

**UNITED STATES  
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, 2021

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: **001-34767**

**CLARUS CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**58-1972600**

(I.R.S. Employer  
Identification Number)

**, Utah**

**2084 East 3900 South  
Salt Lake City, Utah**

(Address of principal executive offices)

**84124**  
(Zip code)

**(801) 278-5552**

(Registrant's telephone number, including area code)

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

**Title of each class**

**Trading Symbol**

**Name of  
each  
exchange  
on which  
registered  
NASDAQ  
Global  
Select  
Market**

Common Stock, par value \$.0001 per share

CLAR

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

None  
(Title of class)

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 Section 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 every Interactive Data File required to be submitted 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 such files). YES ☒ NO ☐

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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act) YES ☐ NO ☒

The aggregate market value of the voting stock and non-voting common equity held by non-affiliates of the Registrant at June 30, 2021 was approximately \$628.2 million based on \$25.70 per share, the closing price of the common stock as quoted on the NASDAQ Global Select Market.

As of March 2, 2022, there were 37,199,359 shares of common stock, par value \$0.0001, outstanding.

**DOCUMENT INCORPORATED BY REFERENCE**

Portions of our Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days of the Registrant's 2021 fiscal year end are incorporated by reference into Part III of this Annual Report on Form 10-K.

## INDEX

### CLARUS CORPORATION

		Page
<b>PART I</b>		
<a href="#">Item 1.</a>	<a href="#">Business</a>	3
<a href="#">Item 1A.</a>	<a href="#">Risk Factors</a>	12
<a href="#">Item 1B.</a>	<a href="#">Unresolved Staff Comments</a>	24
<a href="#">Item 2.</a>	<a href="#">Properties</a>	24
<a href="#">Item 3.</a>	<a href="#">Legal Proceedings</a>	25
<a href="#">Item 4.</a>	<a href="#">Mine Safety Disclosures</a>	25
<b>PART II</b>		
<a href="#">Item 5.</a>	<a href="#">Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	26
<a href="#">Item 6.</a>	<a href="#">[Reserved]</a>	28
<a href="#">Item 7.</a>	<a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	29
<a href="#">Item 7A.</a>	<a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	40
<a href="#">Item 8.</a>	<a href="#">Financial Statements and Supplementary Data</a>	41
<a href="#">Item 9.</a>	<a href="#">Changes in and Disagreements With Accountants on Accounting and Financial Disclosure</a>	76
<a href="#">Item 9A.</a>	<a href="#">Controls and Procedures</a>	76
<a href="#">Item 9B.</a>	<a href="#">Other Information</a>	79
<a href="#">Item 9C.</a>	<a href="#">Disclosure Regarding Foreign Jurisdiction that Prevent Inspections</a>	79
<b>PART III</b>		
<a href="#">Item 10.</a>	<a href="#">Directors, Executive Officers and Corporate Governance</a>	79
<a href="#">Item 11.</a>	<a href="#">Executive Compensation</a>	79
<a href="#">Item 12.</a>	<a href="#">Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	79
<a href="#">Item 13.</a>	<a href="#">Certain Relationships and Related Transactions, and Director Independence</a>	79
<a href="#">Item 14.</a>	<a href="#">Principal Accounting Fees and Services</a>	79
<b>PART IV</b>		
<a href="#">Item 15.</a>	<a href="#">Exhibits and Financial Statement Schedules</a>	80
<a href="#">Item 16.</a>	<a href="#">Form 10-K Summary</a>	84
<a href="#">Signature Page</a>		85

---

## PART I

### ITEM 1. BUSINESS

#### Overview

Headquartered in Salt Lake City, Utah, Clarus Corporation (which may be referred to as the “Company,” “Clarus,” “we,” “our” or “us”) is a global leading designer, developer, manufacturer and distributor of best-in-class outdoor equipment and lifestyle products focused on the outdoor and consumer enthusiast markets. Our mission is to identify, acquire and grow outdoor “super fan” brands through our unique “innovate and accelerate” strategy. We define a “super fan” brand as a brand that creates the world’s pre-eminent, performance-defining product that the best-in-class user cannot live without. Each of our brands has a long history of continuous product innovation for core and everyday users alike. The Company’s products are principally sold globally under the Black Diamond®, Sierra®, Barnes®, Rhino-Rack® and MAXTRAX® brand names through outdoor specialty and online retailers, our own websites, distributors and original equipment manufacturers. Our portfolio of iconic brands is well-positioned for sustainable, long-term growth underpinned by powerful industry trends across the outdoor and adventure sport end markets.

One of the key elements of our sustained financial performance is our persistent focus on brand building through product initiatives. Our iconic brands are rooted in performance-defining technologies that enable our customers to have their best days outdoors. We have a long history of technical innovation and product development, backed by an extensive patent portfolio that continues to evolve and advance our markets. We currently employ approximately 120 engineers across the portfolio, focusing on enhancing our customers’ performance in the most critical moments. Our commitment to quality, rigorous safety, and ultimately best-in-class design is evidenced by outstanding industry recognition, as we have received numerous product awards across our portfolio of super fan brands.

Each of our brands represents a unique customer value proposition. Supported by six decades of proven innovation, Black Diamond, is an established global leader in high-performance, activity-based climbing, skiing, and technical mountain sports equipment. The brand is synonymous with premium performance, safety and reliability. Our Sierra and Barnes brands have been leading specialty manufacturers of bullets and ammunition for over 50 years. Since 1947, Sierra has been dedicated to manufacturing the highest-quality, most accurate bullets in the world for hunting and sport shooting enthusiasts. Barnes traces its history back to 1932, and since 1989 has manufactured technologically-advanced lead-free bullets and premium ammunition for hunters, range shooters, military and law enforcement professionals. Founded in 1992, our Rhino-Rack brand is a globally-recognized designer and distributor of highly-engineered automotive roof racks and accessories to enhance the outdoor enthusiast’s overlanding experience. Founded in 2005, our MAXTRAX brand offers high-quality overlanding and off-road vehicle recovery and extraction tracks for the overland and off-road market.

Clarus, incorporated in Delaware in 1991, acquired Black Diamond Equipment, Ltd. (“Black Diamond Equipment”) in May 2010 and changed its name to Black Diamond, Inc. in January 2011. In October 2012, we acquired PIEPS Holding GmbH and its subsidiaries (collectively, “PIEPS”). On August 14, 2017, the Company changed its name from Black Diamond, Inc. to Clarus Corporation and its stock ticker symbol from “BDE” to “CLAR” on the NASDAQ stock exchange.

On August 21, 2017, the Company acquired Sierra Bullets, L.L.C. (“Sierra”). On November 6, 2018, the Company acquired the assets of SKINourishment, Inc. (“SKINourishment”). On October 2, 2020, the Company completed the acquisition of certain assets and liabilities constituting the Barnes business (“Barnes”). On July 1, 2021, the Company completed the acquisition of Australia-based Rhino-Rack Holdings Pty Ltd (“Rhino-Rack”). On December 1, 2021, the Company completed the acquisition of Australia-based MaxTrax Australia Pty Ltd (“MAXTRAX”).

#### Market Overview

Our brands participate in the outdoor-oriented lifestyle that has and is expected to benefit from favorable long-term growth trends. The users of our products are loyal outdoor enthusiasts, including climbers, mountaineers, trail runners, skiers, mountain bikers, backpackers and campers, competitive shooters, hunters, adventure seekers, overlanders and other outdoor-inspired consumers. We believe we have a strong reputation for innovation, style, quality, design, safety and durability in our core product lines, positioning us for sustainable growth amidst the acceleration of our market opportunity. Select factors driving this acceleration include:

***Increasing Adoption of Outdoor Lifestyles and Focus on Health and Wellness.*** According to Outdoor Foundation, over the past decade, many outdoor activities have experienced a consistent rise in participation rates. This heightened participation has grown in tandem with increasing consumer focus on health and wellness with many consumers acutely aware of the myriad of physical and mental health benefits associated with outdoor activity. Outdoor participation experienced an uplift following the emergence of the COVID-19 pandemic.

***Growing Demand for SUVs as “Staycations,” Road Trips and Short Breaks Increase in Popularity.*** As consumers actively search out activities that conform to local social distancing guidelines, there has been a significant increase in more localized vacations, trips

and activities that avoid air and rail travel. In addition, the popularity of pickups and, more recently, their sibling sport utility vehicles (“SUVs”) and crossover utility vehicles (“CUVs”) continues to rise. They are multipurpose vehicles, proving equally functional for daily commutes, heavy jobsite work or recreational and trail activities. Per the 2021 issue of “SEMA Light-Truck Snapshot,” the light-truck segment — which includes pickups, vans, SUVs and CUVs — is forecast to account for 82% of all new passenger vehicle sales by 2025. From 2019-2025, new light truck sales are estimated to rise approximately 14% overall. By contrast, sales of passenger cars are forecast to decline by approximately 34% over the same period. The demand for vehicles geared towards local travel is driving demand for extra luggage space and the automotive rack market which is expected to directly benefit our Rhino-Rack and MAXTRAX brands

***Rise of Overlanding.*** Combining off-road driving with backcountry lifestyle activities, such as camping, hiking, kayaking and mountain biking, we believe that overlanding has driven a new niche in the light truck, SUV and CUV segment for enthusiasts and light truck manufacturers which is expected to directly benefit our Rhino-Rack and MAXTRAX brands. Per SEMA, overlanding, loosely defined, is the practice of exploring the backcountry in a purpose-built vehicle — generally, a high-clearance four-wheel drive — that is equipped to allow its occupants to remain self-sufficient for periods of time ranging from a few days to several weeks. The activity originated in Australia, with popularity in South America and sub-Saharan Africa, but its popularity in North America has grown significantly over the past decade.

Due to its overlap with numerous outdoor lifestyle activities, overlanding’s market growth is difficult to precisely measure, but we believe that the global adventure tourism market — which includes camping, hiking, mountain biking, kayaking, rafting and other pursuits that are closely associated with overlanding — reflects this growing trend and is expected to continue to grow in the coming years.

***Climbing Verticals Becoming Mainstream.*** With the release of critically acclaimed free climbing documentary The Dawn Wall as well as the Academy Award-winning rock climbing documentary Free Solo, mainstream consumers are increasingly exposed to the markets that Clarus and, specifically, Black Diamond work to serve. Furthermore, the 2020 Tokyo Olympics marked the first time that sport climbing debuted in an Olympic stadium, bringing the thrills of high-skill rock climbing to the living rooms of people across the globe.

***Resurgence in Popularity of Hunting.*** After several years of falling participation, hunting has experienced a strong resurgence in activity over the past two years, as participants have found comfort in an outdoor activity conforming to social distancing guidelines. Additionally, the sport of hunting has experienced more diversity in participants, specifically women and younger people. The investment in hunting equipment and required training courses is expected to drive sustained activity in the sport.

As the variety of outdoor sports activities continues to proliferate, and existing outdoor sports evolve and become more specialized, we believe there is a need in the marketplace to address the unique technical and performance needs of enthusiasts involved in such activities. We believe we have been able to help address this void in the marketplace by seeking to leverage our intimate knowledge of what the customer needs to perform at the highest level. We continue to seek to improve on our existing product lines by expanding our offerings into new niche categories, and by incorporating innovative industrial design and engineering and performance tolerances into our products. We believe the credibility and authenticity of our brands expands our potential market beyond committed outdoor athletes to those outdoor generalist consumers who desire to lead active, outdoor-focused lifestyles.

## **Growth Strategies**

Our growth strategies are to achieve sustainable, profitable growth organically while seeking to expand our business through targeted, strategic acquisitions. We intend to create new and innovative products, increase consumer and retailer awareness and demand for our products, and build stronger emotional brand connections with consumers over time across an increasing number of geographic markets. Additionally, long-term growth is underpinned by powerful industry trends across the outdoor and consumer enthusiast markets. Our growth initiatives include, but are not limited to the following:

***Black Diamond Product Category Expansions.*** Within our Outdoor segment, we intend to utilize our “innovate and accelerate” strategy to leverage our strong brand name, customer relationships, proven capacity to develop new innovative products and product extensions in each of our existing product categories, and to expand into new product categories. Our new technologies are generally inspired by our continuing commitment to maximize the enjoyment and efficacy of the products for the outdoor sports for which we design. We intend to focus on the expansion of our apparel and footwear categories, driving further innovation in lights, trekking poles, snow safety, and climbing hard goods, while broadening our appeal in gloves and packs.

***Growth in International Markets.*** We believe there is a significant opportunity to expand the presence and penetration of each of our brands globally. The European alpine market is currently significantly larger than the U.S. market and is highly fragmented by country, with no clear leader across Europe. We have been able to gain market share by emphasizing our Black Diamond brand, positioning it as a global brand with American roots. We believe there is also a significant opportunity to expand our Sierra and Barnes brands more extensively outside the U.S. market through additional sales and marketing investments. The acquisition of Rhino-Rack adds a leading market position in Australia and New Zealand, with significant whitespace to grow our presence in U.S., currently less than 1% market

share, through key partnerships with brick-and-mortar and online retailers alike, and enhanced brand awareness. Our most recent acquisition of MAXTRAX has a leading market position in Australia as well and we believe it has a significant opportunity to grow in the U.S market.

**Acquisition of Complementary Businesses.** We expect to target acquisitions as a viable opportunity to gain access to new product groups, customer channels, and increase penetration of existing markets. We may also pursue acquisitions that diversify the Company within the outdoor and consumer enthusiast markets. To the extent we pursue future acquisitions, we intend to focus on super-fan brands with recurring revenue, sustainable margins and strong cash flow generation. We anticipate financing future acquisitions prudently through a combination of cash on hand, operating cash flow, bank financings, private placements and new capital markets offerings.

### Competitive Strengths

**Authentic Portfolio of Iconic Super Fan Brands.** We believe that our brands are iconic among devoted, active-outdoor enthusiasts with a strong reputation for innovation, style, quality, design, safety and durability. Each of our brands is synonymous with the sport it serves, tracing its roots to the modern origins of each sport.

- ① Since 1957, our Black Diamond brand has been a global innovator in activity-based climbing, skiing, and mountain sports equipment.
- ① Our Sierra brand was founded in 1947 and, we believe, represents the most precise and accurate bullets and ammunition available for the hunting and sport shooting enthusiast.
- ① Our Barnes brand was founded in 1932 and produces some of the most technologically advanced lead-free bullets and premium ammunition.
- ① Our Rhino-Rack brand was founded in 1992 and has become well-respected and widely recognized for outdoor enthusiasts.
- ① Our MAXTRAX brand was founded in 2005 and has become the market leader in recovery boards for overlanding enthusiasts.

Our brands also appeal to everyday customers seeking high-quality products for outdoor or urban and suburban living. Our focus on innovation, safety and style differentiates us from our competitors.

### Outdoor



**Black Diamond Equipment:** Black Diamond Equipment is a global innovator in climbing, skiing and mountain sports equipment enabling peak performance for outdoor enthusiasts. Employing approximately 65 engineers, the brand is synonymous with innovation, performance, safety and durability. Headquartered in Salt Lake City at the base of the Wasatch Mountains, Black Diamond products are created and tested locally on its alpine peaks, slopes, crags and trails. Continuously recognized as an industry-leading innovator, Black Diamond has received 418 industry awards over five years, including over 110 product awards in 2021 alone.

### Precision Sport



**Sierra:** Sierra Bullets is dedicated to manufacturing the highest-quality, most accurate bullets and ammunition in the world. From local and international shooting competitions to sport and hunting, Sierra is synonymous with precision, providing critical dependability to hunting and sport shooting enthusiasts. This performance is born from a proprietary manufacturing, testing and quality assurance process that enables the achievement of the tightest tolerances in the industry. Sierra's bullets and ammunition are used for precision target shooting, hunting and defense purposes. Sierra's products have cultivated a significant consumer following recognized by its iconic "green box" packaging and include globally recognized bullet brands such as Sierra® MatchKing®, Sierra® GameKing® and Sierra® BlitzKing® and ammunition brands such as GameChanger®, Prairie Enemy™, Outdoor Master® and Sport Master®.



**Barnes:** Barnes Bullets is an industry leader in all-copper bullet technology and innovation. The company manufactures some of the world's most technologically advanced lead-free bullets and premium hunting, self-defense and tactical ammunition. Barnes has earned its strong reputation through unrivaled performance and terminal results. This reputation is defined by innovative design, advanced manufacturing techniques and a core focus on the end-user. As a result, Barnes has generated a strong consumer following

supported by its globally recognized bullet brands such as Barnes® TSX®, X Bullet®, Varmint Grenade® and Expander® and ammunition brands VOR-TX® and TAC-XPD®. With its products being sold through its online store, a variety of retailers and international distributors, Barnes's customers include hunters, range shooters, military and law enforcement professionals around the world.

#### *Adventure*



**Rhino-Rack:** Headquartered in Sydney, Australia, Rhino-Rack has been a widely recognized, premier aftermarket automotive roof rack and accessories brand since 1992 with a leading market position in Australia. Best known for its “north/south” roof rack design, Rhino-Rack’s product offering includes roof racks, luggage carriers, shade awnings, kayak carriers, bike carriers and load-securing accessories. Employing 16 engineers, Rhino-Rack has a long track record of launching new, innovative products with state-of-the-art engineering serving and enhancing the outdoor enthusiast’s overlanding experience. Rhino-Rack has a clearly defined growth strategy, underpinned by access to Clarus’ go-to-market playbook and key customer relationships. Specifically, we believe there is significant opportunity to capture market share and further enhance brand awareness in North America, and globally, through partner and direct ecommerce growth, expansion of the dealer network and new distribution and brand-building partnerships.



**MAXTRAX:** Founded in 2005, MAXTRAX is considered the creator of the vehicle recovery board. MAXTRAX has developed a product lineup consisting of high-quality vehicle recovery and extraction tracks, including its original MAXTRAX MKII recovery track. All MAXTRAX vehicle recovery tracks are manufactured in Australia using its proprietary, Australian-sourced, engineering-grade and fiber-reinforced nylon. MAXTRAX currently sells its products around the world to distributors, retailers, government agencies, third-party e-commerce sites and through its own website.

**Product Innovation and Development Capabilities.** We have a long history of technical innovation and product development, with over 400 patents and patents pending worldwide. Our employees’ passion and intimacy with our core outdoor activities generates new and boundary-pushing concepts and products, which we believe provides a significant advantage that will drive our Company to new levels. We seek to design products that enhance our customers’ personal performance as they participate in the activities we serve. We integrate quality assurance and quality control teams throughout the entire design process to maintain the quality and integrity for which our brands are known. We believe that our vertically integrated design and development process and enthusiastic employee base provide us with a competitive advantage to continue to drive future innovation for our Company and the markets we serve. Our innovation pipeline is supported by approximately 120 engineers and additional quality control employees / associates.

**Experienced and Incentivized Senior Management Team.** The members of our Board of Directors and our executive officers, including Mr. Warren Kanders, are substantial stockholders of the Company, and beneficially own approximately 24.2% of our outstanding common stock as of March 2, 2022, which we believe aligns the interests of our Board of Directors and our executive officers with that of our stockholders.

**Growth-oriented Capital Structure.** Our capital structure provides us with the capacity to fund future growth and our net operating loss and tax credit carryforwards are expected to substantially offset our net taxable income through 2022, which is expected to allow us to retain cash flow for future growth.

#### **Operating Segments**

We operate our business structure within three segments. These segments are defined based on the internal financial reporting used by our chief operating decision maker to allocate resources and assess performance. The Company’s direct costs included in selling and general and administrative expenses are not allocated to the segments. Each segment is described below:

- ① Our Outdoor segment, formerly known as our Black Diamond segment, which includes Black Diamond Equipment, PIEPS, and SKINourishment, is a global leader in designing, manufacturing, and marketing innovative outdoor engineered equipment and apparel for climbing, mountaineering, trail running, backpacking, skiing, and a wide range of other year-round outdoor recreation activities. Our Outdoor segment offers a broad range of products including: high-performance, activity-based apparel (such as shells, insulation, midlayers, pants and logowear); rock-climbing footwear and equipment (such as carabiners,

protection devices, harnesses, belay devices, helmets, and ice-climbing gear); technical backpacks and high-end day packs; trekking poles; headlamps and lanterns; gloves and mittens; and skincare and other sport-enhancing products. We also offer advanced skis, ski poles, ski skins, and snow safety products, including avalanche airbag systems, avalanche transceivers, shovels, and probes.

- ① Our Precision Sport segment, formerly known as our Sierra segment, which includes Sierra and Barnes, includes two iconic American manufacturers of a wide range of high-performance bullets and ammunition for both rifles and pistols. These bullets are used for precision target shooting, hunting and military and law enforcement purposes.
- ① Our Adventure segment, formerly known as our Rhino-Rack segment, includes Rhino-Rack and MAXTRAX brands. The Rhino-Rack brand is a manufacturer of highly-engineered automotive roof racks, trays, mounting systems, luggage boxes, carriers and accessories in Australia and New Zealand and a growing presence in the United States. Our MAXTRAX brand offers high-quality overlanding and off-road vehicle recovery and extraction tracks for the overland and the off-road market.

See Note 17 to our consolidated financial statements for financial information regarding our segments.

## Products

Our products span 36 single product categories and include a wide variety of technical outdoor equipment and lifestyle products for a wide range of outdoor enthusiasts, including climbers, mountaineers, trail runners, skiers, backpackers and campers, competitive shooters, hunters and other outdoor-inspired consumers. We design many of our products for extreme applications, such as high-altitude mountaineering, ice and rock climbing, as well as backcountry skiing and alpine touring. We also manufacture high-quality bullets and ammunition with the tightest tolerances in the industry that enhance the performance of competitive shooters and hunters. We manufacture highly-engineered automotive roof racks, trays, mounting systems, luggage boxes, carriers, recovery tracks and accessories. We have also developed skincare products, such as lotions, lip balm, and sunscreen, as well as sport-enhancing supplements, nutrition, and other products using natural, organic or alternative ingredients. Generally, we divide our product offerings into the following three primary categories:

- ① Outdoor: Our outdoor line consists of apparel, footwear, headlamps, lights, trekking poles, gloves, packs, avalanche airbags, poles, avalanche safety devices, and equipment such as carabiners, harnesses, protection devices, and various other climbing, mountaineering, hiking, and backcountry accessories and products. Our outdoor line represented approximately 50% of our sales on a pro forma basis during the year ended December 31, 2021.
- ① Precision Sport: Our precision sport line consists of premium quality high-precision bullets and ammunition used in competitive shooting, hunting and other applications and environments. Our precision sport line represented approximately 25% of our sales on a pro forma basis during the year ended December 31, 2021.
- ① Adventure: Our adventure line consists of highly-engineered automotive roof racks, trays, mounting systems, luggage boxes, carriers, recovery tracks and accessories. Our adventure line represented approximately 25% of our sales on a pro-form basis during the year ended December 31, 2021.



## Product Design and Development

We conduct our product research, evaluation, and design activities at our locations in Salt Lake City, Utah; Sedalia, Missouri; Mona, Utah; Lebring, Austria; Wimberly, Texas; Sydney, Australia; and Brisbane, Australia.

We typically bring new products from concept to market in approximately 18 to 36 months depending upon the technology integration and complexity of the product. We work simultaneously on product lines for the four subsequent selling seasons.

We expense research and development costs as incurred in selling, general, and administrative expenses. As of December 31, 2021, we had 110 employees dedicated to research and development.

## Customers

We market and distribute our products in over 50 countries, primarily through independent specialty stores and specialty chains, premium sporting goods and outdoor recreation stores, distributors and OEMs in the United States, Canada, Europe, Middle East, Asia, Australia, New Zealand, Africa, and South America. Outside of North America and Europe, we sell our products through independent global distributors into specialty retail stores. We also sell our products directly to customers through our various websites.

Our end users include a broad range of consumers, including mountain, rock, ice, and gym climbers, winter-outdoor enthusiasts, trail runners, backpackers, competitive shooters, hunters, and outdoor-inspired consumers. Such consumers demand high-quality, reliable, and high-precision products to enhance their performance and, in some cases, safety in a multitude of outdoor activities. We expect to leverage our user intimacy, engineering prowess, and design ability to expand into related technical product categories that target the same demographic group and distribution channels.

## Sales and Marketing

Our sales force is generally deployed by geographic region: Canada, Europe, Asia Pacific, Latin America, Australia, and the United States. Our focus is on providing our products to a broad spectrum of outdoor enthusiasts. Within each of our brands, we strive to create a unique look for our products and to communicate those differences to the consumer. In addition, we are continuously exploring uses for brand and market research. We also regularly utilize various promotions and public relations campaigns.

We have consistently established relationships with professional athletes and influencers to help evaluate, promote and establish product performance and authenticity with customers. Such brand endorsers are one of many elements in our array of marketing materials, including instore displays, catalogs, workbooks, social media, and digital campaigns via our websites.



## **Manufacturing, Sourcing, Quality Assurance and Distribution**

### ***Manufacturing***

Our objective is to deliver on-time the highest quality of products in the safest and most cost-efficient manner. Our culture of continuous improvement and implementation of industry best practices, allows us to continue to increase productivity, reduce costs, and bring new innovative products to the market.

The Black Diamond Equipment, PIEPS, Rhino-Rack, and MAXTRAX manufacturing and distribution operations are ISO 9001–2015 certified and are audited annually by an independent certifying agency to ensure quality management systems meet the requirements of ISO 9001–2015, and to ensure that certified products meet all necessary performance certification requirements. Sierra and Barnes are members of the Sporting Arms & Ammunition Manufacturers' Institute and employ best-in-class proprietary manufacturing processes with respect to each one of its products. These processes are performed in-house and includes control of bullet jacket wall concentricity utilizing strict quality control standards overseen by experienced employees, yielding what we believe to be the tightest tolerances in the industry.

We manufacture approximately 25% to 30% of our products, including nearly all protection devices for climbing and all bullets, in our facilities in the United States. The remaining approximately 70% to 75% of our products are also manufactured to our specifications in third-party, independently-owned facilities. We keep employees and agents on-site or via regular visits at these third-party, independently-owned facilities to ensure that our products are manufactured to meet our specifications. While we do not maintain a long-term manufacturing contract with those facilities, we believe that our long-term relationships with them will help to ensure that a sufficient supply of goods built to our specification are available in a timely manner and on satisfactory economic terms in the future.

### ***Sourcing***

We source raw materials, components, finished goods from a variety of suppliers. Our primary materials include copper, lead, aluminum, steel, nylon, corrugated cardboard for packaging, metal, plastic and electrical components, and various textiles, foams, and fabrics. The raw materials and components used to manufacture our products are generally available from numerous suppliers in quantities sufficient to meet normal requirements.

We source packaging materials both domestically as well as from sources in Asia and Europe. We believe that all of our purchased products and materials could be readily obtained from alternative sources at comparable costs.

### ***Quality Assurance***

Quality assurance at the Company has two primary functions:

- ① The first is to ensure that the products that we design and develop are manufactured to meet or exceed the Company's own standards and international regulatory standards. This involves creating inspection documentation, reviewing manufacturing processes with our various vendor-partners, and inspecting finished product to assure it meets the rigorous standards required by our customers. These activities take place globally, wherever our products are manufactured.
- ② The second function is to provide real and meaningful input to the new product development process. Quality assurance professionals interact closely with the design and engineering teams and bring knowledge and expertise to the design process, ensuring that the products we bring to market truly meet the criteria established when a new product is envisioned.

The engineering prowess of the quality assurance group is a core competency that the Company seeks to leverage across all product lines and brands.

### ***Global Distribution***

Our distribution model allows us to ship a broad cross-section of our product line in smaller quantities to our own global distribution centers and to those of our Independent Global Distributors ("IGD") more frequently and at lower transportation and logistics costs.

### ***Competition***

Because of the diversity of our product offerings, we compete by niche with a variety of companies. Our products must stand up to the high standards set by the end users in each category where quality, durability and performance are paramount. We believe our products compete favorably on the basis of product innovation, product performance, marketing support, and price.

The popularity of various outdoor activities and changing design trends affect the desirability of our products. Therefore, we seek to anticipate and respond to trends and shifts in consumer preferences by adjusting the mix of available product offerings by developing

new products with innovative performance features and designs, and by marketing our products in a persuasive and memorable fashion to drive consumer awareness and demand. Failure to anticipate or respond to consumer needs and preferences in a timely and adequate manner could have a material adverse effect on our sales and profitability.

We compete with niche, privately-owned companies as well as a number of brands owned by large, multinational companies, such as those set forth below.

- ① Outdoor: Our outdoor products and accessories, such as apparel, footwear, trekking poles, headlamps, gloves, backpacks, transceivers, protection, carabiners, helmets, and harnesses, compete with products from companies such as The North Face, Patagonia, La Sportiva, Prana, Hestra, Osprey, Arc’Teryx, Petzl, and Mammut.
- ① Precision Sport: We sell bullets and ammunition to both retailers and distributors for sale to consumers. We supply bullets to OEMs who also manufacture bullets. Such companies include Vista (Federal Ammunition, CCI, and Remington), Nammo, Hornady, Fiocchi, and Olin (Winchester).
- ① Adventure: Our highly-engineered automotive roof racks, trays, mounting systems, luggage boxes, carriers, recovery tracks and accessories compete with products from companies such as Thule, Dometic, Yakima, Front Runner, and TRED Outdoors.

In addition, in certain categories we compete with certain of our large wholesale customers who focus on the outdoor market, such as REI, Mountain Equipment Co-op and Decathlon, which manufacture, market and distribute their own climbing, mountaineering, and skiing products under their own private labels.

### Intellectual Property

We believe our registered and pending word and icon trademarks worldwide, including the Black Diamond and Diamond “C” logos, Black Diamond®, ATC®, Camalot®, AvaLung®, FlickLock®, Ascension™, Time is Life®, Hexentric®, Stopper®, Dawn Patrol®, Bibler®, “Use.Design.Build.Engineer.Repeat”®, Sierra®, Sierra® MatchKing®, Sierra® GameKing®, Sierra® BlitzKing®, Barnes®, TSX®, X Bullet®, VOR-TX®, PIEPS®, Rhino-Rack®, and Maxtrax® create international brand recognition for our products.

Solely for convenience, our trademarks and tradenames referred to in this report may appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the right of the applicable licensor to these trademarks and tradenames.

We believe our brands have an established reputation for innovation, style, quality, design, safety, and durability, and accordingly, we actively monitor and police our brands against infringement to ensure their viability and enforceability.

In addition to trademarks, we hold over 400 patents and patents pending worldwide for a wide variety of technologies across our product lines.

Our success with our proprietary products is generally derived from our “first mover” advantage in the market as well as our commitment to protecting our current and future proprietary technologies and products, which acts as a deterrent to infringement of our intellectual property rights. While we believe our patent and trademark protection policies are robust and effective, if we fail to adequately protect our intellectual property rights, competitors may manufacture and market products similar to ours. Our principal intellectual property rights include our patents and trademarks but also include products containing proprietary trade secrets and manufacturing know-how.

We cannot be sure that we will receive patents for any of our patent applications or that any existing or future patents that we receive or license will provide competitive advantages for our products. While we actively monitor our competitors to ensure that we do not compromise the intellectual property of others, we cannot be sure that competitors will not challenge, invalidate or void the application of any existing or future patents that we receive or license. In addition, patent rights may not prevent our competitors from developing, using or selling products that are in similar product niches as ours.

### Seasonality

The Company’s products are outdoor activity-based, however, there are not significant seasonal variations in sales and profitability. On a pro forma basis in 2021, approximately 47% of our sales were in the first half of the year while approximately 53% of our sales occurred in the second half of the year.

Working capital requirements vary throughout the year. Working capital generally increases to support peak manufacturing and shipping periods and then decreases as accounts receivable are collected. However, throughout 2021, the Company has leveraged our balance sheet to secure additional inventory across all of our brands to ensure the right inventory is available to meet customer demand.

## Environmental Matters

Our operations are subject to federal, state, and local environmental, health and safety laws and regulations, including those that impose workplace standards and regulate the discharge of pollutants into the environment and establish standards for the handling, generation, emission, release, discharge, treatment, storage, and disposal of materials and substances including solid and hazardous wastes. We believe that we are in material compliance with such laws and regulations. Further, the cost of maintaining compliance has not, and we believe in the future, will not have a material adverse effect on our business, consolidated results of operations, and consolidated financial condition. Due to the nature of our operations and the frequently changing nature of environmental compliance standards and technology, we cannot predict with any certainty that future material capital or operating expenditures will not be required in order to comply with applicable environmental laws and regulations.

## Regulatory Matters

The manufacture, sale, and purchase of ammunition by our Precision Sport segment are subject to extensive federal, state, local, and foreign governmental laws. Our Precision Sport segment is also subject to the rules and regulations of the US Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) and various state and international agencies that control the manufacture, export, import, distribution and sale of firearms, explosives, and ammunition. Such regulations may adversely affect demand for the products sold by our Precision Sport segment by imposing limitations that increase the costs or limit the availability of its products.

The failure to comply with applicable rules and regulations may result in the limitation of our growth or business activities and could result in the revocation of licenses necessary for business conducted by the Precision Sport segment. Applicable laws and regulations provide for the following:

- ② require the licensing of all persons manufacturing, exporting, importing, or selling ammunition as a business;
- ② require serialization, labeling, and tracking of the acquisition and disposition of certain types of ammunition;
- ② regulate the interstate sale of certain ammunition
- ② restrict or prohibit the ownership, use, or sale of specified categories of ammunition;
- ② require registries of so-called “ballistic images” of ammunition fired from new guns;
- ② govern the sale, export, and distribution of ammunition; regulate the use and storage of gun powder or other energetic materials;
- ② regulate the employment of personnel with certain criminal convictions;
- ② restrict access to ammunition manufacturing facilities for certain individuals from other countries or with criminal convictions; and
- ② require compliance with International Traffic in Arms Regulations

The handling of our technical data and the international sale of products sold by our Precision Sport segment may also be regulated by the U.S. Department of State and Department of Commerce. These agencies can impose civil and criminal penalties, including denying the export of the products sold by our Precision Sport segment, for failure to comply with applicable laws and regulations.

Bills have been introduced in Congress to establish, and to consider the feasibility of establishing a nationwide database recording so-called “ballistic images” of ammunition fired from new guns. Should such a mandatory database be established, the cost to us, our distributors, and our customers could be significant, depending on the type of firearms and ballistic information included in the database. Bills have been introduced in Congress in the past several years that would affect the manufacture and sale of ammunition, including bills to regulate the manufacture, importation, and sale.

We believe that existing federal, state, and local legislation relating to the regulation of firearms and ammunition have not had a material adverse effect on our sales of these products. However, the regulation of firearms and ammunition may become more restrictive in the future, and any such developments might have a material adverse effect on our business, operating results, financial condition, and cash flows. In addition, regulatory proposals, even if never enacted, may affect firearms or ammunition sales as a result of consumer perceptions.

In addition, our SKINourishment business is subject to substantial government regulation. This government regulation includes regulation in the United States and other countries regarding the research, development, formulation, manufacture and marketing of our SKINourishment skincare products.

## Human Capital

As of December 31, 2021, we had a total of over 950 employees worldwide. Of these employees, 400 were engaged in manufacturing, 320 in sales, marketing, product management and customer support, 80 in corporate functions (IT, Finance, HR, Legal and Compliance, etc.), 110 in R&D, engineering technicians, manufacturing engineers and project managers, 40 retail store associates and 20 in various executive and administrative functions. None of our employees are represented by a union in collective

bargaining with us. We believe that our employee relations are good. Our human capital objectives center around identifying, recruiting, retaining, incentivizing and integrating our existing and new employees. We maintain and grow our team utilizing practices that help us identify, hire, incentivize and retain our existing employees and integrate new employees into our Company.

### **Impact of COVID-19**

The global outbreak of COVID-19 was declared a pandemic by the World Health Organization and a national emergency by each of the U.S., European, and Australian governments in March 2020, with governments world-wide implementing safety measures restricting travel and requiring citizen lockdowns and self-confinements for quarantining purposes. This has negatively affected the U.S., European, Australian and global economies, disrupted global supply chains, and resulted in significant transport restrictions and disruption of global financial markets.

The COVID-19 pandemic has significantly impacted the global supply chain, with restrictions and limitations on related activities causing disruption and delay, along with increased raw material, storage, and shipping costs. These disruptions and delays have strained domestic and international supply chains, which have affected and could continue to negatively affect the flow or availability of certain critical raw materials and finished good products that the Company relies upon. Furthermore, significantly increased demand from online sales channels, including our website, has impacted our logistical operations, including our fulfillment and shipping functions, which has resulted in periodic delays in the delivery of our products.

We experienced a decline in retail demand within our Outdoor segment beginning in the second half of March 2020 through December 2020, which negatively impacted our sales and profitability during this period. During 2021, our Outdoor segment continued to be impacted by the pandemic due to disruptions in the global supply chains; however, the Outdoor segment experienced an increase in overall sales as participation in outdoor recreation has increased as certain countries began to ease restrictions. During the third quarter of 2021, the Australian government instituted a mandatory lockdown for its citizens. This caused a decline in retail demand and a disruption in operations within our Adventure segment, which negatively impacted our sales and profitability for the third quarter of 2021 and to a lesser extent during the fourth quarter of 2021. Our Precision Sport segment has experienced higher demand which has positively impacted our sales and profitability since the beginning of the pandemic. We expect a continued impact on the Company's sales and profitability in future periods due to the ongoing impact of the pandemic. The duration of these trends and the magnitude of such impacts cannot be precisely estimated at this time, as they are affected by a number of factors (some of which are outside management's control), including those presented in Item 1A. Risk Factors.

### **Available Information**

Our Internet address is [www.claruscorp.com](http://www.claruscorp.com). We make available free of charge on or through our website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, and the proxy statement for our annual meeting of stockholders as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. Forms 3, 4 and 5 filed with respect to our equity securities under Section 16(a) of the Securities Exchange Act of 1934, as amended, are also available on our website. All of the foregoing materials are located at the "SEC Filings" tab under the section titled "Investor Relations." The information found on our website shall not be deemed incorporated by reference by any general statement incorporating by reference this report into any filing under the Securities Act of 1933, as amended, or under the Securities Exchange Act of 1934, as amended, and shall not otherwise be deemed filed under such Acts.

The Securities and Exchange Commission also maintains a website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Securities and Exchange Commission at [www.sec.gov](http://www.sec.gov). In addition, you may request a copy of any such materials, without charge, by submitting a written request to: Clarus Corporation, c/o the Secretary, 2084 East 3900 South, Salt Lake City, UT 84124. The contents of the websites identified above are not incorporated into this Annual Report on Form 10-K.

### **ITEM 1A. RISK FACTORS**

In addition to other information contained in this Annual Report on Form 10-K, the following risk factors should be carefully considered in evaluating our business, because such factors may have a significant impact on our business, operating results, liquidity and financial condition. As a result of the risk factors set forth below, actual results could differ materially from those mentioned in any forward-looking statements. Additional risks and uncertainties not presently known to us, or that we currently consider to be immaterial, may also impact our business, operating results, liquidity and financial condition. If any of the following risks occur, our business, operating results, liquidity and financial condition, and the price of our common stock, could be materially adversely affected.

## Risks Related to Our Industry

**Many of the products we sell are used for inherently risky outdoor pursuits and could give rise to product liability or product warranty claims and other loss contingencies, which could affect our earnings and financial condition.**

Many of our products are used in applications and situations that involve high levels of risk of personal injury and death. As a result, we maintain a staff who focus on the appropriate disclaimers and markings and testing and seek to assure the quality and safety of our products. We stay current with the law to seek to provide thorough and protective disclaimers and instructions on all of our products and packaging. Furthermore, our technical climbing and avalanche safety equipment and our related operations meet and are certified to International Personal Protective Equipment (PP) standards set by the EEC or ISO 9001 quality system standards. Failure to use our products for their intended purposes, failure to use or care for them properly, or their malfunction, or, in some limited circumstances, even correct use of our products, could result in serious bodily injury or death.

