

DEALER FINANCING AGREEMENT

THIS AGREEMENT entered into by and between Lexington Capital Corp. (“Lexington”) conducting business at _____, a New York Corporation, and _____ (“Dealer”), conducting business at _____

WHEREAS, Dealer is a home improvement contractor organized and existing under the laws of the State of _____, and provides goods and services in the construction, repair, restoration, alteration or improvement of residential property and supplies home improvement products and materials used in such construction; and

WHEREAS, Lexington is sales finance company and lender engaged in the business of consumer financing; and

WHEREAS, Dealer desires to obtain financing from Lexington for Dealer’s customers, and Lexington is willing to provide such financing under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions stated herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually warrant, covenant, and agree as follows:

1. Definitions

Whenever used in this Agreement, the following words and phrases shall have the following meanings:

Account: The obligation of an Owner to pay the indebtedness created by Note, Revolving Credit Agreement, RIC or other debt instrument.

Agreement: This Agreement together with all exhibits, schedules, addenda, and riders hereto, all as the same may be amended and supplemented from time to time in accordance with the terms hereof.

Lexington Capital Corp.: A corporation, together with its successors and assigns.

Dealer: The home improvement contractor signing this Agreement as identified herein.

Finance Documents: The credit application, Note, Revolving Credit Agreement, RIC, Work Order, disclosure statement, mortgage, deed of trust, mechanic’s lien, notice of right to cancel, sales charge slip, completion certificate, assignment, HUD-1A, good faith estimate, financing statement and such other forms and documents as Lexington in it’s sole discretion, shall deem appropriate or necessary in order for Lexington to fund an Account.

[fund, funded and funding]: The act of Lexington disbursing funds on a particular Account (i) to the Dealer, (ii) to the Owner, or (iii) jointly to the Dealer and the Owner, as either (i) payment to Dealer for purchase of a RIC, (ii) disbursement of loan proceeds under the Note used in whole or in part to pay for Improvements, or (iii) payment to Dealer pursuant to Owner’s request for an advance under Owner’s Revolving Credit Agreement.

Improvements: The goods and services sold by Dealer to an Owner and described in a Work Order.

Note: A promissory note or similar negotiable instrument evidencing Owner’s closed- end credit obligation and promise to pay the amount loaned or advanced to Owner by Lexington.

Revolving Credit Agreement: The written agreement in which Owner agrees to pay Lexington for one or more Advances paid to Dealer by Lexington under Lexington’s open-end credit plan.

RIC: The retail installment sales contract, conditional sales contract, or similar document between Owner and Dealer evidencing Owner’s obligation to pay for Improvement purchased from Dealer in approximately equal installment payments.

Security Agreement: The documents or instruments creating or establishing the security interest in Secured Property for an Account together with any and all certificates of title or other evidences of ownership of the security interest.

Secured Property: The property, real and/or personal including Improvements and related interests, securing repayment of an Account.

Work Order: The written contract between Owner and Dealer describing the improvement to be provided by Dealer and the price for such Improvements to be paid by Owner.

2. **Agreement to Fund Accounts.** Subject to the terms and conditions of this Agreement, Lexington agrees to fund Accounts with Dealer's customers for a price Lexington shall, from time to time, establish. Lexington, in its sole judgment, shall determine the acceptability of individual Accounts and the volume of Accounts it will fund for Dealer.

3. **Authorization.** Dealer hereby represents and warrants that (i) the execution of this Agreement is within its powers, has been duly authorized by all necessary corporate, partnership, membership or other action and does not contravene any governmental or contractual restrictions on Dealer, (ii) this Agreement is valid and legally enforceable in accordance with its terms; (iii) Dealer has and shall maintain in full force all federal, state and other licenses, permits and approvals as are necessary to perform its obligation under the Finance Documents and this Agreement; (iv) Dealer is duly organized, validly existing and in good standing to do business wherever it owns real estate or personal property or the conduct of its business requires qualification, specifically in the states of

Dealer shall provide evidence of such licenses, qualification, and authorization at Lexington's request

4. **Finance Documents.** Lexington will furnish Dealer with such Finance Documents as Lexington, in its sole discretion, shall deem appropriate or necessary in order for Lexington to fund Accounts, Dealer shall be responsible for the final completion and execution of all such Finance Documents, Dealer shall complete Finance Documents with due care in accordance with applicable law and Lexington's procedures established from time to time. For Accounts secured by real estate, Dealer shall perform all necessary acts to provide Finance Documents to Lexington in recordable form. Dealer shall forward original completed Finance Documents to Lexington in accordance with procedures from time to time established by Lexington.

