to the occurrence of such event of default), and other sums provided herein to be paid by Tenant for the remainder of the stated Lease Term hereof, discounted to present value using the Discount Rate. The payment of the foregoing amounts shall not constitute payment of Rent in advance for the remainder of the Lease Term. Instead, such sum shall be paid as agreed liquidated damages and not as a penalty; the parties agree that it is difficult or impossible to calculate the damages which Landlord will suffer as a result of Tenant's default, and this provision is intended to provide a reasonable estimate of such damages. If Landlord pursues the remedy described in this subparagraph (ii), Tenant waives any right to assert that Landlord's actual damages are less than the amount calculated under this subparagraph (ii), and Landlord waives any right to assert that its damages are greater than the amount calculated under this subparagraph (ii). Upon the receipt from Tenant of the sum required to be paid pursuant to this subparagraph, Landlord shall use reasonable efforts to relet the Premises. Upon making such payment and after Landlord has received in full the balance of the Rent and other sums it would have received over the remainder of the Lease Term (i.e., the difference between face amount of Rent and Additional Rent due hereunder for the entire Lease Term and the discounted amount paid to Landlord by Tenant), together with the reimbursement or payment of any sums expended by Landlord on account of the cost of repairs, alterations, additions, redecorating, and Landlord's expenses of reletting and collection of the rental accruing therefrom (including attorney's fees and broker's commissions), Tenant shall receive from Landlord all Base Rent received by Landlord from other tenants on account of the Premises during the Lease Term hereof, provided that the amounts to which Tenant shall become so entitled shall in no event exceed the entire amount actually paid by Tenant to Landlord pursuant to this subparagraph (b)(ii). In no event shall Tenant be entitled to any rental received by Landlord in excess of the amounts due by Tenant hereunder;

(iii) commence proceedings against Tenant for all amounts owed by Tenant to Landlord, whether as Base Rent, Additional Rent, damages or otherwise;

(iv) after written notice to Tenant and three (3) days opportunity to cure, terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. Tenant agrees to pay on demand the accelerated amount of all loss and damage which Landlord may suffer by reason of the termination of the Lease Term under this Paragraph or otherwise, including, without limitation, an amount which, at the date of such termination, is calculated as follows: (aa) the value of the excess, if any, of (1) a sum equal to the discounted then present value of the Base Rent and any amounts treated as Additional Rent hereunder (calculated for this purpose only in an amount equal to the Additional Rent payable during the calendar year most recently ended prior to the occurrence of such Event of Default), and other sums provided herein to be paid by Tenant for the remainder of the stated Lease Term hereof, over (2) the aggregate reasonable rental value of the Premises for the remainder of the stated Lease Term hereof, which excess, if any, shall be discounted to present value using the Discount Rate; plus (bb) the costs of recovering possession of the Premises and all other expenses incurred by Landlord due to Tenant's default, including, without limitation, reasonable attorney's fees; plus (cc) the unpaid Base Rent and Additional Rent earned as of the date of termination plus any interest and late fees due hereunder, plus amounts expressly owing on the date of termination by Tenant to Landlord under this Lease or in connection with the Premises. The amount as calculated above shall be deemed immediately due and payable. The payment of the amount calculated in subparagraph (iv)(aa) above shall not constitute payment of Rent in advance for the remainder of the Lease Term. Instead, such sum shall be paid as agreed liquidated damages and not as a penalty; the parties agree that it is difficult or impossible to calculate the damages which Landlord will suffer as a result of Tenant's default, and this provision is intended to provide a reasonable estimate of such damages. If Landlord pursues the remedy described in this subparagraph (iv), Tenant waives any right to assert that Landlord's actual damages are less than the amount calculated under this subparagraph (iv), and Landlord waives any right to assert that its damages are greater than the amount calculated under this subparagraph (iv). In determining the aggregate reasonable rental value pursuant to subparagraph (iv)(aa)(2) above, the parties hereby agree that, at the time Landlord seeks to enforce this remedy, all relevant factors should be considered, including, but not limited to, (1) the length of time remaining in the Lease Term, (2) the then current market conditions in the general area in which the Building is located, (3) the likelihood of reletting the Premises for a period of time equal to the remainder of the Lease Term, (4) the net effective rental rates then being obtained by landlords for similar type space of similar size in similar type buildings in the general area in which the Building is located, (5) the vacancy levels in the general area in which the Building is located, (6) current levels of new construction that will be completed during the remainder of the Lease Term and how this construction will likely affect vacancy rates and rental rates, and (7) inflation. Tenant shall reimburse Landlord for all reasonable attorney's fees incurred by Landlord in connection with enforcing this Lease;

(v) after written notice to Tenant and three (3) days opportunity to cure, terminate Tenant's right to possession without terminating this Lease. Upon any termination of Tenant's right to possession only, without termination of the Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as provided below, without such entry and possession terminating this Lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay Rent, including any amounts treated as Additional Rent, hereunder for the full Lease Term. In any such case, Landlord may relet the Premises on behalf of Tenant for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Lease Term) and on such terms and conditions (which may include concessions of free rent and alteration, repair and improvement of the Premises) as Landlord, in its sole discretion, may determine and receive directly the Rent by reason of the reletting. Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of any reletting of the Premises. Tenant further agrees to reimburse Landlord upon demand for any expenditure made by it for remodeling or repairing in order to relet the Premises and for all other expenses incurred in connection with such reletting (including without limitation attorney's fees, brokerage commissions, concessions of free rent and alteration, repair and improvement of the Premises). Landlord shall have no obligation to relet the Premises or any part thereof and shall in no event be liable for failure to relet the Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting. No such refusal or failure shall operate to relieve Tenant of any liability under this Lease. Tenant shall instead remain liable for all Rent and for all such expenses;

(vi) intentionally omitted;

(vii) do or cause to be done whatever Tenant is obligated to do under the terms of this Lease, in which case Tenant agrees to reimburse Landlord on demand for any and all costs or expenses which Landlord may thereby incur. Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from effecting compliance with Tenant's obligations under this Paragraph, whether caused by the negligence of Landlord or otherwise; and

(viii) enforce the performance of Tenant's obligations hereunder by injunction or other equitable relief (which remedy may be exercised upon any breach or default or any threatened breach or default of Tenant's obligations hereunder).

(c) Landlord's Remedies; Re-Entry Rights. No re-entry or taking possession of the Premises by Landlord pursuant to this Paragraph 12(c), and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(d) Landlord's Right to Perform. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of Rent. If Tenant shall fail to pay any sum of money (other than Base Rent) or perform any other act on its part to be paid or performed hereunder after all applicable grace periods, and such failure shall continue for three (3) days with respect to monetary obligations (or ten (10) days with respect to non-monetary obligations, except in case of emergencies, in which such case, such shorter period of time as is reasonable under the circumstances) after Tenant's receipt of written notice thereof from Landlord, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as Additional Rent.

(e) Interest. If any monthly installment of Rent or Operating Expenses, or any other amount payable by Tenant hereunder is not received by Landlord five (5) days of when due, it shall bear interest at the Default Rate from the date due until paid. All interest, and any late charges imposed pursuant to Paragraph 12(f) below, shall be considered Additional Rent due from Tenant to Landlord under the terms of this Lease. The term " Default Rate" as used in this Lease shall mean the lesser of (A) fifteen percent (15%) per annum, or (B) the maximum rate of interest permitted by Law.

(f) Late Charges. Tenant acknowledges that, in addition to interest costs, the late payments by Tenant to Landlord of any monthly installment of Base Rent, Additional Rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such other costs include, without limitation, processing, administrative and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage, deed to secure debt, deed of trust or related loan documents encumbering the Premises, the Building or the Project. Accordingly, if any monthly installment of Base Rent, Additional Rent or any other amount payable by Tenant hereunder is not received by Landlord within five (5) days of when due, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue amount as a late charge, but in no event more than the maximum late charge allowed by law. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any late payment as hereinabove referred to by Tenant, and the payment of late charges and interest are distinct and separate in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Notwithstanding the foregoing, Tenant shall not be required to pay the late charge on the first (1st) late payment of Base Rent, Additional Rent or other sums due under this Lease, in any twelve (12) month period, provided that such late payment is paid not later than five (5) days after the Tenant receives notice of such late payment. Acceptance of a late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or at law or in equity now or hereafter in effect.

(g) Rights and Remedies Cumulative. All rights, options and remedies of Landlord contained in this Paragraph 12 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Paragraph 12 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

(h) Tenant's Waiver of Redemption . Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future law to redeem any of the Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof, and (ii) the benefits of any present or future law which exempts property from liability for debt or for distress for Rent.

(i) Costs upon Default and Litigation. Tenant shall pay to Landlord as Additional Rent all the expenses incurred by Landlord in connection with any default by Tenant hereunder or the exercise of any remedy by reason of any default by Tenant hereunder, including reasonable attorneys' fees and expenses.

13. ACCESS; CONSTRUCTION

Landlord reserves from the leasehold estate hereunder, in addition to all other rights reserved by Landlord under this Lease, the right to use the roof and exterior walls of the Premises and the area beneath, adjacent to and above the Premises. Landlord also reserves the right to install, use, maintain, repair, replace and relocate equipment, machinery, meters, pipes, ducts, plumbing, conduits and wiring through the Premises, which serve other portions of the Building or the Project in a manner and in locations which do not unreasonably interfere with Tenant's use of the Premises. In addition, Landlord shall have free access to any and all mechanical installations of Landlord or Tenant, including, without limitation, machine rooms, telephone rooms and electrical closets. Tenant agrees that there shall be no construction of partitions or other obstructions which materially interfere with or which threaten to materially interfere with Landlord's free access thereto, or materially interfere with the moving of Landlord's equipment to or from the enclosures containing said installations. Landlord shall at all reasonable times, during normal business hours and after reasonable written or oral notice, have the right to enter the Premises to inspect the same, to supply janitorial service and any other service to be provided by Landlord to Tenant hereunder, to exhibit the Premises to prospective purchasers, lenders or tenants, to post notices of non-responsibility, to alter, improve, restore, rebuild or repair the Premises or any other portion of the Building, or to do any other act permitted or contemplated to be done by Landlord hereunder, all without being deemed guilty of an eviction of Tenant and without liability for abatement of Rent or otherwise. For such purposes, Landlord may also erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. Landlord shall conduct all such inspections and/or improvements, alterations and repairs so as to minimize, to the extent reasonably practical and without material additional expense to Landlord, any interruption of or interference with the business of Tenant. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of such purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises (excluding Tenant's vaults and safes, access to which shall be provided by Tenant upon Landlord's reasonable request). Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency in order to obtain entry to the Premises or any portion thereof, and Landlord shall have the right, at any time during the Lease Term, to provide whatever access control measures it deems reasonably necessary to the Project and/or Building, without any interruption or abatement in the payment of Rent by Tenant. Any entry into the Premises obtained by Landlord by any of such means shall not under any circumstances be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Tenant from the Premises or any portion thereof. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, Alterations or decorations to the Premises or the Project except as otherwise expressly agreed to be performed by Landlord pursuant to the provisions of this Lease.

14. BANKRUPTCY

(a) If at any time on or before the Commencement Date there shall be filed by or against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, or if Tenant makes an assignment for the benefit of creditors, this Lease shall ipso facto be canceled and terminated and in such event neither Tenant nor any person claiming through or under Tenant or by virtue of any applicable law or by an order of any court, tribunal, administrative agency or any other forum having jurisdiction, shall be entitled to possession of the Premises and Landlord, in addition to the other rights and remedies given by Paragraph 12 hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

(b) If, after the Commencement Date, or if at any time during the term of this Lease, there shall be filed against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, and the same is not dismissed after sixty (60) calendar days, or if Tenant makes an assignment for the benefit of creditors, this Lease, at the option of Landlord exercised within a reasonable time after notice of the happening of any one or more of such events, may be canceled and terminated and in such event neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the Premises, but shall forthwith quit and surrender the Premises, and Landlord, in addition to the other rights and remedies granted by Paragraph 12 hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

15. SUBSTITUTION OF PREMISES

Intentionally deleted.

16. SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATES

(a) Tenant agrees that this Lease and the rights of Tenant hereunder shall be subject and subordinate to any and all deeds to secure debt, deeds of trust, security interests, mortgages, master leases, ground leases or other security documents and any and all modifications, renewals, extensions, consolidations and replacements thereof (collectively, "Security Documents") which hereafter constitute a lien upon or affect the Project, the Building or the Premises. Such subordination shall be effective without the necessity of the execution by Tenant of any additional document for the purpose of evidencing or effecting such subordination. In addition, Landlord shall have the right to subordinate or cause to be subordinated any such Security Documents to this Lease and in such case, in the event of the termination or transfer of Landlord's estate or interest in the Project by reason of any termination or foreclosure of any such Security Documents, Tenant shall, notwithstanding such subordination, attorn to and become the Tenant of the successor-in-interest to Landlord at the option of such successor-in-interest. Furthermore, Tenant shall within ten (10) business days of demand therefor execute any instruments or other documents which may be required by Landlord or the holder of any Security Document and specifically shall execute, acknowledge and deliver within ten (10) business days of demand therefor a subordination of lease or subordination of deed of trust or mortgage, in the form reasonably required by the holder of the Security Document requesting the document; the failure to do so by Tenant within such time period shall be a material default hereunder; provided, however, as a condition to the effectiveness of the subordination and attornment in this paragraph the new landlord or the holder of any Security Document shall agree that Tenant's quiet enjoyment of the Premises shall not be disturbed as long as Tenant is not in default under this Lease. Landlord shall use commercially reasonable efforts to obtain a subordination, non-disturbance and attornment agreement (the "SNDA") from Landlord's mortgagee in connection with this Lease. Notwithstanding the foregoing, the effectiveness of this Lease shall in no way be conditioned on obtaining the SNDA. Tenant shall reimburse Landlord for any third party costs or expenses incurred by Landlord in connection with the SNDA.