We remain exposed to product liability claims by the nature of the products we produce. Exposure occurs if one of our products is alleged to have resulted in property damage, bodily injury or other adverse effects. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product or activities associated with the product, negligence, strict liability, and a breach of warranties. Although we maintain product liability insurance in amounts that we believe are reasonable, there can be no assurance that we will be able to maintain such insurance on acceptable terms, if at all, in the future or that product liability claims will not exceed the amount of insurance coverage. Additionally, we do not maintain product recall insurance. As a result, product recalls or product liability claims could have a material adverse effect on our business, results of operations and financial condition.

As a manufacturer and distributor of consumer products, we are subject to government regulation in the United States and other countries, including, without limitation, the Consumer Products Safety Act, which empowers the Consumer Products Safety Commission to exclude from the market products that are found to be unsafe or hazardous. Under certain circumstances, the Consumer Products Safety Commission could require us to repurchase or recall one or more of our products. Additionally, laws regulating certain consumer products exist in some cities and states, as well as in other countries in which we sell our products, and more restrictive laws and regulations may be adopted in the future. Any repurchase or recall of our products could be costly to us and could damage our reputation. If we were required to remove, or we voluntarily removed, our products from the market, our reputation could be tarnished and we might have large quantities of finished products that we could not sell.

We spend substantial resources ensuring compliance with governmental and other applicable standards. However, compliance with these standards does not necessarily prevent individual or class action lawsuits, which can entail significant cost and risk. We do not maintain insurance against many types of claims involving alleged defects in our products that do not involve personal injury or property damage. As a result, these types of claims could have a material adverse effect on our business, results of operations, and financial condition.

Our product liability insurance program is an occurrence-based program based on our current and historical claims experience and the availability and cost of insurance. We carry both general and umbrella liability policies that insure us for product liability claims. The policy has a small retention, which enables us to manage and control our product liability claims. Historically, product liability awards have not exceeded our individual per occurrence self-insured retention. We cannot assure you, however, that our future product liability experience will be consistent with our past experience.

**We are subject to risks related to our dependence on the strength of retail economies in various parts of the world and our performance may be affected by general economic conditions.**

Our business depends on the strength of the retail economies in various parts of the world, primarily in North America, Europe, Australia and to a lesser extent, Asia, Central and South America. These retail economies are affected primarily by factors such as consumer demand and the condition of the retail industry, which, in turn, are affected by general economic conditions and specific events such as natural disasters, terrorist attacks, and political unrest. The impact of these external factors is difficult to predict, and one or more of the factors could adversely impact our business, results of operations, and financial condition.

Purchases of many consumer products are discretionary and tend to be highly correlated with the cycles of the levels of disposable income of consumers. As a result, any substantial deterioration in general economic conditions could adversely affect consumer discretionary spending patterns, our sales, and our results of operations. In particular, decreased consumer confidence or a reduction in discretionary income as a result of unfavorable macroeconomic conditions may negatively affect our business. If the macroeconomic environment worsens, consumers may reduce or delay their purchases of our products. Any such reduction in purchases could have a material adverse effect on our business, financial condition, and results of operations.

**Changes in the retail industry and markets for consumer products affecting our customers or retailing practices could negatively impact existing customer relationships and our results of operations.**

We sell our products to retailers, including sporting goods and specialty retailers, as well as direct to consumers. A significant deterioration in the financial condition of our major customers could have a material adverse effect on our sales and profitability. We regularly monitor and evaluate the credit status of our customers and attempt to adjust sales terms as appropriate. Despite these efforts, a bankruptcy filing by a key customer could have a material adverse effect on our business, results of operations, and financial condition.

In addition, as a result of the desire of retailers to more closely manage inventory levels, there is a growing trend among retailers to make purchases on a “just-in-time” basis. This requires us to shorten our lead time for production in certain cases and more closely anticipate demand, which could in the future require us to carry additional inventories.

We may be negatively affected by changes in the policies of our retailer customers, such as inventory destocking, limitations on access to and time on shelf space, use of private label brands, price demands, payment terms, and other conditions, which could negatively impact our results of operations.

There is a growing trend among retailers in the U.S. and in foreign markets to undergo changes such as consolidations, restructurings or store closings or reorganizations, that could decrease the number of stores that carry our products or increase the concentration of ownership within the retail industry. These changes within the retail industry could result in a shift of bargaining power to the retail industry and in fewer outlets for our products which could result in price and other competition that could reduce our margins and our net sales.

**Seasonality and weather conditions may cause our operating results to vary from quarter to quarter.**

Sales of certain of our products in our Outdoor segment are seasonal. Sales of our outdoor recreation products such as carabineers, harnesses, and related climbing equipment products increase during warm weather months and decrease during winter, while sales of our apparel line and winter sports equipment such as our skis and related ski equipment increase during the cold weather months and decrease during summer. Weather conditions may also negatively impact sales. For instance, milder temperatures could prevent the formation of ice, which may negatively affect demand for our ice climbing products, and mild winter weather with less snowfall may negatively impact sales of our winter sports products. These factors could have a material adverse effect on our business, results of operations, and financial condition.

**Our results of operations could be materially harmed if we are unable to accurately forecast demand for our products.**

We often schedule internal production and place orders for products with independent manufacturers before our customers’ orders are firm. Therefore, if we fail to accurately forecast customer demand, we may experience excess inventory levels or a shortage of product to deliver to our customers.

Inventory levels in excess of customer demand may result in inventory write-downs and the sale of excess inventory at discounted prices, which could have an adverse effect on our business, results of operations, and financial condition. On the other hand, if we underestimate demand for our products, our manufacturing facilities or third-party manufacturers may not be able to produce products to meet customer requirements, and this could result in delays in the shipment of products and lost revenues, as well as damage to our reputation and customer relationships. There can be no assurance that we will be able to successfully manage inventory levels to exactly meet future order and reorder requirements.

**Competition in our industries may hinder our ability to execute our business strategy, achieve profitability, or maintain relationships with existing customers.**

We operate in a highly competitive industry. In this industry, we compete against numerous other domestic and foreign companies. Competition in the markets in which we operate is based primarily on product quality, product innovation, price, and customer service and support, although the degree and nature of such competition vary by location and product line. Some of our competitors are more established in their industries and have substantially greater revenue or resources than we do. Our competitors may take actions to match new product introductions and other initiatives. Since many of our competitors also source their products from third parties, our ability to obtain a cost advantage through sourcing is reduced. Certain of our competitors may be willing to reduce prices and accept lower profit margins to compete with us. Further, retailers often demand that suppliers reduce their prices on existing products. Competition could cause price reductions, reduced profits or losses or loss of market share, any of which could have a material adverse effect on our business, results of operations, and financial condition.

To compete effectively in the future in the consumer products industry, among other things, we must: maintain strict quality standards; develop new and innovative products that appeal to consumers; deliver products on a reliable basis at competitive prices; anticipate and respond to changing consumer trends in a timely manner; maintain favorable brand recognition; and provide effective marketing support.

Our inability to do any of these things could have a material adverse effect on our business, results of operations and financial condition.

**If we fail to adequately protect our intellectual property rights, competitors may manufacture and market products similar to ours, which could adversely affect our market share and results of operations.**

Our success with our proprietary products depends, in part, on our ability to protect our current and future technologies and products and to defend our intellectual property rights. If we fail to adequately protect our intellectual property rights, competitors may manufacture and market products similar to ours. Our principal intellectual property rights include our trademarks, patents, and trade secrets.

We hold numerous patents for the invention of new or improved technologies, which are known as utility patents, and pending patent applications covering a wide variety of products. We cannot be sure that we will receive patents for any of our patent applications or that any existing or future patents that we receive or license will provide competitive advantages for our products. We also cannot be sure that competitors will not challenge, invalidate or avoid the application of any existing or future patents that we receive or license. In addition, patent rights may not prevent our competitors from developing, using or selling products that are similar or functionally equivalent to our products.

Third parties may have patents, or may be awarded new patents, that may materially adversely affect our ability to market, distribute and sell our products. Accordingly, our products, including, but not limited to, our technical climbing and backpack products, may become subject to patent infringement claims or litigation, any adverse determination of which could have a material adverse effect on our business, results of operations, and financial condition.

**Our operations in international markets, and earnings in those markets, may be affected by changes in global cultural, political, and financial market conditions as well as potential changes in regulations, legislation and government policies.**

Approximately 45% of our sales on a pro forma basis for the year ended December 31, 2021 were earned in international markets. As such our ability to maintain the current level of operations in our existing international markets and to capitalize on growth in existing and new international markets is subject to risks associated with international operations. These include the burdens of complying with a variety of foreign laws and regulations, unexpected changes in regulatory requirements, new tariffs or other barriers to some international markets. For example, any future withdrawal or renegotiation of trade agreements, and the prosecution of trade disputes or the imposition of tariffs, duties, taxes and other charges on imports or exports between the United States and countries like China may adversely affect our ability to operate our business and execute our growth strategy. In addition, it may be more difficult for us to enforce agreements, collect receivables, receive dividends and repatriate earnings through foreign legal systems.

We cannot predict whether quotas, duties, taxes, exchange controls, current or future “trade wars” or other restrictions will be imposed by the United States, Australia, China, or other countries upon the import or export of our products and the commodities and components used to manufacture our products, or what effect any of these actions would have on our business, financial condition or results of operations. We cannot predict whether there might be changes in our ability to repatriate earnings or capital from international jurisdictions. Changes in regulatory and geopolitical policies and other factors may adversely affect our business or may require us to modify our current business practices.

Some of our operations are conducted or products are sold in countries where economic growth has slowed, or where economies have suffered economic, social and/or political instability or hyperinflation. In addition, global economic uncertainty relating to the effects of fiscal and political crises and political and economic disputes, changes in consumer spending, foreign currency exchange rate fluctuations, political unrest, natural disasters or other crises, terrorist acts, acts of war and/or military operations, could have a material adverse effect on our financial condition, results of operations and cash flows.

**If we cannot continue to develop new products in a timely manner, and at favorable margins, we may not be able to compete effectively.**

We believe that our future success will depend, in part, upon our ability to continue to introduce innovative design extensions for our existing products and to develop, manufacture, and market new products. We cannot assure you that we will be successful in the introduction, manufacturing, and marketing of any new products or product innovations, or develop and introduce, in a timely manner, innovations to our existing products that satisfy customer needs or achieve market acceptance. Our failure to develop new products and introduce them successfully and in a timely manner, and at favorable margins, would harm our ability to successfully grow our business and could have a material adverse effect on our business, results of operations, and financial condition.

**Our operating results can be adversely affected by changes in the cost or availability of raw materials.**

Pricing and availability of raw materials for use in our businesses can be volatile due to numerous factors beyond our control, including general, domestic, and international economic conditions, labor costs, production levels, competition, consumer demand, import duties, and tariffs and currency exchange rates. This volatility can significantly affect the availability and cost of raw materials for us, and may therefore have a material adverse effect on our business, results of operations, and financial condition.

During periods of rising prices of raw materials, there can be no assurance that we will be able to pass any portion of such increases on to customers. Conversely, when raw material prices decline, customer demands for lower prices could result in lower sale prices and, to the extent we have existing inventory, lower margins. We currently do not hedge against our exposure to changing raw material prices. As a result, fluctuations in raw material prices could have a material adverse effect on our business, results of operations, and financial condition.

Supply shortages or changes in availability for any particular type of raw material can delay production or cause increases in the cost of manufacturing our products. We may be negatively affected by changes in availability and pricing of raw materials, which could negatively impact our results of operations.

**Changes in effective tax rates could adversely affect our results.**

On December 22, 2017, the Tax Cuts and Jobs Act (the “Tax Act”) was enacted. The Tax Act significantly revised United States corporate income tax law by, among other things, reducing the corporate income tax rate to 21%. Prior to the 2020 U.S. election, President Biden proposed an increase in the U.S. corporate income tax rate from 21% to 28%, doubling the rate of tax on certain earnings of foreign subsidiaries, the creation of a 10% penalty on certain imports and a 15% minimum tax on worldwide book income. If any or all of these (or similar) proposals are ultimately enacted into law, in whole or in part, they could have a negative impact on our effective tax rate, which could have a material adverse effect on our business, results of operations, and financial condition.

**Our business, financial condition and results of operations and cash flows, as well as the trading price of our common stock may be negatively impacted by the effects of a disease outbreak, epidemic, pandemic, or similar widespread public health concern, such as travel restrictions or recommendations or mandates from governmental authorities to avoid large gatherings or to self-quarantine, whether as a result of the COVID-19 or coronavirus global pandemic or otherwise.**

These impacts include, but are not limited to:

- ① Significant reductions in demand or significant volatility in demand for one or more of our products;
- ① Disruptions in our manufacturing and supply arrangements;
- ① Failure of third parties on which we rely, including our suppliers, manufacturers, distributors, customers, retailers or other service providers to meet their obligations to the Company;
- ① Significant changes in the political conditions in the markets in which we operate and/or manufacture, sell or distribute our products; or
- ① Our ability to maintain adequate liquidity and/or meet debt covenants contained in the Company’s credit agreement if the Company is unable to resume normal operations in a timely fashion.

Our failure to effectively manage and remedy these impacts on the Company, could have a material adverse effect on our business, financial condition, results of operations and cash flows, as well as the trading price of our common stock.

**The impacts of the COVID-19 pandemic have resulted in ongoing disruptions and delays in manufacturing, shipping and transportation of our products that has had an adverse effect on our business and results of operations, and we expect this adverse impact to continue.**

The COVID-19 pandemic also has the potential to significantly impact our supply chain if the factories that manufacture our products, the distribution centers where we manage our inventory, or the operations of our suppliers of raw materials or other finished product components, logistics and other service providers are disrupted, temporarily closed or experience worker shortages. Current vessel, container and other transportation shortages, labor shortages and port congestion globally have delayed and are expected to continue to delay inventory orders and, in turn, deliveries to our customers and availability in our company-operated stores and e-commerce sites. These supply chain and logistics disruptions have impacted our inventory levels and net revenues in 2021 and could impact our sales volumes in future periods. We have also incurred in 2021, higher freight and other distribution costs, including air freight, to mitigate these delays. We are also seeing negative impacts to pricing of certain components of our products as a result of the COVID-19 pandemic. In the event we increase prices of our products, there can be no assurance that consumers will accept such increases, which could have a material adverse effect on our business, financial condition, results of operations and cash flows, as well as the trading price of our common stock.



**We use foreign suppliers and manufacturing facilities for a significant portion of our raw materials and finished products, and disruptions to international trade, such as disease epidemics or potential ‘trade wars,’ pose a risk to our business operations.**

A majority of our products sold were produced by and purchased from independent manufacturers primarily located in Asia and Eastern Europe, with substantially all of the remainder produced by our manufacturing facilities located in Utah and Missouri. Although no single supplier and no one country controls a majority of our production needs, any of the following could materially and adversely affect our ability to produce or deliver our products and, as a result, have a material adverse effect on our business, financial condition, and results of operations:

- ① political or labor instability in countries where our facilities, contractors, and suppliers are located;
- ① political or military conflict, which could cause a delay in the transportation of raw materials and products to us and an increase in transportation costs;
- ① heightened terrorism security concerns;
- ① disease epidemics and health-related concerns, such as COVID-19 or the coronavirus;
- ① imposition of regulations and quotas relating to imports and our ability to adjust timely to changes in trade regulations;
- ① imposition of tariffs, duties, taxes and other charges on imports and/or exports; and
- ① imposition or the repeal of laws that affect intellectual property rights.

**Changes in governmental regulation, legislation or public opinion regarding the manufacture and sale of bullets, or the possession and use of firearms and ammunition, could adversely affect our Precision Sport segment and overall financial results.**

The manufacture and sale of bullets by our Precision Sport segment, and the possession and use of firearms and ammunition by our customers, is subject to significant governmental regulation. We hold all licenses necessary for the legal manufacture and sale of our bullets. However, federal, state or local legislatures may enact further legislation regarding the manufacture and sale of bullets, and the possession and use of firearms and ammunition by our customers, such as point-of-sale background checks, age and other restrictions on ammunition purchases or further licensing of ammunition dealers. Such legislation, if enacted, could materially and adversely affect the sale of bullets that we manufacture.

The manufacture and sale of bullets, and the possession and use of firearms and ammunition, is also the subject of significant public interest and debate. If public opinion should worsen, it may lead to boycotts of certain of our products and decreased demand for the bullets and other products we manufacture by consumers and the other constituencies with which we deal, including suppliers, distributors and retailers, all of which could be a catalyst for potentially adverse reactions from our shareholders.

We cannot assure you that governmental regulation, legislation or public opinion regarding the manufacture and sale of bullets, or the possession and use of firearms and ammunition, will not become more restrictive or worsen in the future. We also cannot assure you that any such negative public opinion relating to our Precision Sport segment would not affect our Black Diamond or Adventure segments, nor can we assure you that any such changes in governmental regulation, legislation or public opinion will not have a material adverse effect on our business, results of operations or financial condition. See “Business — Regulatory Matters.”

**We may incur significant costs in order to comply with environmental remediation obligations.**

Environmental laws in the United States and in other countries also impose obligations on various entities to clean up contaminated properties or to pay for the cost of such remediation, often upon parties that did not actually cause the contamination. Accordingly, we may be liable, either contractually or by operation of law, for remediation costs even if the contaminated property is not presently owned or operated by us, is a landfill or other location where we have disposed wastes, or if the contamination was caused by third parties during or prior to our ownership or operation of the property. Given the nature of the past industrial operations conducted by us and others at these properties, there can be no assurance that all potential instances of soil or groundwater contamination have been identified, even for those properties where an environmental site assessment has been conducted. Future events, such as changes in existing laws or policies or their enforcement, or the discovery of currently unknown contamination, may give rise to additional remediation liabilities that may have a material adverse effect upon our business, results of operations or financial condition.

#### **Risks Related to our Business**

**There are significant risks associated with acquiring and integrating businesses.**

An element of our general growth strategy is the acquisition of or investment in businesses and assets that will diversify our current business, increase size, expand our geographic scope of operations and otherwise offer growth opportunities. We may not be able to successfully identify attractive acquisition or investment opportunities, obtain financing for acquisitions, make acquisitions on satisfactory terms, or successfully acquire and/or integrate identified targets. In identifying, evaluating and selecting a target business or assets for a potential acquisition or investment, we expect to encounter intense competition from other entities, including blank check companies, private equity groups, venture capital funds, leveraged buyout funds, and operating businesses seeking strategic acquisitions. Many of these entities are well-established and have extensive experience identifying and effecting business combinations directly or

through affiliates. Moreover, many of these competitors possess greater financial, technical, human and other resources than us which will give them a competitive advantage in pursuing the acquisition of certain target businesses.

Our ability to implement our acquisition strategy is also subject to other risks and costs, including:

- ① loss of key employees, customers or suppliers of acquired businesses;
- ① diversion of management's time and attention from our core businesses;
- ① adverse effects on existing business relationships with suppliers and customers;
- ① our ability to secure necessary financing;
- ① our ability to realize operating efficiencies, synergies, or other benefits expected from an acquisition;
- ① risks associated with entering markets in which we have limited or no experience;
- ① risks associated with our ability to execute successful due diligence; and
- ① assumption of contingent or undisclosed liabilities of acquisition targets.

Any of the above risks could have a material adverse effect on the market price of our common stock and our business, financial condition and results of operations.

**Our previously announced growth strategy may negatively impact our business, financial condition and results of operations.**

The Company announced that it is seeking to invest in high-quality, durable, cash flow-producing assets in order to diversify our business within the outdoor and consumer markets and potentially monetize our substantial net operating losses as part of our previously announced growth strategy. There can be no assurance as to the outcome of the growth strategy, that any particular acquisition or investment opportunities will be consummated, that any transaction will occur, or that our net operating losses will be monetized. In addition, our growth strategy may create perceived uncertainties as to our future direction and may result in the loss of employees, customers or business partners. **Turmoil across various sectors of the financial markets may negatively impact the Company's business, financial condition, and/or operating results as well as our ability to effectively execute our growth strategy.**

Various sectors of the credit markets and the financial services industry have experienced a period of unprecedented turmoil and upheaval characterized by disruption in the credit markets and availability of credit and other financing, the failure, bankruptcy, collapse or sale of various financial institutions and an unprecedented level of intervention from the United States federal government. While the future recurrence of these events cannot be predicted, they may have a material adverse effect on our ability to obtain financing necessary to effectively execute acquisitions, the ability of our customers and suppliers to continue to operate their businesses or the demand for our products, which could have a material adverse effect on the market price of our common stock and our business, financial condition, and results of operations.

**We may not be able to adequately manage our growth.**

We have expanded, and are seeking to continue to expand, our business. This growth has placed significant demands on our management, administrative, operating, and financial resources as well as our manufacturing capacity capabilities. The continued growth of our customer base, the types of products offered and the geographic markets served can be expected to continue to place a significant strain on our resources. Personnel qualified in the production and marketing of our products are difficult to find and hire, and enhancements of information technology systems to support growth are difficult to implement. Our future performance and profitability will depend in large part on our ability to attract and retain additional management and other key personnel, as well as our ability to increase and maintain our manufacturing capacity capabilities to meet the needs of our current and future customers. Any failure to adequately manage our growth could have a material adverse effect on the market price of our common stock and our business, financial condition, and results of operations.

**Our credit agreement contains financial and restrictive covenants that may limit our ability to operate our business.**

The credit agreement that we and certain of our subsidiaries entered into with JPMorgan Chase Bank, N.A. on May 3, 2019 (the "Credit Agreement") contains, and any of our other future debt agreements may contain, covenant restrictions that limit our ability to operate our business, including, without limitation, restrictions on our and our subsidiaries' ability to:

- ① incur additional debt or create liens;
- ① engage in mergers, consolidations, certain divisions, liquidations or dissolutions other than in certain permitted instances described in the Credit Agreement;
- ① substantially change the business conducted by us or our subsidiaries; and
- ① pay dividends or make distributions or other restricted payments if certain conditions in the Credit Agreement are not fulfilled.

In addition, the Credit Agreement contains other customary affirmative and negative covenants, including limitations on our and our subsidiaries' ability to perform the following, subject to certain customary exceptions, qualifications and "baskets": make certain

investments, loans, advances, guarantees and acquisitions other than in certain permitted instances as described in the Credit Agreement; sell assets; prepay other indebtedness; engage in certain transactions with affiliates; enter into agreements that restrict dividends from subsidiaries or the ability of subsidiaries to grant liens upon their assets; amend certain charter documents and material agreements governing subordinated indebtedness; and deviate from certain financial ratios described further in the Credit Agreement.

As a result of these covenants, our ability to respond to changes in business and economic conditions and to obtain additional financing, if needed, may be significantly restricted, and we may be prevented from engaging in transactions or making acquisitions of a business that might otherwise be beneficial to us.

**Our variable rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase significantly.**

Our borrowings under our credit facility are at variable rates of interest and expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable rate indebtedness would increase even though the amount borrowed remained the same, and our net income and cash flows would decrease.

**Compliance with changing laws, regulations and standards of corporate governance and public disclosure may result in additional expenses.**

Changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002 (the “Sarbanes Oxley Act”), the Dodd-Frank Wall Street Reform and Consumer Protection Act, new Securities and Exchange Commission regulations and NASDAQ rules, are creating uncertainty for companies such as ours. These new or changed laws, regulations, and standards are subject to varying interpretations, in many cases due to their lack of specificity. As a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We are committed to maintaining high standards of corporate governance and public disclosure. As a result, our efforts to comply with evolving laws, regulations, and standards have resulted in, and are likely to continue to result in, increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

**We could face particular challenges in maintaining and reporting on our internal control over financial reporting.**

Section 404 of the Sarbanes-Oxley Act requires that we evaluate and report on our system of internal control over financial reporting and requires that we have our internal control over financial reporting audited. If we fail to maintain adequate internal controls, we could be subject to regulatory scrutiny, civil or criminal penalties and/or stockholder litigation. Any inability to provide reliable financial reports could harm our business and the trading price of our common stock. Section 404 of the Sarbanes-Oxley Act also requires that our independent registered public accounting firm report on the effectiveness of the Company’s internal control over financial reporting. In addition, acquisition targets may not be in compliance with the provisions of the Sarbanes-Oxley Act regarding adequacy of their internal controls. The development of the internal controls of any such entity to achieve compliance with the Sarbanes-Oxley Act may increase the time and costs necessary to complete any such acquisition.

If we identify any material weaknesses or significant deficiencies in our internal control over financial reporting, we may need to take costly steps to implement improved controls and may be subject to sanctions for failure to comply with the requirements of the Sarbanes-Oxley Act. Such remedial costs or sanctions could have a material adverse effect on our results of operations and financial condition. Further, we would be required to disclose any material weakness in internal control over financial reporting, and we would receive an adverse opinion on our internal control over financial reporting from our independent auditors. These factors could cause investors to lose confidence in our reported financial information and could have a negative effect on the trading price of our stock.

**Breaches of our information systems could adversely affect our reputation, disrupt our operations, and result in increased costs and loss of revenue.**

There have been an increasing number of recent global cyber security incidents affecting companies, including us. These incidents are expected to be more prevalent as a result of work-from-home policies instituted in response to the COVID-19 global pandemic, and could cause operational failures or compromise sensitive or confidential corporate and personal data. Because we are interconnected with and dependent on third-party vendors, we could also be adversely affected if we or any of our vendors are subject to a successful cyber-attack or other information security event. Such cyber security incidents may result in the loss or compromise of customer, financial, or operational data; disruption of billing, collections, or normal operating activities; disruption of electronic monitoring and control of operational systems; and delays in financial reporting and other management functions, and our acquisition activities could increase such risk. There can be no guarantees that such a cyber incident would not result in the unauthorized access to or the disclosure of customer data, our trade secrets or other intellectual property, or personal information of our employees. There can be no guarantee that the disclosure of any of this information would not have a material adverse effect on our business, reputation, financial condition, and results of operations. We continually evaluate our systems and may implement further controls and additional preventative actions

to further strengthen our systems against attacks. We cannot assure you that such measures will provide absolute security, that we will be able to react in a timely manner, or that our remediation efforts following past or future attacks will be successful. Possible impacts associated with a cyber security incident may include, among other things, business interruption, ransom payments, the identification of material weaknesses or significant deficiencies, remediation costs related to lost, stolen, or compromised data; repairs to data processing systems; increased cyber security protection costs; reputational damage; and adverse effects on our compliance with privacy and other laws and regulations that are applicable to us. We have insurance coverage to protect us against losses from certain cyber security incidents, including liability for third-party vendors who mishandle our information. However, there can be no guarantee that every potential loss due to cyber-attack or theft of information has been insured against, nor that the limits of the insurance we have acquired will be sufficient to cover all such losses.

**Adverse publicity about the Company and/or its brands, including without limitation, through social media or in connection with brand damaging events and/or public perception could negatively impact our business.**

Negative claims or publicity involving us, our board of directors, our brands, our products, services and experiences, consumer data, or any of our key employees, endorsers, or suppliers could seriously damage our reputation and the image of our brands, regardless of whether such claims are accurate.

Social media, which accelerates and potentially amplifies the scope of negative publicity, can increase the challenges of responding to negative claims. Adverse publicity could also damage our reputation and the image of our brands, undermine consumer confidence in us and reduce long-term demand for our products, even if such adverse publicity is unfounded or not material to our operations. If the reputation, culture or image of any of our brands is tarnished or if we receive negative publicity, then our sales, financial condition and results of operations could be materially and adversely affected.

**The effects of climate change and increased focus by governmental and non-governmental organizations, customers, consumers and investors on sustainability issues, including those related to climate change and socially responsible activities, may adversely affect our business and financial results and damage our reputation.**

Climate change is occurring around the world and may impact our business in numerous ways. Such change could lead to an increase in raw material and packaging prices, reduced availability, for example, due to water shortages which could adversely impact raw material availability. Increased frequency of extreme weather (storms and floods) could cause increased incidence of disruption to the production and distribution of our products and an adverse impact on consumer demand and spending.

Investor advocacy groups, certain institutional investors, investment funds, other market participants, shareholders, and stakeholders have focused increasingly on the environmental, social and governance (“ESG”) and related sustainability practices of companies. These parties have placed increased importance on the implications of the social cost of their investments. If our ESG practices do not meet investor or other stakeholder expectations and standards, which continue to evolve, our brands, reputation and employee retention may be negatively impacted. It is possible that stakeholders may not be satisfied with our ESG practices or the speed of their adoption. We could also incur additional costs and require additional resources to monitor, report, and comply with various ESG practices. Also, our failure, or perceived failure, to manage reputational threats and meet expectations with respect to socially responsible activities and sustainability commitments could negatively impact our credibility, employee retention, and the willingness of our customers and suppliers to do business with us.

**Interruptions in the proper functioning of our information systems or other issues with our enterprise resource planning systems could cause disruption to our operations.**

We heavily rely on our information systems to manage our various business operations, including our ordering, pricing, billing, inventory management, supply chain, accounting and other processes. Our systems may be subject to damage or interruption from a variety of sources, including power outages, computer and telecommunications failures, computer viruses, cyber security breaches, vandalism, severe weather conditions, catastrophic events, terrorism, and human error. Although we do maintain disaster recovery measures in place which we believe to be adequate, we cannot assure you that our disaster recovery measures can account for all eventualities. If our systems are damaged, fail to function properly, or otherwise become compromised or unavailable, we may incur substantial costs to repair or replace them, and we may experience loss of critical data and interruptions or delays in our ability to perform critical functions, which could adversely affect our business, results of operations and financial condition.

Our information technology systems require periodic modifications, upgrades, and replacement that subject us to costs and risks, including potential disruption to our internal control structure, substantial capital expenditures, additional administration and operating expenses, retention of sufficiently skilled personnel or outside firms to implement and operate existing or new systems, and other risks and costs of delays or difficulties in transitioning to new or modified systems or of integrating new or modified systems into our current systems. In addition, challenges implementing new or modified technology systems may cause disruptions in our business operations and have an adverse effect on our business operations if not anticipated and appropriately mitigated.

**Our Board of Directors and executive officers have significant influence over our affairs.**

The members of our Board of Directors and our executive officers, which includes Mr. Warren B. Kanders, beneficially own approximately 24.2% of our outstanding common stock as of March 2, 2022. As a result, our Board of Directors and executive officer, to the extent they vote their shares in a similar manner, have influence over our affairs and could exercise such influence in a manner that is not in the best interests of our other stockholders, including by attempting to delay, defer or prevent a change of control transaction that might otherwise be in the best interests of our stockholders.

**We may be unable to realize the benefits of our net operating losses and tax credit carryforwards.**

Net operating losses (“NOLs”) may be carried forward to offset federal and state taxable income in future years and eliminate income taxes otherwise payable on such taxable income, subject to certain adjustments. Based on current federal corporate income tax rates, our NOL and other carryforwards could provide a benefit to us, if fully utilized, of significant future tax savings. However, our ability to use these tax benefits in future years will depend upon the amount of our otherwise taxable income. If we do not have sufficient taxable income in future years to use the tax benefits before they expire, we will lose the benefit of these NOL carryforwards permanently.

Additionally, if we underwent an ownership change, the NOL carryforward limitations would impose an annual limit on the amount of the taxable income that may be offset by our NOL generated prior to the ownership change. If an ownership change were to occur, we may be unable to use a significant portion of our NOL to offset taxable income. In general, an ownership change occurs when, as of any testing date, the aggregate of the increase in percentage points of the total amount of a corporation’s stock owned by one or more “5-percent shareholders” within the meaning of Section 382 of the Internal Revenue Code (“Code”) whose percentage ownership of the stock has increased as of such date over the aggregate of the lowest percentage of the stock owned by such 5-percent shareholder at any time during the three-year period preceding such date is more than 50 percentage points. In general, persons who own 5% or more of a corporation’s stock are 5-percent shareholders, and all stock owned by persons who are not 5-percent shareholders is treated as owned by one 5-percent shareholder. The issuance of a large number of shares of common stock in connection with any acquisitions could result in a limitation of the use of our NOLs.

Further, our certificate of incorporation provides for blank check preferred stock, which allows the Board to issue preferred stock at any time with rights and designations set forth by the Board. Section 382 of the Code generally excludes preferred stock when calculating ownership percentages as they relate to our NOLs if the preferred stock satisfies all of the following criteria: it is not entitled to vote, it is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, it has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and it is not convertible into another class of stock. Our Board may authorize and issue preferred stock that does not meet these criteria, and such preferred stock would count towards determining ownership change under Section 382 of the Code. Therefore the issuance of any preferred stock could increase the likelihood of a limitation of the use of our NOLs.

Moreover, if a corporation experiences an ownership change and does not satisfy the continuity of business enterprise, or COBE, requirement (which generally requires that the corporation continue its historic business or use a significant portion of its historic business assets in a business for the two-year period beginning on the date of the ownership change), it cannot, subject to certain exceptions, use any NOL from a pre-change period to offset taxable income in post-change years.

The actual ability to utilize the tax benefit of any existing NOLs will be subject to future facts and circumstances with respect to meeting the above described COBE requirements at the time NOLs are being utilized on a tax return. The realization of NOLs and the recognition of asset and valuation allowances for deferred taxes require management to make estimates and judgments about the Company’s future profitability which are inherently uncertain. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. If, in the opinion of management, it becomes more likely than not that some portion or all of the deferred tax assets will not be realized, deferred tax assets would be reduced by a valuation allowance and any such reduction could have a material adverse effect on the financial condition of the Company.

The amount of NOL and tax credit carryforwards that we have claimed has not been audited or otherwise validated by the U.S. Internal Revenue Service (the “IRS”). The IRS could challenge our calculation of the amount of our NOL or our determinations as to when a prior change in ownership occurred, and other provisions of the Code may limit our ability to carry forward our NOL to offset taxable income in future years. If the IRS were successful with respect to any such challenge, the potential tax benefit of the NOL carryforwards to us could be substantially reduced.

**Certain protective measures implemented by us to preserve our NOL may not be effective or may have some unintended negative effects.**

On July 24, 2003, at our Annual Meeting of Stockholders, our stockholders approved an amendment (the “Amendment”) to our Amended and Restated Certificate of Incorporation to restrict certain acquisitions of our securities in order to help assure the preservation

of our NOL. The Amendment generally restricts direct and indirect acquisitions of our equity securities if such acquisition will affect the percentage of the Company's capital stock that is treated as owned by a "5% stockholder." Additionally, on February 7, 2008, our Board of Directors approved a rights agreement which is designed to assist in limiting the number of 5% or more owners and thus reduce the risk of a possible "change of ownership" under Section 382 of the Code.

Although the transfer restrictions imposed on our capital stock and the rights agreement are intended to reduce the likelihood of an impermissible ownership change, there is no guarantee that such protective measures would prevent all transfers that would result in an impermissible ownership change. These protective measures also will require any person attempting to acquire a significant interest in us to seek the approval of our Board of Directors. This may have an "anti-takeover" effect because our Board of Directors may be able to prevent any future takeover. Similarly, any limits on the amount of capital stock that a stockholder may own could have the effect of making it more difficult for stockholders to replace current management. Additionally, because protective measures implemented by us to preserve our NOL will have the effect of restricting a stockholder's ability to acquire our common stock, the liquidity and market value of our common stock might suffer.

**The loss of any member of our senior management or certain other key executives could significantly harm our business.**

Our ability to maintain our competitive position is dependent to a large degree on the efforts and skills of our senior management team, including Warren B. Kanders. If we were to lose the services of any member of our senior management, our business may be significantly impaired. In addition, many of our senior executives have strong industry reputations, which aid us in identifying acquisition and borrowing opportunities, and having such opportunities brought to us. The loss of the services of these key personnel could materially and adversely affect our operations because of diminished relationships with lenders, existing and prospective tenants, property sellers and industry personnel.

**Our Board of Directors may change significant corporate policies without stockholder approval.**

Our investment, financing, borrowing and dividend policies and our policies with respect to all other activities, including growth, debt, capitalization and operations, will be determined by our Board of Directors. These policies may be amended or revised at any time and from time to time at the discretion of the Board of Directors without a vote of our stockholders. In addition, the Board of Directors may change our policies with respect to conflicts of interest provided that such changes are consistent with applicable legal requirements. A change in these policies could have an adverse effect on our financial condition, results of operations, cash flow, per share trading price of our common stock and ability to satisfy our debt service obligations and to pay dividends to our stockholders.

**Compensation awards to our management may not be tied to or correspond with our improved financial results or share price.**

The compensation committee of our Board of Directors is responsible for overseeing our compensation and employee benefit plans and practices, including our executive compensation plans and our incentive compensation and equity-based compensation plans. Our compensation committee has significant discretion in structuring compensation packages and may make compensation decisions based on any number of factors. As a result, compensation awards may not be tied to or correspond with improved financial results for the Company or the share price of our common stock.

**Risks Related to our Common Stock**

**Our Amended and Restated Certificate of Incorporation authorizes the issuance of shares of preferred stock.**

Our Amended and Restated Certificate of Incorporation provides that our Board of Directors will be authorized to issue from time to time, without further stockholder approval, up to 5,000,000 shares of preferred stock in one or more series and to fix or alter the designations, preferences, rights and any qualifications, limitations or restrictions of the shares of each series, including the dividend rights, dividend rates, conversion rights, voting rights, terms of redemption, including sinking fund provisions, redemption price or prices, liquidation preferences and the number of shares constituting any series or designations of any series. Such shares of preferred stock could have preferences over our common stock with respect to dividends and liquidation rights. We may issue additional preferred stock in ways which may delay, defer or prevent a change in control of the Company without further action by our stockholders. Such shares of preferred stock may be issued with voting rights that may adversely affect the voting power of the holders of our common stock by increasing the number of outstanding shares having voting rights, and by the creation of class or series voting rights.

**Our payment of future quarterly dividends on our common stock is subject to the discretion and approval of our Board of Directors.**

On August 6, 2018, the Company announced that its Board of Directors approved the initiation of the Quarterly Cash Dividend program of \$0.025 per share of the Company's common stock or \$0.10 per share on an annualized basis. We temporarily replaced the Quarterly Cash Dividend with a Quarterly Stock Dividend during portions of the 2020 fiscal year in light of the operational impact of the COVID-19 pandemic. While we intend to pay regular Quarterly Cash Dividends for the foreseeable future, all subsequent dividends will be

reviewed quarterly and declared at the discretion and approval of our Board of Directors and will depend upon, among other things, our results of operations, capital requirements, general business conditions, contractual restrictions under our credit facility on the payment of dividends, legal and regulatory restrictions on the payment of dividends, and other factors our Board of Directors deems relevant. Therefore, you should not purchase our common stock if you need immediate or future income by way of dividends from your investment. In addition, upon an event of default under our credit facility, we are prohibited from declaring or paying any dividends on our common stock or generally making other distributions to our stockholders.

**Shares of our common stock have been, and may continue to be, thinly traded, which may contribute to volatility in our stock price and less liquidity for investors.**

The trading volume of our common stock has varied, and at times may be characterized as thinly traded. As a result of this thin trading market or “float” for our common stock, our common stock has been, and may continue to be, less liquid than the common stock of companies with broader public ownership. If our common stock is thinly traded, the trading of a relatively small volume of our common stock may have a greater impact on the trading price of our common stock than would be the case if our float were larger. As a result, the trading prices of our common stock may be more volatile than the common stock of companies with broader public ownership, and an investor to be unable to liquidate an investment in our common stock at attractive prices.