5. **Approval.** Lexington shall prescribe the credit standards and criteria for prospective Accounts and shall have the sole responsibility for an authority to make all credit decisions concerning any Account it agrees to fund. Lexington shall have no obligation to approve the funding of any specific Account nor any number nor amount of Accounts submitted by Dealer.

6. **Collections.** Lexington shall be responsible for mailing billing statements to the Accounts funded under this Agreement and collecting all amounts due on such Accounts, Dealer authorizes Lexington to sign and endorse Dealer's name on all checks, drafts, money orders or other forms of payment with regard to Accounts. Should Dealer receive any payment on an Account, Dealer shall forward such payments to , not later than one business day after the day it is received by Dealer.

7. **Representations and Warranties.** With respect to each account funded by Lexington, Dealer represents and unconditionally warrants and guarantees to Lexington.

- a. The Improvements were duly delivered and installed by Dealer in a good and workmanlike manner and were accepted by Owner in a good and habitable condition and working order and conformed with all the warranties (express or implied), representations, legal obligations and local, state and federal requirements and codes concerning the condition, construction, and placement of the Improvements. There are no legitimate work product complaints by the Owner that constitute a valid defense to payment of all or any part of the Account. Dealer shall honor all warranty or service agreements of Dealer or manufacturer with any Owner.
- b. Every down payment provided in connection with an Account was made by the Owner in the manner stated in the Finance Documents. No part of such down payment was loaned or provided directly or indirectly by Dealer, nor, to the best of Dealer's knowledge, was any portion of the down payment made from funds borrowed from any other person, and, no note, postdated check or other form of deferred obligation was taken in connection with such down payment.
- c. A completely filled copy of the Finance Documents was delivered to the Owner at the time of Owner's execution thereof or as required by applicable law, and the Finance Documents have not been materially altered;
- d. The transfer of the RIC and any Secured property related thereto to Lexington are valid and enforceable against all of the bona fide Owners associated with the Account and against Dealer's creditors. Dealer has prohibited Lexington with a Work Order containing a description of the goods, services and materials sold constituting the Improvements and the cash price for such Improvements, which description and price are true, accurate and complete in all material respects;
- e. The Account was established as part of a referral or free giveaway program, nor was any debt consolidation or loan from any person included as part of any transaction with an Owner, except, as applicable, a debt consolidation loan provided by Lexington as part of the transaction;
- f. Unless Lexington is apprised to the contrary in writing, the Owner is not in Dealer's employ or a member of the household of any Dealer's employees.

- g. Each Security Agreement, including but not limited to any real estate mortgage, deed of trust, mechanic's lien or deed to secure debt, included in the Finance Documents has been properly signed and, if required, properly notarized, and contains a correct and accurate legal description of the property serving as security;
- h. The finance Documents for the Account do not contain the forged or unauthorized signature of any Owner or any guarantor or surety for such Owner (the identity of each having been verified by Dealer), and at the time of execution of the Finance Documents each Owner was legal age and capacity to contract;
- i. Dealer has not, without Lexington's prior written consent, given a credit to Owner by reason of any matter connected with the transaction from which the Account arose, nor given an allowance nor has Dealer made any settlement with an Owner which, directly or indirectly, affects the Owner's liability on the Account;
- j. Rights to the money due and to become due on the Account are not subject to any defense, offset, counterclaim or recoupment of the Owner whatsoever, arising from a breach of warranty, defective workmanship or materials, guarantee or representation relating to the Improvements provided by Dealer or by anyone on Dealer's behalf;
- k. Upon funding of each Account, Lexington will own the same free and clear of all claims, liens or encumbrances of Dealer's creditors whatsoever, including but not limited to, any claims from unpaid taxes or any pending litigation or disputes with respect to any Account;
- l. Each Account is (i) a valid and existing obligation of Owner as of the date of funding by Lexington and (ii) the unconditional obligation of the Owner free from all defenses, counterclaims, right of set off and recoupment, whether in law or in equity, including but not limited to, any defenses based on the authority and capacity to contract of all persons and/or entities executing all Finance Documents in connection with such Account;
- m. All dealings with the Owner and the execution by the Owner of the Finance Documents have been conducted in compliance with all applicable federal, state and local laws and regulations, including but not limited to the federal Truth-in-Lending Act and Regulation Z, and all disclosure and notices required by law are true and correct and were made before execution of the Finance Documents;
- n. Dealer has properly issued to each Owner a valid and proper notice of right to cancel the transaction as required by applicable federal, state and local laws. No Owner has canceled, and the time for each Owner to cancel under law has expired;
- o. Neither Dealer nor any of its agents or employees shall in any manner have been guilty of any civil or criminal fraud with respect to the creation of any Account or its funding by Lexington. No Owner on any Account was induced to enter into any of the Finance Documents by any false or misleading statement nor by any other misrepresentation, either intentional or negligent;
- p. No Owner named on the Account is deceased at the time the Account was funded by Lexington nor, to Dealer's knowledge, the subject of any current proceeding in bankruptcy;
- q. All Finance Documents submitted to Lexington on forms other than those provided to Dealer by Lexington comply with all applicable federal, state and local laws and regulations and are valid and enforceable according to their terms;
- r. Any real property serving as Secured Property for the Account consists of a single parcel of real property separately assessed for tax purposes, upon which is erected a detached or an attached 1-4 family residence occupied by the Owner, whose ownership interest in the property is an estate fee in simple. The residence or dwelling of Owner is not (i) a single wide mobile home, (ii) a property the ownership interest in which consists of a leasehold estate, life estate or a vendee's interest under a contract for deed, land contract or installment sales contract, (iii) a recreational vehicle, nor (iv) used for commercial purposes;
- s. To the best of Dealer's knowledge at the time an Account is funded by Lexington, there are not unrecorded liens or encumbrances upon the improvements or the Secured Property so that upon recording the Security Agreement contained in the Finance documents, Lexington at all times shall have a valid and enforceable security interest in all Secured Property. There are no mechanic's nor materialman's liens on any Secured Property;