(b) If any proceeding is brought for default under any ground or master lease to which this Lease is subject or in the event of foreclosure or the exercise of the power of sale under any mortgage, deed of trust or other Security Document made by Landlord covering the Premises, at the election of such ground lessor, master lessor or purchaser at foreclosure, Tenant shall attorn to and recognize the same as Landlord under this Lease, provided such successor expressly agrees in writing to be bound to all future obligations by the terms of this Lease, and if so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired term of this Lease then remaining). Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale.

(c) In addition to any statutory lien for Rent in Landlord's favor, Landlord (the secured party for purposes hereof) shall have and Tenant (the debtor for purposes hereof) hereby grants to Landlord, an express contract lien and a continuing security interest to secure the payment of all Rent due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture, inventory and other personal property of Tenant (and any transferees or other occupants of the Premises) presently or hereafter situated on the Premises and upon all proceeds of any insurance which may accrue to Tenant by reason of damage or destruction of any such property. In the event of a default under this Lease, Landlord shall have, in addition to any other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code of the state in which the Premises is located, including without limitation the right to sell the property described in this paragraph at public or private sale upon ten (10) days' notice to Tenant, which notice Tenant hereby agrees is adequate and reasonable. Tenant hereby agrees to execute such other instruments necessary or desirable in Landlord's discretion to perfect the security interest hereby created. Any statutory lien for Rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto. Landlord and Tenant agree that this Lease and the security interest granted herein serve as a financing statement, and a copy or photographic or other reproduction of this paragraph of this Lease may be filed of record by Landlord and have the same force and effect as the original. Tenant warrants and represents that the collateral subject to the security interest granted herein is not purchased or used by Tenant for personal, family or household purposes. Tenant further warrants and represents to Landlord that the lien granted herein constitutes a first and superior lien and that Tenant will not allow the placing of any other lien upon any of the property described in this paragraph without the prior written consent of Landlord. Nothing in this Paragraph 16(c) shall permit Tenant to encumber its leasehold interest in the Premises.

(d) Tenant shall, upon not less than fifteen (15) days' prior written notice by Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying to those facts for which certification has been requested by Landlord or any current or prospective purchaser, holder of any Security Document, ground lessor or master lessor, including, but without limitation, that (i) this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Base Rent, Additional Rent and other charges hereunder have been paid, if any, and (iii) whether or not to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge. To the extent it is accurate, the form of the statement attached hereto as *Exhibit D* is hereby approved by Tenant for use pursuant to this subparagraph (d); however, at Landlord's option, Landlord shall have the right to use other forms for such purpose that are accurate and reasonably acceptable to Tenant. Tenant's failure to execute and deliver such statement within such time shall, at the option of Landlord, constitute a material default under this Lease and, in any event, shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord in any such certificate prepared by Landlord and delivered to Tenant for execution. Any statement delivered pursuant to this Paragraph 16 may be relied upon by any prospective purchaser of the fee of the Building or the Project or any mortgagee, ground lessor or other like encumbrances thereof or any assignee of any such encumbrance upon the Building or the Project.

17. SALE BY LANDLORD; TENANT'S REMEDIES; NONRECOURSE LIABILITY

(a) In the event of a sale or conveyance by Landlord of the Building or the Project, Landlord's obligations accruing after such sale or conveyance shall the sole responsibility of the new owner if such new owner expressly assumes such obligations. If the Security Deposit has been deposited by Tenant to Landlord prior to such sale or conveyance, Landlord shall transfer the Security Deposit to the purchaser, and upon delivery to Tenant of notice thereof, Landlord shall be discharged from any further liability in reference thereto.

(b) Landlord shall not be in default of any obligation of Landlord hereunder unless Landlord fails to perform any of its obligations under this Lease within sixty (60) days after receipt of written notice of such failure from Tenant; provided, however, that if the nature of Landlord's obligation is such that more than sixty (60) days are required for its performance, Landlord shall not be in default if Landlord commences to cure such default within the sixty (60) period and thereafter diligently prosecutes the same to completion. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Project and not thereafter. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

(c) [Intentionally Deleted]

(d) As a condition to the effectiveness of any notice of default given by Tenant to Landlord, Tenant shall also concurrently give such notice under the provisions of Paragraph 17(b) to each beneficiary under a Security Document encumbering the Project if Tenant has received written notice (such notice to specify the address of the beneficiary) of such beneficiary under the Security Document encumbering the Project.). In the event Landlord shall fail to cure any breach or default within the time period specified in subparagraph (b), then prior to the pursuit of any remedy therefor by Tenant, all such beneficiaries shall have an additional thirty (30) days within which to cure such default, or if such default cannot reasonably be cured within such period, then each such beneficiary shall have such additional time as shall be necessary to cure such default, provided that within such thirty (30) day period, such beneficiary has commenced and is diligently pursuing the remedies available to it which are necessary to cure such default (including, without limitation, as appropriate, commencement of foreclosure proceedings).

18. PARKING; COMMON AREAS

(a) Tenant shall have the right to the nonexclusive use of the number parking spaces located in the surface parking area adjacent to the Building as specified in *Item 12* of the Basic Lease Provisions for the parking of operational motor vehicles used by Tenant, its officers and employees only, the location of which is subject to availability as concerns non-reserved parking. Landlord reserves the right, at any time upon written notice to Tenant, to designate the location of Tenant's non-reserved parking spaces as determined by Landlord in its reasonable discretion. The use of such spaces shall be subject to the rules and regulations adopted by Landlord from time to time for the use of the parking areas. Landlord further reserves the right to make such changes to the parking system as Landlord may deem necessary or reasonable from time to time; i.e., Landlord may provide for one or a combination of parking systems, including, without limitation, self-parking, single or double stall parking spaces, and valet assisted parking. Except as is specified in *Item 12* of the Basic Lease provisions, Tenant agrees that Tenant, its officers and employees shall not be entitled to park in any reserved or specially assigned areas designated by Landlord from time to time in the Building's parking or other parking areas in the Project. Landlord may require execution of an agreement with respect to the use of such parking areas by Tenant and/or its officers and employees in form reasonably satisfactory to Landlord as a condition of any such use by Tenant, its officers and employees. A default by Tenant, its officers or employees in the payment of any parking charges, the compliance with such rules and regulations, or the performance of such agreement(s) shall constitute a material default by Tenant hereunder. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's officers, employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Paragraph, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

(b) Subject to subparagraph (c) below and the remaining provisions of this Lease, Tenant shall have the nonexclusive right, in common with others, to the use of such entrances, lobbies, fire vestibules, common restrooms (excluding restrooms on any full floors leased by a tenant), mechanical areas, ground floor corridors, elevators and elevator foyers, electrical and janitorial closets, telephone and equipment rooms, loading and unloading areas, the Project's plaza areas, if any, ramps, drives, stairs, and similar access ways and service ways and other common areas and facilities in and adjacent to the Building and the Project as are designated from time to time by Landlord for the general nonexclusive use of Landlord, Tenant and the other tenants of the Project and their respective employees, agents, representatives, licensees and invitees ("Common Areas"). The use of such Common Areas shall be subject to the rules and regulations contained herein and the provisions of any covenants, conditions and restrictions affecting the Building or the Project. Tenant shall keep all of the Common Areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operations, and shall use the Common Areas only for normal activities, parking and ingress and egress by Tenant and its employees, agents, representatives, licensees and invitees to and from the Premises, the Building or the Project. If, in the reasonable opinion of Landlord, unauthorized persons are using the Common Areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall correct such situation by appropriate action or proceedings against all such unauthorized persons. Nothing herein shall affect the rights of Landlord at any time to remove any such unauthorized persons from said areas or to prevent the use of any of said areas by unauthorized persons. Landlord reserves the right to make such changes, alterations, additions, deletions, improvements, repairs or replacements in or to the Building, the Project (including the Premises) and the Common Areas as Landlord may reasonably deem necessary or desirable, including, without limitation, constructing new buildings and making changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading areas, landscaped areas and walkways; provided, however, that (i) there shall be no unreasonable permanent obstruction of access to or use of the Premises resulting therefrom, and (ii) Landlord shall use commercially reasonable efforts to minimize any interruption with Tenant's use of the Premises. In the event that the Project is not completed on the date of execution of this Lease, Landlord shall have the sole judgment and discretion to determine the architecture, design, appearance, construction, workmanship, materials and equipment with respect to construction of the Project. Notwithstanding any provision of this Lease to the contrary, the Common Areas shall not in any event be deemed to be a portion of or included within the Premises leased to Tenant and the Premises shall not be deemed to be a portion of the Common Areas. This Lease is granted subject to the terms hereof, the rights and interests of third parties under existing liens, ground leases, easements and encumbrances affecting such property, all zoning regulations, rules, ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction over the Project or any part thereof.

(c) Notwithstanding any provision of this Lease to the contrary, Landlord specifically reserves the right to redefine the term "Project" for purposes of allocating and calculating Operating Expenses so as to include or exclude areas as Landlord shall from time to time determine or specify (and any such determination or specification shall be without prejudice to Landlord's right to revise thereafter such determination or specification). In addition, Landlord shall have the right to contract or otherwise arrange for amenities, services or utilities (the cost of which is included within Operating Expenses) to be on a common or shared basis to both the Project (i.e., the area with respect to which Operating Expenses are determined) and adjacent areas not included within the Project, so long as the basis on which the cost of such amenities, services or utilities is allocated to the Project is determined on an arms-length basis or some other basis reasonably determined by Landlord. In the case where the definition of the Project is revised for purposes of the allocation or determination of Operating Expenses, Tenant's Proportionate Share may be appropriately revised to equal the percentage share of all Rentable Area contained within the Project (as then defined) represented by the Premises. The Rentable Area of the Project and/or Building is subject to adjustment by Landlord from time to time to reflect any remeasurement thereof by Landlord's architect, at Landlord's request, and/or as a result of any additions or deletions to any of the buildings in the Project as designated by Landlord. Landlord shall have the sole right to determine, in its reasonable discretion, which portions of the Project and other areas, if any, shall be served by common management, operation, maintenance and repair. Landlord shall also have the right, in its reasonable discretion, to allocate and prorate any portion or portions of the Operating Expenses on a building-by-building basis, on an aggregate basis of all buildings in the Project, or any other reasonable manner including, without limitation, the allocation of certain Project Operating Expenses to the various buildings in the Project, and if allocated on a building-by-building basis, then Tenant's Proportionate Share shall, as to the portion of the Operating Expenses so allocated, be based on the ratio of the Rentable Area of the Premises to the Rentable Area of the Building. Landlord shall have the exclusive rights to the airspace above and around, and the subsurface below, the Premises and other portions of the Building and Project.

19. MISCELLANEOUS

(a) Attorneys' Fees. In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs (including, without limitation, court costs and expert witness fees) incurred in such action. Such amounts shall be included in any judgment rendered in any such action or proceeding.

(b) Waiver. No waiver by Landlord of any provision of this Lease or of any breach by Tenant hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Tenant. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval under this Lease shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant. No act or thing done by Landlord or Landlord's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, unless in writing signed by Landlord. The delivery of the keys to any employee or agent of Landlord shall not operate as a termination of the Lease or a surrender of the Premises. The acceptance of any Rent by Landlord following a breach of this Lease by Tenant shall not constitute a waiver by Landlord of such breach or any other breach unless such waiver is expressly stated in a writing signed by Landlord.

(c) Notices. Any notice, demand, request, consent, approval, disapproval or certificate ("Notice") required or desired to be given under this Lease shall be in writing and given by certified mail, return receipt requested, by personal delivery or by a nationally recognized overnight delivery service (such as Federal Express or UPS) providing a receipt for delivery. Notices may not be given by facsimile. The date of giving any Notice shall be deemed to be the date upon which delivery is actually made by one of the methods described in this Paragraph 19(c) (or attempted if said delivery is refused or rejected). If a Notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day. All notices, demands, requests, consents, approvals, disapprovals, or certificates shall be addressed at the address specified in *Item 13* of the Basic Lease Provisions or to such other addresses as may be specified by written notice from Landlord to Tenant and if to Tenant, at the Premises. Either party may change its address by giving reasonable advance written Notice of its new address in accordance with the methods described in this Paragraph; provided, however, no notice of either party's change of address shall be effective until fifteen (15) days after the addressee's actual receipt thereof. For the purpose of this Lease, counsel for either party may provide Notices to the other party on behalf of their respective client, and such notices shall be binding as if such notices have been provided directly by the party.

(d) Access Control. Landlord shall be the sole determinant of the type and amount of any access control or courtesy guard services to be provided to the Project, if any. IN ALL EVENTS, LANDLORD SHALL NOT BE LIABLE TO TENANT, AND TENANT HEREBY WAIVES ANY CLAIM AGAINST LANDLORD, FOR (I) ANY UNAUTHORIZED OR CRIMINAL ENTRY OF THIRD PARTIES INTO THE PREMISES, THE BUILDING OR THE PROJECT, (II) ANY DAMAGE TO PERSONS, OR (III) ANY LOSS OF PROPERTY IN AND ABOUT THE PREMISES, THE BUILDING OR THE PROJECT, BY OR FROM ANY UNAUTHORIZED OR CRIMINAL ACTS OF THIRD PARTIES, REGARDLESS OF ANY ACTION, INACTION, FAILURE, BREAKDOWN, MALFUNCTION AND/OR INSUFFICIENCY OF THE ACCESS CONTROL OR COURTESY GUARD SERVICES PROVIDED BY LANDLORD, IF ANY. Subject to Landlord's approval, Tenant may provide such supplemental security services and may install within the Premises such supplemental security equipment, systems and procedures as may reasonably be required for the protection of its employees and invitees, provided that Tenant shall coordinate such services and equipment with any security provided by Landlord. The determination of the extent to which such supplemental security equipment, systems and procedures are reasonably required shall be made in the sole judgment, and shall be the sole responsibility, of Tenant. Tenant acknowledges that it has neither received nor relied upon any representation or warranty made by or on behalf of Landlord with respect to the safety or security of the Premises or the Project or any part thereof or the extent or effectiveness of any security measures or procedures now or hereafter provided by Landlord, and further acknowledges that Tenant has made its own independent determinations with respect to all such matters.