We cannot predict the prices at which our common stock will trade in the future. Variations in financial results, announcements of material events, changes in our dividend policy, technological innovations or new products by us or our competitors, our quarterly operating results, changes in general conditions in the economy or the outdoor and consumer industries, other developments affecting us or our competitors or general price and volume fluctuations in the market are among the many factors that could cause the market price of our common stock to fluctuate substantially.

**The sale of a substantial amount of our common stock in the public market could adversely affect the prevailing market price of our common stock.**

We have outstanding an aggregate of 37,199,359 shares of our common stock as of March 2, 2022. This includes 6,578,587 shares of common stock that are beneficially owned by Mr. Kanders, our Chairman of the Board, of which he has 4,840,971 hypothecated and/or pledged as security for loans from financial institutions, which hypothecation has been in place for over ten years, and that may be sold by such financial institutions in the event of a foreclosure of these loans. The sale of a significant amount of shares at any given time, or the perception that such sales could occur, including sales of the shares beneficially owned by Mr. Kanders, could adversely affect the prevailing market price of our common stock.

**We may issue a substantial amount of our common stock in the future, which could cause dilution to current investors and otherwise adversely affect our stock price.**

We may issue additional shares of common stock as consideration for such acquisition. These issuances could be significant. To the extent that we make acquisitions and issue our shares of common stock as consideration, your equity interest in us will be diluted. Any such issuance will also increase the number of outstanding shares of common stock that will be eligible for sale in the future. Persons receiving shares of our common stock in connection with these acquisitions may be more likely to sell off their common stock, which may influence the price of our common stock. In addition, the potential issuance of additional shares in connection with anticipated acquisitions could lessen demand for our common stock and result in a lower price than might otherwise be obtained. We may issue common stock in the future for other purposes as well, including in connection with financings, for compensation purposes, in connection with strategic transactions or for other purposes. The issuance of a large number of shares of common stock in connection with an acquisition could also have a negative effect on our ability to use our NOLs.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## ITEM 2. PROPERTIES

Our corporate headquarters, as well as our primary research, evaluation and design studios, is located in a facility owned by the Company in Salt Lake City, Utah. In addition, at December 31, 2021, the Company and its subsidiaries lease or own facilities throughout the U.S., Europe, Australia and New Zealand. In general, our properties are well maintained, considered adequate and being utilized for their intended purposes.

The following table identifies and provides certain information regarding our principal facilities:

Activity	Location	Owned/Leased
Corporate Headquarters:	Salt Lake City, Utah	Owned
<b>Outdoor Segment</b>		
Black Diamond U.S. Distribution and Manufacturing Facilities:	Salt Lake City, Utah	Leased/Owned
Black Diamond European Sales and Marketing Office:	Innsbruck, Austria	Leased
PIEPS Sales and Marketing Office:	Lebring, Austria	Leased
Black Diamond HQ Retail Store	Salt Lake City, Utah	Leased
Black Diamond Trolley Square Retail Store	Salt Lake City, Utah	Leased
Black Diamond Park City Retail Store	Park City, Utah	Leased
Black Diamond Jackson Retail Store	Jackson, Wyoming	Leased
Black Diamond Big Sky Retail Store	Big Sky, Montana	Leased
Black Diamond Boulder Retail Store	Boulder, Colorado	Leased
Black Diamond Burlington Retail Store	Burlington, Vermont	Leased
<b>Precision Sport Segment</b>		
Sierra U.S. Distribution and Manufacturing Facilities:	Sedalia, Missouri	Owned
Barnes U.S. Distribution and Manufacturing Facilities:	Mona, Utah	Owned
<b>Adventure Segment</b>		
Rhino-Rack Australia Headquarters:	Sydney, Australia	Leased
Rhino-Rack Australia Perth Distribution Facility:	Perth, Australia	Leased
Rhino-Rack U.S. Distribution Facility:	Denver, Colorado	Leased
Rhino-Rack N.Z. Distribution Facility:	Wellington, New Zealand	Leased
MAXTRAX Australia Headquarters:	Brisbane, Australia	Leased



### **ITEM 3. LEGAL PROCEEDINGS**

#### **Legal Proceedings**

The Company is involved in various legal disputes and other legal proceedings that arise from time to time in the ordinary course of business. Based on currently available information, the Company does not believe that the disposition of any of the legal disputes the Company or its subsidiaries is currently involved in will have a material adverse effect upon the Company's consolidated financial condition, results of operations or cash flows. It is possible that, as additional information becomes available, the impact on the Company of an adverse determination could have a different effect.

#### **Litigation**

The Company is involved in various lawsuits arising from time to time that the Company considers ordinary routine litigation incidental to its business. Amounts accrued for litigation matters represent the anticipated costs (damages and/or settlement amounts) in connection with pending litigation and claims and related anticipated legal fees for defending such actions, which legal fees are expensed as incurred. The costs are accrued when it is both probable that a liability has been incurred and the amount can be reasonably estimated. The accruals are based upon the Company's assessment, after consultation with counsel (if deemed appropriate), of probable loss based on the facts and circumstances of each case, the legal issues involved, the nature of the claim made, the nature of the damages sought and any relevant information about the plaintiffs and other significant factors that vary by case. When it is not possible to estimate a specific expected cost to be incurred, the Company evaluates the range of probable loss and records the minimum end of the range. Based on currently available information, the Company does not believe that it is reasonably possible that the disposition of any of the legal disputes the Company or its subsidiaries is currently involved in will have a material adverse effect upon the Company's consolidated financial condition, results of operations or cash flows. There is a reasonable possibility of loss from contingencies in excess of the amounts accrued by the Company in the accompanying consolidated balance sheets; however, the actual amounts of such possible losses cannot currently be reasonably estimated by the Company at this time. It is possible that, as additional information becomes available, the impact on the Company could have a different effect.

#### **Product Liability**

As a consumer goods manufacturer and distributor, the Company faces the risk of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. The Company is therefore vulnerable to various personal injury and property damage lawsuits relating to its products and incidental to its business.

Based on current information, there are no pending product liability claims and lawsuits of the Company, which the Company believes in the aggregate, will have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows.

### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

## PART II

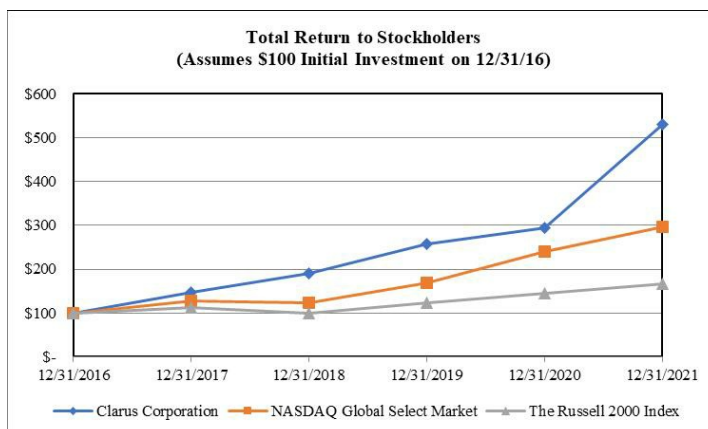
### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is listed for trading on NASDAQ Global Select Market under the trading symbol "CLAR".

#### Performance Graph

Set forth below is a line graph comparing the yearly percentage change in the cumulative total stockholder return on our common stock to the cumulative total return of the NASDAQ Global Select Market Composite and the Russell 2000 Index for the period commencing on December 31, 2016 and ending on December 31, 2021 (the "Measuring Period"). The graph assumes that the value of the investment in our common stock and the indexes was \$100 on December 31, 2016. The yearly change in cumulative total return is measured by dividing (1) the sum of (i) the cumulative amount of dividends for the Measuring Period, assuming dividend reinvestment, and (ii) the change in share price between the beginning and end of the Measuring Period, by (2) the share price at the beginning of the Measuring Period.

Historical stock price performance should not be relied on as indicative of future stock price performance.



#### Total Return Analysis

	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Clarus Corporation	\$ 100.00	\$ 146.73	\$ 190.09	\$ 256.59	\$ 293.30	\$ 529.84
The Russell 2000 Index	\$ 100.00	\$ 113.14	\$ 99.37	\$ 122.94	\$ 145.52	\$ 165.45
NASDAQ Global Select Market	\$ 100.00	\$ 128.43	\$ 123.71	\$ 167.75	\$ 239.95	\$ 295.43

#### Stockholders

On March 2, 2022, the last reported sales price for our common stock was \$23.06 per share. As of March 2, 2022, there were 72 holders of record of our common stock.

#### Dividends

On August 6, 2018, the Company announced that its Board of Directors approved the initiation of a Quarterly Cash Dividend program of \$0.025 per share of the Company's common stock or \$0.10 per share on an annualized basis. On May 1, 2020, the Company announced that, in light of the operational impact of the COVID-19 pandemic, its Board of Directors temporarily replaced its Quarterly Cash Dividend with a Quarterly Stock Dividend. In 2021, 2020 and 2019, our total Quarterly Cash Dividends were \$3,335,000, \$1,520,000, and \$2,987,000 respectively. In 2020, our total Quarterly Stock Dividends were \$1,533,000, which combined with our cash dividend in 2020 of \$1,520,000, resulted in total dividends in 2020 of \$3,053,000.

On February 25, 2022, the Company announced that its Board of Directors approved the payment on March 18, 2022 of the Quarterly Cash Dividend to the record holders of shares of the Company's common stock as of the close of business on March 7, 2022.

The payment of any future Quarterly Cash Dividends will be at the discretion of our Board of Directors and will depend upon, among other things, our results of operations, capital requirements, general business conditions, contractual restrictions on payment of dividends, if any, legal and regulatory restrictions on the payment of dividends, and other factors our Board of Directors deems relevant.

#### Recent Sales of Unregistered Securities

None.

#### Recent Purchases of our Registered Equity Securities

On November 9, 2015, the Company announced that its Board of Directors authorized a stock repurchase program that allows the repurchase of up to \$30,000,000 of the Company's outstanding common stock. No repurchases of shares of the Company's common stock occurred during the three months ended December 31, 2021.

#### Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth certain information regarding our equity plans as of December 31, 2021:

<b>Plan Category</b>	<b>(A) Number of securities to be issued upon exercise of outstanding, warrants and rights</b>	<b>(B) Weighted-average exercise price of outstanding options, warrants and rights</b>	<b>(C) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (A))</b>
Equity compensation plans approved by security holders (1)	5,141,247	\$ 13.14	7,400,248
<b>Total</b>	<b>5,141,247</b>	<b>\$ 13.14</b>	<b>7,400,248</b>

(1) Consists of stock options and restricted stock awards issued and issuable under the 2005 Stock Incentive Plan and the 2015 Stock Incentive Plan. There are a total of 1,000,000 restricted stock awards included in column (A) that do not have an exercise price. Excluding these restricted stock awards, the weighted average exercise price of outstanding options, warrants and rights is \$10.27.



## ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Forward-Looking Statements

Please note that in this Annual Report on Form 10-K Clarus Corporation (which may be referred to as the “Company,” “Clarus,” “we,” “our” or “us”) may use words such as “appears,” “anticipates,” “believes,” “plans,” “expects,” “intends,” “future,” and similar expressions which constitute forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are made based on our expectations and beliefs concerning future events impacting the Company and therefore involve a number of risks and uncertainties. We caution that forward-looking statements are not guarantees and that actual results could differ materially from those expressed or implied in the forward-looking statements.

Potential risks and uncertainties that could cause the actual results of operations or financial condition of the Company to differ materially from those expressed or implied by forward-looking statements in this Annual Report on Form 10-K include, but are not limited to, the overall level of consumer demand on our products; general economic conditions and other factors affecting consumer confidence, preferences, and behavior; disruption and volatility in the global currency, capital and credit markets; the financial strength of the Company’s customers; the Company’s ability to implement its business strategy; the ability of the Company to execute and integrate acquisitions; changes in governmental regulation, legislation or public opinion relating to the manufacture and sale of bullets and ammunition, and the possession and use of firearms and ammunition by our customers; the Company’s exposure to product liability or product warranty claims and other loss contingencies; disruptions and other impacts to the Company’s business, as a result of the COVID-19 global pandemic and government actions and restrictive measures implemented in response; stability of the Company’s manufacturing facilities and suppliers, as well as consumer demand for our products, in light of disease epidemics and health-related concerns such as the COVID-19 global pandemic; the impact that global climate change trends may have on the Company and its suppliers and customers, increased focus on sustainability issues as a result of global climate change, the Company’s ability to protect patents, trademarks and other intellectual property rights; any breaches of, or interruptions in, our information systems; the ability of our information technology systems or information security systems to operate effectively, including as a result of security breaches, viruses, hackers, malware, natural disasters, vendor business interruptions or other causes; our ability to properly maintain, protect, repair or upgrade our information technology systems or information security systems, or problems with our transitioning to upgraded or replacement systems; the impact of adverse publicity about the Company and/or its brands, including without limitation, through social media or in connection with brand damaging events and/or public perception; fluctuations in the price, availability and quality of raw materials and contracted products as well as foreign currency fluctuations; ongoing disruptions and delays in the shipping and transportation of our products due to port congestion, container ship availability and/or other logistical challenges; our ability to utilize our net operating loss carryforwards; changes in tax laws and liabilities, tariffs, legal, regulatory, political and economic risks; the Company’s ability to maintain a quarterly dividend; and any material differences in the actual financial results of the Rhino-Rack acquisition as compared with expectations, including the impact of the acquisition on the Company’s future earnings per share. More information on potential factors that could affect the Company’s financial results can be found under Item 1A. Risk Factors of this Annual Report on Form 10-K. All forward-looking statements included in this Annual Report on Form 10-K are based upon information available to the Company as of the date of this Annual Report on Form 10-K, and speak only as the date hereof. We assume no obligation to update any forward-looking statements to reflect events or circumstances after the date of this Annual Report on Form 10-K.

### Overview

Headquartered in Salt Lake City, Utah, Clarus is a global leading designer, developer, manufacturer and distributor of best-in-class outdoor equipment and lifestyle products focused on the outdoor and consumer enthusiast markets. Our mission is to identify, acquire and grow outdoor “super fan” brands through our unique “innovate and accelerate” strategy. We define a “super fan” brand as a brand that creates the world’s pre-eminent, performance-defining product that the best-in-class user cannot live without. Each of our brands has a long history of continuous product innovation for core and everyday users alike. The Company’s products are principally sold globally under the Black Diamond®, Sierra®, Barnes® and Rhino-Rack® and MAXTRAX® brand names through outdoor specialty and online retailers, our own websites, distributors and original equipment manufacturers. Our portfolio of iconic brands is well-positioned for sustainable, long-term growth underpinned by powerful industry trends across the outdoor and adventure sport end markets.

One of the key elements of our sustained financial performance is our persistent focus on brand building through product initiatives. Our iconic brands are rooted in performance-defining technologies that enable our customers to have their best days outdoors. We have a long history of technical innovation and product development, backed by an extensive patent portfolio that continues to evolve and advance our markets. We currently employ approximately 120 engineers across the portfolio, focusing on enhancing our customers’ performance in the most critical moments. Our commitment to quality, rigorous safety, and ultimately best-in-class design is evidenced by outstanding industry recognition, as we have received numerous product awards across our portfolio of super fan brands.

Each of our brands represents a unique customer value proposition. Supported by six decades of proven innovation, Black Diamond, is an established global leader in high-performance, activity-based climbing, skiing, and technical mountain sports equipment. The brand is synonymous with premium performance, safety and reliability. Our Sierra and Barnes brands have been leading specialty manufacturers of bullets and ammunition for over 50 years. Since 1947, Sierra has been dedicated to manufacturing the highest-quality, most accurate bullets in the world for hunting and sport shooting enthusiasts. Barnes traces its history back to 1932, and since 1989 has manufactured technologically-advanced lead-free bullets and premium ammunition for hunters, range shooters, military and law enforcement professionals. Founded in 1992, our Rhino-Rack brand is a globally-recognized designer and distributor of highly-engineered automotive roof racks and accessories to enhance the outdoor enthusiast's overlanding experience. Founded in 2005, our MAXTRAX brand offers high-quality overlanding and off-road vehicle recovery and extraction tracks for the overland and off-road market.

Clarus, incorporated in Delaware in 1991, acquired Black Diamond Equipment, Ltd. ("Black Diamond Equipment") in May 2010 and changed its name to Black Diamond, Inc. in January 2011. In October 2012, we acquired PIEPS Holding GmbH and its subsidiaries (collectively, "PIEPS"). On August 14, 2017, the Company changed its name from Black Diamond, Inc. to Clarus Corporation and its stock ticker symbol from "BDE" to "CLAR" on the NASDAQ stock exchange.

On August 21, 2017, the Company acquired Sierra Bullets, L.L.C. ("Sierra"). On November 6, 2018, the Company acquired the assets of SKINourishment, Inc. ("SKINourishment"). On October 2, 2020, the Company completed the acquisition of certain assets and liabilities constituting the Barnes business ("Barnes"). On July 1, 2021, the Company completed the acquisition of Australia-based Rhino-Rack Holdings Pty Ltd ("Rhino-Rack"). On December 1, 2021, the Company completed the acquisition of Australia-based MaxTrax Australia Pty Ltd ("MAXTRAX").

On August 6, 2018, the Company announced that its Board of Directors approved the initiation of a quarterly cash dividend program of \$0.025 per share of the Company's common stock (the "Quarterly Cash Dividend") or \$0.10 per share on an annualized basis. The declaration and payment of future Quarterly Cash Dividends is subject to the discretion of and approval of the Company's Board of Directors. On May 1, 2020, the Company announced that, in light of the operational impact of the COVID-19 pandemic, its Board of Directors temporarily replaced its Quarterly Cash Dividend with a stock dividend (the "Quarterly Stock Dividend"). On October 19, 2020, the Company announced that its Board of Directors approved the reinstatement of its Quarterly Cash Dividend. In 2021, 2020 and 2019, our total Quarterly Cash Dividends were \$3,335,000, \$1,520,000 and \$2,987,000, respectively. In 2020, our total Quarterly Stock Dividends were \$1,533,000. In 2020, our total Quarterly Stock Dividends were \$1,533,000, which combined with our cash dividend in 2020 of \$1,520,000, resulted in total dividends in 2020 of \$3,053,000. On February 25, 2022, the Company announced that its Board of Directors approved the payment on March 18, 2022 of the Quarterly Cash Dividend to the record holders of shares of the Company's common stock as of the close of business on March 7, 2022.

### **Impact of COVID-19**

The global outbreak of COVID-19 was declared a pandemic by the World Health Organization and a national emergency by each of the U.S., European, and Australian governments in March 2020, with governments world-wide implementing safety measures restricting travel and requiring citizen lockdowns and self-confinements for quarantining purposes. This has negatively affected the U.S., European, Australian and global economies, disrupted global supply chains, and resulted in significant transport restrictions and disruption of global financial markets.

The COVID-19 pandemic has significantly impacted the global supply chain, with restrictions and limitations on related activities causing disruption and delay, along with increased raw material, storage, and shipping costs. These disruptions and delays have strained domestic and international supply chains, which have affected and could continue to negatively affect the flow or availability of certain critical raw materials and finished good products that the Company relies upon. Furthermore, significantly increased demand from online sales channels, including our website, has impacted our logistical operations, including our fulfillment and shipping functions, which has resulted in periodic delays in the delivery of our products.

We experienced a decline in retail demand within our Outdoor segment beginning in the second half of March 2020 through December 2020, which negatively impacted our sales and profitability during this period. During 2021, our Outdoor segment continued to be impacted by the pandemic due to disruptions in the global supply chains; however, the Outdoor segment experienced an increase in overall sales as participation in outdoor recreation has increased as certain countries began to ease restrictions. During the third quarter of 2021, the Australian government instituted a mandatory lockdown for its citizens. This caused a decline in retail demand and a disruption in operations within our Adventure segment, which negatively impacted our sales and profitability for the third quarter of 2021 and to a lesser extent during the fourth quarter of 2021. Our Precision Sport segment has experienced higher demand which has positively impacted our sales and profitability since the beginning of the pandemic. We expect a continued impact on the Company's sales and profitability in future periods due to the ongoing impact of the pandemic. The duration of these trends and the magnitude of such impacts cannot be precisely estimated at this time, as they are affected by a number of factors (some of which are outside management's control), including those presented in Item 1A. Risk Factors.

## Critical Accounting Policies and Use of Estimates

Management's discussion of our financial condition and results of operations is based on the consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The preparation of the consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the consolidated financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting periods. We continually evaluate our estimates and assumptions including those related to derivatives, revenue recognition, income taxes and valuation of long-lived assets, goodwill and other intangible assets. We base our estimates on historical experience and other assumptions that are believed to be reasonable under the circumstances. Actual results could differ from these estimates.

We believe the following critical accounting policies include the more significant estimates and assumptions used in the preparation of our consolidated financial statements. Our accounting policies are more fully described in Note 1 of our consolidated financial statements.

⌚ *Fair value of net assets acquired in business combinations* – We allocate the purchase price of acquired companies to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values. The excess of the purchase price over these fair values is recorded as goodwill. We engage independent third-party valuation specialists to assist us in determining the fair values of certain assets acquired and liabilities assumed. Such valuations require management to make significant estimates and assumptions, especially with respect to intangible assets. Different valuation approaches are used to value different types of intangible assets. The income approach is a valuation technique that capitalizes anticipated income associated with the asset being valued. This approach is predicated on developing net income and cash flow projections which are discounted for risk and the time value of money. This approach is generally the principal approach to the valuation of most intangible assets. The market approach involves the compilation and analysis of recent acquisitions of similar assets in the open market. A fair value can be estimated after adjustments are made to reflect comparability differences between the assets sold and those being valued. This method of valuation applies primarily to the valuation of owned land, inventory, and certain intangible assets. The cost approach estimates the amount that would be required to replace the service capacity of an asset (often referred to as current replacement cost). We typically apply all three approaches to estimate the fair value of our tangible and intangible assets depending on the type of asset acquired. Business acquisitions may include contingent consideration payments based on various future financial measures, such as sales-based milestones, related to the acquired entity. We estimate the fair value of contingent consideration liabilities based on estimated sales growth rates, discount rates, and other relevant factors.

Significant estimates in valuing certain intangible assets include but are not limited to the projected financial information related to each individual asset, particularly forecasted sales growth rates, cash flows, market-based royalty rates and estimated discount rates. Product technology and trademarks are valued using the relief-from-royalty method, and customer relationships are valued using the multi-period excess earnings model. The relief-from-royalty method is used to estimate the cost savings that accrue to the owner of an intangible asset who would otherwise have to pay royalties or license fees on revenues earned through the use of the asset. The multi-period excess earnings method supposes that the owner of the intangible asset is able to achieve a return in excess of that received without the intangible asset through enhanced revenues or cost savings. Our discounted cash flow estimates use discount rates that correspond to a weighted-average cost of capital consistent with a market-participant view. The discount rates are consistent with those used for investment decisions and take into account our operating plans and strategies. Management's estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable. If we do not achieve the results reflected in the assumptions and estimates, our goodwill impairment evaluations could be adversely affected, and we may impair a portion or all of our intangible assets, which would adversely affect our operating results in the period of impairment.

⌚ *Income taxes* – We account for income taxes using the asset and liability method. The asset and liability method provides that deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities, and for operating loss and tax credit carryforwards. We may make assumptions, judgments and estimates in order to determine the future taxable income available to support the recoverability of deferred tax assets at a more-likely-than-not threshold. The sources of future taxable income include 1) future reversal of existing taxable temporary differences, 2) taxable income in carryback years if carryback is permitted, 3) future taxable income from future operations, and 4) tax planning strategies. The degree and subjectivity and judgment increases as the source of future taxable income becomes more inherently subjective. Our assumptions, judgments and estimates relative to the realizability of a deferred tax asset take into account predictions of the amount and category of expected future taxable income. Actual operating results and the underlying amount and category of income in future years could cause our current assumptions, judgments and estimates of recoverable net deferred taxes to be inaccurate. Changes in any of the assumptions, judgments and estimates mentioned above related to the realizability of deferred tax assets, could materially affect our financial position and results of operations.

⌚ *Goodwill and intangible assets* – We assess the recoverability of our reporting unit's carrying value of goodwill by performing a qualitative assessment and/or a quantitative goodwill impairment test. At a minimum, we perform an annual assessment of possible

goodwill impairment as of each December 31. Management may perform an interim goodwill impairment assessment whenever events or circumstances make it more likely than not that an impairment may have occurred, such as a significant adverse change in the business climate or a decision to sell or dispose of the reporting unit. If we begin with a qualitative assessment and are able to support the conclusion that it is not more likely than not that the fair value of the reporting unit is less than its carrying value, we are not required to perform the quantitative goodwill impairment test. Otherwise, we are required to perform the quantitative goodwill impairment test which compares the reporting unit's carrying value including goodwill to its estimated fair value. We estimate the reporting unit's fair value using either the income approach based upon projected discounted cash flows of the reporting unit or the market approach based upon comparable market acquisition transactions. If the estimated fair value of the reporting entity exceeds the carrying value, the goodwill is not impaired, and no further review is required. However, if the carrying value exceeds the estimated fair value of the reporting unit, an impairment expense should be recognized for the excess of the carrying value over the fair value.

Under the income approach, the estimated discounted cash flows are based on the best information available to us at the time, including supportable assumptions and projections we believe are reasonable. Our discounted cash flow estimates use discount rates that correspond to a weighted-average cost of capital consistent with a market-participant view. The discount rates are consistent with those used for investment decisions and take into account our operating plans and strategies. Certain other key assumptions utilized, including revenue projections, costs of goods sold, operating expenses and effective tax rates, are based on estimates consistent with those utilized in our annual budgeting and planning process that we believe are reasonable. However, if we do not achieve the results reflected in the assumptions and estimates, our goodwill impairment evaluations could be adversely affected, and we may impair a portion or all of our goodwill, which would adversely affect our operating results in the period of impairment.

The market approach identifies the EBITDA multiples of recent industry and competitor acquisitions. The reporting unit's current EBITDA is multiplied by the median industry and competitor acquisition market multiple to estimate its current estimated fair value. If the market multiples or EBITDA value assumptions are incorrect, our goodwill impairment evaluation could also be adversely affected, and we may impair a portion or all of our goodwill, which would adversely affect our operating results in the period of impairment.

No impairment was recorded during the years ended December 31, 2021, 2020, and 2019. During the first quarter of 2019, we early adopted Accounting Standards Update 2017-04, *Intangibles-Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*, which removed the requirement to perform the previous two-step goodwill impairment test.

We also test indefinite-lived intangible assets for impairment at least annually during the fourth quarter, generally on December 31. Management may perform an interim indefinite-lived intangible asset impairment assessment whenever events or circumstances make it more likely than not that an impairment may have occurred, such as a significant adverse change in the business climate or a decision to sell or dispose of the reporting unit. If the carrying value of the indefinite-lived asset is higher than its fair value, then the asset is deemed to be impaired and the impairment charge is estimated as the difference. The Company calculates the fair value of its indefinite-lived intangible assets using the income approach, specifically the relief-from-royalty method. The relief-from-royalty method is used to estimate the cost savings that accrue to the owner of an intangible asset who would otherwise have to pay royalties or license fees on revenues earned through the use of the asset. Internally forecasted revenues, which the Company believes reasonably approximate market participant assumptions, are multiplied by a royalty rate to arrive at the estimated net after tax cost savings. The royalty rate used in the analysis is based on an analysis of empirical, market-derived royalty rates for comparable intangible assets. The net after tax cost savings are discounted using the same weighted-average cost of capital discount rate developed for purposes of the Company's quantitative goodwill impairment test. The key uncertainties in these calculations are the assumptions used in determining the revenue associated with each indefinite-lived intangible asset and the royalty rate. If we do not achieve the results reflected in the assumptions and estimates, our indefinite-lived intangibles impairment evaluations could be adversely affected, and we may impair a portion or all of their carrying values, which would adversely affect our operating results in the period of impairment.

#### **Recent Accounting Pronouncements**

See "Recent Accounting Pronouncements" in Note 1 to the notes to consolidated financial statements.



## Results of Operations (In Thousands)

### Consolidated Year Ended December 31, 2021 Compared to Consolidated Year Ended December 31, 2020

The following presents a discussion of consolidated operations for the year ended December 31, 2021, compared with the consolidated year ended December 31, 2020:

	Year Ended December 31,	
	2021	2020
Sales		
Domestic sales	\$ 225,878	\$ 132,226
International sales	149,916	91,781
Total sales	375,794	224,007
Cost of goods sold	238,862	146,212
Gross profit	136,932	77,795
Operating expenses		
Selling, general and administrative	105,494	71,428
Transaction costs	11,843	2,433
Contingent consideration benefit	(1,605)	-
Total operating expenses	115,732	73,861
Operating income	21,200	3,934
Other income (expense)		
Interest expense, net	(2,939)	(1,261)
Other, net	(4,382)	912
Total other expense, net	(7,321)	(349)
Income before income tax	13,879	3,585
Income tax benefit	(12,214)	(1,960)
Net income	\$ 26,093	\$ 5,545

#### Sales

Consolidated sales increased \$151,787, or 67.8%, to \$375,794 during the year ended December 31, 2021, compared to consolidated sales of \$224,007 during the year ended December 31, 2020. The increase in sales was attributable to the increase in the quantity of new and existing outdoor products sold during the period of \$46,394. Additionally, there was an increase in the quantity of new and existing precision sport products sold by Sierra of \$18,543 and the inclusion of Barnes, which contributed \$38,504. The increase was also driven by the inclusion of adventure products sold by Rhino-Rack of \$43,411 and MAXTRAX of \$1,728. We experienced an increase in sales of \$3,207 due to the weakening of the U.S. dollar against foreign currencies during the year ended December 31, 2021, compared to the prior period.

Consolidated domestic sales increased \$93,652, or 70.8%, to \$225,878 during the year ended December 31, 2021, compared to consolidated domestic sales of \$132,226 during the year ended December 31, 2020. The increase in sales was attributable to the increase in the quantity of new and existing outdoor products sold during the period of \$26,058. Additionally, there was an increase in the quantity of new and existing precision sport products sold by Sierra of \$20,323 and the inclusion of Barnes, which contributed \$35,227. The remaining increase was driven by the inclusion of adventure products sold by Rhino-Rack and MAXTRAX of \$12,044.

Consolidated international sales increased \$58,135, or 63.3%, to \$149,916 during the year ended December 31, 2021, compared to consolidated international sales of \$91,781 during the year ended December 31, 2020. The increase in sales was primarily attributable to the increase in the quantity of new and existing outdoor products of \$20,336 and the inclusion of Barnes, which contributed \$3,277. The increase was also driven by the inclusion of adventure products sold by Rhino-Rack of \$31,392 and MAXTRAX of \$1,703. We experienced an increase in sales of \$3,207 due to the weakening of the U.S. dollar against foreign currencies during the year ended December 31, 2021 compared to the prior period. The increase was partially offset by a decrease in the quantity of new and existing precision sport products sold by Sierra of \$1,780.

### *Cost of Goods Sold*

Consolidated cost of goods sold increased \$92,650, or 63.4%, to \$238,862 during the year ended December 31, 2021, compared to consolidated cost of goods sold of \$146,212 during the year ended December 31, 2020. The increase in cost of goods sold was primarily attributable to an increase in the number of units sold.

### *Gross Profit*

Consolidated gross profit increased \$59,137 or 76.0%, to \$136,932 during the year ended December 31, 2021, compared to consolidated gross profit of \$77,795 during the year ended December 31, 2020. Consolidated gross margin was 36.4% during the year ended December 31, 2021, compared to a consolidated gross margin of 34.7% during the year ended December 31, 2020. Consolidated gross margin during the year ended December 31, 2021, increased compared to the prior year due to favorable product mix in higher margin products and the favorable impacts related to foreign currency. Gross margin also benefited from the inclusion of Barnes, Rhino-Rack, and MAXTRAX; however, the benefit was offset by a decrease in gross margin of \$4,769, or 1.3%, due to the sale of Barnes, Rhino-Rack and MAXTRAX inventory that was recorded at its fair value in purchase accounting during the year ended December 31, 2021.

### *Selling, General and Administrative*

Consolidated selling, general, and administrative expenses increased \$34,066, or 47.7%, to \$105,494 during the year ended December 31, 2021, compared to consolidated selling, general and administrative expenses of \$71,428 during the year ended December 31, 2020. The increase in selling, general and administrative expenses is due to the inclusion of Barnes, Rhino-Rack, and MAXTRAX which contributed \$6,702, \$14,885, and \$400, respectively. Additionally, there was an increase of stock compensation of \$2,686 during the year ended December 31, 2021, compared to the prior year. The remaining increase was attributable to the Company's investments in the brand related activities of sales, direct-to-consumer, marketing, and warehousing and logistics, focused on supporting its strategic initiatives around expanding distribution, elevating brand awareness and being easier to do business with.

### *Transaction Costs*

Consolidated transaction expense increased to \$11,843 during the year ended December 31, 2021, compared to consolidated transaction costs of \$2,433 during the year ended December 31, 2020, which consisted of expenses related to the Company's financing and acquisition efforts in 2021.

### *Contingent Consideration Benefit*

Consolidated contingent consideration increased to \$1,605 during the year ended December 31, 2021, compared to \$0 consolidated contingent consideration during the year ended December 31, 2020, which consisted of changes in estimated fair value of Contingent Consideration liabilities.

### *Interest Expense, net*

Consolidated interest expense, net increased to \$2,939 during the year ended December 31, 2021, compared to consolidated interest expense, net of \$1,261 during the year ended December 31, 2020. The increase in interest expense recognized during the year ended December 31, 2021 was primarily associated with the increase in average outstanding debt amounts during the period compared to the prior year and the recording of certain debt issuance costs.

### *Other, net*

Consolidated other, net expense changed \$5,294, or 580.5% to \$4,382 during the year ended December 31, 2021, compared to consolidated other, net income of \$912 during the year ended December 31, 2020. The change in other, net was primarily attributable to changes on mark-to-market adjustments on non-hedged foreign currency contracts, including contracts associated with the purchase price of Rhino-Rack, as well as a decrease in remeasurement losses recognized on the Company's foreign denominated accounts receivable and accounts payable.

## Income Taxes

Consolidated income tax benefit increased \$10,254, or 523.2%, to \$12,214 during the year ended December 31, 2021, compared to a consolidated income tax benefit of \$1,960 during the same period in 2020. Our effective income tax rate was a benefit of 88% for the year ended December 31, 2021, and differed compared to the statutory tax rates due to the partial release of a valuation allowance offsetting deferred tax assets and discrete charges recorded during the period. This release of the valuation allowance is primarily due to a change in accounting method which increased taxable income and the ability to utilize NOLs. For the year ended December 31, 2020, our effective income tax rate was a benefit of 54.7% and differed compared to the statutory tax rates due to a release of certain valuation allowances and a discrete benefit associated with stock compensation windfall. Factors that could cause our annual effective tax rate to differ materially from our quarterly effective tax rates include changes in the geographic mix of taxable income and discrete events that may occur.

### Consolidated Year Ended December 31, 2020 Compared to Consolidated Year Ended December 31, 2019

The following presents a discussion of consolidated operations for the year ended December 31, 2020, compared with the consolidated year ended December 31, 2019:

	Year Ended December 31,	
	2020	2019
Sales		
Domestic sales	\$ 132,226	\$ 121,751
International sales	91,781	107,686
Total sales	224,007	229,437
Cost of goods sold	146,212	149,146
Gross profit	77,795	80,291
Operating expenses		
Selling, general and administrative	71,428	68,680
Restructuring charge	-	13
Transaction costs	2,433	166
Total operating expenses	73,861	68,859
Operating income	3,934	11,432
Other expense		
Interest expense, net	(1,261)	(1,358)
Other, net	912	(93)
Total other expense, net	(349)	(1,451)
Income before income tax	3,585	9,981
Income tax benefit	(1,960)	(8,991)
Net income	\$ 5,545	\$ 18,972

## Sales

Consolidated sales decreased \$5,430, or 2.4%, to \$224,007 during the year ended December 31, 2020, compared to consolidated sales of \$229,437 during the year ended December 31, 2019. We believe lower consumer demand related to the COVID-19 pandemic drove a decrease in the quantity of new and existing climb, mountain, and ski products sold during the period. These decreases were partially offset by an increase in the quantity of new and existing precision sport products sold by Sierra of \$16,729 and the inclusion of Barnes, which contributed \$6,556. We also experienced an increase in sales of \$606 due to the weakening of the U.S. dollar against foreign currencies during the year ended December 31, 2020 compared to the prior period.

Consolidated domestic sales increased \$10,475, or 8.6%, to \$132,226 during the year ended December 31, 2020, compared to consolidated domestic sales of \$121,751 during the year ended December 31, 2019. The increase in sales was attributable to the increase in the quantity of new and existing precision sport products sold by Sierra of \$17,873 and the inclusion of Barnes, which contributed \$6,179. We believe this increase was partially offset by a decrease in domestic sales due to lower consumer demand related to the

COVID-19 pandemic, which drove a decrease in the quantity of new and existing climb, mountain, and ski products sold during the period.

Consolidated international sales decreased \$15,905, or 14.8%, to \$91,781 during the year ended December 31, 2020, compared to consolidated international sales of \$107,686 during the year ended December 31, 2019. We believe the decrease in international sales was attributable to lower consumer demand related to the COVID-19 pandemic, which drove a decrease in the quantity of new and existing climb, mountain, and ski products sold during the period. We also experienced a decrease in the quantity of new and existing precision sport products sold by Sierra of \$1,143. These decreases were partially offset by the inclusion of Barnes, which contributed \$376. We also experienced an increase in sales of \$606 due to the weakening of the U.S. dollar against foreign currencies during the year ended December 31, 2020 compared to the prior period.

#### *Cost of Goods Sold*

Consolidated cost of goods sold decreased \$2,934, or 2.0%, to \$146,212 during the year ended December 31, 2020, compared to consolidated cost of goods sold of \$149,146 during the year ended December 31, 2019. The decrease in cost of goods sold was primarily attributable to a decrease in the number of units sold due to lower consumer demand related to the COVID-19 pandemic.

#### *Gross Profit*

Consolidated gross profit decreased \$2,496 or 3.1%, to \$77,795 during the year ended December 31, 2020, compared to consolidated gross profit of \$80,291 during the year ended December 31, 2019. Consolidated gross margin was 34.7% during the year ended December 31, 2020, compared to a consolidated gross margin of 35.0% during the year ended December 31, 2019. Consolidated gross margin during the year ended December 31, 2020, decreased compared to the prior year due to unfavorable impacts on our supply chain and logistic activities due to the COVID-19 pandemic. Gross margin benefited from the inclusion of Barnes; however, this benefit was offset by a decrease in gross margin of 0.2% due to the sale of inventory that was recorded at its preliminary fair value in purchase accounting during the year ended December 31, 2020.

#### *Selling, General and Administrative*

Consolidated selling, general, and administrative expenses increased \$2,748, or 4.0%, to \$71,428 during the year ended December 31, 2020, compared to consolidated selling, general and administrative expenses of \$68,680 during the year ended December 31, 2019. The increase in selling, general and administrative expenses is due to the inclusion of Barnes, which contributed \$1,698, and an increase of stock compensation of \$3,842 during the year ended December 31, 2020 compared to the prior year. The increase was partially offset by the cost-saving initiatives implemented in response to the COVID-19 pandemic, primarily related to reductions within sales, marketing, and logistics.