- t. The Dealer's transfer of an RIC or Note and the corresponding Security Agreement to Lexington are sufficient to transfer to Lexington all right, title and interest of Dealer in the Account and in the Secured Property securing the Account. Each RIC and Note and corresponding Security Agreement funded by Lexington has been duly assigned or endorsed by Dealer to Lexington
- u. Upon funding of the Account by Lexington, Lexington shall be entitled to received all payments made by the Owner on such Account and Dealer shall have no right to any such payments;
- v. There have been no representations or warranties made to the Owner which are not contained in the Finance Documents other than the manufacturer's or Dealer's standard warranties and Dealer has no knowledge of any circumstances or conditions with respect to the Account, the Secured Property, the Owner or the Owner's credit standing that can reasonably be expected to cause the Account to become delinquent or adversely affect the value of the Account;
- w. No liabilities or obligations of Dealer under or relating to any Account or otherwise are being assumed by Lexington hereunder, nor shall any such liabilities be assumed by Lexington by virtue of entering into this Agreement or funding any Account;
- x. There is no claim, nor any litigation, proceeding, arbitration, investigation or material controversy pending to which Dealer is a party, which, if adversely decided, could have an adverse effect on any Account.

Each of the foregoing representations and warranties by Dealer (i) shall be deemed to be repeated by Dealer when the Finance Documents are prepared and the time each Account is funded by Lexington, (ii) shall survive the execution and delivery of this Agreement and the execution and delivery of the Finance Documents, and (iii) shall continue in full force and effect until all the terms and conditions of the Finance Documents have been fully performed. Lexington may rely upon the foregoing representations and warranties of Dealer irrespective of any information or knowledge obtained by Lexington of anything contrary to or inconsistent therewith.

8. **Dealer's Covenants.**

- a. **Improvements.** Dealer shall have the sole responsibility for all Improvements, both good and services, including warranty contracts and any representations and warranties made in connection with such Improvements, and Dealer agrees that will make a good faith effort to resolve any disputes it may have with an Owner concerning the Improvements and any representations and warranties with respect thereto. Dealer agrees that it shall provide to Lexington, upon request, pertinent data related to warranty contracts.
- b. **Applications Withdrawn.** If Lexington obtains a credit and/or title report in connection with an application submitted to Lexington by Dealer for credit approval, and the application is subsequently withdrawn, Dealer shall reimburse Lexington for credit and/or title report fees incurred by Lexington
- c. **Insurance.** Dealer shall have in force at all times during the term of this Agreement the following policies (the "Dealer's Insurance");(i) a builder's risk insurance policy with standard conditions, (ii) public liability insurance with limits of liability equal to at least \$500,00 per occurrences, (iii) worker's compensation insurance as required by applicable state law, and (iv) automotive liability insurance with limits of liability equal to at least the minimum required by applicable state law.
- d. **Licenses and Permits.** Dealer shall obtain all licenses and all building permits and approvals for the construction of the Improvements that are required by federal, state, county, municipal and local governmental agencies prior to commencing work on the Improvements at the Owner's residence.
- e. **Inspections.** Dealer shall permit Lexington to inspect the Improvements and Dealer's books and records with respect to all Accounts funded or to be funded by Lexington and Lexington may withhold its funding of any Account until Lexington, has obtained verification from the Owner that all Improvements have been delivered and installed by Dealer in a good and workmanlike manner.
- f. **Financial Statements.** Dealer will immediately submit to Lexington financial statements in the event of any unfavorable change in Dealer's financial condition and at any time upon request by Lexington
- g. **Name of Organizational Change.** Dealer shall immediately inform Lexington of any change in its name, its address, its legal status or form of organization, its senior management personnel or its owners or their ownership interests.
- h. **Change in Authority.** Dealer shall immediately inform Lexington of any suspension or revocation of its authority to transact business or of any licenses required for Dealer to conduct business in any location where Accounts have been or may be submitted to Lexington for funding.