(e) Storage. Any storage space at any time leased to Tenant hereunder shall be used exclusively for storage. Notwithstanding any other provision of this Lease to the contrary, (i) Landlord shall have no obligation to provide heating, cleaning, water or air conditioning therefor, and (ii) Landlord shall be obligated to provide to such storage space only such electricity as will, in Landlord's judgment, be adequate to light said space as storage space.

(f) Holding Over. If Tenant retains possession of the Premises after the termination or expiration of the Lease Term, then Tenant shall, at Landlord's election become a tenant at sufferance (and not a tenant at will), such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Rent for (i) the first three (3) months of the holdover period, an amount equal to one hundred and twenty-five percent (125%) of the Rent in effect on the termination date, but expressly conditioned on Tenant's delivery to Landlord of written notice of Tenant's intent to holdover no less than six months prior to the expiration of the Term; and (ii) any period following the initial three months of the holdover period, an amount equal to one hundred and fifty percent (150%) of the Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments (including payment of Additional Rent) shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph shall not be construed as consent for Tenant to retain possession of the Premises.

(g) Condition of Premises. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, LANDLORD HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED PURPOSE OR USE, WHICH DISCLAIMER IS HEREBY ACKNOWLEDGED BY TENANT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED INT THIS LEASE, THE TAKING OF POSSESSION BY TENANT SHALL BE CONCLUSIVE EVIDENCE THAT TENANT:

(i) ACCEPTS THE PREMISES, THE BUILDING AND LEASEHOLD IMPROVEMENTS AS SUITABLE FOR THE PURPOSES FOR WHICH THE PREMISES WERE LEASED;

(ii) EXCEPT FOR PUNCHLIST ITEMS AND SUBJECT TO THE LANDLORD'S WARRANTY, ACCEPTS THE PREMISES AS BEING IN GOOD AND SATISFACTORY CONDITION; AND

(iii) WAIVES ALL CLAIMS BASED ON ANY IMPLIED WARRANTY OF SUITABILITY OR HABITABILITY.

(h) Quiet Possession. Upon Tenant's paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the term hereof without hindrance or ejection by any person lawfully claiming under Landlord, subject to the provisions of this Lease and to the provisions of any (i) covenants, conditions and restrictions, (ii) master lease, or (iii) Security Documents to which this Lease is subordinate or may be subordinated.

(i) Matters of Record. Except as otherwise provided herein, this Lease and Tenant's rights hereunder are subject and subordinate to all matters affecting Landlord's title to the Project recorded in the Real Property Records of the County in which the Project is located, prior to and subsequent to the date hereof, including, without limitation, all covenants, conditions and restrictions. Tenant agrees for itself and all persons in possession or holding under it that it will comply with and not violate any such covenants, conditions and restrictions or other matters of record. Landlord reserves the right, from time to time, to grant such easements, rights and dedications as Landlord deems necessary or desirable, and to cause the recordation of parcel maps and covenants, conditions and restrictions affecting the Premises, the Building or the Project, as long as such easements, rights, dedications, maps, and covenants, conditions and restrictions do not materially interfere with the use of the Premises by Tenant. At Landlord's request, Tenant shall join in the execution of any of the aforementioned documents.

(j) Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Tenant shall attorn to each purchaser, successor or assignee of Landlord.

(k) Brokers. Tenant and Landlord warrants that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the brokers named in *Item 10* of the Basic Lease Provisions and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Landlord shall pay the brokers named in Item 10 of the Lease pursuant to separate agreements. If a claim for brokerage in connection with the transaction is made by any broker, salesman or finder claiming to have dealt through or on behalf of either the Landlord or Tenant (the "Indemnitor"), said Indemnitor shall indemnify, defend and hold harmless the other party to this Lease, and such other parties' officers, directors, members, agents and representatives (collectively, the "Indemnitees") from all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorneys' fees and costs with respect to said claim for brokerage. No brokerage commission shall be earned, due nor payable to Landlord's Broker and Tenant's Broker under this Lease in the event that this Lease is terminated prior to the expiration of the Contingency Period in accordance with the terms set forth in Section 6(b) hereof.

(l) Project or Building Name and Signage. Landlord shall have the right at any time to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord which shall not be unreasonably withheld, conditioned, or delayed. Additionally, Landlord shall have the exclusive right at all times during the Lease Term to change, modify, add to or otherwise alter the name, number, or designation of the Building and/or the Project, and Landlord shall not be liable for claims or damages of any kind which may be attributed thereto or result therefrom.

(m) Examination of Lease. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

(n) Time. Time is of the essence of this Lease and each and all of its provisions. "Business Days" or "business days" shall mean each Monday through Friday, excluding United States and State of Florida legal holidays, and "Business Day" or "business day" shall mean any one of the days otherwise comprising "Business Days."

(o) Intentionally omitted.

(p) Conflict of Laws; Prior Agreements; Separability. This Lease shall be governed by and construed pursuant to the laws of the State of Florida without giving effect to the rules governing conflicts of laws. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The illegality, invalidity or unenforceability of any provision of this Lease shall in no way impair or invalidate any other provision of this Lease, and such remaining provisions shall remain in full force and effect.

(q) Authority. If Tenant or Landlord is a corporation or limited liability company, each individual executing this Lease on behalf of such entity hereby covenants and warrants that the entity is a duly authorized and existing corporation or limited liability company, that the entity is qualified to do business in the State, that the corporation or limited liability company has full right and authority to enter into this Lease, and that each person signing on behalf of the entity is authorized to do so. If Tenant is a partnership or trust, each individual executing this Lease on behalf of Tenant hereby covenants and warrants that he is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with the terms of such entity's partnership or trust agreement. Landlord and Tenant shall provide the other on request with such evidence of such authority as Landlord or Tenant reasonably request of the other, including, without limitation, resolutions, and certificates. This Lease shall not be construed to create a partnership, joint venture or similar relationship or arrangement between Landlord and Tenant hereunder.

(r) Joint and Several Liability. If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other business association to pay Rent and perform all other obligations hereunder shall be deemed to be joint and several, and all notices, payments and agreements given or made by, with or to any one of such individuals, corporations, partnerships or other business associations shall be deemed to have been given or made by, with or to all of them.

(s) Rental Allocation. For purposes of Section 467 of the Internal Revenue Code of 1986, as amended from time to time, Landlord and Tenant hereby agree to allocate all Rent to the period in which payment is due, or if later, the period in which Rent is paid.

(t) Rules and Regulations. Tenant agrees to comply with all rules and regulations of the Building and the Project imposed by Landlord as set forth on *Exhibit C-1* and *Exhibit C-2* attached hereto, as the same may be changed from time to time upon reasonable notice to Tenant. Landlord shall not be liable to Tenant for the failure of any other tenant or any of its assignees, subtenants, or their respective agents, employees, representatives, invitees or licensees to conform to such rules and regulations but shall take reasonable action to enforce the rules and regulations among the tenants of the Project.

(u) Joint Product. This Agreement is the result of arms-length negotiations between Landlord and Tenant and their respective attorneys. Accordingly, neither party shall be deemed to be the author of this Lease and this Lease shall not be construed against either party.

(v) Financial Statements. Upon Landlord's written request, Tenant shall promptly furnish Landlord, once per year or upon sale or refinance, with the most current audited financial statements prepared in accordance with generally accepted accounting principles, certified by Tenant and an independent auditor to be true and correct, reflecting Tenant's then current financial condition.

(w) Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire, flood or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

(x) Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

(y) Waiver of Right to Jury Trial**. LANDLORD AND TENANT WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CONTRACT OR TORT CLAIM, COUNTERCLAIM, CROSS-COMPLAINT, OR CAUSE OF ACTION IN ANY ACTION, PROCEEDING, OR HEARING BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES, INCLUDING WITHOUT LIMITATION ANY CLAIM OF INJURY OR DAMAGE OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY CURRENT OR FUTURE LAW, STATUTE, REGULATION, CODE, OR ORDINANCE.**

(z) Office and Communications Services. Landlord has advised Tenant that certain office and communications services may be offered to tenants of the Building by a concessionaire under contract to Landlord ("Provider"). Tenant shall be permitted to contract with Provider for the provision of any or all of such services on such terms and conditions as Tenant and Provider may agree. Tenant acknowledges and agrees that: (i) Landlord has made no warranty or representation to Tenant with respect to the availability of any such services, or the quality, reliability or suitability thereof; (ii) the Provider is not acting as the agent or representative of Landlord in the provision of such services, and Landlord shall have no liability or responsibility for any failure or inadequacy of such services, or any equipment or facilities used in the furnishing thereof, or any act or omission of Provider, or its agents, employees, representatives, officers or contractors; (iii) Landlord shall have no responsibility or liability for the installation, alteration, repair, maintenance, furnishing, operation, adjustment or removal of any such services, equipment or facilities; and (iv) any contract or other agreement between Tenant and Provider shall be independent of this Lease, the obligations of Tenant hereunder, and the rights of Landlord hereunder, and, without limiting the foregoing, no default or failure of Provider with respect to any such services, equipment or facilities, or under any contract or agreement relating thereto, shall have any effect on this Lease or give to Tenant any offset or defense to the full and timely performance of its obligations hereunder, or entitle Tenant to any abatement of rent or additional rent or any other payment required to be made by Tenant hereunder, or constitute any accrual or constructive eviction of Tenant, or otherwise give rise to any other claim of any nature against Landlord.

(aa) OFAC Compliance.

(i) Certification. Tenant certifies, represents, warrants and covenants that:

(A) It is not acting and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person", or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

(B) It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

(ii) Indemnity. Tenant hereby agrees to defend (with counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord and the Landlord Indemnitees from and against any and all Claims arising from or related to any such breach of the foregoing certifications, representations, warranties and covenants.

(bb) No Easement for Light, Air and View. This Lease conveys to Tenant no rights for any light, air or view. No diminution of light, air or view, or any impairment of the visibility of the Premises from inside or outside the Building, by any structure or other object that may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of Rent under this Lease, constitute an actual or constructive eviction of Tenant, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

(cc) Nondisclosure of Lease Terms**.** Tenant agrees that the terms of this Lease ("Confidential Information") are confidential and constitute proprietary information of Landlord, and that disclosure of the Confidential Information could adversely affect the ability of Landlord to negotiate with other tenants. Tenant hereby agrees that it shall not disclose the Confidential Information to any other person without Landlord's prior written consent, except to Tenant's employees, partners, officers, managers, members, attorneys, accountants, lenders, advisors, agents, real estate brokers, and representatives, without the express written consent of Landlord unless such Confidential Information (i) is or becomes generally known to the public other than as a result of a disclosure by Tenant; (ii) is required or compelled to be disclosed pursuant to any applicable law, ordinance, rule, regulation, governmental decree, judicial or administrative order or decree, legal or judicial process (including, without limitation, by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) or request by other regulatory organization having authority pursuant to law; (iii) is being used in connection with any legal dispute or legal proceeding; (iv) is being used for tax reporting purposes; or (v) is being used in connection with any prospective sublease or assignment.

(dd) Inducement Recapture in Event of Default. Any agreement by Landlord for free or abated rent or other charges applicable to the Premises, or for the giving or paying by Landlord to or for Tenant of any cash or other bonus, inducement or consideration for Tenant's entering into this Lease, including, but not limited to, any tenant finish allowance, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon Tenant's full and faithful performance of all of the terms, covenants and conditions of this Lease to be performed or observed by Tenant during the term hereof as the same may be extended. Upon the occurrence of an event of default (as defined in Paragraph 12) of this Lease by Tenant, that remains uncured, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any unamortized (calculated on a straight-line basis) portion of rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Landlord under such an Inducement Provision shall be immediately due and payable by Tenant to Landlord, and recoverable by Landlord, as additional rent due under this Lease, notwithstanding any subsequent cure of said event of default by Tenant.

(ee) ERISA. Tenant is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), which is subject to Title I of ERISA, or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, which is subject to Section 4975 of the Internal Revenue Code of 1986; and (b) the assets of Tenant do not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986; and (c) Tenant is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and assets of Tenant do not constitute plan assets of one or more such plans; or (d) transactions by or with Tenant are not in violation of state statutes applicable to Tenant regulating investments of and fiduciary obligations with respect to governmental plans.

(ff) Tenant's Signage. Tenant shall not place any signs or other advertising matter or material on the exterior of the Building, anywhere upon the Common Areas, or in any portion of the interior of the Premises which is visible beyond the Premises, without the prior written consent of Landlord, which consent may be withheld in the sole discretion of Landlord. Notwithstanding the foregoing, at Landlord's expense, Tenant will be identified in standard form on the Building directory in the lobby of the Building and shall be provided with Building standard signage at the entrance to the Premises.

(gg) Landlord's Exculpation. Neither shareholders, officers or directors of Landlord (collectively, the "parties" for purposes of this Paragraph) shall be liable for the performance of Landlord's obligations under this Lease. Tenant shall look solely to Landlord to enforce Landlord's obligations hereunder and shall not seek any damages against any of the parties. Tenant agrees that the liability of Landlord for Landlord's obligations under this Lease is specifically limited to Landlord's interest in the Building, and Landlord shall never be personally liable with respect to any of the terms, covenants and conditions of this Lease. The provisions of this Paragraph 19(gg) will survive the expiration or earlier termination of this Lease.