#### *Restructuring Charges*

Consolidated restructuring expense decreased to \$0 during the year ended December 31, 2020, compared to consolidated restructuring expense of \$13 during the year ended December 31, 2019. Restructuring expenses incurred during the year ended December 31, 2019, related to costs associated with the formal closure and liquidation of the Company's Black Diamond Equipment manufacturing operations in Zhuhai, China.

#### *Transaction Costs*

Consolidated transaction expense increased to \$2,433 during the year ended December 31, 2020, compared to consolidated transaction costs of \$166 during the year ended December 31, 2019, which consisted of expenses related to the Company's various acquisition efforts and capital-raising activities, including acquiring Barnes and completing a registered direct offering (the "Offering").

#### *Interest Expense, net*

Consolidated interest expense, net during the year ended December 31, 2020 remained relatively consistent with consolidated interest expense, net, during the year ended December 31, 2019.

#### *Other, net*

Consolidated other, net, increased \$1,005, or 1,080.6%, to income of \$912 during the year ended December 31, 2020, compared to consolidated other, net expense of \$93 during the year ended December 31, 2019. The increase in other, net, was primarily attributable to an increase in remeasurement gains recognized on the Company's foreign denominated accounts receivable and accounts payable. This increase was partially offset by losses on mark-to-market adjustments on non-hedged foreign currency contracts.

Consolidated income tax benefit decreased \$7,031, or 78.2%, to \$1,960 during the year ended December 31, 2020, compared to a consolidated income tax benefit of \$8,991 during the same period in 2019. Our effective income tax rate was a benefit of 54.7% for the year ended December 31, 2020, and differed compared to the statutory tax rates due to a release of a partial valuation allowance of the deferred tax assets and discrete charges recorded during the period. For the year ended December 31, 2019, our effective income tax rate was a benefit of 90.1% and differed compared to the statutory tax rates due to a release of certain valuation allowances and a discrete benefit associated with stock compensation windfall. Factors that could cause our annual effective tax rate to differ materially from our quarterly effective tax rates include changes in the geographic mix of taxable income and discrete events that may occur.

#### **Liquidity and Capital Resources (In Thousands)**

##### ***Consolidated Year ended December 31, 2021 Compared to Consolidated Year ended December 31, 2020***

Our primary ongoing funding requirements are for working capital, expansion of our operations (both organically and through acquisitions) and general corporate needs, as well as investing activities associated with the expansion into new product categories. We plan to fund these activities through a combination of our future operating cash flows and revolving credit facility which had approximately \$81,499 available to borrow at December 31, 2021. We believe that our liquidity requirements and contractual obligations for at least the next 12 months will be adequately covered by cash provided by operations and our existing revolving credit facility. Additionally, long-term contractual obligations are also currently expected to be funded from cash from operations and availability under our existing credit facilities. However, as the impact of the COVID-19 pandemic on the economy and our operations evolves, we will continue to assess our liquidity needs.

Further, the Company and certain of its direct and indirect subsidiaries (each, a “Loan Party” and, collectively, the “Loan Parties”) entered into Amendment No. 3 (“Amendment No. 3”) to that certain Credit Agreement, dated May 3, 2019, as amended by Amendment No. 1 dated May 28, 2019 and Amendment No. 2 dated November 12, 2020, with JPMorgan Chase Bank, N.A., as administrative agent, and the lenders from time to time party thereto (collectively, the “Credit Agreement”). The Credit Agreement increased the aggregate amount of the term loan facility thereunder to \$125,000 and increased the maximum amount of the revolving loan facility thereunder to \$100,000. The term loan facility was fully borrowed at the closing of Amendment No. 3 on July 1, 2021. The Company is required to repay the term loan through quarterly payments of \$1,563 each beginning with September 30, 2021, increasing to \$3,125 beginning September 30, 2022, and any remaining obligations will be repaid in full on the maturity date of the Credit Agreement of May 3, 2024. Amendment No. 3 also removed the previously agreed upon ability of the Company to issue debt securities that may be convertible into equity interests of the Company in an aggregate principal amount of up to \$125,000 and also increased the maximum consolidated total leverage ratio permitted under the Credit Agreement to 4.25:1.00.

Additionally, the Company entered into an underwriting agreement relating to the public offer and sale of 2,750 shares of the Company’s common stock as well as a 30-day option to purchase up to 413 additional shares of common stock. The closing of the offering of 2,750 shares of common stock as well as the 413 additional shares of common stock occurred on October 29, 2021 and November 2, 2021, respectively. The net proceeds to the Company from the offering were approximately \$80,264 before expenses and after deducting the applicable underwriting discounts and commissions. The Company used a portion of the net proceeds of the offering for the repayment of principal under the revolving loan facility available pursuant to the Credit Agreement and the remaining portion of the net proceeds from the offering for general corporate purposes, including capital expenditures and the MAXTRAX acquisition.

At December 31, 2021, we had total cash of \$19,465, compared to cash of \$17,789 at December 31, 2020, which was substantially controlled by the Company’s U.S. entities. At December 31, 2021, the Company had \$8,959 of the \$19,465 in cash held by foreign entities, of which \$7,188 is considered permanently reinvested.

The following presents a discussion of cash flows for the consolidated year ended December 31, 2021 compared with the consolidated year ended December 31, 2020.

	Year Ended December 31,	
	2021	2020
Net cash (used in) provided by operating activities	\$ (304)	\$ 29,392
Net cash used in investing activities	(178,142)	(35,582)
Net cash provided by financing activities	180,677	22,254
Effect of foreign exchange rates on cash	(555)	22
Change in cash	1,676	16,086
Cash, beginning of year	17,789	1,703
Cash, end of period	<u>\$ 19,465</u>	<u>\$ 17,789</u>

#### *Net Cash From Operating Activities*

Consolidated net cash used in operating activities was \$304 during the year ended December 31, 2021 compared to consolidated net cash provided by operating activities of \$29,696 during the year ended December 31, 2020. The change in net cash used in operating activities during 2021 is primarily due to an increase in net operating assets, or non-cash working capital, of \$48,494, and deferred income taxes, partially offset by an increase in net income, depreciation and amortization and stock compensation during the year ended December 31, 2021, compared to the same period in 2020.

Free cash flow, defined as net cash used in operating activities less capital expenditures, of (\$17,687) was used during the year ended December 31, 2021 compared to \$23,981 generated during the same period in 2020. The Company believes that the non-GAAP measure, free cash flow, provides an understanding of the capital required by the Company to expand its asset base. A reconciliation of free cash flows to comparable GAAP financial measures is set forth below:

	Year Ended December 31,	
	2021	2020
Net cash (used in) provided by operating activities	\$ (304)	\$ 29,392
Purchase of property and equipment	(17,383)	(5,411)
Free cash flow	<u>\$ (17,687)</u>	<u>\$ 23,981</u>

#### *Net Cash From Investing Activities*

Consolidated net cash used in investing activities was \$178,142 during the year ended December 31, 2021 compared to consolidated net cash used in investing activities of \$35,582 during the year ended December 31, 2020. The increase in cash used during the year ended December 31, 2021 is primarily due to the \$160,988 used for the purchase of Rhino-Rack and MAXTRAX, net of cash acquired as well as an increase in purchases of property and equipment, primarily due to the purchase of the Barnes facility. During the year ended December 31, 2020, consolidated net cash used in investing activities included \$30,498 used for the purchase of the Barnes Purchased Assets, net of cash acquired.

#### *Net Cash From Financing Activities*

Consolidated net cash provided by financing activities was \$180,677 during the year ended December 31, 2021, compared to consolidated net cash used in financing activities of \$22,254 during the year ended December 31, 2020. The increase in cash provided during the year ended December 31, 2021, compared to the same period in 2020 was primarily due to the net proceeds to the revolving line of credit and draws of the term loan under Amendment No. 3 described below and the net proceeds from the sale of the Company's common stock of \$79,232. Cash provided by financing activities during the year ended December 31, 2020, was primarily due to the proceeds of \$20,000 borrowed under the term loan and net proceeds from the sale of the Company's common stock of \$11,151, offset by net repayments to the revolving line of credit.

#### *Net Operating Loss*

As of December 31, 2021, the Company had net operating loss carryforwards ("NOLs") and research and experimentation credit for U.S. federal income tax purposes of \$60,712 and \$2,289, respectively. The Company believes its U.S. Federal NOLs will substantially offset its future U.S. Federal income taxes until expiration. The majority of the Company's pre-tax income is currently earned and expected to be earned in the U.S., or taxed in the U.S. as Subpart F income and will be offset with the NOLs. The Company has \$60,712

of NOLs, of which, \$39,507 expire on December 31, 2022. These NOLs are subject to compliance with Section 382 of the Internal Revenue Code of 1986, as amended.

As of December 31, 2021, the Company's gross deferred tax asset was \$38,184. The Company has recorded a valuation allowance of \$4,378, resulting in a net deferred tax asset of \$33,806, before deferred tax liabilities of \$46,653. The Company has provided a valuation allowance against a portion of the net deferred tax assets as of December 31, 2021, because the ultimate realization of those assets does not meet the more-likely-than-not criteria. The majority of the Company's deferred tax assets consist of net operating loss carryforwards for federal tax purposes. If a change in control were to occur, these could be limited under Section 382 of the Internal Revenue Code of 1986 ("Code"), as amended.

### ***Credit Agreement***

On May 3, 2019, the Company, Borrowers and the other loan parties party thereto entered into the Credit Agreement for borrowings of up to \$60,000 under a revolving credit facility (including up to \$5,000 for letters of credit), and borrowings of up to \$40,000 under a term loan facility that is available to be drawn until May 3, 2020. The Credit Agreement also permits the Borrowers, subject to certain requirements, to arrange with lenders for an aggregate of up to \$50,000 of additional revolving and/or term loan commitments (both of which are currently uncommitted), for potential aggregate revolving and term loan commitments under the Credit Agreement of up to \$150,000. The Credit Agreement matures on May 3, 2024.

On November 12, 2020, the Borrowers entered into Amendment No. 2 of the Credit Agreement. Amendment No. 2 increased the maximum consolidated total leverage ratio permitted under the Credit Agreement to 4.00:1.00 from 3.00:1.00. In addition, Amendment No. 2 permits, among other things, the issuance by the Company of debt securities, that may be convertible into equity interests of the Company, in an aggregate principal amount of up to \$125,000, and eliminates the requirement that the proceeds therefrom be used to prepay any revolving loans or term loans under the Credit Agreement.

On July 1, 2021, the Borrowers entered into Amendment No. 3 of the Credit Agreement. Amendment No. 3 increased the aggregate amount of the term loan facility thereunder to \$125,000 and increased the maximum amount of the revolving loan facility thereunder to \$100,000. The term loan facility was fully borrowed at the closing of Amendment No. 3 on July 1, 2021 in connection with the Rhino-Rack Acquisition. The Credit Agreement continues to permit the Borrowers, subject to certain requirements, to arrange with lenders for an aggregate of up to \$50,000 of additional revolving and/or term loan commitments (both of which are currently uncommitted), for potential aggregate revolving and term loan commitments under the Credit Agreement of up to \$275,000.

Amendment No. 3 provides for additional subsidiaries of the Company to guarantee and provide collateral for the loans under the Credit Agreement, including certain of its newly formed or newly acquired Australian subsidiaries in connection with the Rhino-Rack Acquisition. Amendment No. 3 also removed the previously agreed upon ability of the Company to issue debt securities that may be convertible into equity interests of the Company in an aggregate principal amount of up to \$125,000 and also increased the maximum consolidated total leverage ratio permitted under the Credit Agreement to 4.25:1.00. Amendment No. 3 did not change the maturity date which remains May 3, 2024.

On January 3, 2022, the Company entered into Amendment No. 4 to the Credit Agreement ("Amendment No. 4"). Amendment No. 4, among other things, permits (i) the Company to borrow in Australian Dollars and New Zealand Dollars in order to support the operations of the Company in Australia and New Zealand and (ii) provides for addbacks to EBITDA, for debt covenant purposes, (as defined in the Credit Agreement) under the Credit Agreement for expenses relating to activities in respect of acquisitions, dispositions, investments and financings (whether or not these transactions are actually consummated).

The Borrowers may elect to have the revolving and term loans under the Credit Agreement bear interest at an alternate base rate or a Term Benchmark rate plus an applicable rate. The applicable rate for these borrowings will range from 0.50% to 1.625% per annum, in the case of alternate base rate borrowings, and 1.50% to 2.625% per annum, in the case of Term Benchmark borrowings. The applicable rate was initially 0.875% per annum, in the case of alternate base rate borrowings, and 1.875% per annum, in the case of Term Benchmark borrowings; however, it may be adjusted from time to time based upon the level of the Company's consolidated total leverage ratio. The Credit Agreement also requires the Borrowers to pay a commitment fee on the unused portion of the revolving and term loan commitments. Such commitment fee will range between 0.15% and 0.30% per annum, and is also based upon the level of the Company's consolidated total leverage ratio.

All obligations under the Credit Agreement are secured by our subsidiary equity interests, as well as accounts receivable, inventory, intellectual property and certain other assets owned by the Company. The Credit Agreement contains restrictions on the Company's ability to pay dividends or make distributions or other restricted payments if certain conditions in the Credit Agreement are not fulfilled. The Credit Agreement includes customary affirmative and negative covenants, including financial covenants relating to the Company's consolidated total leverage ratio and fixed charge coverage ratio. The Company was in compliance with the debt covenants set forth in the Credit Agreement as of December 31, 2021.

As of December 31, 2021, the Company had drawn approximately \$18,501 of the \$100,000 revolving loan commitment that was available for borrowing under the Credit Agreement, and \$121,874 outstanding under the term loan commitment. As of December 31, 2021, the interest rates for the revolving loan and term loan were 2.3750% and 2.3750% respectively. On April 30, 2020, the Company borrowed \$20,000 under the term loan facility and used the proceeds to pay down amounts outstanding under the revolving portion of the Credit Agreement. On July 1, 2021, the term loan facility was fully borrowed at the closing of Amendment No. 3. The Company is required to repay the term loan through quarterly payments of \$1,563 each beginning with September 30, 2021, increasing to \$3,125 beginning September 30, 2022, and any remaining obligations will be repaid in full on the maturity date of the Credit Agreement of May 3, 2024.

#### ***Off-Balance Sheet Arrangements***

We do not engage in any transactions or have relationships or other arrangements with unconsolidated entities. These include special purpose and similar entities or other off-balance sheet arrangements. We also do not engage in energy, weather or other commodity-based contracts.

#### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

In general, we can be exposed to market risks including fluctuations in interest rates, foreign currency exchange rates and certain commodity prices that can affect the cost of operating, investing, and financing under those conditions. The Company believes it has moderate exposure to these risks. We assess market risk based on changes in interest rates, foreign currency rates, and commodity prices utilizing a sensitivity analysis that measures the potential loss in earnings, fair values, and cash flows based on a hypothetical change in these rates and prices.

##### **Interest Rate Risks**

Our primary exposure to market risk is interest rate risk associated with our credit facility since the interest is indexed to LIBOR. We entered into our current credit facility on May 3, 2019, and simultaneously terminated our previous credit facility. The applicable interest rate for the outstanding borrowings under our credit facility as of December 31, 2021 and 2020 was 2.3750% and 2.0625%, respectively. Amounts outstanding as of December 31, 2021 and 2020 were \$140,375,000 and \$33,579,000, respectively. A change of 100-basis points in market interest rates would cause an impact of approximately \$1,404,000 to annual interest expense as of December 31, 2021.

##### **Foreign Currency Risks**

We transact business predominantly in U.S. dollars, Australian dollars, Euros, and Canadian dollars. Given the current geopolitical environment and other economic uncertainties worldwide, changes in the relation to these and other currencies to the U.S. dollar will affect our sales and profitability and could result in exchange losses. For the year ending December 31, 2021, approximately 41% of our pro forma sales were denominated in foreign currencies (compared to 36% in the prior year), the most significant of which were the Australian Dollar, Euro, Canadian Dollar, Norwegian Kroner, and Swiss Franc. The primary purpose of our foreign currency hedging activities is to mitigate the foreign currency exchange rate exposure on the cash flows related to forecasted inventory purchases and sales. A hypothetical 10% change in foreign currency rates would not have a material effect on foreign currency gains and losses related to the foreign currency derivatives or the net fair value of the Company's foreign currency derivatives. We have not held a material amount of foreign assets during the years ended December 31, 2021, 2020, and 2019, and do not believe our foreign assets expose us to a material foreign currency risk.

##### **Derivative Instruments**

We employ a variety of practices to manage these market risks, including operating and financing activities and, where deemed appropriate, the use of derivative instruments. Derivative instruments are used only for risk management purposes and not for speculation or trading. Derivatives are such that a specific debt instrument, contract, or anticipated purchase determines the amount, maturity, and other specifics of the hedge. If a derivative contract is entered into, we either determine that it is an economic hedge or we designate the derivative as a cash flow or fair value hedge. We do not hold derivative financial investments, derivative commodity investments, engage in foreign currency hedging or other transactions that expose us to material market risks.



ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

CLARUS CORPORATION AND SUBSIDIARIES

Index to Financial Statements

	Page
<a href="#">Report of Independent Registered Public Accounting Firm (PCAOB ID No. 34)</a>	42
<a href="#">Consolidated Balance Sheets - December 31, 2021 and 2020</a>	44
<a href="#">Consolidated Statements of Comprehensive Income - Years Ended December 31, 2021, 2020 and 2019</a>	45
<a href="#">Consolidated Statements of Cash Flows - Years Ended December 31, 2021, 2020 and 2019</a>	46
<a href="#">Consolidated Statements of Stockholders' Equity - Years Ended December 31, 2021, 2020 and 2019</a>	47
<a href="#">Notes to Consolidated Financial Statements</a>	48

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of Clarus Corporation:

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Clarus Corporation and subsidiaries (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of comprehensive income, stockholders' equity, and cash flows, for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 7, 2022, expressed an unqualified opinion on the Company's internal control over financial reporting.

### 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 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. 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.

### Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### *Acquisitions — Refer to Note 2 to the financial statements*

##### *Critical Audit Matter Description*

On July 1, 2021, the Company acquired Rhino-Rack Holdings Pty Ltd ("Rhino-Rack"), and on December 1, 2021, the Company acquired MaxTrax Australia Pty Ltd ("MAXTRAX"). The Company accounted for each acquisition as a business combination. Accordingly, the purchase price was allocated to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values, including Rhino-Rack trademarks of \$72.8 million, customer relationships of \$40.4 million, and product technologies of \$15 million, and MAXTRAX trademarks of \$10.6 million and customer relationships of \$9.0 million. Product technology and trademarks are valued using the relief-from-royalty method, and customer relationships are valued using the multi-period excess earnings model. The determination of the fair value of these intangible assets required management to make significant estimates and assumptions related to forecasted sales growth rates, cash flows, market-based royalty rates, and estimated discount rates.

We identified the valuation of the Rhino-Rack trademarks, customer relationships, and product technologies and MAXTRAX trademarks and customer relationships as a critical audit matter because of the significant estimates and assumptions management made to determine the fair value of these intangible assets. This required a high degree of auditor judgment and an increased extent of effort, including the involvement of our fair value specialists, when performing audit procedures to evaluate the reasonableness of forecasted sales growth rates, cash flows, market-based royalty rates, and estimated discount rates.

*How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to the forecasted future sales growth rates, cash flows, market-based royalty rates, and estimated discount rates for the acquired Rhino-Rack trademarks, customer relationships, and product technologies and MAXTRAX trademarks and customer relationships included the following, among others:

- We tested the effectiveness of internal controls over the valuation of the intangible assets, including those over forecasted sales growth rates and cash flows, and the selection of market-based royalty rates and estimated discount rates.
- We assessed the reasonableness of management's forecasted sales growth rates and cash flows by comparing the forecasts to historical results of Rhino-Rack and MAXTRAX, industry publications, and external data.
- With the assistance of our fair value specialists, we evaluated the reasonableness of the relief-from-royalty and multi-period excess earnings valuation methodologies, and the market-based royalty rates and estimated discount rates by:
  - Evaluating whether the valuation methodologies are appropriate in the circumstances and in accordance with generally accepted valuation principles.
  - Comparing the source information underlying the determination of the estimated discount rates to external data and testing the mathematical accuracy of the calculation.
  - Developing a range of independent estimates for the discount rates and comparing those to the estimated discount rates selected by management.
  - Comparing the selected market-based royalty rates to comparable licensing agreements.
- We evaluated whether the forecasted sales growth rates and cash flows were consistent with evidence obtained in other areas of the audit, including a retrospective review of actual post-acquisition financial results.
- We compared the estimated weighted average return on assets, internal rate of return, and the discount rates used in the valuation models and evaluated whether they were consistent with each other.

/s/ Deloitte & Touche LLP

Salt Lake City, Utah

March 7, 2022

We have served as the Company's auditor since 2018.

**CLARUS CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except per share amounts)

	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Assets</b>		
Current assets		
Cash	\$ 19,465	\$ 17,789
Accounts receivable, net	66,180	50,475
Inventories	129,354	68,356
Prepaid and other current assets	11,831	5,385
Income tax receivable	116	117
Total current assets	226,946	142,122
Property and equipment, net	42,826	26,956
Other intangible assets, net	73,683	19,416
Indefinite-lived intangible assets	128,271	47,523
Goodwill	118,090	26,715
Deferred income taxes	22,433	11,113
Other long-term assets	19,578	6,846
<b>Total assets</b>	<b>\$ 631,827</b>	<b>\$ 280,691</b>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities		
Accounts payable	\$ 31,488	\$ 21,483
Accrued liabilities	27,473	13,182
Income tax payable	4,437	956
Current portion of long-term debt	9,585	4,000
Total current liabilities	72,983	39,621
Long-term debt, net	131,948	30,621
Deferred income taxes	35,280	1,227
Other long-term liabilities	21,448	4,628
<b>Total liabilities</b>	<b>261,659</b>	<b>76,097</b>
<b>Stockholders' Equity</b>		
Preferred stock, \$0.0001 par value per share; 5,000 shares authorized; none issued	-	-
Common stock, \$0.0001 par value per share; 100,000 shares authorized; 41,105 and 35,198 issued and 37,094 and 31,228 outstanding, respectively	4	4
Additional paid in capital	662,996	513,979
Accumulated deficit	(263,342)	(286,100)
Treasury stock, at cost	(24,440)	(23,789)
Accumulated other comprehensive (loss) income	(5,050)	500
<b>Total stockholders' equity</b>	<b>370,168</b>	<b>204,594</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 631,827</b>	<b>\$ 280,691</b>

See accompanying notes to consolidated financial statements.

**CLARUS CORPORATION**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(In thousands, except per share amounts)

	Year Ended December 31,		
	2021	2020	2019
Sales			
Domestic sales	\$ 225,878	\$ 132,226	\$ 121,751
International sales	149,916	91,781	107,686
Total sales	375,794	224,007	229,437
Cost of goods sold	238,862	146,212	149,146
Gross profit	136,932	77,795	80,291
Operating expenses			
Selling, general and administrative	105,494	71,428	68,680
Restructuring charge	-	-	13
Transaction costs	11,843	2,433	166
Contingent consideration benefit	(1,605)	-	-
Total operating expenses	115,732	73,861	68,859
Operating income	21,200	3,934	11,432
Other income (expense)			
Interest expense, net	(2,939)	(1,261)	(1,358)
Other, net	(4,382)	912	(93)
Total other expense, net	(7,321)	(349)	(1,451)
Income before income tax	13,879	3,585	9,981
Income tax benefit	(12,214)	(1,960)	(8,991)
Net income	26,093	5,545	18,972
Other comprehensive (loss) income, net of tax:			
Foreign currency translation adjustment	(6,721)	1,766	(359)
Unrealized gain (loss) on hedging activities	1,171	(963)	(421)
Other comprehensive (loss) income	(5,550)	803	(780)
Comprehensive income	\$ 20,543	\$ 6,348	\$ 18,192
Net income per share:			
Basic	\$ 0.79	\$ 0.18	\$ 0.64
Diluted	0.73	0.18	0.61
Weighted average shares outstanding:			
Basic	33,136	30,175	29,820
Diluted	35,686	31,225	30,993

See accompanying notes to consolidated financial statements.

**CLARUS CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Year Ended December 31,		
	2021	2020	2019
<b>Cash Flows From Operating Activities:</b>			
Net income	\$ 26,093	\$ 5,545	\$ 18,972
Adjustments to reconcile net income to net cash (used in) provided by operating activities:			
Depreciation of property and equipment	5,985	4,801	4,550
Amortization of other intangible assets	9,834	4,070	3,552
Amortization of debt issuance costs	505	311	283
(Gain) loss on disposition of property and equipment	(63)	104	62
Noncash lease expense	2,384	898	728
Contingent consideration benefit	(1,675)	-	-
Stock-based compensation	9,477	6,791	2,949
Deferred income taxes	(14,423)	(3,201)	(8,995)
Changes in operating assets and liabilities, net of acquisitions:			
Accounts receivable	(6,464)	(7,665)	(6,163)
Inventories	(34,071)	11,007	(9,145)
Prepaid and other assets	(3,560)	(1,849)	856
Accounts payable	2,746	5,006	1,221
Accrued liabilities	2,935	2,715	909
Income taxes	(7)	859	(257)
Net cash (used in) provided by operating activities	(304)	29,392	9,522
<b>Cash Flows From Investing Activities:</b>			
Purchase of businesses, net of cash received	(160,988)	(30,498)	-
Proceeds from disposition of property and equipment	229	327	20
Purchases of property and equipment	(17,383)	(5,411)	(4,116)
Net cash used in investing activities	(178,142)	(35,582)	(4,096)
<b>Cash Flows From Financing Activities:</b>			
Proceeds from revolving credit facilities	122,140	49,571	132,215
Repayments on revolving credit facilities	(119,219)	(55,501)	(131,607)
Repayments on term loans	(7,467)	(2,000)	(31)
Proceeds from issuance of term loans	109,157	20,000	-
Payment of debt issuance costs	(985)	(79)	(709)
Purchase of treasury stock	(651)	(1,520)	(4,167)
Proceeds from exercise of stock options	1,805	2,152	1,000
Cash dividends paid	(3,335)	(1,520)	(2,987)
Proceeds from the sale of common stock	80,264	11,476	-
Common stock issuance costs	(1,032)	(325)	-
Net cash provided by (used in) financing activities	180,677	22,254	(6,286)
<b>Effect of foreign exchange rates on cash</b>	(555)	22	77
<b>Change in cash</b>	1,676	16,086	(783)
<b>Cash, beginning of year</b>	17,789	1,703	2,486
<b>Cash, end of period</b>	<u>\$ 19,465</u>	<u>\$ 17,789</u>	<u>\$ 1,703</u>
<b>Supplemental Disclosure of Cash Flow Information:</b>			
Cash paid for income taxes	\$ 1,984	\$ 426	\$ 209
Cash paid for interest	\$ 2,252	\$ 970	\$ 1,086
<b>Supplemental Disclosures of Non-Cash Investing and Financing Activities:</b>			
Stock issued for business acquisitions	\$ 57,927	\$ -	\$ -
Deferred stock consideration for business acquisition	\$ 4,457	\$ -	\$ -
Contingent consideration for business acquisitions	\$ 5,209	\$ -	\$ -
Property and equipment purchased with accounts payable	\$ 269	\$ 173	\$ 408
Lease liabilities arising from obtaining right of use assets	\$ 6,517	\$ 622	\$ 1,889
Gain on transfer of entity under common control	\$ 576	\$ -	\$ -
Stock dividends	\$ -	\$ 1,533	\$ -

See accompanying notes to consolidated financial statements.

**CLARUS CORPORATION**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(In thousands, except per share amounts)

	<u>Common Stock</u>		<u>Additional</u>	<u>Accumulated</u>	<u>Treasury Stock</u>		<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Paid-In</u>	<u>Deficit</u>	<u>Shares</u>	<u>Amount</u>	<u>Other</u>	<u>Stockholders'</u>
			<u>Capital</u>				<u>Comprehensive</u>	<u>Equity</u>
							<u>Income (Loss)</u>	
Balance, December 31, 2018	33,244	\$ 3	\$ 488,404	\$ (304,577)	(3,496)	\$ (18,102)	\$ 477	\$ 166,205
Net income	-	-	-	18,972	-	-	-	18,972
Other comprehensive loss	-	-	-	-	-	-	(780)	(780)
Cash dividends (\$0.10 per share)	-	-	-	(2,987)	-	-	-	(2,987)
Purchase of treasury stock	-	-	-	-	(359)	(4,167)	-	(4,167)
Stock-based compensation expense	-	-	2,949	-	-	-	-	2,949
Proceeds from exercise of options	371	-	1,000	-	-	-	-	1,000
Balance, December 31, 2019	33,615	\$ 3	\$ 492,353	\$ (288,592)	(3,855)	\$ (22,269)	\$ (303)	\$ 181,192
Net income	-	-	-	5,545	-	-	-	5,545
Other comprehensive income	-	-	-	-	-	-	803	803
Cash dividends (\$0.05 per share)	-	-	-	(1,520)	-	-	-	(1,520)
Stock dividends (\$0.05 per share)	133	-	1,533	(1,533)	-	-	-	-
Purchase of treasury stock	-	-	-	-	(115)	(1,520)	-	(1,520)
Stock-based compensation expense	244	-	6,791	-	-	-	-	6,791
Proceeds from exercise of options	306	-	2,152	-	-	-	-	2,152
Issuance of common stock, net of issuance costs	900	1	11,150	-	-	-	-	11,151
Balance, December 31, 2020	35,198	\$ 4	\$ 513,979	\$ (286,100)	(3,970)	\$ (23,789)	\$ 500	\$ 204,594
Net income	-	-	-	26,093	-	-	-	26,093
Other comprehensive loss	-	-	-	-	-	-	(5,550)	(5,550)
Cash dividends (\$0.10 per share)	-	-	-	(3,335)	-	-	-	(3,335)
Purchase of treasury stock	-	-	-	-	(41)	(651)	-	(651)
Gain on transfer of entity under common control	-	-	576	-	-	-	-	576
Stock-based compensation expense	-	-	9,477	-	-	-	-	9,477
Proceeds from exercise of options	322	-	1,805	-	-	-	-	1,805
Issuance of common stock, net of issuance costs	3,163	-	79,232	-	-	-	-	79,232
Shares issued in business acquisitions	2,422	-	57,927	-	-	-	-	57,927
Balance, December 31, 2021	41,105	\$ 4	\$ 662,996	\$ (263,342)	(4,011)	\$ (24,440)	\$ (5,050)	\$ 370,168

See accompanying notes to consolidated financial statements.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(in thousands, except per share amounts)**

**NOTE 1. NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The accompanying audited consolidated financial statements of Clarus Corporation and subsidiaries (which may be referred to as the “Company,” “Clarus,” “we,” “our” or “us”) have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

**Nature of Business**

Headquartered in Salt Lake City, Utah, Clarus is a global leading designer, developer, manufacturer and distributor of best-in-class outdoor equipment and lifestyle products focused on the outdoor and consumer enthusiast markets. Our mission is to identify, acquire and grow outdoor “super fan” brands through our unique “innovate and accelerate” strategy. We define a “super fan” brand as a brand that creates the world’s pre-eminent, performance-defining product that the best-in-class user cannot live without. Each of our brands has a long history of continuous product innovation for core and everyday users alike. The Company’s products are principally sold globally under the Black Diamond®, Sierra®, Barnes® and Rhino-Rack® and MAXTRAX® brand names through outdoor specialty and online retailers, our own websites, distributors and original equipment manufacturers.

Clarus, incorporated in Delaware in 1991, acquired Black Diamond Equipment, Ltd. (“Black Diamond Equipment”) in May 2010 and changed its name to Black Diamond, Inc. in January 2011. In October 2012, we acquired PIEPS Holding GmbH and its subsidiaries (collectively, “PIEPS”). On August 14, 2017, the Company changed its name from Black Diamond, Inc. to Clarus Corporation and its stock ticker symbol from “BDE” to “CLAR” on the NASDAQ stock exchange.

On August 21, 2017, the Company acquired Sierra Bullets, L.L.C. (“Sierra”). On November 6, 2018, the Company acquired the assets of SKINourishment, Inc. (“SKINourishment”). On October 2, 2020, the Company completed the acquisition of certain assets and liabilities constituting the Barnes business (“Barnes”). On July 1, 2021, the Company completed the acquisition of Australia-based Rhino-Rack Holdings Pty Ltd (“Rhino-Rack”). On December 1, 2021, the Company completed the acquisition of Australia-based MaxTrax Australia Pty Ltd (“MAXTRAX”).

**Use of Estimates**

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. The more significant estimates relate to the fair value of net assets acquired in business combinations, excess or obsolete inventory, allowance for credit losses, contingent consideration liabilities, and valuation of deferred tax assets. We base our estimates on historical experience, projected future cash flows, and other assumptions that are believed to be reasonable under the circumstances. Actual results could differ from these estimates.

**Significant Accounting Policies**

*Principles of Consolidation*

The consolidated financial statements include the accounts of Clarus Corporation and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

*Foreign Currency Transactions and Translation*

The accounts of the Company’s international subsidiaries’ financial statements which have functional currencies other than the U.S. dollar are translated into U.S. dollars using the exchange rate at the balance sheet dates for assets and liabilities and average exchange rates for the periods for revenues, expenses, gains and losses. Foreign currency translation adjustments are recorded as a separate component of accumulated other comprehensive income (loss). Foreign currency transaction gains and losses are included in other income (expense) in the consolidated statements of comprehensive income.

*Cash Equivalents*

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. At December 31, 2021 and 2020, the Company did not hold any amounts that were considered to be cash equivalents.



**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
**(in thousands, except per share amounts)**

*Accounts Receivable and Allowance for Credit Losses*

The Company records its trade receivables at sales value. The trade receivables do not bear interest. The Company performs on-going credit evaluations of its customers and adjusts credit limits based upon payment history and the customer's current credit worthiness, as determined by the review of their current credit information. The Company evaluates the collectability of its accounts receivable and determines the appropriate allowance for credit losses based on a combination of factors. A non-specific allowance for estimated credit losses is recorded based on historical experience of collectability. In addition, specific allowances are established for customer accounts as known collection problems occur due to insolvency, disputes or other collection issues. The amounts of these specific allowances are estimated by management based on the customer's financial position, the age of the customer's receivables and the reasons for any disputes. The allowance for credit losses is reduced by subsequent collections of the specific allowances or by any write-off of customer accounts that are deemed uncollectible. The allowance for credit losses was \$811 and \$1,433 at December 31, 2021 and 2020, respectively. There were no significant write-offs during the years ended December 31, 2021, 2020, and 2019.

*Inventories*

Inventories are stated at the lower of cost (using the first-in, first-out method "FIFO") or net realizable value. Elements of cost in the Company's manufactured inventories generally include raw materials, direct labor, manufacturing overhead and freight in. The Company reviews its inventories for excess, close-out, or slow-moving items and makes provisions as necessary to properly reflect inventory values.

*Property and Equipment*

Property and equipment is stated at historical cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives. The principal estimated useful lives are: buildings, 30 years; building improvements, 20 years; computer hardware and software and machinery and equipment, 3-15 years; furniture and fixtures, 5 years. Leasehold improvements are amortized over the lesser of the estimated useful life of the improvement or the life of the lease. Major replacements, which extend the useful lives of equipment, are capitalized and depreciated over the remaining useful life. Normal maintenance and repair items are expensed as incurred. Property and equipment are reviewed for impairment whenever events or changes in circumstances exist that indicate the carrying amount of an asset may not be recoverable. Property and equipment located outside of the United States are not considered material.

*Leases*

Lease assets and lease liabilities are recognized at the commencement of an arrangement where it is determined at inception that a lease exists. Lease assets represent the right to use an underlying asset for the lease term, and lease liabilities represent the obligation to make lease payments arising from the lease. These assets and liabilities are initially recognized based on the present value of lease payments over the lease term calculated using our incremental borrowing rate. Lease terms include options to extend or terminate the lease when it is reasonably certain that those options will be exercised.

Variable lease payments are generally expensed as incurred and include certain non-lease components, such as common area maintenance and other services provided by the lessor, and other charges such as utilities, insurance and property taxes included in the lease. Leases with an initial term of 12 months or less are not recorded on the balance sheet, and the expense for these short-term leases and for leases is recognized on a straight-line basis over the lease term. Non-lease components are excluded from the right-of-use ("ROU") asset and lease liability present value computations. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

*Goodwill*

Goodwill represents the excess of the purchase price over the fair market value of identifiable net assets of acquired companies. Goodwill is not amortized, but rather is tested at the reporting unit level at least annually for impairment or more frequently if triggering events or changes in circumstances indicate impairment. The Company has the option to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If, through this qualitative assessment, the conclusion is made that it is more likely than not that a reporting unit's fair value is less than its carrying amount, a quantitative impairment analysis is performed. If the fair value of the reporting unit is less than its carrying amount, an impairment loss is recognized for the excess carrying amount over the fair value computation. Based on the results of the Company's annual impairment tests completed during the fourth quarter, the Company determined that goodwill was not impaired. No impairment was recorded during the years ended December 31, 2021, 2020, and 2019.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
**(in thousands, except per share amounts)**

*Intangible Assets*

Intangible assets represent other intangible assets and indefinite-lived intangible assets acquired. The Company's other intangible assets, such as certain customer relationships, product technologies, tradenames, trademarks and core technologies are amortized over their estimated useful lives. Other intangible assets are reviewed for impairment whenever events or changes in circumstances exist that indicate the carrying amount of an asset may not be recoverable or annually as of December 31<sup>st</sup> of each year.

The Company's indefinite-lived intangible assets consists of certain tradenames and trademarks that provide Black Diamond Equipment, PIEPS, Sierra, Barnes, Rhino-Rack, and MAXTRAX with the exclusive and perpetual rights to manufacture and sell their respective products. Indefinite-lived intangible assets are not amortized; however, they are tested at least annually for impairment or more frequently if events or changes in circumstances exist that may indicate impairment. The Company has the option to first assess qualitative factors to determine whether it is more likely than not that the fair value of an indefinite-lived intangible asset is less than its carrying amount. If, through this qualitative assessment, the conclusion is made that it is more likely than not that an indefinite-lived intangible asset's fair value is less than its carrying amount, or the Company elects to bypass the qualitative assessment, a quantitative impairment analysis is performed by comparing the indefinite-lived intangible asset's book value to its estimated fair value. The fair value for indefinite-lived intangible assets is determined through an income approach using the relief-from-royalty method. The amount of any impairment is measured as the difference between the carrying amount and the fair value of the impaired asset. Based on the results of the Company's annual impairment tests during the years ended December 31, 2021, 2020, and 2019, no impairment of indefinite-lived intangible assets was recorded.

*Derivative Financial Instruments*

The Company uses derivative instruments to hedge currency rate movements on foreign currency denominated sales. The Company enters into forward contracts, option contracts and non-deliverable forwards to manage the impact of foreign currency fluctuations on a portion of its forecasted foreign currency exposure. These derivatives are carried at fair value on the Company's consolidated balance sheets in prepaid and other current assets, other long-term assets, accrued liabilities, and other long-term liabilities. Changes in fair value of the derivatives not designated as hedge instruments are included in the determination of net income. For derivative contracts designated as hedge instruments, the effective portion of gains and losses resulting from changes in fair value of the instruments are included in accumulated other comprehensive (loss) income and reclassified to sales in the period the underlying hedged item is recognized in earnings.