- i. **Further Assurances.** Dealer shall execute and deliver to Lexington, upon Lexington's request, such instruments and assurances as Lexington may deem necessary for confirmation or perfection of this Agreement, any Security Agreement contemplated by this Agreement or any Account subject to this Agreement. Dealer understands and agrees that Lexington may subject Dealer to an annual review and renewal in order to continue to do business with Dealer.

9. **Remedies.** Dealer agrees that if any representation herein was falsely made or is untrue, or if any warranty or covenant made herein is breached by Dealer, or if an Owner asserts any claim or defense with respect to an Account, Dealer will, on demand of Lexington, repurchase the Account. Notwithstanding the foregoing, if a breach of the Dealer's representations, warranties or covenants contained in the Agreement arises out of an Owner's complaint regarding the Improvements. Lexington will give prompt written notice thereof to Dealer, and Dealer will have thirty days, unless such time is extended by Lexington, to resolve the complaint. If the Dealer fails to resolve the complaint to the satisfaction of Lexington within the time period permitted, Dealer shall purchase the Account from Lexington. In determining whether the complaint has been satisfactorily resolved Lexington, may require that the Dealer furnish a new completion certificate signed by the Owner. Any purchase of any Account by Dealer from Lexington will be at a purchase price equal to the then unpaid balance (including earned unpaid finance charges, late fees and returned check charges) on such Account, plus the costs and expenses of Lexington, including attorney's fees.

10. **Indemnity.** In addition to any other rights and remedies that Lexington may have, Dealer shall indemnify and hold Lexington harmless from any claim, loss, damage, liability, obligation, judgment, demand, cost and/or expenses, including attorney's fees and cost of litigation which Lexington may incur because of any claim or defense asserted against Lexington (i) by reason of any representation, covenant or warranty made by dealer being breached or untrue, or (ii) by reason of Dealer's breach of contract or violation of consumer protection statutes and/or all regulations promulgated thereunder. Lexington, shall indemnify Dealer for any claim, loss, damage, liability, obligation, judgment, demand, cost and/or expense, including attorney's fees and cost of litigation, which Dealer may incur based solely upon the form any Finance Documents furnished to Dealer by Lexington.

11. **Nonexclusive Remedies.** Lexington's rights and remedies under this Agreement are cumulative and may be exercised by Lexington concurrently or in any order desired by Lexington. Any failure by Lexington to exercise any right or remedy hereunder shall not operate as a waiver of the right to exercise such rights as to any further or subsequent breach or default. Lexington may proceed against Dealer and/or Owner and/or all Secured Property in any order or combination as Lexington in its sole discretion shall deem appropriate, and Lexington shall not be required to first resort to any action against Owner nor to any Secured Property.

12. **Termination.** Dealer or Lexington may terminate this Agreement at any time by written notice to the other specifying the effective date of such termination. Notice shall be mailed to the respective addresses set forth below. No such termination shall alter, change or modify the respective rights or liabilities of Dealer or Lexington as herein set forth with respect to any Account funded by Lexington prior to the date of termination. All covenants, representations and warranties made by Dealer to Lexington including but not limited to Dealer's agreement to indemnify and purchase Accounts pursuant hereto, and by Lexington to Dealer shall survive termination of this Agreement.

13. **Independent Contractor.** It is understood and agreed that all times when acting under pursuant hereto, Dealer is and shall be deemed to be an independent contractor and not the agent, partner, or subcontractor of Lexington for any purpose, nor shall this Agreement constitute establishment of partnership or joint venture between Lexington and Dealer. Dealer agrees it will not represent, directly or indirectly, to any person that it has the ability or authority on behalf of Lexington, to advertise by any means or method whatsoever or otherwise indicate that financing is obtainable from Lexington by or through Dealer.