20. NONRECOURSE LIABILITY; WAIVER OF CONSEQUENTIAL AND SPECIAL DAMAGES

NOTWITHSTANDING ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY, THE OBLIGATIONS OF LANDLORD UNDER THIS LEASE (INCLUDING ANY ACTUAL OR ALLEGED BREACH OR DEFAULT BY LANDLORD) DO NOT CONSTITUTE PERSONAL OBLIGATIONS OF THE INDIVIDUAL PARTNERS, DIRECTORS, OFFICERS, MEMBERS OR SHAREHOLDERS OF LANDLORD OR LANDLORD'S MEMBERS OR PARTNERS, AND TENANT SHALL NOT SEEK RECOURSE AGAINST THE INDIVIDUAL PARTNERS, DIRECTORS, OFFICERS, MEMBERS OR SHAREHOLDERS OF LANDLORD OR AGAINST LANDLORD'S MEMBERS OR PARTNERS OR AGAINST ANY OTHER PERSONS OR ENTITIES HAVING ANY INTEREST IN LANDLORD, OR AGAINST ANY OF THEIR PERSONAL ASSETS FOR SATISFACTION OF ANY LIABILITY WITH RESPECT TO THIS LEASE. ANY LIABILITY OF LANDLORD FOR A DEFAULT BY LANDLORD UNDER THIS LEASE, OR A BREACH BY LANDLORD OF ANY OF ITS OBLIGATIONS UNDER THE LEASE, SHALL BE LIMITED SOLELY TO ITS INTEREST IN THE PROJECT, AND IN NO EVENT SHALL ANY PERSONAL LIABILITY BE ASSERTED AGAINST LANDLORD IN CONNECTION WITH THIS LEASE NOR SHALL ANY RECOURSE BE HAD TO ANY OTHER PROPERTY OR ASSETS OF LANDLORD, ITS PARTNERS, DIRECTORS, OFFICERS, MEMBERS, SHAREHOLDERS OR ANY OTHER PERSONS OR ENTITIES HAVING ANY INTEREST IN LANDLORD. TENANT'S SOLE AND EXCLUSIVE REMEDY FOR A DEFAULT OR BREACH OF THIS LEASE BY LANDLORD SHALL BE EITHER (I) AN ACTION FOR DAMAGES, OR (II) AN ACTION FOR INJUNCTIVE RELIEF; TENANT HEREBY WAIVING AND AGREEING THAT TENANT SHALL HAVE NO OFFSET RIGHTS OR RIGHT TO TERMINATE THIS LEASE ON ACCOUNT OF ANY BREACH OR DEFAULT BY LANDLORD UNDER THIS LEASE. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL LANDLORD EVER BE LIABLE FOR PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER THIS LEASE AND TENANT WAIVES ANY RIGHTS IT MAY HAVE TO SUCH DAMAGES UNDER THIS LEASE IN THE EVENT OF A BREACH OR DEFAULT BY LANDLORD UNDER THIS LEASE.

21. RADON DISCLOSURE

In accordance with the requirements of Florida Statutes Section 404.056(5), the following notice is hereby given:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department.

22. WAIVERS BY TENANT

Tenant expressly waives any rights it may have in the selection of venue in the event of suit by or against Landlord, it being understood that the venue of such suit shall be in Palm Beach County, Florida.

23. EARLY ACCESS PERIOD.

As an accommodation to Tenant, Landlord hereby grants to Tenant and its contractors a license to early access the Premises during normal business hours for properly coordinated construction with the general contractors construction of the Space Plan (e.g. cabling, low voltage wiring, card readers, etc.), and for a period of ten (10) days prior to the Commencement Date (collectively, the "**Early Access Period**") during normal Business Hours in order for Tenant to deliver and install (at Tenant's sole cost and expense) low voltage wiring and Tenant's equipment, furniture or other personal property (collectively, "**Tenant's Equipment**"), provided such access does not impede Landlord's ability to complete the Tenant Improvements. Landlord assumes no liability for Tenant's Equipment located at the Leased Premises during the Early Access Period. In the event that Tenant's Equipment is damaged during the Early Access Period, then Tenant shall indemnify and hold Landlord harmless from and against any such damage to Tenant's Equipment. Except for Tenant's obligation to pay Rent, Tenant shall strictly abide by all of the terms and conditions of this Lease during the Early Access Period, including without limitation, the insurance requirements set forth in Paragraph 8 of this Lease.

24. PRIOR TENANT FURNITURE, FIXTURES OR EQUIPMENT.

Tenant acknowledges and agrees that: (a) certain furniture, fixtures, equipment and/or related items (collectively referred to herein as the "**FF&E"**), were left by a prior occupant of the Premises ("***Prior Occupant***") and may still be located in the Premises as of the Commencement Date, and may have been abandoned; (b) the Prior Occupant or one or more other parties may claim to be the owner, equipment lessor or secured lender (collectively referred to herein as "***FF&E Claimant***") of the FF&E; (c) if any FF&E Claimant contacts Tenant or Landlord, then Tenant shall promptly either enter into mutually acceptable written arrangements to lease, license or pay for the FF&E or else permit the FF&E Claimant or its representatives to remove the FF&E; (d) Landlord reserves the right to provide access to the Premises to the FF&E Claimant to remove the FF&E at any time prior to such time as Tenant and the FF&E Claimant enter into a mutually acceptable written agreement, or at any time thereafter that the FF&E Claimant represents to Landlord that it has the right to remove the FF&E, e.g. based on Tenant's violation of such written agreement or expiration thereof; and (e) Tenant has had an opportunity to inspect and perform an inventory of any such FF&E located in the Premises, including its condition, and Landlord is making no representations or warranties, and shall have no liability whatsoever, relating to the FF&E, including, but not limited to, the condition thereof or whether there is any damage thereto or defects therein. Tenant shall not be responsible for the FF&E or remove the FF&E from the Premises at the end of the Lease Term.

25. GENERATOR

Subject to Landlord's prior written approval of Tenant's plans, Tenant shall be permitted to install, maintain, replace and operate (collectively, the "**Generator Installation**") an emergency generator and above-ground fuel tank, together with all related pipes, wiring, conduits, and related improvements (collectively, the "**Generator**") in an area designated by the Landlord, in Landlord's reasonable discretion, the installation and maintenance of which shall be at Tenant's sole cost and expense. The Generator Installation shall be performed in compliance with applicable laws. Tenant shall be responsible to obtain all necessary governmental permits (true copies of which are to be provided to Landlord) and association approvals in connection with Generator Installation and operation of the Generator. Tenant hereby acknowledges and agrees that no odors are permitted to emanate as a result of the Generator Installation or the operation of the Generator. Tenant shall only use a licensed contractor, which contractor must be approved in writing by Landlord prior to the commencement of the Generator Installation and must obtain insurance coverage in connection with the Generator pursuant to the requirements set forth in this Lease. The Lease specifically prohibits the subjecting of Landlord's interest in the Premises or the Building to any mechanic's, materialman's or laborer's liens for improvements made by Tenant, and therefore Tenant must deliver to Landlord a lien waiver from all contractors and subcontractors performing the Generator Installation.

Tenant hereby acknowledges that the installation, operation, use, maintenance and removal of the Generator shall be at the sole and exclusive risk of Tenant, and Landlord shall not assume any liability whatsoever in connection therewith. Tenant shall and does hereby indemnify, defend and hold harmless Landlord, its partners, principals, and agents from and against all claims, expenses, costs, damages, loss, or other liabilities (including, without limitation, attorneys' fees of Landlord) arising from or in any way connected with Tenant's use of the Generator or the installation, operation, maintenance and removal thereof. Tenant hereby further acknowledges that the Generator shall become the property of Landlord at the expiration of the Term, however, Landlord reserves the right to require Tenant, at Tenant's expense to (i) remove the Generator at the expiration of the Term; and (ii) repair all injury done by or in connection with installation or removal of the Generator, provided that Landlord gives notice to Tenant no later than thirty (30) days prior to the expiration of the Lease Term.

26. WAIVER OF LANDLORD'S LIEN. Notwithstanding anything in this Lease or under applicable Laws to the contrary notwithstanding, Landlord hereby waives any statutory and common law lien it may have against Tenant's trade fixtures, equipment, furniture and all other tangible and intangible personal property, and any and all equipment and/or supplies utilized by Tenant in its business operation, sand under no circumstances shall Landlord have any lien or possessory interest in Tenant's work files, business papers and records, including, without limitation, the media on which those records and data are stored. Landlord agrees that, upon the request of Tenant, Landlord shall, at Tenant's sole cost and expense, negotiate in good faith with any lender that is providing (i) secured financing to Tenant, (ii) purchase money equipment financing to Tenant, or (iii) equipment leasing to Tenant for the purpose of executing and delivering a commercially reasonable waiver or subordination of Landlord's statutory and common law lien rights, if any, and a consent and agreement with respect to the respective rights of Landlord and such person or entity regarding the security interests in, and the timing and removal of, any tenant personal property in which such lender has a secured interest (the "**Collateral**"), in form and substance reasonably acceptable to Landlord, Tenant, which shall include but not limited to, require Tenant and its lender (i) provides for the indemnification of Landlord against any claims by Tenant or any person or entity claiming through Tenant, and against any physical damage caused to the Premises, in connection with the removal of any of the Collateral by such person or entity, (ii) provide insurance in favor of Landlord, with coverage in amounts reasonably determined by Landlord, (iii) provides for a reasonable, but limited, time frame (the duration of which shall be determined by Landlord) for the removal of such Collateral, and (iii) provides for the per diem payment of Rent due hereunder by such person or entity for each day following the date of the expiration or termination of the Lease that Landlord permits such Collateral to remain in the Premises.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Effective Date.

Witness #1:

_____

_____
Printed Name of Witness #1

Witness #2:

_____

_____
Printed Name of Witness #2

"TENANT":

FlexShopper, LLC, a North Carolina limited liability company

By: /s/ Brad Bernstein
Name: Brad Bernstein
Title: CEO & President

Witness #1:

_____

_____
Printed Name of Witness #1

Witness #2:

_____

_____
Printed Name of Witness #2

"LANDLORD":

Mainstreet CV North 40, LLC, a Delaware limited liability company

By: Mainstreet 40, Ltd, a Florida limited partnership, Manager

By: Mainstreet N40, Inc., a Florida corporation, General Partner

By: /s/ Paul J. Kilgallon
Paul J. Kilgallon, President

JOINDER BY BROKERS

The undersigned hereby join in the execution of this Lease for the sole purpose of being bound to Section 19(k) of this Agreement.

LANDLORD'S BROKER:

AVISON YOUNG – FLORIDA, LLC.

By: _____
Name: _____
Title: _____

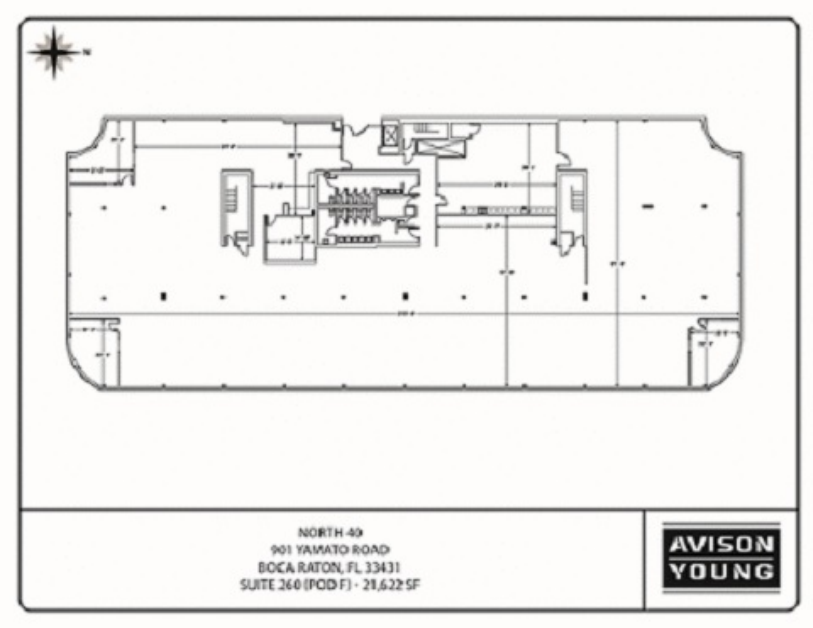
TENANT'S BROKER:

THE EASTON GROUP

By: _____
Name: _____
Title: _____

EXHIBIT A-1

FLOOR PLANS OF THE PREMISES



NOTE: These floor plans are being used solely for the purpose of identifying the approximate location of the Premises.

EXHIBIT A-2

LEGAL DESCRIPTION OF THE PROJECT

A parcel of land lying and being in Sections 1 and 12, Township 47 South, Range 42 East and Sections 6 and 7, Township 47 South, Range 43 East, Palm Beach County, Florida, described as follows:

Commence at the Northeast corner of said Section 12; thence South 00°29'15" West, along the East line of said Section 12, a distance of 80.01 feet to the North right-of-way line of N.W. 51st Street and the Point of Beginning of this description; thence North 88°35'00" West, along a line 80.00 feet South of, and parallel with, as measured at right angles to the North line of said Section 12, a distance of 453.93 feet; thence North 00°24'40" East, a distance of 149.73 feet; thence North 89°35'20" West, a distance of 4.27 feet; thence North 00°24'40" East, a distance of 69.93 feet; thence North 89°35'20" West, a distance of 2.46 feet; thence North 00°24'40" East, a distance of 578.59 feet; thence South 89°35'20" East, a distance of 14.51 feet; thence North 00°24'40" West, a distance of 13.99 feet; thence South 88°35'00" East, a distance of 504.73 feet to the East line of said Section 1; thence continue South 88°35'00" East, a distance of 57.50 feet; thence South 00°29'15" West, parallel with the East line of said Section 1, a distance of 250.00 feet; thence South 88°35'00" East, a distance of 20.00 feet; thence South 00°29'15" West, a distance of 435.82 feet to a line 45.00 feet North of and parallel with the South line of said Section 6; thence South 89°42'30" East, along said parallel line, a distance of 40.00 feet; thence South 00°29'15" West, a distance of 45.00 feet to the South line of said Section 6; thence continue South 00°29'15" West, a distance of 80.00 feet to a line 80.00 feet South of and parallel with the South line of said Section 6, said point being further described as being the North right-of-way line of N.W. 51st Street; thence North 89°42'30" West, along said parallel line, a distance of 117.50 feet to the said Point of Beginning of this description; together with the rights for parking and ingress and egress and other rights as established pursuant to that certain Declaration of Reciprocal Easements and Covenants dated July 6, 1995 and recorded on July 18, 1995 in Official Records Book 8841, page 423, Public Records of Palm Beach, Florida.