For all hedging relationships, the Company formally documents the hedging relationship and its risk-management objective and strategy for undertaking the hedge, the hedging instrument, the hedged transaction, the nature of the risk being hedged, how the hedging instrument's effectiveness in offsetting the hedged risk will be assessed prospectively and retrospectively, and a description of the method used to measure ineffectiveness. The Company also formally assesses, both at the inception of the hedging relationship and on an ongoing basis, whether the derivatives that are used in hedging relationships are highly effective in offsetting changes in cash flows of hedged transactions. The Company uses operating budgets and cash flow forecasts to estimate future foreign currency cash flow exposures and to determine the level and timing of derivative transactions intended to mitigate such exposures in accordance with its risk management policies. The Company discontinues hedge accounting prospectively when it determines that the derivative is no longer effective in offsetting cash flows attributable to the hedged risk, the derivative expires or is sold, terminated, or exercised, the cash flow hedge is redesignated because a forecasted transaction is not probable of occurring, or management determines to remove the designation of the cash flow hedge. The Company does not enter into derivative instruments for any purpose other than cash flow hedging. The Company does not speculate using derivative instruments.

*Stock-Based Compensation*

The Company records compensation expense for all share-based awards granted based on the fair value of the award at the time of the grant. The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model that uses assumptions and estimates that the Company believes are reasonable. Stock-based compensation costs for stock awards and restricted stock awards is measured based on the closing market value of the Company's common stock on the date of the grant. For restricted stock awards subject to market conditions, the fair value of each restricted stock award has been estimated as of the date of grant using the Monte-Carlo pricing model. The Company recognizes the cost of the share-based awards on a straight-line basis over the requisite service period of the award and recognizes forfeitures in the period they occur. Stock options granted have contractual terms of up to ten years. Upon exercise of stock options or vesting of restricted stock awards, the Company issues shares from new shares authorized and reserved for issuance.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
**(in thousands, except per share amounts)**

*Revenue Recognition*

The Company recognizes revenue when a contract exists with a customer that specifies the goods and services to be provided at an agreed upon sales price and when the performance obligation is satisfied by transferring the goods or service to the customer. The performance obligation is considered complete when control transfers, which is determined when products are shipped or delivered to the customer depending on the terms of the contract. Sales are made on normal and customary short-term credit terms or upon delivery of point-of-sale transactions.

The Company enters into contractual arrangements with customers in the form of individual customer orders which specify the goods, quantity, pricing, and associated order terms. The Company does not have long-term contracts that are satisfied over time. Due to the nature of the contracts, no significant judgment exists in relation to the identification of the customer contract, satisfaction of the performance obligation, or transaction price. The Company expenses incremental costs of obtaining a contract due to the short-term nature of the contracts.

The Company's contract terms or historical business practices can give rise to variable consideration such as term discounts and customer cooperative payments. We estimate the expected term discounts based on an analysis of historical experience and record cash discounts as a reduction to revenue. Through cooperative advertising programs, the Company reimburses its wholesale customers for some of their costs of advertising the Company's products. The Company records such costs as a reduction of revenue, where the fair value cannot be reasonably estimated or where costs exceed the fair value of the services.

At the time of revenue recognition, we also provide for estimated sales returns and miscellaneous claims from customers as reductions to revenues. The estimates are based on historical rates of product returns and claims. The Company accrues for such estimated returns and claims with an estimated accrual and associated reduction of revenue. Additionally, the Company records inventory that it expects to be returned as an other current asset, with a corresponding reduction of cost of goods sold.

Sales commissions are expensed as incurred. These costs are recorded in selling, general and administrative expenses in the accompanying consolidated statements of comprehensive income. Taxes collected from customers and remitted to government authorities are reported on the net basis and are excluded from sales.

*Cost of Goods Sold*

The expenses that are included in cost of goods sold include all direct product costs and costs related to shipping, certain warehousing or handling, duties and importation fees. Product warranty costs and specific provisions for excess, close-out, or slow-moving inventory are also included in cost of goods sold. Certain warehousing or handling costs which are not associated with the manufacturing of goods for sale are excluded from cost of goods sold.

*Selling, General and Administrative Expense*

Selling, general and administrative expense includes personnel-related costs, including stock-based compensation, product development, selling, advertising, visual merchandise, depreciation and amortization, and other general operating expenses. Advertising costs are expensed in the period incurred. Total advertising expense, including cooperative advertising costs, were \$5,945, \$3,833, and \$4,588 for the years ended December 31, 2021, 2020, and 2019, respectively.

Through cooperative advertising programs, the Company reimburses its wholesale customers for some of their costs of advertising the Company's products based on various criteria, including the value of purchases from the Company and various advertising specifications. Cooperative advertising costs were not material for the years ended December 31, 2021 and 2020. Cooperative advertising costs were \$287 for the year ended December 31, 2019 and were included in selling, general, and administrative expense because the Company receives an identifiable benefit in exchange for the cost, the advertising may be obtained from a party other than the customer, and the fair value of the advertising benefit can be reasonably estimated.

*Product Warranty*

Some of the Company's products carry warranty provisions for defects in quality and workmanship. Warranty repairs and replacements are recorded in cost of goods sold and a warranty liability is established at the time of sale to cover estimated costs based on the Company's history of warranty repairs and replacements. For the years ended December 31, 2021, 2020, and 2019, the Company experienced warranty claims on its products of \$1,863, \$1,201, and \$1,123, respectively.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
**(in thousands, except per share amounts)**

*Research and Development*

Research and development costs are charged to expense as incurred, and are included in selling, general and administrative expenses in the accompanying consolidated statements of comprehensive income. Total research and development costs were \$11,857, \$10,159, and \$10,575 for the years ended December 31, 2021, 2020, and 2019, respectively.

*Transaction Costs*

Transaction costs consists of expenses related to the Company's various acquisition efforts and capital-raising activities associated with acquiring Sierra, Barnes, Rhino-Rack and MAXTRAX.

*Income Taxes*

Income taxes are accounted for under the asset and liability method. Income taxes are based on amounts of taxes payable or refundable in the current year and on expected future tax consequences of events that are recognized in the financial statements in different periods than they are recognized in tax returns. As a result of timing of recognition and measurement differences between financial accounting standards and income tax laws, temporary differences arise between amounts of pre-tax financial statement income and taxable income and between reported amounts of assets and liabilities in the consolidated balance sheets and their respective tax bases. Deferred income tax assets and liabilities reported in the consolidated balance sheets reflect estimated future tax effects attributable to these temporary differences and to net operating loss and net capital loss carryforwards, based on enacted tax rates expected to be in effect for years in which the differences are expected to be settled or realized. The Company has netted these deferred tax assets and deferred tax liabilities by jurisdiction. Realization of deferred tax assets is dependent on future taxable income in specific jurisdictions. Valuation allowances are used to reduce deferred tax assets to amounts considered more likely than not to be realized. U.S. deferred income taxes are not provided on undistributed income of foreign subsidiaries where such earnings are considered to be permanently invested. Unremitted taxes on undistributed foreign earnings are not material for the years ended December 31, 2021, 2020, and 2019.

The Company releases residual tax effects in accumulated other comprehensive (loss) income through continuing operations as the underlying asset matures or expires.

The Company recognizes tax benefits from uncertain tax positions only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution. The Company recognizes interest and penalties related to unrecognized tax benefits in income tax benefit. Unrecognized tax benefits that reduce a net operating loss, similar tax loss or tax credit carryforward, are presented as a reduction to deferred income taxes. The Company recognizes interest expense and penalties related to uncertain tax positions in income tax expense (benefit).

*Concentration of Credit Risk and Sales*

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash, accounts receivable, and aggregate unrealized gains (losses) on derivative contracts. Risks associated with cash within the United States are mitigated by banking with federally insured, creditworthy institutions; however, there are balances with these institutions that are greater than the Federal Deposit Insurance Corporation insurance limit. The Company performs ongoing credit evaluations of its customers and maintains allowances for possible losses as considered necessary by management.

During the years ended December 31, 2021, 2020 and 2019, Recreational Equipment, Inc. ("REI") accounted for approximately 10%, 10% and 14%, respectively, of the Company's sales and is included in the Outdoor segment. No other single customer contributed more than 10% of our sales during those periods. As of December 31, 2021 and 2020, REI accounted for approximately 11% and 11% of the Company's accounts receivable, respectively.

*Fair Value Measurements*

The carrying value of cash, accounts receivable, accrued liabilities approximate their respective fair values due to the short-term nature and liquidity of these financial instruments. Derivative financial instruments are recorded at fair value based on current market pricing models. The Company estimates that, due to the variable interest rates reflecting current market rates, the fair value of its long-term debt obligations under its revolving credit facility and term loan approximate the carrying value at December 31, 2021 and 2020.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
**(in thousands, except per share amounts)**

*Contingent Consideration Liabilities*

Contingent consideration liabilities are required to be recognized at fair value as of the acquisition date. We estimate the fair value of these liabilities based on financial projections of the acquired company, such as sales-based milestones, and estimated probabilities of achievement. Based on updated estimates and projections, the contingent consideration liabilities are adjusted at each reporting date to their estimated fair value. Changes in fair value subsequent to the acquisition date are reported in contingent consideration benefit in the accompanying consolidated statements of comprehensive income. Variations in the fair value of contingent consideration liabilities may result from changes in discount periods or rates, changes in the timing and amount of sales estimates, and changes in probability assumptions with respect to the likelihood of achieving sales milestones.

*Segment Information*

We operate our business structure within three segments. These segments are defined based on the internal financial reporting used by our chief operating decision maker to allocate resources and assess performance. Certain significant selling and general and administrative expenses are not allocated to the segments.

*Reclassifications*

Certain reclassifications have been made to prior period financial statements to conform to the current period presentation. Specifically, accounts payable and accrued liabilities, which were combined and disclosed as one amount, are now presented separately.

**Recent Accounting Pronouncements**

*Accounting Pronouncements not yet adopted*

In March 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This ASU provides temporary optional expedients and exceptions to existing guidance on contract modifications and hedge accounting to facilitate the market transition from existing reference rates, such as the London Inter-Bank Offered Rate ("LIBOR") which is being phased out in 2021, to alternate reference rates, such as the Secured Overnight Financing Rate ("SOFR"). The standard is currently effective and upon adoption may be applied prospectively to contract modifications made on or before December 31, 2022. The provisions have impact as contract modifications and other changes occur while LIBOR is phased out. The Company is in the process of evaluating the optional relief guidance provided within this ASU. Management will continue its assessment and monitor regulatory developments during the LIBOR transition period. Currently, management does not believe that the impact of transitioning from LIBOR to SOFR will have a material effect on the interest rates of the company.

**NOTE 2. ACQUISITIONS**

*MAXTRAX*

On November 26, 2021, Clarus, through Oscar Aluminium Pty Ltd ("Oscar Aluminium"), an indirect wholly-owned Australian subsidiary of the Company, entered into a Share and Unit Purchase Agreement (the "MAXTRAX Purchase Agreement") to acquire Australia-based MaxTrax Australia Pty Ltd ("MAXTRAX"). On December 1, 2021, the transaction contemplated by the MAXTRAX Purchase Agreement was consummated. All United States dollar amounts contained herein are based on the exchange rates in effect for Australian dollars (\$AUD) and the market value of the Company's common stock at the time of closing of the acquisition of MAXTRAX (the "MAXTRAX Acquisition").

Under the terms of the MAXTRAX Purchase Agreement, Oscar Aluminium acquired MAXTRAX for an aggregate purchase price of \$AUD 49,744 (approximately \$35,475), subject to a post-closing adjustment. The purchase price was comprised of \$AUD 37,551 (approximately \$26,780) cash, 107 shares of the Company's common stock valued at \$2,594, and additional consideration described below. The shares of the Company's common stock issued are subject to a lock-up agreement restricting sales for 180 days from the closing of the MAXTRAX Acquisition. The MAXTRAX Purchase Agreement also provides for the payment of additional consideration in the form of shares of the Company's common stock valued at \$AUD 6,250 (approximately \$4,457) split equally on June 30, 2022 and 2023. The MAXTRAX Purchase Agreement provides for the payment of additional contingent consideration up to \$AUD 6,250 (approximately \$4,457) in cash if certain future net sales thresholds are met during 2022 and 2023 (the "MAXTRAX Contingent Consideration"). The Company estimated the fair value of the MAXTRAX Contingent Consideration to be \$AUD 2,307 (approximately \$1,644) and has recorded this liability within accrued liabilities and other long-term liabilities.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
**(in thousands, except per share amounts)**

The acquisition was accounted for as a business combination. Acquisition-related costs for the MAXTRAX Acquisition, which were included in transaction costs during the year ended December 31, 2021 were \$446.

*Rhino-Rack*

On May 30, 2021, Clarus, through Oscar Aluminium, an indirect wholly-owned Australian subsidiary of the Company, entered into a Share Sale and Purchase Agreement (the “Rhino-Rack Purchase Agreement”) to acquire Australia-based Rhino-Rack Holdings Pty Ltd (“Rhino-Rack”). On July 1, 2021, the transaction contemplated by the Rhino-Rack Purchase Agreement was consummated. All United States dollar amounts contained herein are based on the exchange rates in effect for Australian dollars (\$AUD) and the market value of the Company’s common stock at the time of closing of the acquisition of Rhino-Rack (the “Rhino-Rack Acquisition”).

Under the terms of the Rhino-Rack Purchase Agreement, Oscar Aluminium acquired Rhino-Rack for an aggregate purchase price of \$AUD 269,696 (approximately \$202,488), subject to a post-closing adjustment. The purchase price was comprised of \$AUD 191,249 (approximately \$143,590) cash, 2,315 shares of the Company’s common stock valued at \$55,333, and additional contingent consideration described below. The shares of the Company’s common stock issued were subject to a lock-up agreement restricting sales for 180 days from the closing of the Acquisition. The Purchase Agreement also provides for the payment of additional contingent consideration up to \$AUD 10,000 (approximately \$7,508) in cash if certain future net sales thresholds are met during 2022 (the “Contingent Consideration”). The Company estimated the fair value of the Contingent Consideration to be \$AUD 4,747 (approximately \$3,565) and has recorded this liability within accrued liabilities.

The acquisition was accounted for as a business combination. Acquisition-related costs for the Rhino-Rack Acquisition, which were included in transaction costs during the year ended December 31, 2021 were \$10,975.

*Barnes*

On September 30, 2020, the Company entered into an Asset Purchase Agreement (the “Barnes Asset Purchase Agreement”) with Remington Outdoor Company, Inc. and certain of its subsidiaries (the “Seller”), pursuant to which the Company agreed to (i) acquire certain assets of the Seller constituting the Barnes business (“Barnes”), including equipment, inventory, intellectual property (including exclusive use of Barnes’ intellectual property in the all-copper and powdered metallurgy ammunition fields as well as its trademarks) and a leasehold interest in certain real property located in Mona, Utah (collectively, the “Barnes Purchased Assets”) and (ii) assume certain liabilities related to the Barnes Purchased Assets in a transaction to be effected in Seller’s bankruptcy proceeding under Chapter 11 of title 11 of the United States Code, §§ 101 et seq. (the “Bankruptcy Code”) which commenced on July 27, 2020 in the United States Bankruptcy Court for the Northern District of Alabama (the “Bankruptcy Court”). Pursuant to the Barnes Asset Purchase Agreement, the purchase price to be paid for the Barnes Purchased Assets is \$30,500 (the “Barnes Purchase Price”). On October 2, 2020, Sierra completed the acquisition of the Barnes Purchased Assets. Acquisition-related costs for the Barnes acquisition, which were included in transaction costs during the years ended December 31, 2021 and 2020 were \$273 and \$922 respectively. The acquisition was accounted for as a business combination.

The Company believes the acquisitions of MAXTRAX, Rhino-Rack and Barnes are expected to provide the Company with a greater combined global revenue base, increased gross margins, profitability and free cash flows, and access to increased liquidity to further acquire and grow businesses.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

The following table is a reconciliation to the fair value of the purchase consideration and how the purchase consideration is allocated to assets acquired and liabilities assumed which have been estimated at their fair values. The fair value estimates for the purchase price allocation for MAXTRAX and Rhino-Rack are based on the Company's best estimates and assumptions as of the reporting date and are considered preliminary. The fair value measurements of identifiable assets and liabilities, and the resulting goodwill related to the MAXTRAX and Rhino-Rack Acquisitions are subject to change and the final purchase price allocations could be different from the amounts presented below. We expect to finalize the valuations as soon as practicable, but not later than one year from the date of the acquisitions. The fair value measurements for the acquisition of Barnes have been completed. The excess of purchase consideration over the assets acquired and liabilities assumed is recorded as goodwill. Goodwill for MAXTRAX and Rhino-Rack is included in the Adventure segment and goodwill for Barnes is included in the Precision Sport segment. The goodwill consists largely of the growth and profitability expected from these acquisitions.

	<b>MAXTRAX</b>		<b>Rhino-Rack</b>		<b>Barnes</b>
	<b>December 1, 2021</b>		<b>July 1, 2021</b>		<b>October 2, 2020</b>
	<b>Number of Shares</b>	<b>Estimated Fair Value</b>	<b>Number of Shares</b>	<b>Estimated Fair Value</b>	<b>Estimated Fair Value</b>
<b>Cash paid</b>	-	\$ 26,780	-	\$ 143,590	\$ 30,500
<b>Issuance of shares of Clarus Corporation</b>	107	2,594	2,315	55,333	-
<b>Future issuance of shares of Clarus Corporation</b>	-	4,457	-	-	-
<b>Contingent consideration</b>	-	1,644	-	3,565	-
<b>Total purchase consideration</b>	<u>107</u>	<u>\$ 35,475</u>	<u>2,315</u>	<u>\$ 202,488</u>	<u>\$ 30,500</u>
<b>Assets acquired and liabilities assumed</b>					
<b>Assets</b>					
Cash		\$ 1,869		\$ 7,513	\$ 2
Accounts receivable		2,791		10,769	-
Inventories		1,819		27,046	4,535
Prepaid and other current assets		883		644	612
Property and equipment		139		4,619	4,036
Other intangible assets		10,341		55,400	7,500
Indefinite-lived intangible assets		10,555		72,800	5,600
Goodwill		14,458		78,347	8,625
Other long-term assets		979		11,468	4,355
<b>Total assets</b>		<u>43,834</u>		<u>268,606</u>	<u>35,265</u>
<b>Liabilities</b>					
Accounts payable and accrued liabilities		1,435		16,511	842
Income tax payable		251		3,413	-
Current portion of long-term debt		-		607	-
Long-term debt		-		2,107	-
Deferred income taxes		5,863		32,451	-
Other long-term liabilities		810		11,029	3,923
<b>Total liabilities</b>		<u>8,359</u>		<u>66,118</u>	<u>4,765</u>
<b>Net Book Value Acquired</b>		<u>\$ 35,475</u>		<u>\$ 202,488</u>	<u>\$ 30,500</u>

The estimated fair value of inventory was recorded at expected sales price less cost to sell plus a reasonable profit margin for selling efforts.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

In connection with the acquisitions, the Company acquired exclusive rights to MAXTRAX's, Rhino-Rack's, and Barnes' trademarks, customer relationships, and product technologies. The amounts assigned to each class of intangible asset, other than goodwill acquired, and the related average useful lives are as follows:

	<b>MAXTRAX</b>		<b>Rhino-Rack</b>		<b>Barnes</b>	
	<b>Gross</b>	<b>Average Useful Life</b>	<b>Gross</b>	<b>Average Useful Life</b>	<b>Gross</b>	<b>Average Useful Life</b>
<b>Intangibles subject to amortization</b>						
Customer relationships	\$ 8,986	13.5 years	\$ 40,400	13.5 years	\$ 5,700	10.0 years
Product technologies	1,355	7.0 years	15,000	10.0 years	1,800	10.0 years
<b>Intangibles not subject to amortization</b>						
Trademarks	10,555	N/A	72,800	N/A	5,600	N/A
	<u>\$ 20,896</u>	<u>12.6 years</u>	<u>\$ 128,200</u>	<u>12.6 years</u>	<u>\$ 13,100</u>	<u>10.0 years</u>

The full amount of goodwill of \$14,458 at MAXTRAX and \$78,347 at Rhino-Rack is expected to be non-deductible for tax purposes. No pre-existing relationships existed between the Company and MAXTRAX and Rhino-Rack or their sellers prior to the acquisition. MAXTRAX and Rhino-Rack revenue and operating income are included in the Adventure segment. Total revenue of \$1,728 and net income of \$183 of MAXTRAX were included in the Company's consolidated statements of comprehensive income from the date of acquisition to December 31, 2021. Total revenue of \$43,411 and net loss of \$7,310 of Rhino-Rack were included in the Company's consolidated statements of comprehensive income from the date of acquisition to December 31, 2021.

The acquisition of Barnes is treated as a purchase of assets for tax purposes. As such, the basis in the assets of Barnes is equal for both book and tax, which results in no initial recognition of deferred tax assets or liabilities. Furthermore, the full amount of goodwill recorded of \$8,625 is expected to be deductible for tax purposes. No pre-existing relationships existed between the Company and the Barnes sellers prior to the acquisition. Barnes revenue and operating income were included in the Precision Sport segment.

The following unaudited pro forma results are based on the individual historical results of the Company, MAXTRAX, Rhino-Rack, and Barnes, with adjustments to give effect as if the acquisition and borrowings used to finance the acquisition had occurred on January 1, 2020 for MAXTRAX and Rhino-Rack and January 1, 2019 for Barnes, after giving effect to certain adjustments including the amortization of intangible assets, depreciation of fixed assets, interest expense and taxes and assumes the purchase price was allocated to the assets purchased and liabilities assumed based on their fair market values at the date of purchase.

	<b>Year Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Sales	\$ 441,624	\$ 324,539
Net income	\$ 46,903	\$ 10,148
Net income per share - basic	\$ 1.42	\$ 0.34
Net income per share - diluted	\$ 1.31	\$ 0.32

The unaudited pro forma information is presented for illustrative purposes only and is not necessarily indicative of the operating results that would have occurred had the transactions been consummated as of January 1, 2020 for MAXTRAX and Rhino-Rack or January 1, 2019 for Barnes. Furthermore, such pro forma information is not necessarily indicative of future operating results of the combined companies and should not be construed as representative of the operating results of the combined companies for any future dates or periods.

Material nonrecurring adjustments excluded from the unaudited pro forma financial information above consists of \$12,616 transaction costs and \$5,399 step up of inventory to its preliminary fair value, which is expected to be recorded as an unfavorable adjustment to cost of goods sold.



**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

**NOTE 3. INVENTORIES**

Inventories, as of December 31, 2021 and 2020, were as follows:

	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Finished goods	\$ 86,647	\$ 50,132
Work-in-process	10,336	6,429
Raw materials and supplies	32,371	11,795
	<u>\$ 129,354</u>	<u>\$ 68,356</u>

**NOTE 4. PROPERTY AND EQUIPMENT**

Property and equipment, net as of December 31, 2021 and 2020, were as follows:

	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Land	\$ 4,160	\$ 3,160
Building and improvements	16,403	7,324
Furniture and fixtures	6,677	5,715
Computer hardware and software	7,512	5,707
Machinery and equipment	33,581	26,848
Construction in progress	4,312	3,042
	<u>72,645</u>	<u>51,796</u>
Less accumulated depreciation	(29,819)	(24,840)
	<u>\$ 42,826</u>	<u>\$ 26,956</u>

Depreciation expense was \$5,985, \$4,801, and \$4,550 for the years ended December 31, 2021, 2020, and 2019, respectively.

**NOTE 5. GOODWILL AND OTHER INTANGIBLE ASSETS**

**Goodwill**

The following table summarizes the changes in goodwill by segment:

	<b>Outdoor</b>	<b>Precision Sport</b>	<b>Adventure</b>	<b>Total</b>
Balance at December 31, 2019	\$ -	\$ 18,090	\$ -	\$ 18,090
Increase due to acquisition of Barnes	-	8,625	-	8,625
Balance at December 31, 2020	\$ -	\$ 26,715	\$ -	\$ 26,715
Increase due to acquisitions of Rhino-Rack and MAXTRAX	-	-	92,805	92,805
Impact of foreign currency exchange rates	-	-	(1,430)	(1,430)
Balance at December 31, 2021	\$ -	\$ 26,715	\$ 91,375	\$ 118,090

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

**Indefinite-Lived Intangible Assets**

The following table summarizes the changes in indefinite-lived intangible assets:

Balance at December 31, 2020	\$ 47,523
Increase due to acquisitions of Rhino-Rack and MAXTRAX	83,355
Impact of foreign currency exchange rates	(2,607)
Balance at December 31, 2021	\$ 128,271

Trademarks classified as indefinite-lived intangible assets by brand as of December 31, 2021 and 2020, were as follows:

	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Black Diamond	\$ 19,600	\$ 19,600
PIEPS	3,166	3,423
Sierra	18,900	18,900
Barnes	5,600	5,600
Rhino-Rack	70,278	—
MAXTRAX	10,727	—
	<u>\$ 128,271</u>	<u>\$ 47,523</u>

**Other Intangible Assets, net**

The following table summarizes the changes in gross other intangible assets:

Gross balance at December 31, 2020	\$ 40,840
Increase due to acquisitions of Rhino-Rack and MAXTRAX	65,741
Impact of foreign currency exchange rates	(1,900)
Gross balance at December 31, 2021	\$ 104,681

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

Other intangible assets, net of amortization as of December 31, 2021 and 2020, were as follows:

	<b>December 31, 2021</b>			
	<b>Gross</b>	<b>Accumulated Amortization</b>	<b>Net</b>	<b>Weighted Average Useful Life</b>
<b>Intangibles subject to amortization</b>				
Customer relationships	\$ 80,078	\$ (23,804)	\$ 56,274	13.8 years
Product technologies	22,393	(5,557)	16,836	10.2 years
Tradenam e / trademark	1,263	(690)	573	9.4 years
Core technologies	947	(947)	-	10.0 years
	<u>\$ 104,681</u>	<u>\$ (30,998)</u>	<u>\$ 73,683</u>	<u>12.9 years</u>

	<b>December 31, 2020</b>			
	<b>Gross</b>	<b>Accumulated Amortization</b>	<b>Net</b>	<b>Weighted Average Useful Life</b>
Customer relationships	\$ 31,930	\$ (16,783)	\$ 15,147	14.2 years
Product technologies	6,700	(3,151)	3,549	11.5 years
Tradenam e / trademark	1,263	(543)	720	9.4 years
Core technologies	947	(947)	-	10.0 years
	<u>\$ 40,840</u>	<u>\$ (21,424)</u>	<u>\$ 19,416</u>	<u>13.5 years</u>

Amortization expense for the years ended December 31, 2021, 2020, and 2019, was \$9,834, \$4,070, and \$3,552, respectively. Future amortization expense for other intangible assets as of December 31, 2021 is as follows:

<b>Years Ending December 31,</b>	<b>Amortization Expense</b>
<b>2022</b>	\$ 15,789
<b>2023</b>	13,384
<b>2024</b>	11,266
<b>2025</b>	9,113
<b>2026</b>	7,012
<b>Thereafter</b>	17,119
	<u>\$ 73,683</u>

**NOTE 6. ACCRUED LIABILITIES AND OTHER LONG-TERM LIABILITIES**

Accrued liabilities as of December 31, 2021 and 2020, were as follows:

	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Accrued payroll and related items	\$ 5,029	\$ 2,807
Accrued bonus	3,615	1,535
Designated forward exchange contracts	-	1,539
Accrued warranty	1,529	1,354
Current lease liabilities	2,824	973
Accrued commissions	811	475
Contingent consideration liabilities	2,791	-
Accrued excise tax	724	331
Other	10,150	4,168
	<u>\$ 27,473</u>	<u>\$ 13,182</u>

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

Other long-term liabilities as of December 31, 2021 and 2020, were as follows:

	<u>December 31, 2021</u>	<u>December 31, 2020</u>
Long-term lease liability	\$ 15,111	\$ 4,414
Deferred stock consideration for business acquisition	4,530	-
Contingent consideration liability	694	-
Other	1,113	214
	<u>\$ 21,448</u>	<u>\$ 4,628</u>

**NOTE 7. LONG-TERM DEBT, NET**

Long-term debt as of December 31, 2021 and 2020, was as follows:

	<u>December 31, 2021</u>	<u>December 31, 2020</u>
Revolving credit facility (a)	\$ 18,501	\$ 15,579
Other debt (b)	1,467	1,042
Term loan (c)	121,874	18,000
Debt issuance costs	(309)	-
	<u>141,533</u>	<u>34,621</u>
Less current portion	(9,585)	(4,000)
	<u>\$ 131,948</u>	<u>\$ 30,621</u>

On July 1, 2021, the Company and certain of its direct and indirect subsidiaries (each, a “Loan Party” and, collectively, the “Loan Parties”) entered into Amendment No. 3 (“Amendment No. 3”) to that certain Credit Agreement, dated May 3, 2019, as amended by Amendment No. 1 dated May 28, 2019 and Amendment No. 2 dated November 12, 2020, with JPMorgan Chase Bank, N.A., as administrative agent, and the lenders from time to time party thereto (collectively, the “Credit Agreement”).

The Credit Agreement as amended by Amendment No. 3, increased aggregate amount of the term loan facility thereunder to \$125,000 and increased the maximum amount of the revolving loan facility thereunder to \$100,000. The Credit Agreement continues to permit the Loan Parties, subject to certain requirements, to arrange with lenders for an aggregate of up to \$50,000 of additional revolving and/or term loan commitments (both of which are currently uncommitted), for potential aggregate revolving and term loan commitments under the Credit Agreement of up to \$275,000.

Amendment No. 3 provides for additional subsidiaries of the Company to guarantee and provide collateral for the loans under the Credit Agreement, including certain of its newly formed or newly acquired Australian subsidiaries in connection with the Rhino-Rack Acquisition. Amendment No. 3 also removed the previously agreed upon ability of the Company to issue debt securities that may be convertible into equity interests of the Company in an aggregate principal amount of up to \$125,000 and also increased the maximum consolidated total leverage ratio permitted under the Credit Agreement to 4.25:1.00. Amendment No. 3 did not change the maturity date which remains May 3, 2024.

All obligations under the Credit Agreement are secured by our subsidiary equity interests, as well as accounts receivable, inventory, intellectual property and certain other assets owned by the Company. The Credit Agreement contains restrictions on the Company’s ability to pay dividends or make distributions or other restricted payments if certain conditions in the Credit Agreement are not fulfilled. The Credit Agreement also includes other customary affirmative and negative covenants, including financial covenants relating to the Company’s consolidated total leverage ratio and fixed charge coverage ratio. The Company was in compliance with the debt covenants set forth in the Credit Agreement as of December 31, 2021.

- (a) As of December 31, 2021, the Company had drawn \$18,501 on the \$100,000 revolving commitment that was available under the credit agreement with JPMorgan Chase Bank, N.A., with a maturity date of May 3, 2024. The Company pays interest monthly on any borrowings on the Credit Agreement (as defined below). As of December 31, 2021 and 2020, the interest rate was 2.3750% and 2.0625%, respectively.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

- (b) Foreign subsidiaries of the Company have a revolving credit facility and term debt with financial institutions which mature between February 21, 2022 and August 8, 2024. The foreign subsidiaries pay interest monthly on any borrowings on the credit facilities as well as monthly payments on the term debt. As of December 31, 2021, the interest rates ranged between 1.3387% and 5.1651% and as of December 31, 2020, the rate was 1.3387%. The credit facilities are secured by certain assets of the foreign subsidiaries.
- (c) Under the Credit Agreement, the Company had access to a term loan facility that was available for drawdown until May 3, 2020. On April 30, 2020, the Company borrowed \$20,000 under such term loan facility. On July 1, 2021, under Amendment No. 3, the aggregate amount of the term loan facility was increased to \$125,000 and the term loan was fully borrowed at the closing of Amendment No. 3. The Company is required to repay the term loan through quarterly payments of \$1,563 each beginning with September 30, 2021, increasing to \$3,125 each beginning with September 30, 2022, and any remaining obligations will be repaid in full on the maturity date of the Credit Agreement of May 3, 2024. The Company pays interest monthly on any borrowings on the Credit Agreement. As of December 31, 2021, the rate was 2.3752%. As part of the Rhino-Rack Acquisition, the Company assumed certain current and long-term debt of approximately \$2,252 which was settled during the year ended December 31, 2021.

The aggregate maturities of the revolving credit facility for the years subsequent to December 31, 2021 are as follows:

<b>2022</b>	\$ 9,585
<b>2023</b>	13,602
<b>2024</b>	118,655
Total future long-term debt payments	141,842
Less amount representing debt discounts	(309)
Total carrying amount of long-term debt	141,533
Less current portion	(9,585)
Long-term debt obligations	<u>\$ 131,948</u>

**NOTE 8. DERIVATIVE FINANCIAL INSTRUMENTS**

The Company's primary exchange rate risk management objective is to mitigate the uncertainty of anticipated cash flows attributable to changes in foreign currency exchange rates. The Company primarily focuses on mitigating changes in cash flows resulting from sales denominated in currencies other than the U.S. dollar. The Company manages this risk primarily by using currency forward and option contracts. If the anticipated transactions are deemed probable, the resulting relationships are formally designated as cash flow hedges. The Company accounts for these contracts as cash flow hedges and tests effectiveness by determining whether changes in the expected cash flow of the derivative offset, within a range, changes in the expected cash flow of the hedged item.

During the year ended December 31, 2021, the Company held currency forward contracts to mitigate currency fluctuations related to the estimated cash purchase price of Rhino-Rack totaling \$AUD 193,650 with a maturity date of July 1, 2021. These contracts were not designated as accounting hedges and the changes in fair value of the instruments are recognized in earnings. During the year ended December 31, 2021, losses of \$4,281 were recorded in other, net expense.

At December 31, 2021, the Company's derivative contracts had remaining maturities of less than one and one-half years. The counterparties to these transactions had both long-term and short-term investment grade credit ratings. The maximum net exposure of the Company's credit risk to the counterparties is generally limited to the aggregate unrealized loss of all contracts with that counterparty. As of December 31, 2021, there was no such exposure to the counterparties. The Company's exposure of counterparty credit risk is limited to the aggregate unrealized gain of \$487 on all contracts as of December 31, 2021. The Company's derivative counterparties have strong credit ratings and as a result, the Company does not require collateral to facilitate transactions.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

The Company held the following contracts designated as hedged instruments as of December 31, 2021 and 2020:

	<b>December 31, 2021</b>	
	Notional Amount	Latest Maturity
Foreign exchange contracts - Canadian Dollars	\$14,850	February 2023
Foreign exchange contracts - Euros	€ 20,104	February 2023
	<b>December 31, 2020</b>	
	Notional Amount	Latest Maturity
Foreign exchange contracts - Canadian Dollars	\$14,587	February 2022
Foreign exchange contracts - Euros	€ 24,481	February 2022

For contracts that qualify as effective hedge instruments, the effective portion of gains and losses resulting from changes in fair value of the instruments are included in accumulated other comprehensive (loss) income and reclassified to sales in the period the underlying hedged transaction is recognized in earnings. Losses of \$223 and \$139 were reclassified to sales during the years ended December 31, 2021 and 2020, respectively.

The following table presents the balance sheet classification and fair value of derivative instruments as of December 31, 2021 and 2020:

	<b>Classification</b>	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Derivative instruments in asset positions:			
Designated forward exchange contracts	Prepaid and other current assets	\$ 491	\$ -
Forward exchange contracts	Other long-term assets	\$ 20	\$ -
Derivative instruments in liability positions:			
Designated forward exchange contracts	Accrued liabilities	\$ -	\$ 1,539
Designated forward exchange contracts	Other long-term liabilities	\$ 24	\$ 90

**NOTE 9. ACCUMULATED OTHER COMPREHENSIVE (LOSS) INCOME**

Accumulated other comprehensive (loss) income ("AOCI") primarily consists of foreign currency translation adjustments and changes in our forward foreign exchange contracts. The components of AOCI, net of tax, were as follows:

	<b>Foreign Currency Translation Adjustments</b>	<b>Unrealized Gains (Losses) on Cash Flow Hedges</b>	<b>Total</b>
Balance as of December 31, 2020	\$ 1,480	\$ (980)	\$ 500
Other comprehensive (loss) income before reclassifications	(6,721)	1,000	(5,721)
Amounts reclassified from other comprehensive (loss) income	-	171	171
Net current period other comprehensive (loss) income	(6,721)	1,171	(5,550)
Balance as of December 31, 2021	\$ (5,241)	\$ 191	\$ (5,050)

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

	<b>Foreign Currency Translation Adjustments</b>	<b>Unrealized Gains (Losses) on Cash Flow Hedges</b>	<b>Total</b>
Balance as of December 31, 2019	\$ (286)	\$ (17)	\$ (303)
Other comprehensive income (loss) before reclassifications	1,766	(1,069)	697
Amounts reclassified from other comprehensive (loss) income	-	106	106
Net current period other comprehensive income (loss)	1,766	(963)	803
Balance as of December 31, 2020	\$ 1,480	\$ (980)	\$ 500

The effects on net income of amounts reclassified from unrealized gains (losses) on cash flow hedges for foreign exchange contracts and foreign currency translation adjustments for the years ended December 31, 2021 and 2020 were as follows:

<b>Affected line item in the Consolidated Statements of Comprehensive Income</b>	<b>Losses reclassified from AOCI to the Consolidated Statements of Comprehensive Income</b>	
	<b>Twelve Months Ended</b>	
	<b>December 31, 2021</b>	<b>December 31, 2020</b>
<b>Foreign exchange contracts:</b>		
Sales	\$ (223)	\$ (139)
Less: Income tax benefit	(52)	(33)
Amount reclassified, net of tax	\$ (171)	\$ (106)
Total reclassifications from AOCI	\$ (171)	\$ (106)

The Company's policy is to classify reclassifications of cumulative foreign currency translation from AOCI to Other, net.

**NOTE 10. FAIR VALUE MEASUREMENTS**

We measure certain financial assets and liabilities at fair value on a recurring basis. Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants, under a three-tier fair value hierarchy which prioritizes the inputs used in measuring fair value as follows:

- Level 1- inputs to the valuation methodology are quoted market prices for identical assets or liabilities in active markets.
- Level 2- inputs to the valuation methodology include quoted prices in markets that are not active or model inputs that are observable either directly or indirectly for substantially the full term of the asset or liability.
- Level 3- inputs to the valuation methodology are based on prices or valuation techniques that are unobservable.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

Assets and liabilities measured at fair value on a recurring basis at December 31, 2021 and 2020 were as follows:

<b>December 31, 2021</b>				
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
<b>Assets</b>				
Designated forward exchange contracts	\$ -	\$ 511	\$ -	\$ 511
	<u>\$ -</u>	<u>\$ 511</u>	<u>\$ -</u>	<u>\$ 511</u>
<b>Liabilities</b>				
Designated forward exchange contracts	\$ -	\$ 24	\$ -	\$ 24
Contingent consideration liabilities	-	-	3,485	3,485
	<u>\$ -</u>	<u>\$ 24</u>	<u>\$ 3,485</u>	<u>\$ 3,509</u>
<b>December 31, 2020</b>				
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
<b>Assets</b>				
Designated forward exchange contracts	\$ -	\$ -	\$ -	\$ -
	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
<b>Liabilities</b>				
Designated forward exchange contracts	\$ -	\$ 1,629	\$ -	\$ 1,629
	<u>\$ -</u>	<u>\$ 1,629</u>	<u>\$ -</u>	<u>\$ 1,629</u>

Derivative financial instruments are recorded at fair value based on current market pricing models. No nonrecurring fair value measurements existed at December 31, 2021 and 2020.