14. **Modification of Obligations.** Lexington in its sole and absolute discretion may, without notice to Dealer, extend, compromise, release, change, modify, adjust and/or alter, by operation of law or otherwise, any obligations of the Owner or any other person obligated under any Account and/or modify, subordinate, release or satisfy any Security Agreement without releasing or otherwise affecting the obligations of Dealer under this Agreement. Without in any way limiting the foregoing, in the event Dealer fails to purchase an Account after demand and within the time provided by this Agreement, Lexington may in its sole discretion release or reconvey any Secured Property and/or reassign any Security Agreement to Dealer which action shall in no event constitute a release or waiver of 's rights and remedies for Dealer's breach including payment of the purchase price.

15. **Miscellaneous Terms.**

- a. All acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of _____

- b. If any part of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby. The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

16. **Notices.** All notices or other communications which are required or permitted hereunder shall be in writing and shall be sufficient if delivered personally or sent by certified mail, postage prepaid or by overnight courier, telex or telecopy addressed as follows:

If to Dealer: Name _____
 Address _____

 Fax Number _____
 Contact Person _____

If to Lexington Capital Corp.:
 Name _____
 Address _____

 Fax Number _____
 Contact Person _____

Any party may change the address to which the notices or other communication to it are to be delivered or mailed by written notice to the other party. Any notice or communication shall be deemed to have delivered on the date received at the premises address of the addressee as provided pursuant to this paragraph or on the date of attempted delivery to such address or in the event of such addressee's refusal to accept delivery.

17. **Attorney's Fees.** If any party hereto shall bring suit or other proceeding against the other as a result of any alleged breach or failure to the other party to fulfill or perform any covenants or obligations under this Agreement, then prevailing party upon obtaining judgment in such action or proceeding shall be entitled to receive from the non prevailing party reasonable attorney's fees incurred by reason of such action or proceeding and all costs of suit for both trial and appellate levels.

18. **Notice of Claim.** Lexington and Dealer shall promptly notify each other and forward a copy of every demand, notice, summons or other process received in connection with any Account purchased by Lexington from Dealer under this Agreement.

19. **Entire Agreement.** This Agreement contains all the terms, conditions and provisions agreed upon by the parties with respect thereto, and no modification or waivers hereof shall be made except in a writing signed by both parties.

20. **Assignments.** This Agreement shall be binding upon and insures to the benefit of the personal representatives, successors and permitted assigns of the respective parties. Dealer may not assign its rights under this Agreement without prior written consent of Lexington may assign its rights under this Agreement at any time without consent of Dealer.

21. **Multiple Counterparts.** This Agreement may be executed in nay number of multiple counterparts, all of which shall constitute but one and the same original.

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GUARANTEE

The undersigned, _____, and each of the undersigned individually (referred to herein as the "Guarantor" whether one or more) unconditionally guarantees the payment when due of any and all indebtedness (collectively, the "Obligations and Liabilities") and performance of _____, the "Dealer" under the foregoing Dealer Financing Agreement (the "Agreement") with Lexington Capital Corp. ("Lexington"). If any Obligations and Liabilities of the Dealer under the Agreement are not timely satisfied by the Dealer, the Guarantor unconditionally promises to pay to Lexington, without deduction of any kind, in lawful money of the United States, the amount of the Obligations and Liabilities. The Guarantor acknowledges that a separate action may be brought and prosecuted against each or any Guarantor whether or not action is brought against Dealer, and whether or not Dealer is joined in any such actions. The Guarantor authorizes Dealer, without notice of demand, and without affecting or impairing the liability of Guarantor, from time to time, in accordance with Agreement or by mutual agreement with Lexington to renew, compromise, extend, increase, accelerate or otherwise change the time for payment of , or otherwise the terms of, any indebtedness of Dealer under Agreement or to modify the terms and time for performance of any or all obligations and Liabilities under the Agreement to modify the terms and time for performance of any or all Obligations and Liabilities under Agreement. The Guarantor waives notice of dishonor, notice of acceptance, and any right to require to proceed against any other Guarantor or the Dealer or to pursue any other remedy in Lexington's power whatsoever. Until all of the Obligations and Liabilities shall have been fully performed, and until all periods under applicable laws to contest preferential or fraudulent payments have expired, Guarantor waives all rights of contribution and subrogation. This Guarantee is for the benefit of Lexington, its successors and assigns.

(signature)

(signature)

(printed name)

(printed name)

Address: _____

Address: _____

Dated: _____

Dated: _____