Said land situate, lying and being in Palm Beach County, Florida.

901 Yamato

A parcel of land in Section 6, Township 47 South, Range 43 East, Palm Beach County, Florida, described as follows:

Commence at the Southwest corner of said Section 6; thence N. 0°29'15" E., along the West line of said Section 6, 20.00 feet; thence S. 89°42'30" E., parallel with the South line of said Section 6, 117.50 feet to the Point of Beginning; thence S. 89°42'30" E. 190.00 feet; thence N. 0°17'30" E., 290.79 feet; thence N. 30°29'15" E., 325.02 feet; thence S. 89°30'45" E., 401.00 feet to the West right-of-way line of Congress Avenue according to the plat thereof recorded in Road Plat Book 4, Page 143 of the Public Records of Palm Beach County, Florida; thence N. 0°29'15" E. along said West right-of-way line, 135.00 feet to the Southeast corner of Parcel U, Arvida Park of Commerce Plat No. 5, according to the plat thereof recorded in Plat Book 44, at pages 111 and 112 of the Public Records of Palm Beach County, Florida; thence N. 0°29'15" E., along the East line of said Parcel U, 563.50 feet; thence N. 44°30'45"W., along the Northeasterly line of said Parcel U, 35.36 feet; thence N. 89°30'45" W., along the North line of Parcel U, 229.01 feet to a point of curvature of a curve concave Northerly with a radius of 341.19 feet and a central angle of 23°14'51"; thence Westerly, along the arc of said curve and the North line of said Parcel U, 138.44 feet; thence S. 23°44'06" W., along the West line of said Parcel U, 46.45 feet; thence S. 19°17'46" W., 69.99 feet to a point of curvature on a curve concave Westerly with a radius of 25 feet and a central angle of 2°49'54"; thence Southerly along the arc of said curve, 1.24 feet; thence N. 0°29'15" E., 13.89 feet; thence N. 89°30'45" W., 440.00 feet to the West line of said Section 6; thence S. 0°29'15" W. along said West line, 515.97 feet; thence S. 88°35'00" E., 57.50 feet; thence S. 0°29'15" W., parallel with the said West line of Section 6, 250.00 feet; thence S. 88°35'00" E., 20.00 feet; thence S. 0°29'15" W., parallel with the said West line of Section 6, 435.82 feet to a line 45.00 feet North of and parallel with the South line of said Section 6; thence S. 89°42'30" E., along said parallel line, 40.00 feet; thence S. 0°29'15" W., parallel with the said West line of Section 6, 25.00 feet to the Point of Beginning.

Containing 17.14 acres, more or less.

TOGETHER WITH, all rights of Grantee under that certain Grant of Easement by Arvida Corporation, as grantor, to International Business Machines Corporation, as Grantee, recorded in Official Records Book 3489, Page 939, Public Records of Palm Beach County, Florida.

5201 Congress

EXHIBIT B

Space Plan

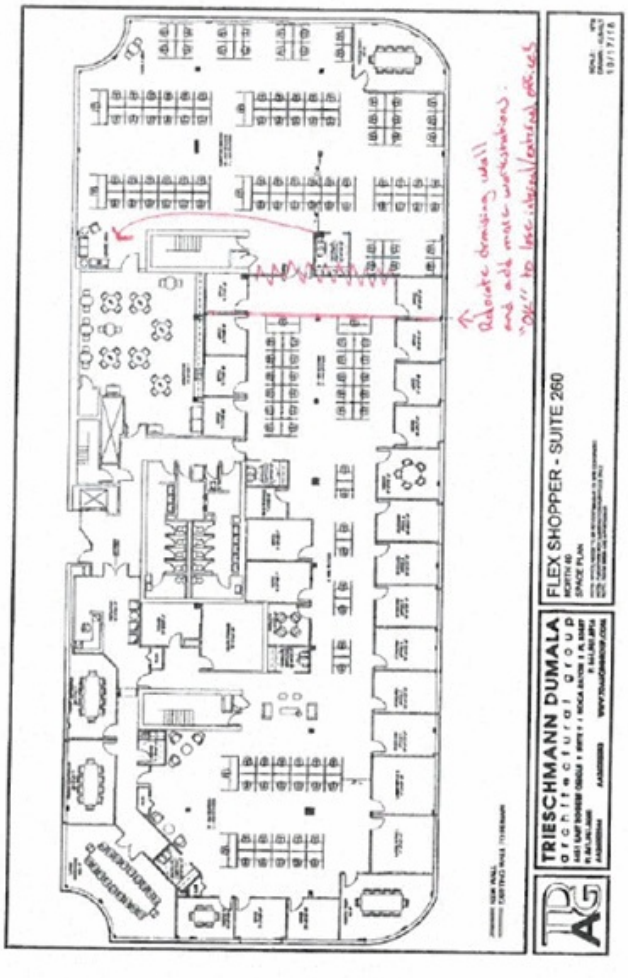


EXHIBIT C-1

BUILDING RULES AND REGULATIONS

The following building regulations are provided and are applicable to Tenant, except as otherwise specifically addressed in the Lease.

1. The sidewalks, entry passages, corridors, halls, elevators, and stairways shall not be obstructed by Tenant or used by Tenant for any purpose other than those of ingress and egress. The floors, skylights, and windows that reflect or admit light into any place in said Building shall not be covered or obstructed by Tenant subject to Tenant's right to install window coverings such as blinds. The water closets and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, or other obstructing substances shall be thrown therein.

2. No advertisement, sign, or other notice shall be inscribed, painted, or affixed on any part of the outside or inside of said Building, except upon the interior doors and windows permitted by Landlord, which signs, etc., shall be of such order, size, and style and at such places as shall be designated by Landlord. Exterior signs on doors will be provided for Tenant by Landlord, the cost of such signage to be charged to and paid for by Tenant.

3. Nothing shall be thrown by Tenant, its clerks, or servants out of the windows or doors or down the passages or skylights of the Building. No rooms shall be occupied or used as sleeping or lodging apartments at any time.

4. Tenant shall not employ any persons other than the janitors of Landlord or others reasonably approved by Landlord (who will be provided with pass keys into the offices) for the purpose of cleaning or taking charge of said Premises. It is understood and agreed that the Landlord shall not be responsible to Tenant for any loss of property from the Premises, however occurring, or for any damage done to the furniture or other effects of Tenant by the janitor or any of its employees provided, however, that Landlord shall use its good faith reasonable efforts to employ service companies for providing such janitorial services that maintain quality controls for personnel employed.

5. No animals (except service animals), birds, bicycles, or other vehicles shall be allowed in the offices, halls, corridors, elevators, or elsewhere in the Building.

6. No painting shall be done nor shall any alterations be made to any part of the Building by putting up or changing any partitions, doors, or windows, nor shall there be any nailing, boring, or screwing into the woodwork or plastering, nor shall any connection be made to the electric wires or electric fixtures without the consent in writing on each occasion of Landlord or its Agent. All glass, locks, and trimmings in or upon the doors and windows of the Building shall be kept whole and, when any part thereof shall be broken, the same shall be immediately replaced or repaired and put in order under the direction and to the satisfaction of Landlord or its Agent and shall be left whole and in good repair. Tenant shall not inure, overload, or deface the Building, the woodwork, or the walls of the Premises nor carry on upon the Premises any noisome, noxious, noisy, or offensive business.

7. Tenants shall not (without Landlord's prior written consent) put up or operate any steam engine, boiler, machinery, or stove upon the Premises or carry on any mechanical business thereof or do any cooking thereon or use or allow to be used upon the Premises oil, burning fluids, camphene, gasoline, or kerosene for heating, warming, or lighting. No article deemed extra hazardous on account of fire and no explosives shall be brought into the Premises. No offensive gases or liquids will be permitted.

8. Landlord will post on the directory of its Building, if any, at no charge to Tenant, names of the executives of Tenant, such executives to be designated by Tenant. All additional names which Tenant shall desire put upon said directory must be first consented to by Landlord, and if so approved, a charge will be made for such additional listing as prescribed by Landlord to be paid to Landlord by Tenant.

9. The Landlord and its Agents shall have the right to enter the Premises at all reasonable hours for the purpose of making any repairs, alterations, or additions which it shall deem necessary for the safety, preservation, or improvement of said Building, and the Landlord shall be allowed to take all material into and upon such Premises that may be required to make such repairs, improvements, and additions or any alterations for the benefit of the Tenant without in any way being deemed or held guilty of an eviction of Tenant; and the rent reserved shall in no wise abate while said repairs, alterations, or additions are being made; and Tenant shall not be entitled to maintain a set-off or counterclaim for damage against Landlord by reason of loss or interruption to the business of Tenant because of the prosecution of any such work. All such repairs, decorations, additions, and improvements shall be done during ordinary business hours or, if any such work is not the request of the Tenant, to be done during any other hours. Tenant shall pay for all overtime costs.

10. Tenant shall instruct its mover to contact the Building Manager two (2) working days prior to truck arrival for coordination of move-in and/or large furniture/equipment deliveries. Such moves will normally be made after 6:00 p.m. Friday and prior to 8:00 a.m. Monday. Tenant shall be responsible for any damage to Building interior including but not limited to floors and carpet. A Landlord representative will be present for all such moves.

11. Landlord reserves the right to make such other and reasonable rules and regulations as, in its judgment, may from time to time be needed for the safety, care, and cleanliness of the Premises and for the preservation of good order therein.

12. The Building and the Project are a weapons free environment. No tenant, owner of a tenant, officer or employee of a tenant, visitor of tenant, contractor or subcontractor of tenant, or any other party shall carry weapons (concealed or not) of any kind in the Building or the Building's parking area. This prohibition applies to all public areas including, without limitation, restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, all areas within the leased premises of tenants, the parking areas and the surrounding Land related to the Building.

13. Except as hereinafter provided, the Building and the Project are a tobacco free environment. No tenant, party with an ownership interest in a tenant, officer or employee of a tenant, visitor of a tenant, contractor or subcontractor of a tenant, or any other party shall smoke tobacco products of any kind in the Building, the Building's parking area or any of the Building's balconies. This prohibition applies to all public areas including, without limitation, restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, all areas within the leased premises of tenants, the surface parking areas, balconies and the surrounding Land related to the Project; provided however, and notwithstanding the foregoing to the contrary, tobacco smoking shall be permitted only in the outdoor promenade of the retail portion of the Project and in such other areas of the Project which may be designated from time to time by Landlord, in Landlord's sole discretion, as permitted smoking areas.

EXHIBIT C-2

CONSTRUCTION RULES AND REGULATIONS

1. Each general contractor shall provide a full time project supervisor, field office and telephone during the project construction.

2. Employees of contractors and subcontractors must park in areas designated by the Landlord's property manager. No parking is allowed in the loading area or on the throughways.

3. All contractors and subcontractors are expressly prohibited from using the passenger elevators or from being in the front lobby or atrium area. Only the freight elevator and service entrance shall be used by all contractors and subcontractors. Large material deliveries may be made only at a time scheduled in advance with Landlord's property manager so that any conflicts can be coordinated.

4. Each general contractor shall submit a complete list of suppliers and subcontractors to Landlord's property manager prior to commencement of construction. Each contractor shall also submit a list of subcontractors' phone numbers as well as after-hours phone numbers if contractors or subcontractor will perform work after hours.

5. Each contractor shall maintain clean and safe working conditions at all times. Trash removal will be done at contractor's cost, including all labor and dumpsters. Dumpster locations shall be approved by Landlord's property manager. Trash on any tenant build out floors shall be removed within 24 hours of any directive of Landlord's property manager. No accumulation of trash will be tolerated anywhere in the Building.

6. Normal working hours will be 7:00 a.m. until 5:30 p.m. Landlord's property manager must be notified in writing of all work schedules and the names of those who will be working in the Building after normal working hours.

7. After hours and weekend work must be supervised by contractor's superintendent and are subject to additional HVAC, security and other applicable charges.

8. Each contractor must advise Landlord's property manager before working on any fire safety components, and use all efforts to avoid accidental activation of alarms. All fire detection devices must be protected from contaminates from construction activity.

9. No contractor and/or subcontractor may operate air handling units. Arrangements for after hours air conditioning must be made with the office of Landlord's property manager before 3:00 p.m. for night time requests and before 3:00 p.m. Friday for weekend requests.

10. Contractor shall supply to Building management copies of all building permits and submit a complete test and balance report from an independent air conditioning contractor.

11. Contractor must protect public area corridors and carpet by plastic runners and or builder's paper as necessary.

12. Contractor must use walk-off mats at all entrances to the work area and changed as often as needed. Contractor will be responsible for maintaining cleanliness of these areas at all times.

13. No utilities are to be interrupted without the written approval Landlord's property manager. Such approval must be requested not less than 24 hours in advance and on regular working days.

14. Work that may generate excessive noise that may disturb or inconvenience other occupants of the Building shall not be performed between the hours of 8:30 a.m. and 5:30 p.m. on regular business days. Such work must be scheduled and coordinated with Landlord's property manager.

15. Building materials and equipment are to be stored only in the build out area unless prior arrangements have been made with Landlord's property manager.

16. Construction personnel are not to eat in the lobbies or atrium area nor are they to congregate in these areas at any time. They should eat in the space in which they are working.

17. No keys will be issued to any subcontractors. The general contractor on the job will be issued a key on a daily sign in/out basis only if necessary.