The Company estimated the fair value of the Contingent Consideration liabilities using a series of call options. Significant unobservable inputs used in the valuation include a discount rates ranging from 4.8% to 8.0%. The Contingent Consideration liabilities are remeasured at the estimated fair value at the end of each reporting period with the change in fair value recognized in contingent consideration benefit in the accompanying consolidated statements of comprehensive income for such period. We measure the initial liability and remeasure the liability on a recurring basis using Level 3 inputs as defined under authoritative guidance for fair value measurements.

Detail of the Contingent Consideration for the year ended December 31, 2021:

Increase due to acquisition of Rhino-Rack	\$ 3,565
Increase due to acquisition of MAXTRAX	1,644
Fair value adjustments	(1,605)
Impact of foreign currency exchange rates	(119)
Balance at December 31, 2021	<u>\$ 3,485</u>

As the Contingent Consideration liabilities are remeasured to fair value each reporting period, significant increases or decreases in projected sales, discount rates or the time until payment is made would have resulted in a significantly lower or higher fair value measurement. Our determination of fair value of the Contingent Consideration liabilities could change in future periods based on our ongoing evaluation of these significant unobservable inputs.



**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

**NOTE 11. STOCKHOLDERS' EQUITY**

On August 6, 2018, the Company announced that its Board of Directors approved the initiation of a quarterly cash dividend program of \$0.025 per share of the Company's common stock (the "Quarterly Cash Dividend") or \$0.10 per share on an annualized basis. The declaration and payment of future Quarterly Cash Dividends is subject to the discretion of and approval of the Company's Board of Directors. On May 1, 2020, the Company announced that, in light of the operational impact of the COVID-19 pandemic, its Board of Directors temporarily replaced its Quarterly Cash Dividend with a stock dividend (the "Quarterly Stock Dividend"). In 2021, 2020 and 2019 our total Quarterly Cash Dividends were \$3,335, \$1,520 and \$2,987, respectively. In 2020, our total Quarterly Stock Dividends were \$1,533, which combined with our cash dividend in 2020 of \$1,520, resulted in total dividends in 2020 of \$3,053. On February 25, 2022, the Company announced that its Board of Directors approved the payment on March 18, 2022 of the Quarterly Cash Dividend of \$0.025 to the record holders of shares of the Company's common stock as of the close of business on March 7, 2022.

On October 25, 2021, the Company entered into an underwriting agreement with BofA Securities, Inc., as representative of the several underwriters named therein (the "Underwriters"), relating to the public offer and sale of 2,750 shares of the Company's common stock at a price to the public of \$27.00 per share. The Underwriters received an underwriting discount of 6%, or \$1.62 per share, in connection with the sale of the shares of Common Stock in the offering. In addition, the Company granted the Underwriters a 30-day option to purchase up to 413 additional shares of common stock on the same terms and conditions which was fully exercised. The net proceeds to the Company from the offering, including the Underwriters' exercise of their 30-day option but before expenses and after deducting the applicable underwriting discounts and commissions, were \$80,264.

On September 25, 2020, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") with three existing stockholders of the Company. Pursuant to the Purchase Agreement, the Company sold 900 shares of its common stock in a registered direct offering. The proceeds to the Company from this offering were \$11,476.

**NOTE 12. EARNINGS PER SHARE**

Basic earnings per share is computed by dividing earnings by the weighted average number of common shares outstanding during each period. Diluted earnings per share is computed by dividing earnings by the total of the weighted average number of shares of common stock outstanding during each period, plus the effect of dilutive outstanding stock options and unvested restricted stock grants. Potentially dilutive securities are excluded from the computation of diluted earnings per share if their effect is anti-dilutive to the loss from continuing operations.

The following table is a reconciliation of basic and diluted shares of common stock outstanding used in the calculation of earnings per share:

	Year Ended December 31,		
	2021	2020	2019
Weighted average shares outstanding - basic	33,136	30,175	29,820
Effect of dilutive stock awards	2,509	1,050	1,173
Effect of dilutive deferred stock consideration for business acquisition	41	-	-
Weighted average shares outstanding - diluted	35,686	31,225	30,993
Net income per share:			
Basic	\$ 0.79	\$ 0.18	\$ 0.64
Diluted	0.73	0.18	0.61

For the years ended December 31, 2021, 2020, and 2019, equity awards of 509, 868, and 702, respectively, were outstanding and anti-dilutive and therefore not included in the calculation of net income per share for these periods.

**NOTE 13. STOCK-BASED COMPENSATION PLAN**

Under the Company's current 2015 Stock Incentive Plan (the "2015 Plan"), the Company's Board of Directors (the "Board of Directors") has flexibility to determine the type and amount of awards to be granted to eligible participants, who must be employees, directors, officers or consultants of the Company or its subsidiaries. The 2015 Plan allows for grants of incentive stock options, nonqualified stock options, restricted stock awards, stock appreciation rights, and restricted units. The aggregate number of shares of common stock that may be granted through awards under the 2015 Plan to any employee in any calendar year may not exceed 500 shares. The 2015

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

Plan will continue in effect until December 2025 unless terminated sooner. As of December 31, 2021, the number of shares authorized and reserved for issuance under the 2015 Plan is 7,400 shares, subject to automatic annual increase equal to 5% of the total number of shares of the Company's outstanding common stock.

**Options Granted:**

During the year ended December 31, 2021, the Company issued stock options for an aggregate of 500 shares under the 2015 Plan to directors and employees of the Company. The options issued during the year ended December 31, 2021 generally vest and become exercisable over a period of one to three years and expire ten years from the date of the grant.

For computing the fair value of the stock-based awards, the fair value of each option grant has been estimated as of the date of grant using the Black-Scholes option-pricing model with the following assumptions:

	<b>2021</b>	<b>2020</b>	<b>2019</b>
Number of options	500	1,098	188
Option vesting period	1 - 3 Years	1 - 5 Years	1 - 3 Years
Grant price (per share)	\$15.15 - \$24.43	\$9.99 - \$16.93	\$13.21
Dividend yield	0.41% - 0.66%	0.59% - 1.00%	0.76%
Expected volatility (a)	39.1% - 43.6%	40.9% - 44.2%	41.0% - 41.2%
Risk-free interest rate	0.50% - 1.02%	0.41% - 0.65%	1.88% - 1.93%
Expected life (years) (b)	5.31 - 6.00	5.31 - 6.50	5.31 - 6.00
Weighted average fair value (per share)	\$5.88 - \$9.23	\$3.72 - \$6.89	\$4.87 - \$5.13

(a) Expected volatility is based upon the Company's historical volatility.

(b) The expected term was determined based upon the underlying terms of the awards and the category and employment history of employee award recipient.

Using these assumptions, the fair value of the stock options granted during the years ended December 31, 2021, 2020, and 2019 was \$3,239, \$5,310, and \$952, respectively, which will be amortized as stock-based compensation expense over the vesting period of the options.

**Stock Award Granted:**

On September 14, 2020, the Company issued and granted to the Executive Chairman a stock award of 244 shares under the 2015 Plan, which vested immediately. The fair value of the stock award was calculated as of the date of grant using the closing market price. The grant date fair value of the stock award granted during the year ended December 31, 2020 was \$3,314, which was immediately recognized to selling, general and administrative expenses.

**Market Condition Restricted Shares Granted:**

On May 28, 2021, the Company issued and granted to the Executive Chairman a restricted stock award of 500 restricted shares under the 2015 Plan, of which 500 restricted shares will vest if, on or before May 28, 2024, the Fair Market Value (as defined in the Plan) of the Company's common stock shall have equaled or exceeded \$35.00 per share for twenty consecutive trading days. For computing the fair value of the restricted shares with a market condition, the fair value of the restricted stock award grant has been estimated as of the date of grant using the Monte-Carlo pricing model with the assumptions below.

On August 27, 2020, the Company issued and granted to an employee a restricted stock award of 100 restricted shares under the 2015 Plan, of which 100 restricted shares will vest if, on or before August 27, 2023, the Fair Market Value (as defined in the Plan) of the Company's common stock shall have equaled or exceeded \$15.00 per share for twenty consecutive trading days. For computing the fair value of the 100 restricted shares with a market condition, the fair value of the restricted stock award grant has been estimated as of the date of grant using the Monte-Carlo pricing model with the assumptions below. During the year ended December 31, 2021, the market-based condition was met and the restricted shares became fully vested.

On January 7, 2019, the Company issued and granted to an employee a restricted stock award of 350 restricted shares under the 2015 Plan, that will vest as follows: (A) the stock award will vest and become nonforfeitable if, on or before January 7, 2024, the closing

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

price of the Company's common stock shall have equaled or exceeded \$15.00 per share for twenty consecutive trading days (such 20th day being the "Price Trigger Date"); and (B) once the Price Trigger Date occurs, (i) 117 shares of the Company's common stock shall vest on each of the first and second anniversary of the Price Trigger Date; and (ii) 116 shares of the Company's common stock shall vest on the third anniversary of the Price Trigger Date. For computing the fair value of the 350 restricted shares with a market condition, the fair value of each restricted stock award grant has been estimated as of the date of grant using the Monte-Carlo pricing model with the assumptions below. During the year ended December 31, 2021, the market-based condition was met and the Price Trigger Date occurred.

On January 7, 2019, the Company issued and granted to an employee a restricted stock award of 150 restricted shares under the 2015 Plan, that will vest as follows: (A) the stock award will vest and become nonforfeitable if, on or before January 7, 2024, the closing price of the Company's common stock shall have equaled or exceeded \$15.00 per share for twenty consecutive trading days (such 20th day being the Price Trigger Date); and (B) once the Price Trigger Date occurs, the shares shall equally vest on each of the first, second, third and fourth anniversary of the Price Trigger Date. For computing the fair value of the 150 restricted shares with a market condition, the fair value of each restricted stock award grant has been estimated as of the date of grant using the Monte-Carlo pricing model with the assumptions below. During the year ended December 31, 2021, the market-based condition was met and the Price Trigger Date occurred.

	<u>May 28, 2021</u>	<u>August 27, 2020</u>	<u>January 7, 2019</u>
Number issued	500	100	500
Vesting period	\$35.00 stock price target	\$15.00 stock price target	\$15.00 stock price target
Grant price (per share)	\$23.69	\$12.72	\$10.21
Dividend yield	0.42%	0.79%	0.0%
Expected volatility	42.3%	41.1%	42.4%
Risk-free interest rate	0.30%	0.19%	2.53%
Expected term (years)	1.05	0.52	4.28 - 5.28
Weighted average fair value (per share)	\$14.46	\$9.91	\$7.92

Using these assumptions, the fair value of the market condition restricted stock awards granted on May 28, 2021, August 27, 2020, and January 7, 2019 were approximately \$7,230, \$991, and \$3,753, respectively.

The total non-cash stock compensation expense related to stock options and restricted stock awards recorded by the Company was as follows:

	<u>Year Ended December 31,</u>		
	<u>2021</u>	<u>2020</u>	<u>2019</u>
Restricted stock awards	\$ 5,241	\$ 1,488	\$ 1,058
Stock options	4,236	1,989	1,891
Stock awards	-	3,314	-
Total	<u>\$ 9,477</u>	<u>\$ 6,791</u>	<u>\$ 2,949</u>

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

For the years ended December 31, 2021, 2020, and 2019, stock-based compensation costs were classified as selling, general and administrative expense. A summary of changes in outstanding options and restricted stock awards during the year ended December 31, 2021 is as follows:

	<b>Options</b>	<b>Weighted Average Exercise Price</b>	<b>Aggregate Intrinsic Value</b>	<b>Restricted Stock Awards</b>
Outstanding at December 31, 2020	3,901	\$ 9.30	\$ 23,802	600
Granted	500	16.93		500
Exercised or vested	(222)	8.13		(100)
Expired	-	-		-
Cancelled	-	-		-
Forfeited	(38)	-		-
Outstanding at December 31, 2021	4,141	\$ 10.27	\$ 72,265	1,000
Options exercisable at December 31, 2021	2,625	8.56	\$ 50,290	

The following table summarizes the exercise price range, weighted average exercise price, and remaining contractual lives by significant ranges for options outstanding and exercisable as of December 31, 2021:

<b>Exercise Price Range</b>	<b>Outstanding</b>	<b>Exercisable</b>	<b>Remaining Life In Years</b>		<b>Weighted Average Exercise Price</b>
			<b>Outstanding</b>	<b>Exercisable</b>	
\$4.38 - \$23.47	4,041	2,587	5.8	5.7	\$ 8.33
\$23.47 - \$24.43	100	38	9.4	9.4	\$ 24.43
	4,141	2,625	6.1	5.9	\$ 8.56

The intrinsic value of options exercised was \$3,425, \$2,006, and \$607 during the years ended December 31, 2021, 2020, and 2019, respectively. The intrinsic value of restricted stock awards vested was \$1,623, \$0, and \$3,252 during the years ended December 31, 2021, 2020, and 2019, respectively. Total fair value of options vested during the years ended December 31, 2021, 2020, and 2019 was \$3,227, \$1,722 and \$1,610, respectively. Total fair value of restricted stock awards vested during the years ended December 31, 2021, 2020, and 2019 was \$991, \$0, and \$919, respectively.

The fair value of unvested restricted stock awards is determined based on the market price of our shares of common stock on the grant date or using the Monte-Carlo pricing model. As of December 31, 2021, there were 1,516 unvested stock options and unrecognized compensation cost of \$6,261 related to unvested stock options, as well as 1,000 unvested restricted stock awards and unrecognized compensation cost of \$4,419 related to unvested restricted stock awards. Unrecognized compensation cost of unvested stock options and restricted stock awards are expected to be recognized over the weighted average period of 1.8 years and 0.8 years, respectively.

#### **NOTE 14. RESTRUCTURING**

As part of the conclusion of the Company's review of strategic alternatives, the Company initiated restructuring activities in efforts to further realign resources within the organization (the "2015 Restructuring Plan") and completed the plan in 2018 with a final payment in 2019. During the year ended December 31, 2019 we incurred \$13 of restructuring charges related to the 2015 Restructuring Plan. We have incurred \$2,694 of cumulative restructuring charges since the commencement of the 2015 Restructuring Plan.

#### **NOTE 15. COMMITMENTS AND CONTINGENCIES**

As a consumer goods manufacturer and distributor, the Company faces the risk of product liability and related lawsuits involving claims for substantial money damages, product recall actions and higher than anticipated rates of warranty returns or other returns of goods. The Company is therefore vulnerable to various personal injury and property damage lawsuits relating to its products and incidental to its business.

The Company is involved in various legal disputes and other legal proceedings that arise from time to time in the ordinary course of business. Based on currently available information, the Company does not believe that it is reasonably possible that the disposition of any of the legal disputes the Company or its subsidiaries is currently involved in will have a material adverse effect upon the Company's

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

consolidated financial condition, results of operations or cash flows. There is a reasonable possibility of loss from contingencies in excess of the amounts accrued by the Company in the accompanying consolidated balance sheets; however, the actual amounts of such possible losses cannot currently be reasonably estimated by the Company at this time. It is possible that, as additional information becomes available, the impact on the Company could have a different effect.

**NOTE 16. INCOME TAXES**

Consolidated income before income taxes consists of the following:

	Year Ended December 31,		
	2021	2020	2019
U.S. operations	\$ 16,947	\$ 362	\$ 8,553
Foreign operations	(3,068)	3,223	1,428
Income before income tax	<u>\$ 13,879</u>	<u>\$ 3,585</u>	<u>\$ 9,981</u>

The components of the benefit for income taxes consist of the following:

	Year Ended December 31,		
	2021	2020	2019
Current:			
Federal	\$ 141	\$ 34	\$ (41)
State and local	887	390	179
Foreign	<u>2,057</u>	<u>863</u>	<u>111</u>
	3,085	1,287	249
Deferred:			
Federal	4,338	3,084	1,133
State and local	353	44	(156)
Foreign	<u>(2,020)</u>	<u>(91)</u>	<u>3,273</u>
	2,671	3,037	4,250
Change in valuation allowance for deferred income taxes	<u>(17,970)</u>	<u>(6,284)</u>	<u>(13,490)</u>
	(15,299)	(3,247)	(9,240)
Income tax benefit	<u>\$ (12,214)</u>	<u>\$ (1,960)</u>	<u>\$ (8,991)</u>

The Company's foreign operations that are considered to be permanently reinvested have statutory tax rates of approximately 25% to 30%.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

The following is a reconciliation of the statutory federal income tax rate to the effective rate reported in the Company's financial statements:

	Year Ended December 31,		
	2021	2020	2019
Statutory income tax expense	21.0 %	21.0 %	21.0 %
Increase (decrease) in income taxes resulting from:			
Foreign taxes	1.3	3.6	0.2
State income taxes, net of federal income taxes	10.1	10.2	1.9
Income tax credits	(14.1)	(17.1)	(5.6)
Incentive stock options	(5.5)	9.9	(3.7)
Change in effective state rate	(0.5)	2.3	(0.1)
Deferred tax asset write-offs	-	73.1	31.4
Executive compensation limitation	7.3	15.6	-
Change in valuation allowance	(129.5)	(175.4)	(135.9)
Research and development expenditure	1.7	-	-
Fair value inventory step-up	4.8	-	-
Transactions costs	10.2	-	-
Other	5.2	2.1	0.7
Income tax benefit	(88.0)%	(54.7)%	(90.1)%

The deferred tax asset write-offs relate to historical research and development tax credits and certain investments that were fully offset by a release in the valuation allowance.

Deferred income tax assets and liabilities are determined based on the difference between the financial reporting carrying amounts and tax bases of existing assets and liabilities and operating loss and tax credit carryforwards. Significant components of the Company's existing deferred income tax assets and liabilities as of December 31, 2021 and 2020 are as follows:

	December 31,	
	2021	2020
Deferred tax assets:		
Net operating loss, capital loss amount and research & experimentation credit carryforwards	\$ 26,530	\$ 37,206
Non-cash compensation	2,576	1,528
Accrued liabilities	1,944	274
Reserves and other	6,885	1,462
Depreciation	4	-
Intangibles	245	68
	38,184	40,538
Valuation allowance	(4,378)	(22,348)
Net deferred tax assets	33,806	18,190
Deferred tax liabilities:		
Depreciation	(1,737)	(1,074)
Intangibles	(44,814)	(7,529)
Other	(102)	299
	(46,653)	(8,304)
Total	\$ (12,847)	\$ 9,886

Certain deferred income tax balances are not netted as they represent deferred amounts applicable to different taxing jurisdictions. The Company has provided a valuation allowance against a portion of the deferred tax assets as of December 31, 2021, because the ultimate realization of those assets does not meet the more-likely-than-not criteria. The majority of the Company's deferred tax assets consist of net operating loss carryforwards for federal tax purposes. If a change in control were to occur, these could be limited under Section 382 of the Internal Revenue Code of 1986 ("Code"), as amended.

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

In assessing the realizability of deferred income tax assets, management considers whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible and net operating loss and credit carryforwards expire. The estimates and judgments associated with the Company's valuation allowance on deferred tax assets are considered critical due to the amount of deferred tax assets recorded by the Company on its consolidated balance sheets and the judgment required in determining the Company's potential for future taxable income. The need for a valuation allowance is reassessed at each reporting period.

The net change in the valuation allowance for deferred income tax assets was (\$17,970), (\$6,284), and (\$13,490) during the years ended December 31, 2021, 2020, and 2019, respectively. A roll forward of our valuation allowance for deferred income tax assets for the years ended December 31, 2021, 2020, and 2019 is as follows:

	<b>Balance at Beginning of Year</b>	<b>Charged to Costs and Expenses</b>	<b>Other Adjustments</b>	<b>Balance at End of Year</b>
2019	\$ 42,122	\$ (13,473)	\$ (17)	\$ 28,632
2020	\$ 28,632	\$ (6,284)	\$ -	\$ 22,348
2021	\$ 22,348	\$ (17,970)	\$ -	\$ 4,378

As of December 31, 2021, the Company has net operating loss carryforwards ("NOLs") and research and experimentation credit for U.S. federal income tax purposes of \$60,712 and \$2,289, respectively. The Company believes its U.S. Federal NOLs will substantially offset its future U.S. Federal income taxes until expiration. The majority of the Company's pre-tax income is currently earned and expected to be earned in the U.S., or taxed in the U.S. as Subpart F. income and will be offset with the NOLs. There are \$39,507 of NOLs that expire on December 31, 2022, which the Company expects to realize in their entirety in 2022. Therefore, the Company has eliminated any remaining valuation allowance associated with these NOLs during the year ended December 31, 2021.

NOLs available to offset taxable income, subject to compliance with Section 382 of the Code, begin to expire based upon the following schedule:

**Net Operating Loss Carryforward Expiration Dates**  
**December 31, 2021**

<b>Expiration Dates December 31,</b>	<b>Net Operating Loss Amount</b>
2022	\$ 39,507
2023	5,712
2024	3,566
2025 and beyond	11,927
<b>Total</b>	<b>\$ 60,712</b>

Tax positions are recognized in the financial statements when it is more likely than not that the position will be sustained upon examination by the tax authorities. The Company conducts its business globally. As a result, the Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction and various state and foreign jurisdictions and are subject to examination for the open tax years in the U.S. federal and state jurisdictions of 2015 through 2019 and in the foreign jurisdictions of 2007 through 2019. The Company recognizes interest and penalties related to unrecognized tax benefits in income tax expense.

A reconciliation of the beginning and ending amount of total unrecognized tax benefits for the years ended December 31, 2021, 2020 and 2019 is as follows:

	<b>December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
Balance, beginning of year	\$ 427	\$ 561	\$ 545
Additions for current year tax positions	143	87	77
Additions for prior year tax positions	237	12	11
Reductions for prior year tax positions	(111)	(233)	(72)
<b>Balance, end of year</b>	<b>\$ 696</b>	<b>\$ 427</b>	<b>\$ 561</b>

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
**(in thousands, except per share amounts)**

Included in the balance of total unrecognized tax benefits at December 31, 2021 and 2020, are potential benefits of \$696 and \$427, respectively, that if recognized, would affect the effective rate, subject to impact of valuation allowance, on income from continuing operations. Unrecognized tax benefits that reduce a net operating loss, similar tax loss or tax credit carryforward are presented as a reduction to deferred income taxes. As a result, the Company classified \$250 and \$292 of its unrecognized tax benefit as a reduction to deferred tax assets as of December 31, 2021 and 2020, respectively.

Interest and penalty expense recognized related to uncertain tax positions were not significant during the years ending December 31, 2021, 2020, and 2019, respectively. Total accrued interest and penalties as of December 31, 2021 and 2020, were not significant.

**NOTE 17. SEGMENT INFORMATION**

We operate our business structure within three segments. These segments are defined based on the internal financial reporting used by our chief operating decision maker to allocate resources and assess performance. Certain significant selling and general and administrative expenses are not allocated to the segments including non-cash stock compensation expense. Each segment is described below:

- ① Our Outdoor segment, formerly known as our Black Diamond segment, which includes Black Diamond Equipment, PIEPS, and SKINourishment, is a global leader in designing, manufacturing, and marketing innovative outdoor engineered equipment and apparel for climbing, mountaineering, trail running, backpacking, skiing, and a wide range of other year-round outdoor recreation activities. Our Outdoor segment offers a broad range of products including: high-performance, activity-based apparel (such as shells, insulation, midlayers, pants and logowear); rock-climbing footwear and equipment (such as carabiners, protection devices, harnesses, belay devices, helmets, and ice-climbing gear); technical backpacks and high-end day packs; trekking poles; headlamps and lanterns; gloves and mittens; and skincare and other sport-enhancing products. We also offer advanced skis, ski poles, ski skins, and snow safety products, including avalanche airbag systems, avalanche transceivers, shovels, and probes.
- ① Our Precision Sport segment, formerly known as our Sierra segment, which includes Sierra and Barnes, includes two iconic American manufacturers of a wide range of high-performance bullets and ammunition for both rifles and pistols. These bullets are used for precision target shooting, hunting and military and law enforcement purposes.
- ① Our Adventure segment, formerly known as our Rhino-Rack segment, which includes Rhino-Rack and MAXTRAX, is a manufacturer of highly-engineered automotive roof racks, trays, mounting systems, luggage boxes, carriers, recovery boards and accessories in Australia and New Zealand and a growing presence in the United States.

As noted above, the Company has a wide variety of technical outdoor equipment and lifestyle products focused on the climb, ski, mountain, precision sport and adventure product categories that are sold to a variety of customers in multiple end markets. While there are multiple products sold, the terms and nature of revenue recognition policy is similar for all segments. The precision sport product category represents the Precision Sport segment revenue and the adventure product category represents the Adventure segment revenue.



**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

Financial information for our segments, as well as revenue by geography, which the Company believes provides a meaningful depiction how the nature, timing and uncertainty of revenue are affected by economic factors, is as follows:

	Year Ended December 31,		
	2021	2020	2019
Sales to external customers:			
Outdoor			
Domestic sales	\$ 112,775	\$ 86,717	\$ 100,294
International sales	108,057	84,514	99,652
Total Outdoor	220,832	171,231	199,946
Precision Sport			
Domestic sales	101,059	45,509	21,457
International sales	8,764	7,267	8,034
Total Precision Sport	109,823	52,776	29,491
Adventure			
Domestic sales	12,044	-	-
International sales	33,095	-	-
Total Adventure	45,139	-	-
Total sales to external customers	375,794	224,007	229,437
Segment operating income:			
Outdoor	16,171	5,933	15,553
Precision Sport	34,224	12,924	4,008
Adventure	(2,196)	-	-
Total segment operating income	48,199	18,857	19,561
Restructuring charge	-	-	(13)
Transaction costs	(11,843)	(2,433)	(166)
Contingent consideration benefit	1,605	-	-
Corporate and other expenses	(21,143)	(11,578)	(8,043)
Interest expense, net	(2,939)	(1,261)	(1,358)
Income before income tax	\$ 13,879	\$ 3,585	\$ 9,981

There were no intercompany sales between the Outdoor, Precision Sport, and Adventure segments for the periods presented.

Total assets by segment, as of December 31, 2021 and 2020, were as follows:

	December 31,	
	2021	2020
Outdoor	\$ 166,751	\$ 141,746
Precision Sport	142,549	113,430
Adventure	298,364	-
Corporate	24,163	25,515
	\$ 631,827	\$ 280,691

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

Capital expenditures, depreciation and amortization by segment is as follows.

	Year Ended December 31,		
	2021	2020	2019
Capital expenditures:			
Outdoor	\$ 3,120	\$ 3,376	\$ 2,636
Precision Sport	13,486	2,035	1,480
Adventure	777	-	-
Total capital expenditures	\$ 17,383	\$ 5,411	\$ 4,116
Depreciation:			
Outdoor	\$ 2,888	\$ 2,782	\$ 2,645
Precision Sport	2,633	2,019	1,905
Adventure	464	-	-
Total depreciation	\$ 5,985	\$ 4,801	\$ 4,550
Amortization:			
Outdoor	\$ 1,030	\$ 1,061	\$ 1,111
Precision Sport	3,753	3,009	2,441
Adventure	5,051	-	-
Total amortization	\$ 9,834	\$ 4,070	\$ 3,552

**NOTE 18. LEASES**

The Company has entered into leases for certain facilities, vehicles and other equipment. Our leases have remaining contractual terms of up to nine years, some of which include options to extend the leases for up to five years. Our lease costs are primarily related to facility leases for inventory warehousing, administration offices and vehicles. The Company's finance leases are immaterial.

Lease ROU assets and liabilities as of December 31, 2021 and 2020, were as follows:

	Balance Sheet Classification	December 31, 2021	December 31, 2020
Assets			
Lease ROU assets	Other long-term assets	\$ 17,637	\$ 5,334
Liabilities			
Current lease liabilities	Accrued liabilities	\$ 2,824	\$ 973
Noncurrent lease liabilities	Other long-term liabilities	\$ 15,111	\$ 4,414

Lease costs were as follows:

	Affected line item in the Consolidated Statements of Comprehensive Income	Year Ended December 31, 2021	Year Ended December 31, 2020
Lease costs	Cost of goods sold, Selling, general and administrative	\$ 2,611	\$ 940
Variable lease costs	Cost of goods sold, Selling, general and administrative	642	194
Short-term lease costs	Cost of goods sold, Selling, general and administrative	183	189
		\$ 3,436	\$ 1,323

**CLARUS CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED**  
(in thousands, except per share amounts)

The maturity of lease liabilities as of December 31, 2021 are as follows:

Years Ending December 31,	Lease Payments
2022	\$ 3,319
2023	3,103
2024	3,017
2025	3,091
2026	2,288
Thereafter	5,078
Total future lease payments	19,896
Less: amount representing interest	(1,961)
Present value of future lease payments	17,935
Less: current lease obligations	(2,824)
Long-term lease obligations	\$ 15,111

As of December 31, 2021, our leases have a weighted-average remaining lease term of 6.59 years and a weighted-average discount rate of 2.81%.

**NOTE 19. RELATED PARTY TRANSACTIONS**

As part of the Rhino-Rack Acquisition, on July 1, 2021, the Company paid a fee in the amount of \$1,750 to Kanders & Company, Inc. ("Kanders & Company") in consideration of the significant support received by the Company from Kanders & Company in sourcing, structuring, performing due diligence and negotiating the Rhino-Rack Acquisition. Mr. Warren B. Kanders, the Company's Executive Chairman of the Board of Directors, is a member of the Board of Directors and sole stockholder of Kanders & Company.

Additionally, at closing of Amendment No. 3 on July 1, 2021, the Company paid a fee in the amount of \$250 to Kanders & Company in consideration of the significant support received by the Company from Kanders & Company in sourcing, structuring, and negotiating Amendment No. 3.

On October 25, 2021, the Company paid a fee in the amount of \$500 to Kanders & Company in consideration of the significant support received by the Company from Kanders & Company in sourcing, structuring, and negotiating the public offer and sale of the Company's common stock.

On September 25, 2020, the Company paid a fee in the amount of \$250 to Kanders & Company in consideration of the significant support received by the Company from Kanders & Company in sourcing, structuring, and negotiating the sale of the Company's common stock in a registered direct offering.

Upon the Company's acquisition of Barnes, on October 2, 2020, the Company paid a fee in the amount of \$500 to Kanders & Company, which is included in transaction costs, in consideration of the significant support received by the Company from Kanders & Company in sourcing, structuring, performing due diligence and negotiating the acquisition of Barnes.

**NOTE 20. SUBSEQUENT EVENT**

On January 3, 2022, the Company entered into Amendment No. 4 to the Credit Agreement ("Amendment No. 4"). Amendment No. 4, among other things, permits (i) the Company to borrow in Australian Dollars and New Zealand Dollars in order to support the operations of the Company in Australia and New Zealand and (ii) provides for addbacks to EBITDA, for debt covenant purposes, (as defined in the Credit Agreement) under the Credit Agreement for expenses relating to activities in respect of acquisitions, dispositions, investments and financings (whether or not these transactions are actually consummated).

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES****Evaluation of Disclosure Controls and Procedures**

The Company's management carried out an evaluation, under the supervision and with the participation of the Company's Executive Chairman and Chief Financial Officer, its principal executive officer and principal financial officer, respectively, of the effectiveness of the design and operation of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of December 31, 2021, pursuant to Exchange Act Rule 13a-15. Such disclosure controls and procedures are designed to ensure that information required to be disclosed by the Company is accumulated and communicated to the appropriate management on a basis that permits timely decisions regarding disclosure. Based upon that evaluation, the Company's Executive Chairman and Chief Financial Officer concluded that the Company's disclosure controls and procedures as of December 31, 2021, were effective.

**Management's Report on Internal Control Over Financial Reporting**

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America ("US GAAP"). The Company's internal control over financial reporting includes those policies and procedures that:

- ① pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- ② provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with US GAAP, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and
- ③ provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. 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.

As required by Section 404 of the Sarbanes-Oxley Act of 2002, management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2021. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in *Internal Control-Integrated Framework (2013)*.

On July 1, 2021, the Company completed the acquisition of Australia-based Rhino-Rack Holdings Pty Ltd ("Rhino-Rack"). On December 1, 2021, the Company completed the acquisition of Australia-based MaxTrax Australia Pty Ltd ("MAXTRAX"). Management excluded Rhino-Rack and MAXTRAX from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2021. Rhino-Rack's and MAXTRAX's combined financial statements constitute 11% of total assets (excluding goodwill and intangible assets, which are included within the assessment) and 12% of total sales of the consolidated financial statement amounts as of and for the year ended December 31, 2021.

Based on our assessment and those criteria, management concluded that the Company maintained effective internal control over financial reporting as of December 31, 2021. The Company's independent registered public accounting firm, Deloitte & Touche LLP, has issued an audit report on the Company's internal control over financial reporting, which is included herein.

**Changes in Internal Control Over Financial Reporting**

The Company acquired MAXTRAX and Rhino-Rack on December 1, 2021 and July 1, 2021, respectively. The Company is currently in the process of integrating the internal controls over financial reporting at MAXTRAX and Rhino-Rack. Except for the inclusion of MAXTRAX and continued integration of Rhino-Rack, there has been no change in our internal control over financial reporting that occurred during the fourth quarter of 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**Report of Independent Registered Public Accounting Firm**

To the stockholders and the Board of Directors of Clarus Corporation:

**Opinion on Internal Control over Financial Reporting**

We have audited the internal control over financial reporting of Clarus Corporation and subsidiaries (the “Company”) as of December 31, 2021, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control — Integrated Framework (2013) issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2021, of the Company and our report dated March 7, 2022, expressed an unqualified opinion on those financial statements.

As described in Management’s Report on Internal Control Over Financial Reporting, management excluded from its assessment the internal control over financial reporting at Rhino-Rack, which was acquired on July 1, 2021, and MAXTRAX, which was acquired on December 21, 2021, and whose combined financial statements constitute 11% of total assets (excluding goodwill and intangible assets, which are included within the assessment) and 12% of total sales of the consolidated financial statement amounts as of and for the year ended December 31, 2021. Accordingly, our audit did not include the internal control over financial reporting at Rhino-Rack and MAXTRAX.

**Basis for Opinion**

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

**Definition and Limitations of Internal Control over Financial Reporting**

A company’s internal control over financial reporting is a process designed 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. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. 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.

/s/ Deloitte & Touche LLP

Salt Lake City, Utah

March 7, 2022

**ITEM 9B. OTHER INFORMATION**

None.

**ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

Not applicable.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The Company has adopted a Code of Business Conduct and ethics that applies to its all of its directors and employees, including the chief executive officer, chief financial officers, and all senior financial officers of the Company and its subsidiaries, including the principal financial officer, principal accounting officer, controller and internal audit staff of the Company and its subsidiaries. In addition, such officers are also subject to the Code of Ethics for Senior Executive Officer and Senior Financial Officers. These documents may be accessed at [www.cadre-holdings.com](http://www.cadre-holdings.com), our Internet website, at the tab “Governance” under the section called “Governance Documents.” The Company intends to disclose future amendments to, or waivers from, certain provisions of its codes of conduct, if any, on the above website within five business days following the date of such amendment or waiver.

Other information required by this Item 10 of Form 10-K will be included in our 2022 Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for our 2022 Annual Meeting of Stockholders and is incorporated herein by reference. The 2022 Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this Item 11 of Form 10-K will be included in our 2022 Proxy Statement and is incorporated herein by reference.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this Item 12 of Form 10-K will be included in our 2022 Proxy Statement and is incorporated herein by reference.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this Item 13 of Form 10-K will be included in our 2022 Proxy Statement and is incorporated herein by reference.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this Item 14 of Form 10-K will be included in our 2022 Proxy Statement and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

**Financial Statements, Financial Statement Schedules and Exhibits**

(a)(1) The Financial Statements. The Financial Statements of the Company are included in Item 8 above.

(a)(2) Financial Statement Schedules. No schedules are included because the required information is inapplicable, not required or are presented in the financial statements or the related notes thereto.