18. Landlord's property manager will designate restrooms to be used by construction personnel.

19. Contractor shall take all reasonable precautions to protect against the possibility of fire including the following mandatory: no smoking, supervision of welding and soldering, daily inspections of the job site, and adequate presence of fire extinguishers.

20. Workers without shirts or inappropriately dressed or who conduct themselves in an inappropriate manner will be required to leave the Building.

21. No loud music will be allowed in any construction area.

22. Prior to commencing work, the contractor must conduct a walk through of the common area with the Landlord's property manager to determine existing damage; in the event the so the contractor will not be held responsible.

23. Contractor must submit in writing a list of all standard owner supplied building material that will be required for each individual job. This material will be turned over to the contractor as scheduled between the contractor and Landlord's representative.

24. Contractor is to maintain and provide proof of adequate insurance coverage as approved by Landlord's property manager throughout the duration of the project. Mainstreet CV North 40, LLC, a Delaware limited liability company, shall be named as additional insureds on the contractors insurance policies and the evidence of insurance provided by contractor must include such additional insureds.

25. Contractor must supply an on site supervisor and security guard any time work is scheduled in tenant occupied spaces after regular Building hours. The supervisor and guard must remain on duty 100% of the time the space is open and/or work is in progress.

26. Contractor must assure that entrance and perimeter doors of all premises are locked at all times after hours.

27. Landlord's property manager reserves the right to inspect any and all boxes, tool chests or other containers which may be brought in to the Building by the contractor and/or his employees. Such inspections may be made randomly and without prior notice. Any employees or subcontractors not willing to consent to such searches will not be permitted to work in the building.

28. Contractor must shield smoke detectors from construction dust as necessary. Smoke detector protection must be removed at the end of each work day and inspected by the contractor to insure its proper operation.

29. THIS IS A NON-SMOKING BUILDING. Smoking is not permitted anywhere within the Building.

EXHIBIT D

FORM TENANT ESTOPPEL CERTIFICATE

TO: Mainstreet CV North 40, LLC, a Delaware limited liability company ("Landlord")
c/o Mainstreet Real Estate Services, Inc.
2101 West Commercial Boulevard, Suite 1200
Fort Lauderdale, Florida 33309, and:

_____ ("Third Party")

_____

_____

Re: _____
Boca Raton, Florida 33431
Lease Agreement, dated: _____, 2014 (the "Lease"), between Landlord and _____, as Tenant
Premises: Suite _____, consisting of _____ square feet of Rentable Area located on the _____ floor of the Building.

The undersigned tenant ("Tenant") hereby certifies to Third Party and Landlord as follows:

1. The above-described Lease has not been canceled, modified, assigned, extended or amended except _____.

2. Base Rent has been paid to the first day of the current month and all additional rent has been paid and collected in a current manner. There is no prepaid rent except $_____, and the amount of the security deposit is $_____.

3. Base Rent is currently payable in the amount of $ _____ monthly exclusive of Tenant's Proportionate Share of Operating Expenses.

4. The Lease expires on _____, 20___ subject to the following renewal options (if any) set forth in the Lease: _____.

5. All work to be performed for Tenant under the Lease has been performed as required and has been accepted by Tenant, except:

_____.

6. The Lease is: (a) in full force and effect; (b) to Tenant's actual knowledge, free from default; and (c) to Tenant's actual knowledge, Tenant has no claims against the Landlord or offsets against Rent.

7. Tenant's Proportionate Share of Operating Expenses, as defined in the said Lease, is _____%.

8. The undersigned has no right or option pursuant to the said Lease or otherwise to purchase all or any part of the Premises or the Building of which the Premises are a part.

9. There are no other agreements written or oral between the undersigned and the Landlord with respect to the Lease and/or the Premises and Building.

10. The statements contained herein may be relied upon by the Landlord and by any prospective purchaser of the property of which the Premises is a part and its mortgage lender.

If a blank in this document is not completed, then such blank will be automatically deemed to read "none." All capitalized terms used but not defined in this estoppel certificate shall have the meanings set forth in the Lease.

The undersigned signatory is duly authorized by Tenant to execute and deliver this estoppel certificate on behalf of Tenant.

Dated this _____ day of _____, 2018.

TENANT:

FlexShopper, LLC, a North Carolina limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT E

TENANT'S COMMENCEMENT LETTER

To: Mainstreet CV North 40, LLC, a Delaware limited liability company ("Landlord")

Date: _____, 2017

Tenant's Commencement Letter

_____

The undersigned, as the Tenant under that certain Office Lease (the "Lease") dated _____, 201__, made and entered into between Landlord, and the undersigned, as Tenant, hereby certifies that:

1. The undersigned has accepted possession and entered into occupancy of the Premises described in the Lease.

2. The Commencement Date of the Lease was _____, 201__.

3. The Expiration Date of the Lease is _____, 20___.

4. The Lease is in full force and effect and has not been modified or amended.

5. Landlord has performed all of its obligations to improve the Premises for occupancy by the undersigned, except for the following punch-list items (none if left blank): _____.

Dated this _____ day of _____, 2017.

FlexShopper, LLC, a North Carolina limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT F

MEMORANDUM OF LEASE

Prepared By and Return To:
David Itskovich, Esq.
NELSON MULLIN BROAD AND CASSEL
LYNN FINANCIAL CENTER
1905 NW CORPORATE BLVD, SUITE 310
BOCA RATON, FLORIDA 33431

MEMORANDUM OF LEASE

A. Lease: Office Lease Agreement dated _____ (the "Lease")

B. Landlord: **MAINSTREET CV NORTH 40, LLC,** a Delaware limited liability company (the "Landlord")

C. Tenant: _____ (the "Tenant")

D. Premises: Suite _____ (the "Premises) in the building currently known located at _____, Boca Raton, Florida 33487 (the "Building"), which building is situated in the land (the "Land") legally described as follows:

See attached.

E. Lien on Landlord's Interest Prohibited. Tenant shall never, under any circumstances, have the power to subject the interest of Landlord in the Premises, the Building, or the Land to any mechanic's, materialmen's, or construction liens of any kind. In order to comply with the provisions of Chapter 713.10, Florida Statutes, it is specifically provided that neither Tenant nor anyone claiming by, through or under Tenant, including, but not limited to, contractors, subcontractors, materialmen, mechanics and/or laborers, shall have any right to file or place any mechanics', materialmen's or construction liens of any kind whatsoever upon the Premises, the Building, the Land, or improvements thereon, and any such liens are hereby specifically prohibited. All parties with whom Tenant may deal are put on notice that Tenant has no power to subject Landlord's interest to any mechanics', materialmen's or construction lien of any kind or character, and all such persons so dealing with Tenant must look solely to the credit of Tenant, and not to Landlord's interest or assets. Without limiting the generality of the foregoing, the Lease provides as follows: THE INTEREST OF LANDLORD IN THE PREMISES, THE BUILDING, AND THE LAND SHALL NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS TO THE PREMISES, THE BUILDING, AND/OR THE LAND MADE BY TENANT, NOTWITHSTANDING ANY APPROVAL BY LANDLORD OF ANY CONTRACT(S) WITH ANY CONTRACTOR(S), AND/OR LANDLORD'S APPROVAL OF ANY SUCH IMPROVEMENT(S) AND/OR PLANS. PRIOR TO ENTERING INTO ANY CONTRACT FOR THE CONSTRUCTION OF ANY ALTERATION OR IMPROVEMENT, TENANT SHALL NOTIFY THE CONTRACTOR MAKING IMPROVEMENTS TO THE PREMISES, THE BUILDING AND/OR THE LAND OF THE FOREGOING PROVISION, AND TENANT'S KNOWING OR WILLFUL FAILURE TO PROVIDE SUCH NOTICE TO THE CONTRACTOR SHALL RENDER THE CONTRACT BETWEEN TENANT AND THE CONTRACTOR VOIDABLE AT THE OPTION OF THE CONTRACTOR.

[Signature Pages Follow]

[SIGNATURE PAGE FOR MEMORANDUM OF LEASE]

Landlord and Tenant have signed this Memorandum of Lease as of the day and year first above written.

WITNESS/ATTEST:

LANDLORD:

MAINSTREET CV NORTH 40, LLC, a Delaware limited liability company

Print Name: _____

Print Name: _____

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of MAINSTREET CV NORTH 40, LLC, a Delaware limited liability company, on behalf of the company. S/He is personally known to me or has produced _____ as identification.

Print Name: _____
Notary Public
Commission No. _____
My commission expires: _____

[SIGNATURE PAGE FOR
MEMORANDUM OF LEASE]

WITNESS/ATTEST:

Print Name: _____

Print Name: _____

TENANT:

_____

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of ___ _____, a _____, on behalf of the _____. S/He is personally known to me or has produced _____ as identification.

_____

Print Name: _____

Notary Public

Commission No. _____

My commission expires: _____

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Exhibit 10.39

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is entered into as of February 19, 2019 by and between FlexShopper, Inc., a Delaware corporation (the "Company"), and XLR8 Capital Partners LLC ("Consultant").

RECITALS

WHEREAS, the Company desires to engage Consultant to provide certain services with respect to the Company's business as set forth herein; and

WHEREAS, Consultant represents that it has experience providing such services and desires to provide those services to the Company, all as more specifically set forth below.

NOW, THEREFORE, in consideration of the promises and the respective covenants and agreements of the parties herein contained, the parties hereby agree as follows.

1. Consulting Engagement; Term. The Company hereby engages Consultant, and Consultant hereby accepts such engagement by the Company, as a consultant and advisor with respect to the matters specifically set forth herein. The term of this Agreement (the "Term") shall commence on March 1, 2019 and continue for twelve (12) months unless terminated earlier as herein provided and may be extended upon written agreement between the Company and Consultant.

2. Consulting Services.

(a) During the Term, Consultant shall devote such time as is necessary, which in any event shall be not less than 100 hours per month, to serve as an advisor and consultant to the Company by advising on retailer partnerships, management consulting and mentoring services, marketing consulting and call center and collection optimization related to both lease-to-own and loan products as well as any other matters agreed upon by the Agent (as defined below) and the Company's Chief Executive Officer (collectively, the "Services"). Consultant represents and warrants to the Company that it is able to provide the Services in a professional manner consistent with this type of engagement. The parties understand and further agree that, during the Term of the Agreement, Consultant is not restricted from providing similar consulting services to other companies; provided, that any such other activities shall not materially interfere with the Services.

(b) The parties expect that the Services will primarily be provided by Devon Cohen and various others with specific experience and knowledge that Consultant believes could benefit the Company (the "Agent"). The Agent will be available for meetings and discussion as reasonably requested by the Company with the executive officers of the Company and the Company's other advisors and/or consultants. During the Term, the Agent may accompany Howard Dvorkin to meetings of the Company's Board of Directors and attend such meetings in a non-voting observer capacity.

3. Compensation. In consideration of the Services to be rendered as set forth herein, Company shall compensate Consultant as follows:

(a) On the last day of each calendar month during the Term, the Company shall pay to Consultant $20,000 in cash.

(b) On the last day of each calendar month during the Term, the Company shall issue to Consultant and/or its designee(s), subject to (i) any such designee executing any documents as may be reasonably requested by the Company in connection therewith and (ii) applicable securities laws, warrants to purchase an aggregate of 40,000 shares of the Company's common stock ("Common Stock") at a strike price per share equal to the greater of $1.25 or 110% of the closing price of a share Common Stock on the Nasdaq Capital Market on the last trading day of such calendar month (or, if the Common Stock is not then listed on the Nasdaq Capital Market, 110% of the Fair Market Value, as such term is defined in the Company's 2018 Omnibus Equity Compensation Plan, of a share of Common Stock), subject to customary adjustments in the event of a stock dividend or a subdivision or combination (i.e., by reverse stock split) of outstanding shares of the Company's common stock ("Warrants"). The Warrants will expire on June 30, 2023. In the event that Consultant designates an individual to receive Warrants, the Company may issue to such designee stock options under the Plan having substantially similar terms as the Warrants. The underlying shares of Common Stock shall be deemed fully earned, fully paid and non-forfeitable upon issuance.

(c) Consultant may be eligible to receive additional Warrants as bonus payment as determined by the Compensation Committee of the Company's Board of Directors, in its sole discretion at the end of the Term. The Compensation Committee will consider additional warrants based upon Consultant's tangible results that are at a minimum aligned with bonus equity grants to senior management of the Company.

(d) The Company shall not withhold any applicable federal, state, or local taxes, including payroll taxes and income tax withholding, and Consultant represents and warrants that he, she, or it shall report the Fee as taxable income on his, her, or its federal, state, and local tax returns as required by applicable law

4. Termination. This Agreement may be terminated prior to the expiration of the Term: (a) after August 8, 2019, by any party for any or no reason upon thirty (30) days' prior written notice to the other party; or (b) by the Company immediately for Consultant's failure to provide adequately the Services as determined by the Compensation Committee of the Company's Board of Directors.

5. Expenses. No expenses paid or incurred by Consultant in connection with the performance of the Services shall be subject to reimbursement by the Company unless any such expenses are expressly pre-approved in writing by the Company's Chief Executive Officer as reimbursable.

6. Representations, Warranties and Covenants of Consultant.

(a) Consultant hereby represents and warrants that it has full power and legal right and authority to execute, deliver, and perform under this Agreement.

(b) Consultant hereby covenants and agrees to indemnify and hold harmless the Company and its affiliates, and their respective former and current directors, officers, employees, agents, successors and assigns, from and against and in respect of: (i) any and all losses and damages resulting from any misrepresentation or breach of any warranty, covenant or agreement by Consultant made or contained in this Agreement, and (ii) any and all actions, suit, proceedings, claims, demands, judgments, costs and expenses, including attorney's fees, incident to the foregoing.