(a)(3) The following Exhibits are hereby filed as part of this Annual Report on Form 10-K:

CLARUS CORPORATION

Exhibit Number	Exhibit
<a href="#"><u>1.1</u></a>	<a href="#"><u>Underwriting Agreement dated as of October 26, 2021 by and among the Company, on the one hand, and BofA Securities, Inc., as representative of the several underwriters named therein, on the other hand (filed as Exhibit 1.1 to the Company's Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on October 29, 2021, and incorporated herein by reference).</u></a>
<a href="#"><u>2.1</u></a>	<a href="#"><u>Purchase and Sale Agreement by and among Everest/Sapphire Acquisition, LLC Sierra Bullets L.L.C., BHH Management, Inc. and Lumber Management, Inc., dated as of August 21, 2017 (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 25, 2017 and incorporated herein by reference).</u></a>
<a href="#"><u>2.2</u></a>	<a href="#"><u>Stock Purchase Agreement dated March 10, 2020, by and among Everest/Sapphire Acquisition, LLC, the Company, S.K.B. Corporation, David Sanderson and Steven Kottman (filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 13, 2020 and incorporated herein by reference).</u></a>
<a href="#"><u>2.3</u></a>	<a href="#"><u>Letter Agreement dated April 30, 2020, by and among Everest/Sapphire Acquisition, LLC, the Company, S.K.B. Corporation, David Sanderson, Steven Kottman and Steven Kottman, as Sellers' Representative (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 1, 2020 and incorporated herein by reference).</u></a>
<a href="#"><u>2.4</u></a>	<a href="#"><u>Asset Purchase Agreement dated September 30, 2020, by and among Sierra Bullets, L.L.C., as Buyer, and Remington Outdoor Company, Inc., certain of its subsidiaries, as Seller (filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 2, 2020 and incorporated herein by reference).</u></a>
<a href="#"><u>2.5</u></a>	<a href="#"><u>Share Sale and Purchase Agreement dated as of May 30, 2021, by and among Oscar Aluminium Pty Ltd, Clarus Corporation, Cropley Nominees Pty Ltd, Richard Cropley, Hugh Cropley and Oliver Cropley (filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on June 4, 2021, and is incorporated herein by reference).</u></a>
<a href="#"><u>3.1</u></a>	<a href="#"><u>Amended and Restated Certificate of Incorporation of the Company (filed as Appendix C to the Company's Definitive Proxy Statement, filed with the Securities and Exchange Commission on November 6, 2002 and incorporated herein by reference).</u></a>
<a href="#"><u>3.2</u></a>	<a href="#"><u>Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Company (filed as Exhibit 3.1 of the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on July 31, 2003 and incorporated herein by reference).</u></a>
<a href="#"><u>3.3</u></a>	<a href="#"><u>Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on January 24, 2011 and incorporated herein by reference).</u></a>
<a href="#"><u>3.4</u></a>	<a href="#"><u>Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 14, 2017 and incorporated herein by reference).</u></a>
<a href="#"><u>3.5</u></a>	<a href="#"><u>Amended and Restated Bylaws of the Company (filed as Appendix D to the Company's Definitive Proxy Statement, filed with the Securities and Exchange Commission on November 6, 2002 and incorporated herein by reference).</u></a>
<a href="#"><u>3.6</u></a>	<a href="#"><u>Amendment No. 1 to the Amended and Restated Bylaws of the Company (incorporated herein by reference to Exhibit 3.4 of the Company's Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 31, 2003).</u></a>
<a href="#"><u>3.7</u></a>	<a href="#"><u>Amendment No. 2 to the Amended and Restated By-Laws of the Company (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on June 4, 2010 and incorporated herein by reference).</u></a>
<a href="#"><u>3.8</u></a>	<a href="#"><u>Amendment No. 3 to the Amended and Restated By-Laws of the Company (filed as Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on August 9, 2010 and incorporated herein by reference).</u></a>
<a href="#"><u>3.9</u></a>	<a href="#"><u>Amendment No. 4 to the Amended and Restated By-Laws of the Company (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on June 9, 2016 and incorporated herein by reference).</u></a>
<a href="#"><u>3.10</u></a>	<a href="#"><u>Amendment No. 5 to the Amended and Restated By-Laws of the Company (filed as Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on August 7, 2017 and incorporated herein by reference).</u></a>
<a href="#"><u>3.11</u></a>	<a href="#"><u>Form of Certificate of Designation of Series A Junior Participating Preferred Stock (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on February 13, 2008 and incorporated herein by reference).</u></a>
<a href="#"><u>4.1</u></a>	<a href="#"><u>See Exhibits <a href="#"><u>3.1</u></a>, <a href="#"><u>3.2</u></a>, <a href="#"><u>3.3</u></a>, <a href="#"><u>3.4</u></a>, <a href="#"><u>3.5</u></a>, <a href="#"><u>3.6</u></a>, <a href="#"><u>3.7</u></a>, <a href="#"><u>3.8</u></a>, <a href="#"><u>3.9</u></a>, <a href="#"><u>3.10</u></a> and <a href="#"><u>3.11</u></a> for provisions of the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of the Company defining rights of the holders of Common Stock of the Company.</u></a>
<a href="#"><u>4.2</u></a>	<a href="#"><u>Company's Specimen Common Stock Certificate.</u></a>



CLARUS CORPORATION

- 4.3 [Rights Agreement, dated as of February 12, 2008, by and between the Company and American Stock Transfer & Trust Company \(filed as Exhibit 4.2 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on February 13, 2008 and incorporated herein by reference\).](#)
- 4.4 [Form of Rights Certificate \(filed as Exhibit 4.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on February 13, 2008 and incorporated herein by reference\).](#)
- 10.1 [Form of Indemnification Agreement for Directors and Executive Officers of the Company \(filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on December 23, 2002 and incorporated herein by reference\).](#)
- 10.2 [Employment Agreement between the Company and Warren B. Kanders, dated as of June 1, 2017 \(filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on June 6, 2017 and incorporated herein by reference\). +](#)
- 10.3 [Employment Agreement, dated as of August 27, 2020, between the Company and Aaron Kuehne \(filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 1, 2020 and incorporated herein by reference\).+](#)
- 10.4 [Employment Agreement between the Company and John Walbrecht, dated as of January 1, 2021 \(filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on January 6, 2021 and incorporated herein by reference\). +](#)
- 10.5 [Company's 2005 Stock Incentive Plan \(filed as Appendix A of the Company's Definitive Proxy Statement, filed with the Securities and Exchange Commission on May 2, 2005 and incorporated herein by reference\). +](#)
- 10.6 [Amendment No. 1 to the Company's 2005 Stock Incentive Plan \(filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on September 7, 2010 and incorporated herein by reference\). +](#)
- 10.7 [Company's 2015 Stock Incentive Plan \(filed as Appendix A to the Company's Proxy Statement, filed with the Securities and Exchange Commission on November 9, 2015 and incorporated herein by reference\). +](#)
- 10.8 [Form of Stock Option Agreement for the Company's 2015 Stock Incentive Plan \(filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 17, 2015 and incorporated herein by reference\). +](#)
- 10.9 [Form of Stock Award Agreement for the Company's 2015 Stock Incentive Plan \(filed as Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 17, 2015 and incorporated herein by reference\). +](#)
- 10.10 [Form of 5% Unsecured Subordinated Note due May 28, 2017 \(filed as Exhibit 10.9 to the Company's Current Report on Form 8-K, filed with the Securities and Exchange Commission on June 4, 2010 and incorporated herein by reference\).](#)
- 10.11 [Credit Agreement, effective as of May 3, 2019, by and among the Company, Black Diamond Retail, Inc., Black Diamond Retail – Alaska, LLC, Sierra Bullets, L.L.C., SKINourishment, LLC, the other loan parties party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the other lenders from time to time party thereto \(filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on May 6, 2019 and incorporated herein by reference\).](#)
- 10.12 [Pledge and Security Agreement, effective as of May 3, 2019, by and among the Company, Black Diamond Equipment, Ltd., Black Diamond Retail, Inc., Sierra Bullets, L.L.C., Everest/Sapphire Acquisition, LLC, BD European Holdings, LLC, SKINourishment, LLC, Black Diamond Retail – Alaska, LLC, the other grantors party thereto, and JPMorgan Chase Bank, N.A. \(filed as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on May 6, 2019 and incorporated herein by reference\).](#)
- 10.13 [Amendment No. 2 to Credit Agreement dated as of November 12, 2020, by and among the Company, Black Diamond Retail, Inc., Black Diamond Retail – Alaska, LLC, Sierra Bullets, L.L.C., SKINourishment, LLC, Black Diamond Retail – Colorado, LLC, Black Diamond Retail – Montana, LLC, Barnes Bullets – Mona, LLC, the other loan parties party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the other lenders from time to time party thereto \(filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 17, 2020 and incorporated herein by reference\).](#)

- 10.14 [Amendment No. 3 dated as of July 1, 2021, to that certain Credit Agreement, dated May 3, 2019, as amended by Amendment No. 1 dated May 28, 2019, and Amendment No. 2 dated November 12, 2020, by and among Clarus Corporation, Black Diamond Retail, Inc., Black Diamond Retail – Alaska, LLC, Sierra Bullets, L.L.C., SKINourishment, LLC, Black Diamond Retail – Colorado, LLC, Black Diamond Retail – Montana, LLC, Barnes Bullets – Mona, LLC, and Black Diamond Retail – Wyoming, LLC, as borrowers, the other loan parties party thereto, JPMorgan Chase Bank, N.A., as administrative agent, U.S. Bank National Association, as syndication agent, Regions Bank and Bank of America, N.A., as co-documentation agents, JPMorgan Chase Bank, N.A., as sole bookrunner and sole lead arranger, and the other lenders from time to time party thereto \(filed as Exhibit 10.1 to the Company’s Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on July 8, 2021, and incorporated herein by reference\).](#)
- 10.15 [Amendment No. 4 dated as of January 3, 2022, to that certain Credit Agreement, dated May 3, 2019, as amended by Amendment No. 1 dated May 28, 2019, and Amendment No. 2 dated November 12, 2020, and Amendment No. 3 dated July 1, 2021, by and among Clarus Corporation, Black Diamond Retail, Inc., Black Diamond Retail – Alaska, LLC, Sierra Bullets, L.L.C., SKINourishment, LLC, Black Diamond Retail – Colorado, LLC, Black Diamond Retail – Montana, LLC, Barnes Bullets – Mona, LLC, and Black Diamond Retail – Wyoming, LLC, as borrowers, the other loan parties party thereto, JPMorgan Chase Bank, N.A., as administrative agent, U.S. Bank National Association, as syndication agent, Regions Bank and Bank of America, N.A., as co-documentation agents, JPMorgan Chase Bank, N.A., as sole bookrunner and sole lead arranger, and the other lenders from time to time party thereto . \\*\\*](#)
- 10.16 [Letter to Greenhouse Funds LLLP dated November 7, 2017 \(filed as Exhibit 99.1 to the Company’s Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 7, 2017 and incorporated herein by reference\).](#)
- 10.17 [Letter to Brown Advisory Incorporated dated September 25, 2020 \(filed as Exhibit 99.2 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on September 29, 2020 and incorporated herein by reference\).](#)
- 10.18 [Letter to ArrowMark Colorado Holdings, LLC dated January 25, 2019 \(filed as Exhibit 99.1 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on January 31, 2019 and incorporated herein by reference\).](#)
- 10.19 [Letter to TT Investimentos Ltda. dated March 23, 2020 \(filed as Exhibit 99.1 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on March 24, 2020 and incorporated herein by reference\).](#)
- 10.20 [Letter to TT Investimentos Ltda. dated April 5, 2021 \(filed as Exhibit 99.1 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on April 6, 2021 and incorporated herein by reference\).](#)
- 10.21 [Letter to TT Investimentos Ltda. dated October 6, 2021 \(filed as Exhibit 99.1 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on October 8, 2021 and incorporated herein by reference\).](#)
- 10.22 [Securities Purchase Agreement, September 25, 2020, by and between the Company and the Purchasers thereto \(filed as Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on September 29, 2020 and incorporated herein by reference\).](#)

<a href="#">21.1</a>	<a href="#">Subsidiaries of the Company. **</a>
<a href="#">23.1</a>	<a href="#">Consent of Independent Registered Public Accounting Firm. **</a>
<a href="#">31.1</a>	<a href="#">Certification of Principal Executive Officer, as required by Rule 13a-14(a) of the Securities Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. **</a>
<a href="#">31.2</a>	<a href="#">Certification of Principal Financial Officer, as required by Rule 13a-14(a) of the Securities Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. **</a>
<a href="#">32.1</a>	<a href="#">Certification of Principal Executive Officer, pursuant to 18. U.S.C. Section 1350 as adopted pursuant to Section 302 of the Sarbanes-Oxley of 2002. ***</a>
<a href="#">32.2</a>	<a href="#">Certification of Principal Financial Officer, pursuant to 18. U.S.C. Section 1350 as adopted pursuant to Section 302 of the Sarbanes-Oxley of 2002. ***</a>
101.INS	XBRL Instance Document. **
101.SCH	XBRL Taxonomy Extension Schema Document. **
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document. **
101.LAB	XBRL Taxonomy Extension Label Linkbase Document. **
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document. **
+	Management contract or compensatory plan or arrangement.
**	Filed herewith
***	Furnished herewith

**ITEM 16. SUMMARY**

None.

CLARUS CORPORATION

SIGNATURES

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

Date: March 7, 2022

<u>Name</u>
<u>/s/ Warren B. Kanders</u> Warren B. Kanders
<u>/s/ Michael J. Yates</u> Michael J. Yates
<u>/s/ Donald L. House</u> Donald L. House
<u>/s/ Nicholas Sokolow</u> Nicholas Sokolow
<u>/s/ Michael A. Henning</u> Michael A. Henning
<u>/s/ Susan Ottmann</u> Susan Ottmann
<u>/s/ c James E. Walker III</u> James E. Walker III

CLARUS CORPORATION

By: /s/ Michael J. Yates  
Michael J. Yates  
Chief Financial Officer  
(Principal Financial Officer and  
Principal Accounting Officer)

<u>Title</u>
Executive Chairman and Director (Principal Executive Officer)
Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
Director
Director
Director
Director
Director

## EXECUTION VERSION

## FOURTH AMENDMENT TO CREDIT AGREEMENT

**THIS FOURTH AMENDMENT TO CREDIT AGREEMENT** (this “Amendment”), dated as of January 3, 2022, is entered into by and among CLARUS CORPORATION, a Delaware corporation (the “Company”), BLACK DIAMOND RETAIL, INC., a Delaware corporation (“BDR”), BLACK DIAMOND RETAIL – ALASKA, LLC, a Delaware limited liability company (“BDR-AK”), SIERRA BULLETS, L.L.C., a Delaware limited liability company (“Sierra”), SKINOURISHMENT, LLC, a Delaware limited liability company (“Skin”), BLACK DIAMOND RETAIL – COLORADO, LLC, a Delaware limited liability company (“BDR-CO”), BLACK DIAMOND RETAIL – MONTANA, LLC, a Delaware limited liability company (“BDR-MO”), BLACK DIAMOND RETAIL – WYOMING, LLC, a Delaware limited liability company (“BDR-WY”) and BARNES BULLETS – MONA, LLC, a Delaware limited liability company (“Barnes” and, together with the Company, BDR, BDR-AK, Sierra, Skin, BDR-CO, BDR-MO and BDR-WY, each individually a “Borrower”, and individually and collectively, jointly and severally, as the “Borrowers”), the Lenders (as defined below) party hereto, and JPMORGAN CHASE BANK, N.A., as administrative agent for the Lenders (in such capacity, “Administrative Agent”).

## RECITALS

- A. The Borrowers, the other parties signatory thereto as “Loan Parties”, the Administrative Agent, and the financial institutions party thereto as lenders (each individually, a “Lender” and collectively, the “Lenders”) have previously entered into that certain Credit Agreement, dated as of May 3, 2019 (as amended by a certain First Amendment to Credit Agreement, dated May 28, 2019, as amended by a certain Second Amendment to Credit Agreement, dated November 12, 2020, as amended by a certain Third Amendment to Credit Agreement, dated July 1, 2021, and as further amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), pursuant to which the Lenders have made certain loans and financial accommodations available to Borrowers. Terms used herein without definition shall have the meanings ascribed to them in the Amended Credit Agreement (as defined below).
- B. The Borrowers have requested that Administrative Agent and the Lenders amend the Credit Agreement, and Administrative Agent and the Lenders are willing to amend the Credit Agreement pursuant to the terms and conditions set forth herein.
- C. Each Borrower is entering into this Amendment with the understanding and agreement that, except as specifically provided herein, none of Administrative Agent’s or any Lender’s rights or remedies as set forth in the Credit Agreement and the other Loan Documents are being waived or modified by the terms of this Amendment.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Amendments to Credit Agreement. The Credit Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) set forth in the pages of the amended Credit Agreement attached to this Amendment as Exhibit A to this Amendment (the “Amended Credit Agreement”).

2. Conditions Precedent to Effectiveness of this Amendment. The following shall have occurred (or been waived) before this Amendment is effective (the date of the satisfaction of such conditions being the “Amendment No. 4 Effective Date”):

- a. Amendment. Administrative Agent shall have received this Amendment fully executed by the Borrowers, the Lenders, the Administrative Agent and the Issuing Bank.
- b. Fees and Interest. The Lenders and the Administrative Agent shall have received all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel) on or before the Amendment No. 4 Effective Date.
- 3. Representations and Warranties. Each Borrower represents and warrants as follows:
  - a. Authority. Each Borrower has the requisite organizational power and authority to execute and deliver this Amendment, and to perform its obligations hereunder and under the Loan Documents (as amended or modified hereby) to which it is a party. The execution, delivery, and performance by each Borrower of this Amendment have been duly approved by all necessary organizational actions and do not contravene any law or any contractual restriction binding on such Borrower.
  - b. Enforceability. This Amendment has been duly executed and delivered by each Borrower. This Amendment and each Loan Document (as amended or modified hereby) is the legal, valid, and binding obligation of each Borrower, enforceable against each Borrower in accordance with its terms, and is in full force and effect.
  - c. Representations and Warranties. The representations and warranties of the Borrowers in the Amended Credit Agreement are true and correct in all material respects with the same effect as though made on the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date is true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).
  - d. No Default. No event has occurred and is continuing that constitutes a Default or Event of Default.

4. Choice of Law. This Amendment shall be governed by and construed in accordance with the internal laws (and not the laws of conflicts) of the State of New York, but giving effect to federal laws applicable to national banks.

5. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by, subject to Section 9.06(b) of the Amended Credit Agreement, that is an Electronic Signature transmitted by telecopy, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment.

6. Reference to and Effect on the Loan Documents.

- a. Upon and after the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to “the Credit Agreement”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Amended Credit Agreement.
- b. Except as specifically set forth in this Amendment, the Amended Credit Agreement and all other Loan Documents, including the Liens granted therein, are and shall continue to be in full force and effect and are hereby in all respects ratified, and confirmed and shall constitute the legal, valid, binding, and enforceable obligations of Borrowers and the other Loan Parties to Administrative Agent and the Lenders without defense, offset, claim, or contribution.
- c. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power, or remedy of Administrative Agent or any Lender under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.
- d. This Amendment is a Loan Document.

7. Ratification. Each Borrower hereby restates, ratifies and reaffirms each and every term and condition set forth in the Amended Credit Agreement and the Loan Documents, including the Liens granted therein, effective as of the date hereof. Without limiting the foregoing, each Borrower party hereto, as debtor, grantor, pledgor, guarantor, or another similar capacity in which such Borrower grants liens or security interests in its properties or otherwise acts as a guarantor, joint or several obligor or other accommodation party, as the case may be, in each case under the Loan Documents, hereby each (a) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Loan Documents to which it is a party and (b) to the extent such Borrower granted liens on or security interests in any of its properties pursuant to any of the Loan Documents, hereby ratifies and reaffirms such grant of security (and any filings with Governmental Authorities made in connection therewith) and confirms that such liens and security interests continue to secure the Secured Obligations, including, without limitation, all additional Obligations resulting from or incurred pursuant to the Amended Credit Agreement.

8. Estoppel. To induce Administrative Agent and Lenders to enter into this Amendment and to induce Administrative Agent and the Lenders to continue to make advances to Borrowers under the Amended Credit Agreement, each Borrower hereby acknowledges and agrees that, after giving effect to this Amendment, as of the date hereof, there exists no Default or Event of Default and no right of offset, defense, counterclaim, or objection in favor of any Borrower as against Administrative Agent or any Lender with respect to the Obligations.

9. Integration. This Amendment, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

10. Severability. In case any provision in this Amendment shall be invalid, illegal, or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

---

3

11. Submission of Amendment. The submission of this Amendment to the parties or their agents or attorneys for review or signature does not constitute a commitment by Administrative Agent or any Lender to waive any of their respective rights and remedies under the Loan Documents, and this Amendment shall have no binding force or effect until all of the conditions to the effectiveness of this Amendment have been satisfied as set forth herein.

12. No Novation. Neither the execution, delivery and acceptance of this Amendment nor any of the terms, covenants, conditions or other provisions set forth herein are intended, nor shall they be deemed or construed, to effect a novation of any liens or Secured Obligations under the Credit Agreement or to pay, extinguish, release, satisfy or discharge (a) the Secured Obligations under the Credit Agreement, (b) the liability of any Loan Party under the Credit Agreement or the other Loan Documents executed and delivered in connection therewith or any Secured Obligations or other obligations evidenced thereby, or (c) any mortgages, deeds of trust, liens, security interests or contractual or legal rights securing all or any part of such Secured Obligations.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

---

4

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

**BORROWERS:**

**CLARUS CORPORATION,**  
a Delaware corporation

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Chief Financial Officer,  
Chief Administrative Officer,  
Treasurer and Secretary

**BLACK DIAMOND RETAIL, INC.,**  
a Delaware corporation

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Chief Financial Officer and Secretary

**BLACK DIAMOND RETAIL – ALASKA, LLC,**  
a Delaware limited liability company

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Chief Financial Officer and Secretary

**SIERRA BULLETS, L.L.C.,**  
a Delaware limited liability company

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Secretary

**SKINOURISHMENT, LLC,**  
a Delaware limited liability company

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Treasurer and Secretary

[Signature Page to Fourth Amendment to Credit Agreement]

---

**BLACK DIAMOND RETAIL – COLORADO, LLC,**  
a Delaware limited liability company

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Chief Financial Officer and Secretary

**BLACK DIAMOND RETAIL – MONTANA, LLC,**  
a Delaware limited liability company

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Chief Financial Officer and Secretary

**BARNES BULLETS – MONA, LLC,**  
a Delaware limited liability company

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Secretary

**BLACK DIAMOND RETAIL – WYOMING, LLC,**  
a Delaware limited liability company

By /s/ Aaron J. Kuehne  
Name: Aaron J. Kuehne  
Title: Chief Financial Officer and Secretary

[Signature Page to Fourth Amendment to Credit Agreement]

---

**LENDERS: JPMORGAN CHASE BANK, N.A.,**  
as Administrative Agent, Issuing Bank and individually as a Lender

By /s/ Kristin L. Gubler  
Name: Kristin L. Gubler  
Title: Authorized Signer

[Signature Page to Fourth Amendment to Credit Agreement]

---

**U.S. BANK NATIONAL ASSOCIATION,**  
as Syndication Agent and individually as a Lender

By: /s/ Nate Quist  
Name: Nate Quist  
Title: VP

[Signature Page to Fourth Amendment to Credit Agreement]

---

**REGIONS BANK,**  
as Co-Documentation Agent and individually as a Lender

By: /s/ Kyle Hene  
Name: Kyle Hene  
Title: Vice President

[Signature Page to Fourth Amendment to Credit Agreement]

---

**BANK OF AMERICA, N.A.,**  
as Co-Documentation Agent and individually as a Lender

By: /s/ Reese Morikubo  
Name: Reese Morikubo  
Title: Vice President

[Signature Page to Fourth Amendment to Credit Agreement]

---

**ZIONS BANCORPORATION, N.A., DBA ZIONS BANK,**  
as a Lender

By: Raymond E. Sweger  
Name: Raymond E. Sweger  
Title: Senior Vice President

[Signature Page to Fourth Amendment to Credit Agreement]

---

**EXHIBIT A**

**Amended Credit Agreement**

[Attached]

---

**EXHIBIT A**

---

---

**J.P.Morgan**

CREDIT AGREEMENT

dated as of

May 3, 2019,  
as amended on May 28, 2019,  
as further amended on November 12, 2020, and  
as further amended July 1, 2021

among



CLARUS CORPORATION,  
BLACK DIAMOND RETAIL, INC., BLACK DIAMOND RETAIL - ALASKA, LLC,  
SIERRA BULLETS, L.L.C., SKINOURISHMENT, LLC,  
BLACK DIAMOND RETAIL – COLORADO, LLC,  
BLACK DIAMOND RETAIL – MONTANA, LLC,  
BLACK DIAMOND RETAIL – WYOMING, LLC, and BARNES BULLETS – MONA, LLC,  
as Borrowers,

The other Loan Parties Party Hereto,

The Lenders Party Hereto,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent,

U.S. BANK NATIONAL ASSOCIATION,  
as Syndication Agent,

and

REGIONS BANK and BANK OF AMERICA, N.A.,  
as Co-Documentation Agents

---

JPMORGAN CHASE BANK, N.A.,  
as Sole Bookrunner and Sole Lead Arranger

---

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I DEFINITIONS</b>	<b>1</b>
SECTION 1.01. <u>Defined Terms</u>	1
SECTION 1.02. <u>Classification of Loans and Borrowings</u>	<del>35</del> <u>42</u>
SECTION 1.03. <u>Terms Generally</u>	<del>35</del> <u>42</u>
SECTION 1.04. <u>Accounting Terms; GAAP</u>	<del>35</del> <u>42</u>
SECTION 1.05. <u>Currency Translations; Currency Matters</u>	<del>36</del> <u>43</u>
SECTION 1.06. <u>Status of Obligations</u>	<del>36</del> <u>44</u>
SECTION 1.07. <u>Interest Rates; LIBOR Notification</u>	<del>37</del> <u>44</u>
SECTION 1.08. <u>Letters of Credit</u>	<del>37</del> <u>45</u>
SECTION 1.09. <u>Divisions</u>	<del>38</del> <u>45</u>
<b>ARTICLE II THE CREDITS</b>	<del>38</del> <u>45</u>
SECTION 2.01. <u>Commitments</u>	<del>38</del> <u>45</u>
SECTION 2.02. <u>Loans and Borrowings</u>	<del>38</del> <u>46</u>
SECTION 2.03. <u>Requests for Borrowings</u>	<del>39</del> <u>47</u>
SECTION 2.04. <del>Intentionally Omitted</del> <u>Determination of Dollar Amounts</u>	<del>39</del> <u>47</u>
SECTION 2.05. <u>Swingline Loans</u>	<del>40</del> <u>47</u>
SECTION 2.06. <u>Letters of Credit</u>	<del>40</del> <u>48</u>
SECTION 2.07. <u>Funding of Borrowings</u>	<del>44</del> <u>53</u>
SECTION 2.08. <u>Interest Elections</u>	<del>45</del> <u>53</u>
SECTION 2.09. <u>Termination of Commitments; Increase in Commitments</u>	<del>46</del> <u>55</u>
SECTION 2.10. <u>Repayment and Amortization of Loans; Evidence of Debt</u>	<del>48</del> <u>57</u>
SECTION 2.11. <u>Prepayment of Loans</u>	<del>49</del> <u>58</u>

SECTION 2.12.	<u>Fees</u>	<del>50</del> <u>60</u>
SECTION 2.13.	<u>Interest</u>	<del>50</del> <u>60</u>
SECTION 2.14.	<u>Alternate Rate of Interest; Illegality</u>	<del>51</del> <u>61</u>
SECTION 2.15.	<u>Increased Costs</u>	<del>53</del> <u>65</u>
SECTION 2.16.	<u>Break Funding Payments</u>	<del>55</del> <u>66</u>
SECTION 2.17.	<u>Withholding of Taxes; Gross-Up</u>	<del>55</del> <u>67</u>

SECTION 2.18.	<u>Payments Generally; Allocation of Proceeds; Sharing of Set-offs</u>	<del>58</del> <u>70</u>
SECTION 2.19.	<u>Mitigation Obligations; Replacement of Lenders</u>	<del>61</del> <u>73</u>
SECTION 2.20.	<u>Defaulting Lenders</u>	<del>61</del> <u>74</u>
SECTION 2.21.	<u>Returned Payments</u>	<del>63</del> <u>75</u>
SECTION 2.22.	<u>Banking Services and Swap Agreements</u>	<del>63</del> <u>75</u>

### ARTICLE III **REPRESENTATIONS AND WARRANTIES**

SECTION 3.01.	<u>Organization; Powers</u>	<del>63</del> <u>76</u>
SECTION 3.02.	<u>Authorization; Enforceability</u>	<del>63</del> <u>76</u>
SECTION 3.03.	<u>Governmental Approvals; No Conflicts</u>	<del>64</del> <u>76</u>
SECTION 3.04.	<u>Financial Condition; No Material Adverse Change</u>	<del>64</del> <u>76</u>
SECTION 3.05.	<u>Properties</u>	<del>64</del> <u>76</u>
SECTION 3.06.	<u>Litigation and Environmental Matters</u>	<del>64</del> <u>77</u>
SECTION 3.07.	<u>Compliance with Laws and Agreements; No Default</u>	<del>65</del> <u>77</u>
SECTION 3.08.	<u>Investment Company Status</u>	<del>65</del> <u>77</u>
SECTION 3.09.	<u>Taxes</u>	<del>65</del> <u>77</u>
SECTION 3.10.	<u>ERISA</u>	<del>65</del> <u>77</u>
SECTION 3.11.	<u>Disclosure</u>	<del>65</del> <u>78</u>
SECTION 3.12.	<u>Material Agreements</u>	<del>66</del> <u>78</u>
SECTION 3.13.	<u>Solvency</u>	<del>66</del> <u>78</u>
SECTION 3.14.	<u>Insurance</u>	<del>66</del> <u>79</u>
SECTION 3.15.	<u>Capitalization and Subsidiaries</u>	<del>67</del> <u>79</u>
SECTION 3.16.	<u>Security Interest in Collateral</u>	<del>67</del> <u>79</u>
SECTION 3.17.	<u>Employment Matters</u>	<del>67</del> <u>79</u>
SECTION 3.18.	<u>Federal Reserve Regulations</u>	<del>67</del> <u>80</u>
SECTION 3.19.	<u>Use of Proceeds</u>	<del>67</del> <u>80</u>
SECTION 3.20.	<u>No Burdensome Restrictions</u>	<del>67</del> <u>80</u>
SECTION 3.21.	<u>Anti-Corruption Laws and Sanctions</u>	<del>68</del> <u>80</u>
SECTION 3.22.	<u>Common Enterprise</u>	<del>68</del> <u>80</u>
SECTION 3.23.	<del>EEA</del> <u>Affected Financial Institutions</u>	<del>68</del> <u>80</u>
SECTION 3.24.	<u>Carrying on Business; Assets</u>	<del>68</del> <u>81</u>

ARTICLE IV <b>CONDITIONS</b>	<del>68</del> 81
SECTION 4.01. <u>Effective Date</u>	<del>68</del> 81
SECTION 4.02. <u>Each Credit Event</u>	<del>71</del> 83
ARTICLE V <b>AFFIRMATIVE COVENANTS</b>	<del>71</del> 84
SECTION 5.01. <u>Financial Statements; Other Information</u>	<del>71</del> 84
SECTION 5.02. <u>Notices of Material Events</u>	<del>74</del> 86
SECTION 5.03. <u>Existence; Conduct of Business</u>	<del>75</del> 87
SECTION 5.04. <u>Payment of Obligations</u>	<del>75</del> 88
SECTION 5.05. <u>Maintenance of Properties</u>	<del>75</del> 88
SECTION 5.06. <u>Books and Records; Inspection Rights</u>	<del>75</del> 88
SECTION 5.07. <u>Compliance with Laws and Material Contractual Obligations</u>	<del>76</del> 88
SECTION 5.08. <u>Use of Proceeds</u>	<del>76</del> 88
SECTION 5.09. <u>Accuracy of Information</u>	<del>76</del> 89
SECTION 5.10. <u>Insurance</u>	<del>77</del> 89
SECTION 5.11. <u>Casualty and Condemnation</u>	<del>77</del> 90
SECTION 5.12. <u>Depository Banks</u>	<del>77</del> 90
SECTION 5.13. <u>Additional Collateral; Further Assurances</u>	<del>77</del> 90
SECTION 5.14. <u>Other Debt</u>	<del>78</del> 92
<u>SECTION 5.15. Real Estate Requirements</u>	92
ARTICLE VI <b>NEGATIVE COVENANTS</b>	<del>79</del> 94
SECTION 6.01. <u>Indebtedness</u>	<del>79</del> 94
SECTION 6.02. <u>Liens</u>	<del>81</del> 96
SECTION 6.03. <u>Fundamental Changes</u>	<del>83</del> 98
SECTION 6.04. <u>Investments, Loans, Advances, Guarantees and Acquisitions</u>	<del>84</del> 98
SECTION 6.05. <u>Asset Sales</u>	<del>86</del> 101
SECTION 6.06. <u>Sale and Leaseback Transactions</u>	<del>87</del> 102
SECTION 6.07. <u>Swap Agreements</u>	<del>87</del> 102
SECTION 6.08. <u>Restricted Payments; Certain Payments of Indebtedness</u>	<del>87</del> 102
SECTION 6.09. <u>Transactions with Affiliates</u>	<del>88</del> 103
SECTION 6.10. <u>Restrictive Agreements</u>	<del>89</del> 103
SECTION 6.11. <u>Amendment of Material Documents</u>	<del>89</del> 104
SECTION 6.12. <u>Consolidated Total Leverage Ratio</u>	<del>89</del> 104
SECTION 6.13. <u>Consolidated Fixed Charge Coverage Ratio</u>	<del>89</del> 104
<hr/>	
iii	
ARTICLE VII <b>EVENTS OF DEFAULT</b>	<del>89</del> 104
ARTICLE VIII <b>THE ADMINISTRATIVE AGENT</b>	<del>92</del> 107
SECTION 8.01. <u>Appointment</u>	<del>92</del> 107
SECTION 8.02. <u>Rights as a Lender</u>	<del>92</del> 108
SECTION 8.03. <u>Duties and Obligations</u>	<del>92</del> 108
SECTION 8.04. <u>Reliance</u>	<del>93</del> 109

SECTION 8.05.	<u>Actions through Sub-Agents</u>	<del>93</del> <u>109</u>
SECTION 8.06.	<u>Resignation</u>	<del>93</del> <u>109</u>
SECTION 8.07.	<u>Non-Reliance</u>	<del>94</del> <u>110</u>
SECTION 8.08.	<u>Certain ERISA Matters</u>	<del>95</del> <u>111</u>
SECTION 8.09.	<u>Not Partners or Co-Venturers; Administrative Agent as Representative of the Secured Parties</u>	<del>96</del> <u>112</u>
SECTION 8.10.	<u>Flood Laws</u>	<del>96</del> <u>112</u>
<u>SECTION 8.11.</u>	<u>Payments.</u>	<u>112</u>
<b>ARTICLE IX MISCELLANEOUS</b>		<del>97</del> <u>113</u>
SECTION 9.01.	<u>Notices</u>	<del>97</del> <u>113</u>
SECTION 9.02.	<u>Waivers; Amendments</u>	<del>99</del> <u>116</u>
SECTION 9.03.	<u>Expenses; Indemnity; Damage Waiver</u>	<del>101</del> <u>118</u>
SECTION 9.04.	<u>Successors and Assigns</u>	<del>103</del> <u>120</u>
SECTION 9.05.	<u>Survival</u>	<del>107</del> <u>124</u>
SECTION 9.06.	<u>Counterparts; Integration; Effectiveness; Electronic Execution</u>	<del>107</del> <u>124</u>
SECTION 9.07.	<u>Severability</u>	<del>108</del> <u>125</u>
SECTION 9.08.	<u>Right of Setoff</u>	<del>108</del> <u>125</u>
SECTION 9.09.	<u>Governing Law; Jurisdiction; Consent to Service of Process</u>	<del>109</del> <u>125</u>
SECTION 9.10.	<u>WAIVER OF JURY TRIAL</u>	<del>109</del> <u>126</u>
SECTION 9.11.	<u>Headings</u>	<del>109</del> <u>127</u>
SECTION 9.12.	<u>Confidentiality</u>	<del>110</del> <u>127</u>
SECTION 9.13.	<u>Several Obligations; Nonreliance; Violation of Law</u>	<del>111</del> <u>128</u>
<hr/>		
SECTION 9.14.	<u>USA PATRIOT Act</u>	<del>111</del> <u>128</u>
SECTION 9.15.	<u>Disclosure</u>	<del>111</del> <u>128</u>
SECTION 9.16.	<u>Appointment for Perfection</u>	<del>111</del> <u>128</u>
SECTION 9.17.	<u>Interest Rate Limitation</u>	<del>111</del> <u>128</u>
SECTION 9.18.	<u>Marketing Consent</u>	<del>111</del> <u>129</u>
SECTION 9.19.	<u>Acknowledgement and Consent to Bail-In of Affected Financial Institutions</u>	<del>111</del> <u>129</u>
SECTION 9.20.	<u>No Fiduciary Duty, etc.</u>	<del>112</del> <u>129</u>
<b>ARTICLE X LOAN GUARANTY</b>		<del>113</del> <u>130</u>
SECTION 10.01.	<u>Guaranty</u>	<del>113</del> <u>130</u>
SECTION 10.02.	<u>Guaranty of Payment</u>	<del>113</del> <u>131</u>
SECTION 10.03.	<u>No Discharge or Diminishment of Loan Guaranty</u>	<del>113</del> <u>131</u>
SECTION 10.04.	<u>Defenses Waived</u>	<del>114</del> <u>131</u>
SECTION 10.05.	<u>Rights of Subrogation</u>	<del>114</del> <u>132</u>
SECTION 10.06.	<u>Reinstatement; Stay of Acceleration</u>	<del>114</del> <u>132</u>
SECTION 10.07.	<u>Information</u>	<del>115</del> <u>132</u>
SECTION 10.08.	<del>Termination</del> <u>Release of Subsidiary Guarantors</u>	<del>115</del> <u>132</u>
SECTION 10.09.	<u>Taxes</u>	<del>115</del> <u>133</u>
SECTION 10.10.	<u>Maximum Liability</u>	<del>115</del> <u>133</u>
SECTION 10.11.	<u>Contribution</u>	<del>115</del> <u>133</u>

SECTION 10.12. <u>Liability Cumulative</u>	<del>116</del> 134
SECTION 10.13. <u>Keepwell</u>	<del>116</del> 134
SECTION 10.14. <u>Acknowledgement Regarding Any Supported OFCs</u>	<del>116</del> 134
SECTION 10.15. <u>Joint and Several</u>	<del>117</del> 135

## ARTICLE XI THE BORROWER REPRESENTATIVE

SECTION 11.01. <u>Appointment; Nature of Relationship</u>	<del>118</del> 136
SECTION 11.02. <u>Powers</u>	<del>118</del> 136
SECTION 11.03. <u>Employment of Agents</u>	<del>118</del> 136
SECTION 11.04. <u>Intentionally Omitted</u>	<del>118</del> 136
SECTION 11.05. <u>Successor Borrower Representative</u>	<del>118</del> 136
SECTION 11.06. <u>Execution of Loan Documents</u>	<del>118</del> 136

v

### SCHEDULES:

Commitment Schedule  
Schedule 3.05 -- Properties  
Schedule 3.06 -- Disclosed Matters  
Schedule 3.12 -- Material Agreements  
Schedule 3.14 -- Insurance  
Schedule 3.15 -- Capitalization and Subsidiaries  
Schedule 6.01 -- Existing Indebtedness  
Schedule 6.02 -- Existing Liens  
Schedule 6.04 -- Existing Investments  
Schedule 6.10 -- Existing Restrictions

### EXHIBITS:

Exhibit A – Form of Assignment and Assumption  
Exhibit B – Form of Borrowing Request  
Exhibit C – Form of Interest Election Request  
Exhibit D – Form of Joinder Agreement  
Exhibit E – Form of Compliance Certificate  
Exhibit F – Form of Instrument of Adherence

vi

CREDIT AGREEMENT dated as of May 3, 2019, as amended on May 28, 2019, as further amended on November 12, 2020 and as further amended on July 1, 2021 (as it may be amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) among CLARUS CORPORATION, a Delaware corporation (the “Company”), BLACK DIAMOND RETAIL, INC., a Delaware corporation (“BDR”), BLACK DIAMOND RETAIL – ALASKA, LLC, a Delaware limited liability company (“BDR-AK”), SIERRA BULLETS, L.L.C., a Delaware limited liability company (“Sierra”), SKINOURISHMENT, LLC, a Delaware limited liability company (“Skin”), BLACK DIAMOND RETAIL – COLORADO, LLC, a Delaware limited liability company (“BDR-CO”), BLACK DIAMOND RETAIL – MONTANA, LLC, a Delaware limited liability company (“BDR-MO”), BLACK DIAMOND RETAIL – WYOMING, LLC, a Delaware limited liability company (“BDR-WY”), and BARNES BULLETS – MONA, LLC, a Delaware limited liability company (“Barnes”) and together with the Company, BDR, BDR-AK, Sierra, Skin, BDR-CO, BDR-MO and BDR-WY and any other Person that joins this Agreement as a Borrower in accordance with the terms hereof, are referred to hereinafter each individually as a “Borrower”, and individually and collectively, jointly and severally, as the “Borrowers”), the other Loan Parties party hereto, the Lenders party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate. All ABR Loans shall be denominated in Dollars.

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the Effective Date, by which any Loan Party (a) acquires any going business or all or substantially all of the assets of any Person, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

“Additional Lender” has the meaning assigned to such term in Section 2.09.

“Additional Term Lenders” means, as of any date of determination, Lenders having an Additional Term Loan Commitment.

“Additional Term Loan Commitment” means as to any Additional Term Lender, the commitment of such Additional Term Lender to make Additional Term Loans as set forth on Exhibit C to the Third Amendment or in the most recent Assignment and Assumption executed by such Additional Term Lender, as applicable.

“Additional Term Loans” means the term loans extended by the Additional Term Lenders to the Borrowers on the Third Amendment Effective Date pursuant to Section 2.01(b) hereof.

---

“Adjusted AUD Rate” means, with respect to any Term Benchmark Borrowing denominated in Australian Dollars for any Interest Period, an interest rate per annum equal to (a) the AUD Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate; provided that, if the Adjusted AUD Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjusted LIBO Rate” means, with respect to any Term Benchmark Borrowing for any Interest Period denominated in Dollars, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Adjusted ~~LIBO~~ NZD Rate” means, with respect to any Term Benchmark Borrowing denominated in New Zealand Dollars for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the ~~LIBO~~ NZD Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate, provided that, if the Adjusted NZD Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Administrative Agent” means JPMorgan Chase Bank, N.A. (including its branches and affiliates), in its capacity as administrative agent and security trustee (where applicable) for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person.