(c) Consultant represents, warrants, covenants and agrees that:

(i) the Warrants (including the shares of Common Stock issuable upon the exercise of the Warrants, the "Securities") have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or applicable state securities laws and, therefore, cannot be resold or otherwise disposed of unless they are subsequently registered under the Securities Act and such laws, or unless an exemption from such registration is available;

(ii) Consultant is an accredited investor within the meaning of Rule 501(a) of Regulation D promulgated under the Securities Act;

(iii) Consultant acknowledges that this offer and sale of the Securities is intended to be exempt from registration under the Securities Act;

(iv) Consultant has received, carefully read and understands in their entirety: (1) this Agreement, (2) the Company's recent filings under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (3) all information necessary to verify the accuracy and completeness of the Company's representations, warranties and covenants made herein and filed under the Exchange Act; and (4) written (or verbal) answers to all questions Consultant submitted to the Company regarding an investment in the Company; and Consultant has relied on the information contained therein and has not been furnished with any other documents, offering literature, memorandum or prospectus with respect thereto;

(v) Consultant: (1) has obtained, in Consultant's judgment, sufficient information to evaluate the merits and risks of an investment in the Company; and (2) has sufficient knowledge and experience in financial and business matters to evaluate the merits and risks associated with such investment and to make an informed investment decision with respect thereto;

(vi) the Securities are being acquired for its own account for investment and not for the benefit or account of any other person or entity and not with a view to, or in connection with, any resale or distribution thereof; Consultant fully understands and agrees that he must bear the economic risk of the investment in the Securities for an indefinite period of time because, among other reasons, the Securities have not been and will not be registered under the Securities Act or under the securities laws of any state, and, therefore, are "restricted securities" and cannot be resold, pledged, assigned or otherwise disposed of unless they are subsequently registered under the Securities Act and under the applicable securities laws of such states or an exemption from such registration is otherwise available; and

(vii) Consultant has determined that the Securities are a suitable investment and has adequate means to provide for current cash needs and possible contingencies, and Consultant's financial condition is such that it can afford to bear all risks associated with the acquisition of the Securities. Consultant hereby acknowledges that an investment in the Securities is subject to a high degree of risk, lacks liquidity and that Consultant has the financial capacity to hold the Securities purchased hereby for an indefinite period and that it could bear a complete loss of this investment.

(d) Consultant hereby acknowledges that any certificates representing the Securities will contain a legend substantially as follows:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND SUCH SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS.

7. Independent Contractor Status.

It is expressly understood and agreed that this is a consulting services agreement only and does not constitute an employer/employee relationship. Accordingly, Consultant agrees that Consultant shall be solely responsible for the payment of its own taxes or sums due to the federal, state or local governments, office overhead, workers compensation, fringe benefits, pension contributions and other expenses. Consultant, including the Agent, is an independent contractor and the Company shall have no right to control the activities of Consultant other than to require Consultant to provide the Services in a professional manner pursuant to the terms and conditions of this Agreement. Consultant shall have no authority to bind the Company except as provided for by Company in writing.

8. Covenants of the Company.

(a) The Company hereby covenants and agrees to indemnify and hold harmless Consultant and its affiliates, and their respective former and current directors, officers, employees, agents, successors and assigns, from and against and in respect of: any and all losses and damages resulting from any (i) misrepresentation or breach of any warranty, covenant or agreement by the Company made or contained in this Agreement, (ii) any willful misconduct or gross negligence on the part of the Company or any of its officers, directors, agents or employees; and (iii) any and all actions, suit, proceedings, claims, demands, judgments, costs and expenses, including attorney's fees, incident to the foregoing.

(b) The Company shall use commercially reasonable efforts to name Consultant as an additional insured under its applicable insurance policies.

9. Confidentiality and Publicity.

(a) Except as required by law or court order, Consultant will keep confidential any trade secrets or confidential or proprietary information of the Company which are now known to Consultant or which hereinafter may become known to Consultant and Consultant shall not at any time directly or indirectly disclose or permit to be disclosed any such information to any person, firm, or corporation or other entity except with the prior written permission of the Company. Consultant acknowledges and agrees that breach of this confidentiality provision by Consultant and/or anyone employed by or otherwise associated with Consultant may also constitute a violation of federal and/or state securities and other laws. For purposes of this Agreement, "trade secrets or confidential or proprietary information" includes information that is unique to or about the Company or its business and is not known or generally available to the public, including, but not limited to, information obtained by attending meetings of the Company's board of directors. Notwithstanding the foregoing, Consultant acknowledges that no confidential information of the Company is necessary to be shared with Consultant in order for it to perform the Services.

(b) Consultant will not use any trade name, trademark, service mark, or logo of the Company (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the Company's prior written consent or as described herein. Consultant will not issue press releases or publicity relating to the Company or this Agreement or reference the Company or its affiliates in any brochures, advertisements, client lists or other promotional materials without the Company's prior written consent.

10. Miscellaneous Provisions.

(a) Notices. Any notice, request, demand or other communications required or permitted pursuant to this Agreement shall be in writing and shall be deemed to have been properly given if delivered in person or by courier or other overnight carrier, by certified or registered mail, postage prepaid and return receipt requested, or by electronic mail to each party hereto at the address indicated below or at any other address as may be designated from time to time by written notice to each party. Such notice shall be deemed given upon delivery.

If to Consultant: XLR8 Capital Partners, LLC
6360 NW 5th Way, Suite 200
Fort Lauderdale, FL 33309

If to the Company: FlexShopper, Inc.
2700 North Military Trail, Ste. 200
Boca Raton, FL 33431
Attention: Chief Executive Officer

(b) Survival. In the event of any termination of this Agreement, Sections 7, 9 10 and 11 hereof shall survive and continue in effect.

(c) Assignment. This Agreement may not be assigned by the Company or Consultant without the other party's written consent.

(d) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior written or oral agreements, commitments or understandings with respect to the matters provided for herein, and no modification shall be binding unless set forth in writing and duly executed by each party hereto.

(e) Modification of Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

(f) Binding Effects. This Agreement shall be binding upon and inure to the benefit of the parties hereto their respective heirs, executors, administrators and successors, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business.

(g) Headings. The headings or captions of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or scope of this Agreement or the intent of any provisions hereof.

(h) Identification. Whenever required by the context of this Agreement, the singular number shall include the plural, and the word "person" or "party" shall include a corporation, limited liability company, firm, partnership, or other form of association.

(i) Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement or the failure of either party to insist upon the performance of any of the terms and conditions of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

(j) Counterparts. For the convenience of the parties hereto, this Agreement may be executed in one or more counterparts, which shall each be considered an original.

(k) Severability. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement will continue in full force and effect so far as the intent of the parties hereto can be carried out.

(l) Recitals. The recitals set forth at the beginning of this Agreement are incorporated by reference in and made a part of this Agreement.

11. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware (irrespective of its choice of law principles).

[Signature page follows]

FLEXSHOPPER, INC.

By: /s/ Brad Bernstein
Name: Brad Bernstein
Title: Chief Executive Officer

XLR8 CAPITAL PARTNERS, LLC

By: /s/ Devon M. Cohen
Name: Devon M. Cohen
Title: Authorized Person

[Signature Page to Consulting Agreement]

Exhibit 10.40

February 19, 2019

FlexShopper, LLC
2700 N. Military Trail, Suite 200
Boca Raton, Florida 33431

Ladies and Gentlemen:

The purpose of this letter is to advise FlexShopper, LLC, a North Carolina limited liability company ("Borrower"), that Lender hereby commits to provide to Borrower on the date hereof $2,000,000 of subordinated debt financing on the terms set forth in the form of promissory note attached hereto as Exhibit A (the "Subordinated Promissory Note") and on the terms set forth herein. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Subordinated Promissory Note.

1. Commitment. Lender's commitment is subject only to the following conditions:

(a) On the date hereof, Borrower shall have paid to Lender a one-time commitment fee in an aggregate amount equal to $40,000 (representing 2% of Lender's aggregate commitment) and

(b) Borrower shall have duly executed and delivered to Lender the Subordinated Promissory Note; and

2. Right of First Offer.

(a) Subject to the terms of this Section 2, Borrower hereby agrees with Lender that during the period commencing on the date hereof and ending on the date of making by Lender or its affiliates of additional loans to Borrower (not including the loan made pursuant hereto on the date hereof) in an aggregate amount equal to $2,000,000 (the "ROFO Period"), Borrower shall not incur any debt financing that is contractually subordinated to the indebtedness under Senior Credit Agreement ("Subordinated Financing") from any other person or entity without first offering to Lender the right to provide Borrower with such Subordinated Financing.

(b) If, during the ROFO Period, Borrower desires to obtain any Subordinated Financing, as determined by Borrower in its sole and absolute discretion, then Borrower shall deliver to Lender notice (the "ROFO Notice"), which may be delivered by email, not less than three (3) days prior to the date proposed by Borrower for receipt of such Subordinated Financing (such period, the "Funding Period"). Each ROFO Notice shall specify the amount of Subordinated Financing being requested by Borrower, which shall be in a minimum amount of $100,000, and the account designated by Borrower for receipt thereof. To exercise the right of first offer set forth herein, Lender shall deliver, by wire transfer of immediately available funds, the amount of Subordinated Financing requested in the ROFO Notice (less a funding fee in an amount equal to 2% of the amount so requested and funded) to the account designated therein no later than 5 p.m. (Boca Raton time) on the last day of the Funding Period. Any such Subordinated Financing funded by Lender in accordance herewith shall have (and this letter agreement shall evidence the parties agreement with respect to) the same terms and conditions as the Subordinated Promissory Note attached hereto as Exhibit A except that the maturity date of such Subordinated Financing shall be the date that is the last day of the first full calendar month occurring two years and four months after funding thereof. Promptly following request, Borrower shall deliver to Lender a promissory note in substantially the form of Exhibit A, but which promissory note shall give effect to the terms of such Subordinated Financing as set forth in this Section 2.

(c) Notwithstanding anything to the contrary contained herein, Lender shall forfeit all rights under this Section 2, the ROFO Period and this Section 2 shall immediately and automatically terminate upon the failure of Lender to timely fund any Subordinated Financing within the time period set forth in the preceding subsection (b) following receipt of a ROFO Notice, time being of the essence. Upon such termination, Borrower shall be free to obtain Subordinated Financing without any requirement to comply herewith.

3. Reporting. Until repayment of all amounts owing under the Subordinated Promissory Note or any other Subordinated Financing by Lender pursuant to Section 2 above, Borrower shall provide to Lender copies of the monthly covenant reporting package delivered to, and notices of default received from, the lender under Senior Credit Agreement.

4. Representations. Lender represents and warrants that the following are true and correct: (a) Lender is not acquiring the Subordinated Promissory Note (or making any other Subordinated Financing) with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act of 1933, as amended, and (b) Lender (i) is an "accredited investor" as defined in Rule 501 promulgated under the Securities Exchange Act of 1934, as amended, and (ii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment in the Subordinated Promissory Note and all other Subordinated Financing. Further, Lender is familiar with the business and affairs of Borrower and its subsidiaries and has conducted such due diligence as it has deemed necessary and desirable in making its investment decision.

5. Miscellaneous.

Each party shall be responsible for its own fees and expenses, including, without limitation, legal fees, incurred by it in connection with this letter agreement, the Subordinated Promissory Note and any other Subordinated Financing.

This letter agreement shall not be assignable by any party hereto without the prior written consent of the other party hereto; provided, however, Lender may assign this letter agreement or any rights hereunder to any affiliated entity under common control and ownership as Lender (and any purported assignment without such consent shall be null and void), and is solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. This letter agreement may not be amended or waived except in a written instrument signed by Borrower and Lender. The provisions of this letter agreement shall remain in full force and effect from and after the date hereof until payment in full of all Subordinated Financing by Lender to Borrower. This letter agreement and the Subordinated Promissory Note constitute the entire agreement among the parties hereto with respect to the subject matter hereof and there are no promises, undertakings, representations or warranties by any party hereto or thereto relative to the subject matter hereof not expressly set forth or referred to herein or in the Subordinated Promissory Note. In the event of any conflict between the terms and provisions of this letter agreement and the terms and provisions of the Subordinated Promissory Note, the terms and provisions of this letter agreement shall govern and control.

This letter agreement may be executed in counterparts, each of which shall be deemed an original and all of which counterparts shall constitute one and the same document. Delivery of an executed signature page of this letter agreement by facsimile or electronic (including "PDF") transmission shall be effective as delivery of a manually executed counterpart hereof.

This letter agreement, and all matters relating hereto or thereto or arising therefrom (whether sounding in contract law, tort law or otherwise), shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of North Carolina, without regard to conflicts of laws principles.

Lender shall hold all information regarding Borrower, its affiliates and their businesses obtained by Lender confidential and shall not disclose such information; provided, however, the foregoing shall not be construed to prohibit the disclosure of any information that is or becomes publicly known or information obtained by Lender from sources other than Borrower other than as a result of a disclosure by the Lender known (or that should have reasonably been known) to be in violation of this provision.

We are pleased to have been given the opportunity to assist you.

Sincerely,

NRNS CAPITAL HOLDINGS LLC

By: /s/ Howard Dvorkin
Name: Howard Dvorkin
Title: Manager

Acknowledged and Agreed:

FLEXSHOPPER, LLC

By: /s/ Brad Bernstein
Name: Brad Bernstein, CPA
Title: CEO & President

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE BORROWER THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT.

SUBORDINATED PROMISSORY NOTE

$2,000,000.00 February 19, 2019

FOR VALUE RECEIVED, FlexShopper, LLC, a North Carolina limited liability company (" Borrower"), hereby promises to pay to NRNS CAPITAL HOLDINGS LLC, a Florida limited liability company ("Lender"), the principal sum of up to Two Million and 00/100 Dollars ($2,000,000.00) (the "Maximum Amount"), together with interest thereon, subject to the terms and conditions set forth in this Subordinated Promissory Note (this "Note").

1. Payment of Principal and Interest.

(a) Payments of principal, interest and all other amounts payable on this Note shall be due and payable on June 30, 2021 (the "Maturity Date"). All payments required to be paid under this Note shall be wired to the account designated by Lender.

(b) The unpaid principal balance of this Note shall bear interest at a rate equal to five percent (5.00%) per annum in excess of the non-default rate of interest from time to time in effect under that certain Credit Agreement dated as of March 6, 2015 among FlexShopper 2, LLC, as borrower, Wells Fargo Bank, National Association, as paying agent, WE 2014-1, LLC, as administrative agent (the "Administrative Agent"), and the lenders party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "Senior Credit Agreement") computed on the basis of a 360 day year.

(c) Interest shall be payable in arrears on the first day of each calendar month, upon any prepayment to the extent accrued on the amount being prepaid and on the Maturity Date, provided, that no interest shall be payable (and instead such interest shall continue to accrue as simple interest) at any time there at any time that the "Applicable Advance Rate" (as defined in the Senior Debt Documents) exceeds 96%.

(d) Except as otherwise provided in this Section 1(d), this Note may not be prepaid by the Borrower without the written consent of the Lender. Notwithstanding the foregoing, the Borrower may prepay this Note in whole or in part at any time, without premium or penalty, upon a Change of Control (as defined in the Senior Credit Agreement) or with the proceeds of the issuance of any equity interests by FlexShopper, Inc, including, without limitation, upon exercise of any warrants.

(e) All payments of principal and interest shall be made in lawful money of the United States of America and shall be made to Lender at Lender's address set forth in Section 13 or at such other place as Lender may designate to Borrower in writing.

(f) Lender shall make a notation on Schedule A hereto of each prepayment or repayment made by Borrower, which schedule shall be conclusive evidence of the principal amount then outstanding hereunder, absent manifest error, subject to the next sentence. In the event that the Lender fails to make a notation on Schedule A, then the amount showing as owing from Borrower to Lender on the books and records of the Lender shall be conclusive evidence of the principal amount then outstanding hereunder, absent manifest error.

2. Security. As collateral security for the payment and satisfaction of the unpaid principal balance of this Note and all interest accrued thereon, and subject to the rights of the Senior Creditors as described in Section 12, Borrower hereby grants to Lender a continuing, first-priority security interest in and to all of the Collateral. The Collateral means each and all of the following:

A. the Accounts;

B. the Equipment;

C. the Inventory;

D. the General Intangibles;

E. the Negotiable Collateral;

F. any money, deposit accounts or other assets of Borrower in which Lender receives a security interest or which hereafter come into the possession, custody or control of Lender;

G. all Supporting Obligations;

H. all Investment Property;

I. all Letter of Credit Rights; and

J. the proceeds of any of the foregoing, including, but not limited to, proceeds of insurance covering the Collateral, or any portion thereof, and any and all Accounts, Equipment, Inventory, General Intangibles, Negotiable Collateral, the Investment Property, the Letter of Credit Rights, the Supporting Obligations, money, deposit accounts or other tangible and intangible property resulting from the sale or other disposition of the Collateral, or any portion thereof or interest therein, and the proceeds thereof.

The capitalized terms used in the definition of the Collateral shall have the meanings ascribed to them under the Uniform Commercial Code as adopted in the State of North Carolina (the "UCC").

3. Representations and Warranties. Borrower hereby represents and warrants to Lender that:

(a) Borrower (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina, (ii) has all requisite limited liability company power and authority to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently, or is currently proposed to be, engaged, (iii) is duly qualified as a foreign entity, licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except to the extent that the failure to so qualify would not have a material adverse effect on Borrower, and (iv) has the limited liability company power and authority to execute, deliver and perform its obligations under this Note and to borrow hereunder;

(b) The execution, delivery and performance by Borrower of this Note (i) has been duly authorized by all necessary action, (ii) do not and will not contravene or violate the terms of its corporate constitutional documents or any amendment thereto or any law applicable to Borrower or its assets, business or properties, (iii) do not and will not (1) conflict with, contravene, result in any violation or breach of or default under any material contractual obligation of Borrower (with or without the giving of notice or the lapse of time or both), (2) create in any other person a right or claim of termination or amendment of any material contractual obligation of Borrower, or (3) require modification, acceleration or cancellation of any material contractual obligation of Borrower, and (iv) do not and will not result in the creation of any lien (or obligation to create a lien) against any property, asset or business of Borrower; and

(c) Borrower has duly executed and delivered this Note and this Note constitutes the legal, valid and binding obligations Borrower, enforceable against Borrower in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

(d) Borrower shall prepare a UCC-1 financing statement and hereby authorizes Lender to file such UCC-1 financing statement and any other necessary documents to perfect Lender's security interest in the Collateral.

4. Events of Default. The following shall constitute "Events of Default" with respect to this Note:

(a) Borrower shall fail to pay the principal of, or interest on, this Note, the Senior Credit Agreement, or the Senior Debt (defined below) when the same becomes due and payable in accordance with the terms hereof;

(b) Any representation or warranty made by Borrower in Section 3 hereof shall fail to be true and correct in all material respects or Borrower shall default in the performance of any of its obligations under this Note or the letter agreement concerning this Subordinated Promissory Note dated and delivered as of the date hereof; or

(c) Borrower makes a general assignment for the benefit of its creditors or applies to any tribunal for the appointment of a trustee or receiver of a substantial part of the assets of Borrower, or commences any proceedings relating to Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debts, dissolution or other liquidation law of any jurisdiction; or any such application is filed, or any such proceedings are commenced against Borrower and Borrower indicates its consent to such proceedings, or an order or decree is entered by a court of competent jurisdiction appointing such trustee or receiver, or adjudicating Borrower bankrupt or insolvent, or approving the petition in any such proceedings, and such order or decree remains unstayed and in effect for ninety (90) days.

5. Consequences of Event of Default. Upon the occurrence of any such Event of Default and during the continuation thereof, the unpaid principal balance of this Note and accrued and unpaid interest hereon shall become immediately due and payable upon such occurrence without action by Lender and Lender shall have all other rights and remedies provided by applicable law. Lender shall have all of the rights and remedies of a secured party under the UCC.

6. Remedies are Cumulative. No failure on the part of Lender to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Lender or any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any right, power or remedy. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law, in equity, or in other loan documents.

7. Costs of Collection. In the event that this Note is not paid when due, Borrower shall also pay or reimburse Lender for all reasonable costs and expenses of collection, including, without limitation, reasonable attorneys' fees.

8. Default Interest Rate. Upon the occurrence of any Event of Default, any principal balance remaining unpaid under this Note shall bear interest at a rate per annum equal to two percent (2%) above the interest rate otherwise applicable hereto.

9. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to the conflicts of law provisions thereof.

10. Waiver. Borrower waives presentment for payment, demand, protest, notice of dishonor, notice of protest, diligence on bringing suit against any party hereto, and all defenses on the ground of any extension of the time of payment that may be given by Lender to it. Borrower agrees not to assert against Lender as a defense (legal or equitable), as a set-off, as a counterclaim, or otherwise, any claims Borrower may have against any other party liable to Lender for all or any part of the obligations under this Note. All rights of Borrower hereunder, and all obligations of Borrower hereunder, shall be absolute and unconditional, not discharged or impaired irrespective of (and regard less of whether Borrower receives any notice of): (i) any lack of validity or enforceability of any provision of this Note; (ii) any change in the time, manner or place of payment or performance, or in any term, of all or any of the obligations hereunder or any other amendment or waiver of or any consent to any departure from any provision herein; or (iii) any release of or modifications to or insufficiency, unenforceability or enforcement of the obligations of any guarantor or other obligor. To the extent permitted by law, Borrower hereby waives any rights under any valuation, stay, appraisement, extension or redemption laws now existing or which may hereafter exist and any other circumstance which might otherwise constitute a defense available to, or a discharge of any party with respect to the obligations of Borrower hereunder.

11. Waiver of Jury Trial. The parties hereby waive all right to trial by jury in any action or proceedings of any kind or nature, arising on, under or by reason of or relating to, this Note.

12. No Right of Set-Off. As of the date hereof, Borrower represents that it has no claims or offsets against Lender in breach of contract, breach of warranty, express or implied, negligence or for any other type of legal action under this Note or otherwise.

13. Subordination.

(a) Lender agrees that the obligations represented by this Note shall be in all respects subordinate in payment and junior in priority to all indebtedness, liabilities and other obligations (collectively, the "Senior Debt" and the holders of such Senior Debt, the "Senior Creditors") owing under the Senior Credit Agreement and the other agreements, instruments and documents executed and delivered in connection therewith, as amended, modified or increased (collectively, the "Senior Debt Documents").

(b) Until all Senior Debt shall have been paid in full in cash and all commitments to advance Senior Debt have terminated, (i) no payment may be made on this Note, whether of principal or interest or other obligations, at any time that the "Applicable Advance Rate" (as defined in the Senior Debt Documents) exceeds 96% or an "Event of Default" (as defined in the Senior Debt Documents) exists, (ii) the Lender shall not (A) take any action or exercise any remedy against the Borrower under this Note (other than the imposition of the default rate of interest as set forth herein); or (B) commence, or join with any other creditor of the Borrower in commencing any insolvency or similar proceeding against the Borrower (iii) the Lender waives all rights of subrogation, reimbursement and any similar rights with respect to the indebtedness evidenced by this Note and (iv) any and all liens and security interests of Lender in any collateral shall be and hereby are subordinated for all purposes and in all respects to the liens and security interests of the Senior Creditors in such collateral, whether or not valid or perfected, regardless of the time, manner or order of attachment, grant or perfection of any such liens and security interests and regardless of any provision of the Uniform Commercial Code of any jurisdiction or any other law or any other circumstance.

(c) In case any funds shall be paid or delivered to the Lender in violation hereof, such funds shall be held in trust by the Lender for, and paid and delivered to, the Senior Creditors (in the form received, together with any necessary endorsements) upon demand.

(d) The priority of the Senior Debt (whether or not such amounts are deemed allowable or recoverable) set forth above shall continue during any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against the Borrower, under any bankruptcy or insolvency law or laws.

(e) The Lender expressly waives all notice of the acceptance by any Senior Creditor of the subordination and other provisions of this Note.

Without limitation of the foregoing, the Senior Creditors (including, without limitation, the Administrative Agent under the Senior Credit Agreement) are express third party beneficiaries of the terms and conditions contained in this Section 12 and shall be entitled to enforce such terms and conditions directly, as if they were parties to this Note. Furthermore, until all Senior Debt shall have been paid in full in cash and all commitments to advance Senior Debt have terminated, this Section 12 may not be amended, restated, supplemented or otherwise modified without the prior written consent of the Administrative Agent and the Required Lenders (as defined in the Senior Credit Agreement).

14. Notices. Any notice pursuant to this Note must be in writing and will be deemed effectively given to another patty on the earliest of the date (a) three (3) business days after such notice is sent by registered U.S. mail, return receipt requested, (b) one (1) business day after receipt of confirmation if such notice is sent by facsimile, (c) one (1) business day after delivery of such notice into the custody and control of an overnight courier service for next day delivery, (d) one (1) business day after delivery of such notice in person and (e) such notice is received by that party; in each case to the appropriate address below (or to such other address as a party may designate by notice to the other party):

If to Borrower:

FlexShopper, LLC
2700 N. Military Trail, Suite 200
Boca Raton, FL 33431
Attn: Brad Bernstein

If to Lender:

NRNS Capital Holdings LLC
7809 Galleon Court
Parkland, FL 33067

15. Severability. Any provision of this Note that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision hereof or the invalid or unenforceable provision in any other situation or in any other jurisdiction. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

16. Counterparts. This Note may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Note constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Note by telecopy or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Note.

Borrower has caused this Note to be duly executed, and Lender has accepted this Note, as of the day and year first above written.

Borrower:

FLEXSHOPPER, LLC

By: /s/ Brad Bernstein
Name: Brad Bernstein
Title: CEO

ACCEPTED:

Lender:

NRNS CAPITAL HOLDINGS LLC

By: /s/ Howard Dvorkin
Name: Howard Dvorkin
Title: Manager

Schedule A to Subordinated Promissory Note

Payment Schedule

Date	Principal Payment	Principal Balance

Exhibit 21

Subsidiaries of Registrant

FlexShopper, LLC is a limited liability company formed under the laws of the State of Delaware in June 2013.

Anchor Funding Services, LLC is a limited liability company formed originally in South Carolina in January 2003 and later reincorporated in North Carolina in August 2005. The operations of Anchor are shown as discontinued operations.

FlexShopper 1, LLC and FlexShopper 2, LLC are wholly-owned subsidiaries formed under the laws of the State of Delaware in the first quarter of 2015.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements of FlexShopper, Inc. on Form S-3 (No. 333-219017) and S-8 (No. 333-203509, No. 333-210487 and No. 333-225222) of our report dated March 11, 2019, on our audits of the consolidated financial statements as of December 31, 2018 and 2017, and for each of the years then ended, which report is included in this Annual Report on Form 10-K to be filed on or about March 11, 2019.

/s/ EisnerAmper LLP

EISNERAMPER LLP
New York, New York
March 11, 2019

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Brad Bernstein, certify that:

1. I have reviewed this annual report on Form 10-K of FlexShopper, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2019

/s/ Brad Bernstein

Brad Bernstein
Principal Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Russ Heiser, certify that:

1. I have reviewed this annual report on Form 10-K of FlexShopper, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2019

/s/ Russ Heiser

Russ Heiser
Principal Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350

In connection with the Annual Report of FlexShopper Inc. (the "registrant") on Form 10-K for the year ended December 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "report"), I, Brad Bernstein, Chief Executive Officer of the registrant, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the registrant.

March 11, 2019

/s/ Brad Bernstein

Brad Bernstein
Principal Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350

In connection with the Annual Report of FlexShopper Inc. (the "registrant") on Form 10-K for the year ended December 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "report"), I, Russ Heiser, Chief Financial Officer of the registrant, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the registrant.

March 11, 2019

/s/ Russ Heiser

Russ Heiser
Principal Financial Officer