“Agent Parties” has the meaning assigned to such term in Section 9.01(d).

“Agreed Currencies” means (i) Dollars and (ii) each Foreign Currency.

“Aggregate Revolving Commitment” means, at any time, the aggregate of the Revolving Commitments of all of the Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As of the Third Amendment Effective Date, the Aggregate Revolving Commitment is \$100,000,000.

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposure of all the Lenders at such time.

“Aggregate Term Exposure” means, at any time, the aggregate Term Exposure of all the Lenders at such time.

“Aggregate Term Loan Commitment” means, at any time, the aggregate amount of the unused Additional Term Loan Commitments of all of the Lenders at such time. As of the Third Amendment Effective Date, prior to giving effect to the funding of the Additional Term Loans, the Aggregate Term Loan Commitment is \$125,000,000.

“Agreement” has the meaning assigned to such term in the preamble.

“Allocable Amount” has the meaning assigned to such term in Section 10.11. “ALTA” means the American Land Title Association.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 1/2 of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period in Dollars on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the LIBO Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(c)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“Amendment No. 4 Effective Date” means January 3, 2022.

“Ancillary Document” has the meaning assigned to it in Section 9.06(b).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption.

“Applicable Percentage” means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment provided that, if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender’s share of the Aggregate Revolving Exposure at that time, and (b) with respect to the Term Loans, a percentage equal to a fraction the numerator of which is such the sum of such Lender’s Additional Term Loan Commitment (if any) and outstanding Term Loans held by such Lender and the denominator of which is the sum of the Aggregate Term Loan Commitment (if any) and aggregate outstanding Term Loans held by all Lenders; provided that, in accordance with Section 2.20, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender’s Revolving Commitment shall be disregarded in the foregoing calculation.

“Applicable Rate” means, for any day, with respect to any Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption “Revolver ABR Spread”, “Term Benchmark Spread for Revolving Loans”, “Term Loan ABR Spread”, “Term Benchmark Spread for Term Loans” or “Commitment Fee Rate”, as the case may be, based upon the Consolidated Total Leverage Ratio measured on a trailing twelve month basis, as of the most recent determination date; provided that, until the delivery to the Administrative Agent of the Company’s consolidated financial statements delivered pursuant to Section 5.01 for the fiscal quarter ending June 30, 2021, the “Applicable Rate” shall be the applicable rates per annum set forth below in Category 4:

Consolidated Total Leverage Ratio	Term Benchmark Spread for Revolving Loans	Revolver ABR Spread	Term Benchmark Spread for Term Loans	Term Loan ABR Spread	Commitment Fee Rate
<u>Category 1</u> <1.50 to 1.00	1.500%	0.500%	1.500%	0.500%	0.15%
<u>Category 2</u> ≥1.50 to 1.00 and < 2.50 to 1.00	1.875%	0.875%	1.875%	0.875%	0.20%
<u>Category 3</u> ≥2.50 to 1.00 and < 3.50 to 1.00	2.250%	1.250%	2.250%	1.250%	0.25%
<u>Category 4</u> ≥ 3.50 to 1.00	2.625%	1.625%	2.625%	1.625%	0.30%

3

For purposes of the foregoing Categories, (a) the Applicable Rate shall be determined as of the end of each fiscal quarter of the Company based upon the Company’s annual or monthly (that is a quarter end) consolidated financial statements delivered pursuant to Section 5.01 and (b) each change in the Applicable Rate resulting from a change in the Consolidated Total Leverage Ratio shall be effective during the period commencing on and including the date of delivery to the Administrative Agent of such consolidated financial statements indicating such change and ending on the date immediately preceding the effective date of the next such change, provided that (i) the Consolidated Total Leverage Ratio shall be deemed to be in Category 4 at the option of the Administrative Agent or at the request of the Required Lenders if the Company fails to deliver the annual or monthly (that is a quarter end) consolidated financial statements required to be delivered by it pursuant to Section 5.01, during the period from the expiration of the time for delivery thereof until such consolidated financial statements are delivered and (ii) notwithstanding anything in this Agreement to the contrary, solely for purposes of determining the Applicable Rate that is based on the Company’s consolidated financial statements delivered pursuant to Section 5.01 for the fiscal quarter ending June 30, 2021, such calculation of the Applicable Rate shall be based on such consolidated financial statements after giving pro forma effect to the consummation of the Project Oscar Acquisition and the other Project Oscar Transactions, the incurrence of the Additional Term Loans and the incurrence or assumption of any other Loans and Indebtedness in connection with the Project Oscar Acquisition, in a manner reasonably satisfactory to the Administrative Agent.

If at any time the Administrative Agent determines that the financial statements upon which the Applicable Rate was determined were incorrect (whether based on a restatement, fraud or otherwise), or any ratio or compliance information in a Compliance Certificate or other certification was incorrectly calculated, relied on incorrect information or was otherwise not accurate, true or correct, (x) if the Applicable Rate would have been higher for such period, the Borrowers shall be required to retroactively pay any additional amount that the Borrowers would have been required to pay if such financial statements, Compliance Certificate or other information had been accurate and/or computed correctly at the time they were delivered and (y) if the Applicable Rate would have been lower for such period, the Administrative Agent shall credit the Borrowers on future interest payments on behalf of the applicable Lenders the difference between the amount that would have accrued and been due and payable and the amount actually paid in respect of such period.

“Approved Fund” has the meaning assigned to such term in Section 9.04.

“Arranger” means JPMorgan Chase Bank, N.A., in its capacity as sole bookrunner and sole lead arranger hereunder.

4

“Assignment and Assumption” means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

“AUD Interpolated Rate” means, at any time, with respect to any Term Benchmark Borrowing denominated in Australian Dollars and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the AUD Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the AUD Screen Rate for the longest period (for which the AUD Screen Rate is available) that is shorter than the Impacted AUD Rate Interest Period; and (b) the AUD Screen Rate for the shortest period (for which the AUD Screen Rate is available) that exceeds the Impacted AUD Rate Interest Period, in each case, at such time; provided that if any AUD Interpolated Rate shall be less than 0%, such rate shall be deemed to be 0% for the purposes of this Agreement.

“AUD Rate” means, with respect to any Term Benchmark Borrowing denominated in Australian Dollars and for any Interest Period, the AUD Screen Rate at approximately 11:00 a.m., Sydney, Australia time, on the first day of such Interest Period; provided that, if the AUD Screen Rate shall not be available at such time for such Interest Period (an “Impacted AUD Rate Interest Period”) with respect to Australian Dollars, then the AUD Rate shall be the AUD Interpolated Rate.

“AUD Screen Rate” means, for any day and time, with respect to any Term Benchmark Borrowing denominated in Australian Dollars and for any Interest Period, the average bid reference rate administered by ASX Benchmarks Pty Limited (ACN 616 075 417) (or any other Person that takes over the administration of such rate) for Australian Dollar bills of exchange with a tenor equal in length to such Interest Period as displayed on page BBSY of the Reuters screen (or, in the event such rate does not appear on such Reuters page, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion); provided that if, the AUD Screen Rate shall be less than the Floor, the AUD Screen Rate shall be deemed to be the Floor for purposes of this Agreement.

“Augmenting Lender” has the meaning assigned to such term in Section 2.09(d).

“Austria GmbH Debt Agreement” has the meaning assigned to such term in Section 6.04.

“Australian Corporations Act” means the Corporations Act 2001 (Cth).

“Australian Dollars” means that lawful currency of Australia.



“Australian Entity” means any Person incorporated or established under the laws of Australia (including any State or territory of Australia).

“Australian Loan Party” means any Loan Party that is an Australian Entity.

“Australian PPSA” means Personal Property Securities Act 2009 (Cth) and any regulations in force at any time under the PPSA, including the Personal Property Securities Regulations 2010 (Cth).

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Commitments.

“Available Revolving Commitment” means, at any time, the Aggregate Revolving Commitment *minus* the Aggregate Revolving Exposure (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Applicable Percentage of all outstanding Borrowings).

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark for any Agreed Currency, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (g) of Section 2.14.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Banking Services” means each and any of the following bank services provided to any Loan Party or its Subsidiaries by any Lender or an Affiliate of a Lender: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services, (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, and interstate depository network services), and (e) Lease Financing.

“Banking Services Obligations” means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services, provided, however, Banking Services Obligations in respect of Lease Financing shall be limited to Lease Deficiency Obligations.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified at 11 U.S.C. §§ 101 et seq.

“Bankruptcy Event” means, with respect to any Person, when such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Benchmark” means, initially, ~~LIBOR Rate~~ with respect to any Loan or Borrowing denominated in any Agreed Currency, the Relevant Rate for such Agreed Currency; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to ~~LIBOR~~ the applicable Relevant Rate or the then-current Benchmark for such Agreed Currency, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (c) or clause (d) of Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, in the case of any Loan denominated in an Agreed Currency other than Dollars or in the case of an Other Benchmark Rate Election, “Benchmark Replacement” shall mean the alternative set forth in (3) below:

- (1) in the case of any Loan denominated in Dollars, the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) in the case of any Loan denominated in Dollars, the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Representative as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for ~~dollar-denominated~~ syndicated credit facilities denominated in the applicable Agreed Currency at such time in the United States and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1) above, such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided further that, in the case of clause (3) above, when such clause is used to determine the Benchmark Replacement in connection with the occurrence of an Other Benchmark Rate Election, the alternate benchmark rate selected by the Administrative Agent and the Borrower shall be the term benchmark rate that is used in lieu of a LIBOR-based rate in the relevant other dollar-denominated syndicated credit facilities; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of



(a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso [immediately](#) above).

If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“[Benchmark Replacement Adjustment](#)” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date [and/or](#) (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for ~~dollar-denominated~~ syndicated credit facilities [denominated in the applicable Agreed Currency at such time](#);

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

“[Benchmark Replacement Conforming Changes](#)” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“[Benchmark Replacement Date](#)” means, [with respect to any Benchmark](#), the earliest to occur of the following events with respect to ~~the~~[such](#) then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower Representative pursuant to Section 2.14(d); or

(4) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) [above](#) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“[Benchmark Transition Event](#)” means, [with respect to any Benchmark](#), the occurrence of one or more of the following events with respect to ~~the~~[such](#) then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the ~~Federal Reserve~~ Board, the NYFRB, [the CME Term SOFR Administrator, the central bank for the Agreed Currency applicable to such Benchmark](#)

an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to ~~clauses~~ clause (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced ~~the such~~ then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced ~~the such~~ then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

“Beneficial Owner” means, with respect to any U.S. Federal withholding Tax, the beneficial owner, for U.S. Federal income tax purposes, to whom such Tax relates.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“BIA” means the Bankruptcy and Insolvency Act (Canada).

“Black Diamond” means Black Diamond Equipment, Ltd., a Delaware corporation.

“Board” means the Board of Governors of the Federal Reserve System of the U.S.

“Borrower” or “Borrowers” have the respective meanings specified therefor in the preamble to this Agreement.

“Borrower Materials” has the meaning assigned to such term in Section 5.01.

“Borrower Representative” has the meaning assigned to such term in Section 11.01.

“Borrowing” means (a) a Revolving Borrowing, (b) a Term Loan of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect, and (c) a Swingline Loan.

“Borrowing Request” means a request by the Borrower Representative for a Borrowing in accordance with Section 2.03, which shall be substantially in the form of Exhibit B or any other form approved by the Administrative Agent.

“Burdensome Restrictions” means any consensual encumbrance or restriction of the type described in clause (a) or (b) of Section 6.10.

“Business Day” means any day ~~that is not (other than a Saturday or a Sunday or other day)~~ (a) on which ~~commercial banks are open for business~~ in New York City ~~are authorized or required by law to remain closed; provided that, when used in connection with a Term Benchmark Loan or a Swingline Loan, the term “Business Day” shall also exclude any day and (b)(i) in relation to the calculation or computation of LIBOR, on which banks are not open for general business in London or (ii) in relation to Loans denominated in any other Agreed Currency or any interest rate settings, fundings, disbursements, settlements or payments of any CBR Loan or CBR Borrowing, on which dealings in the applicable Agreed Currency are carried on in the principal financial center of such Agreed Currency.~~

“Capital Expenditures” means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of the Company and its Subsidiaries prepared in accordance with GAAP.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“CBR Loan” means a Loan that bears interest at a ~~rate~~ determined by reference to the Central Bank Rate.

“CBR Spread” means the Applicable Rate, applicable to such Loan that is replaced by a CBR Loan.

“CCAA” means the Companies’ Creditors Arrangement Act (Canada).

“Central Bank Rate” means, at any time, a rate per annum equal to the sum of: (A) the greater of (i) for any Loan denominated in any Foreign Currency, a central bank rate for such Foreign Currency as determined by the Administrative Agent in its reasonable discretion (any reference rate described in this clause (A)(i) for any Foreign Currency being referred to as the “CBR Reference Rate”) and (ii) 0%; plus (B) the applicable Central Bank Rate Adjustment. Any change in the Central Bank Rate due to a change in the CBR Reference Rate or the Central Bank Rate Adjustment shall be effective from and including the effective date of such change in the CBR Reference Rate or the Central Bank Rate Adjustment, respectively.

“Central Bank Rate Adjustment” means for any day, for any Loan denominated in any Foreign Currency, a Central Bank Rate adjustment for such Foreign Currency as determined by the Administrative Agent in its reasonable discretion. For purposes of this definition, the term Central Bank Rate shall be determined disregarding clause (B) of

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) (other than Warren B. Kanders, any trust under which Warren B. Kanders has control or is the primary beneficiary, Kanders GMP Holdings, LLC (so long as (I) such entity is controlled by Warren B. Kanders and (II) is organized primarily for the purpose of making equity or debt investments in one or more companies) or a Qualified Kanders Entity), of Equity Interests representing more than 20% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company; (b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were not (i) directors of the Company on the date of this Agreement, (ii) nominated or appointed by the board of directors of the Company or (iii) approved by the board of directors of the Company as director candidates prior to their election; or (c) the acquisition of direct or indirect Control of the Company by any Person or group; or (d) the Company shall cease to own, free and clear of all Liens or other encumbrances, directly or indirectly, at least 100% of the outstanding voting Equity Interests of the other Loan Parties on a fully diluted basis. For purposes of this definition, a “Qualified Kanders Entity” is an entity (I) located in the U.S., (II) controlled by Warren B. Kanders (for the avoidance of doubt, “controlled” means the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity whether by contract or otherwise), (III) organized under applicable U.S. and state laws, (IV) not engaged, directly or indirectly, in any line of business other than (A) the businesses in which the Loan Parties are engaged on the Effective Date, (B) the businesses that are reasonably similar, ancillary, or complementary thereto, or a line of business that is a reasonable extension, development or expansion thereof, in each case, solely with respect to the businesses that a Loan Party is engaged on the Effective Date, or (C) a business organized primarily for the purpose of making equity or debt investments in one or more companies, (V) that does not violate any Anti-Corruption Laws or Sanctions applicable to such entity as a result of the ownership, directly or indirectly, of the Equity Interests of the Company, and (VI) for which all documentation and other information requested by the Administrative Agent in connection with satisfying applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, have been delivered to the Administrative Agent.

“Change in Law” means the occurrence after the date of this Agreement of any of the following: (a) the adoption of or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or the Issuing Bank’s holding company, if any) with any request, guideline, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Charges” has the meaning assigned to such term in Section 9.17.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Term Loans or Swingline Loans.

“CME Term SOFR Administrator” means [CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate \(SOFR\) \(or a successor administrator\)](#).

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means any and all property owned, leased or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become or be intended to be, subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the Secured Obligations.

“Collateral Documents” means, collectively, the Security Agreement, the Mortgages and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether heretofore, now or hereafter executed by any Loan Party and delivered to the Administrative Agent.

“Collection Account” has the meaning assigned to such term in the Security Agreement.

“Commercial LC Exposure” means, at any time, the sum of (a) the aggregate undrawn ~~amount~~ [Dollar Amount](#) of all outstanding commercial Letters of Credit *plus* (b) the aggregate ~~amount~~ [Dollar Amount](#) of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers. The Commercial LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Commercial LC Exposure at such time.

“Commitment” means, either or both of the Revolving Commitment or the Additional Term Loan Commitment.

“Commitment Schedule” means the Schedule attached hereto identified as such.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Communications” has the meaning assigned to such term in Section 9.01(d).

“Company” has the meaning specified therefor in the preamble to this Agreement.

“Compliance Certificate” has the meaning assigned to such term in Section 5.01(d).

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

“Consolidated Fixed Charge Coverage Ratio” means, as at the end of each fiscal quarter of the Company and calculated for the period of four (4) fiscal quarters then ending, the ratio of (a) the sum of (i) consolidated EBITDA for such period, minus (ii) Unfinanced Capital Expenditures made during such period, minus (iii) dividends and other Restricted Payments made by the Company during such period, minus (iv) taxes paid in cash by the Company and its Subsidiaries during such period, plus (v) the amount of exercise price proceeds received from the exercise of stock options during such period to (b) Consolidated Total Debt Service for such period, all calculated for the Company

and its Subsidiaries calculated on a consolidated basis for such period.

“Consolidated Total Assets” means, at any date, total assets of the Company and its Subsidiaries calculated on a consolidated basis as of such date.

“Consolidated Total Debt Service” means, as at the end of each fiscal quarter of the Company and calculated for the period of four (4) fiscal quarters then ending, the sum of (a) the aggregate amount of Interest Expense paid by the Company and its Subsidiaries in cash during such period and (b) the aggregate amount of scheduled and mandatory payments in respect of the principal amount of Indebtedness made by the Company and its Subsidiaries during such period.

“Consolidated Total Indebtedness” means, at any time, the sum of (a) the aggregate principal amount of Indebtedness of the Company and its Subsidiaries outstanding as of such date in the amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP, plus (b) the aggregate principal amount of Indebtedness of the Company and its Subsidiaries outstanding as of such date that is not required to be reflected on a balance sheet in accordance with GAAP, determined on a consolidated basis.

“Consolidated Total Leverage Ratio” means the ratio, determined as of the end of each fiscal quarter of the Borrowers, of (a) Consolidated Total Indebtedness of the Borrowers and their Subsidiaries as of such quarter-end date minus unrestricted and unencumbered (other than Liens in favor of the Administrative Agent) domestic cash and cash equivalents in excess of \$5,000,000 that are held by Loan Parties to (b) consolidated EBITDA of the Borrowers and their Subsidiaries for the period of four (4) fiscal quarters ending on such date.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding ~~business day~~ Business Day adjustment) as such Available Tenor.

~~“Corresponding Tenor” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.~~

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned to such term in Section 10.14.

“Credit Exposure” means, as to any Lender at any time, the sum of (a) such Lender’s Revolving Exposure at such time, plus (b) an amount equal to the aggregate principal amount of its Term Loans outstanding at such time.

“Credit Party” means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

“Currency of Payments” has the meaning assigned to such term in Section 1.05.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which ~~will~~ may include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied; (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

“Disclosed Matters” means the actions, suits, proceedings and environmental matters disclosed in Schedule 3.06.

“Dividing Person” has the meaning assigned to it in the definition of “Division”.

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“Document” has the meaning assigned to such term in the Security Agreement.

“Dollar Equivalent of Amount” means, for any amount ~~means~~, at the time of determination thereof, (a) if such amount is expressed in ~~U.S.~~ Dollars, such amount ~~and~~, (b) if such amount is expressed in a Foreign Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Foreign Currency last provided (either by publication or otherwise provided to the Administrative Agent) by Reuters on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with the Foreign Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in ~~U.S.~~ Dollars as determined by the Administrative Agent using any method of determination it ~~reasonably~~ deems appropriate ~~in its sole discretion~~.

“Dollars”, “dollars”, “U.S. Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means a Subsidiary organized under the laws of a jurisdiction located in the U.S.

“Early Opt-in Election” means, if the then-current Benchmark with respect to Dollars is LIBO Rate, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower Representative to trigger a fallback from LIBO Rate and the provision by the Administrative Agent of written notice of such election to the Borrower Representative and the Lenders.

“Earn-Outs” shall mean unsecured liabilities of the Company or any of its Subsidiaries arising under an agreement to make a deferred payment as part of the purchase price for a Permitted Acquisition, including performance bonuses or consulting payments in any related services, employment or similar agreement, in an amount that is subject to or contingent upon the revenues, income, cash flow or profits (or the like) of the target of such Permitted Acquisition. Earn-Outs shall be valued as the amount required to be recorded as a liability on the financial statements of the Loan Parties in accordance with GAAP.

“EBITDA” means, for any period, Net Income for such period ~~plus~~ (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) income tax expense for such period net of tax refunds, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any extraordinary non-cash charges for such period, (v) any other non-cash charges for such period (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period and any non-cash charge that relates to the write-down or write-off of inventory in an aggregate amount in excess of \$1,000,000 during such period), (vi) costs, charges, losses and expenses to the extent covered by insurance under which the insurer has been properly notified and has not denied or contested coverage, (vii) any fees, costs or expenses incurred during such period in connection with any ~~Permitted Acquisition or financing that was~~ acquisitions, dispositions, investments or financings (whether or not actually consummated); provided that the aggregate amount permitted to be added back to EBITDA pursuant to this clause (vii) for all acquisitions, dispositions, investments and financings that were not consummated, ~~in (x) shall not exceed an aggregate amount not equal to exceed \$500,000~~ shall not exceed an aggregate amount equal to \$2,000,000 ~~5,000,000~~ during the term of this Agreement, (viii) the effect on earnings of any write-ups or write-downs of inventory following the consummation of a Permitted Acquisition or other Acquisition permitted hereunder as a result of purchase accounting, and (ix) fees, costs and expenses incurred during such period associated with facilities relocations, plant shutdowns or the discontinuance of operations, in an aggregate amount not to exceed 10% of EBITDA (calculated without giving effect to this clause (ix)) for such period, minus (b) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-cash charges described in clause (a)(v) taken in a prior period and (ii) any extraordinary gains and any non-cash items of income for such period, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP. For the purposes of calculating EBITDA (including Net Income) for any period of twelve consecutive months, if at any time during such period, any Loan Party or any of its Subsidiaries shall have consummated a Permitted Acquisition or any other Acquisition permitted hereunder, EBITDA (including Net Income) for such period shall be calculated after giving pro forma effect thereto (including pro forma adjustments arising out of events which are directly attributable to such Permitted Acquisition or other Acquisition permitted hereunder, are factually supportable, and are expected to have a continuing impact, in each case determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the SEC and as certified by a Financial Officer of the Borrowers) or in such other manner acceptable to Administrative Agent in its Permitted Discretion as if such Permitted Acquisition or other Acquisition permitted hereunder or adjustment occurred on the first day of such period.

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.



“Effective Date” means the date on which the conditions specified in Section 4.01 were satisfied (or waived in accordance with Section 9.02).

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for such Borrower, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or any Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

---

17

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equipment AG Debt Agreement” has the meaning assigned to such term in Section 6.04.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing.

“Equivalent Amount” means, for any amount of any Foreign Currency, at the time of determination thereof, (a) if such amount is expressed in such Foreign Currency, such amount and (b) if such amount is expressed in Dollars, the equivalent of such amount in such Foreign Currency determined by using the rate of exchange for the purchase of such Foreign Currency with Dollars last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Reuters source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of such Foreign Currency with Dollars, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any ERISA Affiliate from any Plan or Multiemployer Plan; or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition upon any Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status or in reorganization, within the meaning of Title IV of ERISA.

---

18

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Event of Default” has the meaning assigned to such term in Article VII.

“Exchange Rate” means, for any Foreign Currency, the rate of exchange therefor as described in clause (b) of the definition of “Dollar Amount”.

“Excluded Swap Obligation” means, with respect to any Loan Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Guarantor’s failure for any reason to constitute an ECP at the time the Guarantee of such Loan Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient’s failure to comply with Section 2.17(f); and (d) any U.S. Federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Credit Agreement, dated as of June 27, 2018, by and among, the Loan Parties, the lenders party thereto and JPMCB, as Administrative Agent.

“Existing Letters of Credit” means the letters of credit issued under the Existing Credit Agreement, each of which shall be deemed as of the Effective Date to constitute Letters of Credit issued under this Agreement.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall be set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

~~“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.~~

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of a Borrower.

“Fixtures” has the meaning assigned to such term in the Security Agreement.

“Flood Laws” has the meaning assigned to such term in Section 8.10.

“Floor” means the benchmark rate floor, if any, provided in this Agreement ~~initially~~ (as of the ~~execution of this Agreement~~ Amendment No. 4 Effective Date, the modification, amendment or renewal of this Agreement or otherwise) with respect to ~~LIBO Rate, the Adjusted LIBO Rate, LIBO Rate, Adjusted AUD Rate, AUD Rate, Adjusted NZD Rate, NZD Rate, LIBOR Market Index Rate or the Central Bank Rate. For the avoidance of doubt the Floor as of the Amendment No. 4 Effective Date with respect to Adjusted LIBO Rate, LIBO Rate, Adjusted AUD Rate, AUD Rate, Adjusted NZD Rate, NZD Rate and the Central Bank Rate is zero.~~

“Foreign Currency” means (i) Australian Dollars, (ii) New Zealand Dollars and (iii) any additional currencies determined after the Effective Date by mutual agreement of the Company, each Revolving Lender, the Issuing Bank and the Administrative Agent; provided that each such currency is a lawful currency that is readily available, freely transferable and not restricted and able to be converted into Dollars.

“Foreign Lender” means (a) if a Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if a Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

“Foreign Plan” means any retirement benefit or pension plan maintained or contributed to by, or entered into with, any Borrower or Subsidiary with respect to any employees employed outside the United States which under applicable laws is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

“Foreign Subsidiary” means any Subsidiary which is not a Domestic Subsidiary.

“Foreign Target” shall have the meaning set forth in the definition of Permitted Foreign Target.

“Funding Account” has the meaning assigned to such term in Section 4.01(h).

“GAAP” means generally accepted accounting principles in the U.S.

“Governmental Authority” means the government of the U.S., any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” has the meaning assigned to such term in Section 10.01. “Guarantor Payment” has the meaning assigned to such term in Section 10.11.

“Hazardous Materials” means: (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, Freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

“Impacted AUD Rate Interest Period” has the meaning assigned to it in the definition of “AUD Rate.”

“Impacted LIBO Rate Interest Period” has the meaning assigned to such term in the definition of “LIBO Rate.”

“Impacted NZD Rate Interest Period” has the meaning assigned to such term in the definition of “LIBO NZD Rate.”

“Increasing Lender” shall have the meaning assigned to such in Section 2.09(d).

“Incremental Term Loan” has the meaning assigned to such term in Section 2.09(d).

“Incremental Term Loan Amendment” has the meaning assigned to such term in Section 2.09(h).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) obligations under any earn-out (which for all purposes of this Agreement shall be valued at the maximum potential amount payable with respect to such earn-out), (l) any other Off-Balance Sheet Liability, (m) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person and (n) obligations, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in the foregoing clause (a) hereof, Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Ineligible Institution” has the meaning assigned to such term in Section 9.04(b). “Information” has the meaning assigned to such term in Section 9.12.

“Initial Term Loans” means the term loans extended by the Term Lenders to the Borrowers on the Effective Date pursuant to Section 2.01(b) hereof.

“Instrument of Adherence” means an Instrument of Adherence in substantially the form of Exhibit F.

“Intellectual Property” has the meaning assigned to such term in the Security Agreement.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.08, which shall be substantially in the form of Exhibit C or any other form approved by the Administrative Agent.

“Interest Expense” means, for any period, total interest expense (including that attributable to Capital Lease Obligations) of the Company and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Company and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for the Company and its Subsidiaries for such period in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any ABR Loan or any CBR Loan, the first Business Day of each fiscal quarter and the Maturity Date, and (b) with respect to any Term Benchmark Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period), and the Maturity Date.

“Interest Period” means, with respect to any Term Benchmark Borrowing, the period commencing on the date of such Term Benchmark Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as the Borrower Representative may elect, in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment for any Agreed Currency; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to Section 2.14(g) shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and in the case of a Revolving Borrowing thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time; provided, that if any Interpolated rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement with respect to (a) any Term Benchmark Borrowing denominated in Dollars, the LIBO Interpolated Rate, (b) any Term Benchmark Borrowing denominated in Australian Dollars, the AUD Interpolated Rate, and (c) any Term Benchmark Borrowing denominated in New Zealand Dollars, the NZD Interpolated Rate.

“IRS” means the United States Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Issuing Bank” means JPMCB, in its capacity as the issuer of Letters of Credit hereunder. Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is



“Joinder Agreement” means a Joinder Agreement in substantially the form of Exhibit D or such other form reasonably acceptable to the Administrative Agent.

“JPMCB” means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

“JPMCB Parties” has the meaning assigned to such term in Section 9.18.

“LC Collateral Account” has the meaning assigned to such term in Section 2.06(j).

“LC Disbursement” means any payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

“Lease Financing” means (i) a lease of specific equipment as defined in Article 2-A of the UCC, and (ii) a secured financing transaction secured by specific equipment, whether that transaction is called a lease or a loan, entered into by any Loan Party or its Subsidiaries with JPMCB or any of its Affiliates (in this context, the “Lessor”).

“Lease Deficiency Obligation” means after default, repossession and disposition of the equipment which is the subject of or which secures a Lease Financing, the amount, if any, by which (i) any and all obligations of the Loan Parties or their Subsidiaries to a Lessor, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with a specific Lease Financing, exceeds (ii) the Net Proceeds realized by the Lessor upon the disposition of the equipment which is the subject of or which secures the specific Lease Financing.

“Lender Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Lender-Related Person” has the meaning assigned to such term in Section 9.03(b).

“Lenders” means the Persons listed on the Commitment Schedule (or, if the Commitments have terminated or expired, a Person holding Credit Exposure) and any other Person that shall have become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and the Issuing Bank.

“Letters of Credit” means the letters of credit issued pursuant to this Agreement, and the term “Letter of Credit” means any one of them or each of them singularly, as the context may require. All Existing Letters of Credit shall be deemed to have been issued pursuant to this Agreement, and from and after the Effective Date shall in all respects be subject to and governed by the terms and conditions hereof.

“Liabilities” means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

“LIBO Interpolated Rate” means, at any time, with respect to any Term Benchmark Borrowing denominated in Dollars and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted LIBO Rate Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted LIBO Rate Interest Period, in each case, at such time; provided that if any LIBO Interpolated Rate shall be less than 0%, such rate shall be deemed to be 0% for the purposes of this Agreement.

“LIBO Rate” means, with respect to any Term Benchmark Borrowing denominated in Dollars and for any applicable Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that, if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted LIBO Rate Interest Period”)—with respect to Dollars then the LIBO Rate shall be the LIBO Interpolated Rate; subject to Section 2.14 in the event that the Administrative Agent shall conclude that it shall not be possible to determine such Interpolated Rate (which conclusion shall be conclusive and binding absent manifest error).

“LIBO Screen Rate” means, for any day and time, with respect to any Term Benchmark Borrowing or a Swingline Loan denominated in Dollars for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars) for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“LIBOR Market Index Rate” means, for any date, the LIBO Screen Rate for a one-month Interest Period as of 11:00 a.m., London time, on such day, or if such day is not a Business Day, then the immediately preceding Business Day (or if not so reported, then as determined by the Administrative Agent from another recognized source or interbank quotation); provided that, if such LIBO Screen Rate is determined by reference to an Impacted LIBO Rate Interest Period, the LIBOR Market Index Rate shall be the LIBO Interpolated Rate, subject to Section 2.14 in the event that the Administrative Agent shall conclude that it shall not be possible to determine such LIBO Interpolated Rate (which conclusion shall be conclusive and binding absent manifest error). It is understood and agreed that all of the terms and conditions of this definition of “LIBOR Market Index Rate” shall be subject to Section 2.14.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest (including any security interest as defined in the Australian PPSA which secures payment of money or performance of an obligation) in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, hire purchase or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Documents” means, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit applications, the Collateral Documents, the Loan Guaranty, the Third Amendment and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered to, or

in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements, letter of credit applications and any agreements between the Borrower Representative and the Issuing Bank regarding the respective rights and obligations between any Borrower and the Issuing Bank in connection with the issuance of Letters of Credit, and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantor” means each Loan Party.

“Loan Guaranty” means Article X of this Agreement.

“Loan Parties” means, collectively, the Borrowers, the Borrowers’ Material Subsidiaries party hereto on the Third Amendment Effective Date, and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement (including, without limitation, as required pursuant to the Third Amendment) and their respective successors and assigns, and the term “Loan Party” shall mean any one of them or all of them individually, as the context may require.

“Loans” means the Revolving Loans and Term Loans made by the Lenders pursuant to this Agreement, including Swingline Loans.

“Margin Stock” means margin stock within the meaning of Regulations T, U and X, as applicable.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, properties or condition of (i) the Company and its Subsidiaries taken as a whole or (ii) the Loan Parties taken as a whole, (b) the ability of any Loan Party to perform any of its obligations under the Loan Documents to which it is a party, (c) the Collateral, or the Administrative Agent’s Liens (on behalf of itself and other Secured Parties) on the Collateral or the priority of such Liens, or (d) the validity of, or the enforceability of any of the rights of or benefits available to the Administrative Agent, the Issuing Bank or the Lenders under any of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Company and its Subsidiaries in an aggregate principal amount exceeding \$1,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Company or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Company or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Subsidiary” means each Subsidiary (i) which, as of the most recent fiscal quarter of the Company, for the period of four consecutive fiscal quarters then ended, for which financial statements have been delivered pursuant to Section 5.01(a) or (b), contributed greater than five percent (5%) of consolidated EBITDA of the Company and its Subsidiaries for such period or (ii) which contributed greater than five percent (5%) of Consolidated Total Assets as of such date; provided that, if at any time the aggregate amount of consolidated EBITDA of the Company and its Subsidiaries or Consolidated Total Assets attributable to all Subsidiaries that are not Material Subsidiaries exceeds ten percent (10%) of consolidated EBITDA of the Company and its Subsidiaries for any such period or ten percent (10%) of Consolidated Total Assets as of the end of any such fiscal quarter, the Company (or, in the event the Company has failed to do so within ten (10) days, the Administrative Agent) shall designate sufficient Subsidiaries as “Material Subsidiaries” to eliminate such excess, and such designated Subsidiaries shall for all purposes of this Agreement constitute Material Subsidiaries.

“Maturity Date” means May 3, 2024 or any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof.

“Maximum Rate” has the meaning assigned to such term in Section 9.17. “Moody’s” means Moody’s Investors Service, Inc.

“MIRE Event” means, if there are any Mortgaged Properties located in the United States at such time, any increase, extension or renewal of any of the Commitments or Loans (including an Incremental Term Loans or any other incremental credit facilities hereunder, but excluding (i) any continuation or conversion of Borrowings, (ii) the making of any Loan or (iii) the issuance or extension of Letters of Credit).

“Mortgage” means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, on real property of a Loan Party, including any amendment, restatement, modification or supplement thereto.

“Mortgaged Property” means, at any time, any real property of a Loan Party subject to a Mortgage at such time.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Income” means, for any period, the consolidated net income (or loss) of the Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Company or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Company or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Company or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative).

“New Zealand Dollars” means that lawful currency of New Zealand.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(c).

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“NZ Companies Act” means the Companies Act 1993 (New Zealand).

“NZD Interpolated Rate” means, at any time, with respect to any Term Benchmark Borrowing denominated in Australian Dollars and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the NZD Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the NZD Screen Rate for the longest period (for which the NZD Screen Rate is available) that is shorter than the Impacted NZD Rate Interest Period; and (b) the NZD Screen Rate for the shortest period (for which the NZD Screen Rate is available) that exceeds the Impacted NZD Rate Interest Period, in each case, at such time; provided that if any NZD Interpolated Rate shall be less than 0%, such rate shall be deemed to be 0% for the purposes of this Agreement.

“NZD Rate” means, with respect to any Term Benchmark Borrowing denominated in New Zealand Dollars and for any Interest Period, the NZD Screen Rate at approximately 11:00 a.m., Wellington, New Zealand time, on the first day of such Interest Period; provided that, if the NZD Screen Rate shall not be available at such time for such Interest Period (an “Impacted NZD Rate Interest Period”) with respect to New Zealand Dollars, then the NZD Rate shall be the NZD Interpolated Rate.

“NZD Screen Rate” means, for any day and time, with respect to any Term Benchmark Borrowing denominated in New Zealand Dollars and for any Interest Period, the rate per annum determined by the Administrative Agent which is equal to the average bank bill reference rate as administered by the New Zealand Financial Markets Association (or any other Person that takes over the administration of such rate) for bills of exchange with a tenor equal in length to such Interest Period as displayed on page BKBM of the Reuters screen (or, in the event such rate does not appear on such page, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion); provided that if, the NZD Screen Rate shall be less than the Floor, the NZD Screen Rate shall be deemed to be the Floor for purposes of this Agreement.

“Obligated Party” has the meaning assigned to such term in Section 10.02.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person (other than operating leases).

“Original Indebtedness” has the meaning assigned to such term in Section 6.01.

“Other Benchmark Rate Election” means, with respect to any Loan denominated in Dollars, if the then-current Benchmark is the LIBO Rate, the occurrence of:

(a) a request by the Borrower to the Administrative Agent to notify each of the other parties hereto that, at the determination of the Borrower, dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a LIBOR-based rate, a term benchmark rate as a benchmark rate, and

(b) the Administrative Agent, in its sole discretion, and the Borrower jointly elect to trigger a fallback from the LIBO Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Term Benchmark borrowings denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the NYFRB Rate and (b) with respect to any amount denominated in a Foreign Currency, an overnight rate determined by the Administrative Agent or the Issuing Bank, as the case may be, in accordance with banking industry rules on interbank compensation.

“Paid in Full” or “Payment in Full” means, (i) the indefeasible payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (ii) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the Issuing Bank, in an amount equal to 105% of the LC Exposure as of the date of such payment), (iii) the indefeasible payment in full in cash of the accrued and unpaid fees, (iv) the indefeasible payment in full in cash of all reimbursable expenses and other Secured Obligations (other than Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (v) the termination of all Commitments, and (vi) the termination of the Swap Agreement Obligations and the Banking Services Obligations or entering into other arrangements satisfactory to the Secured Parties counterparties thereto.

“Participant” has the meaning assigned to such term in Section 9.04(c).

“Participant Register” has the meaning assigned to such term in Section 9.04(c).

“Payment” has the meaning assigned to it in Section 8.11.

“Payment Notice” has the meaning assigned to it in Section 8.11.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means any Acquisition by any Loan Party in a transaction that satisfies each of the following requirements:

(a) such Acquisition is not a hostile or contested acquisition;

(b) the business acquired in connection with such Acquisition is (i) unless a Permitted Foreign Target, located in the U.S. and organized under applicable U.S. and state laws, and (ii) not engaged, directly or indirectly, in any line of business other than the (I) businesses in which the Loan Parties are engaged on the Effective Date, (II) businesses that are reasonably similar, ancillary, or complementary thereto or a line of business that is a reasonable extension, development or expansion thereof, in each case, solely with respect to the businesses that a Loan Party is engaged on the Effective Date, and (III) businesses otherwise approved by the Administrative Agent in its sole discretion.

(c) both before and after giving effect to such Acquisition and the Loans (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct (except any such representation or warranty which relates to a specified prior date) and no Default or Event of Default exists or would result therefrom;

(d) as soon as available, but not less than fifteen (15) days prior to such Acquisition (or such shorter time as the Administrative Agent may agree in its sole discretion), the Borrower Representative has provided the Administrative Agent (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Administrative Agent including pro forma financial statements, statements of cash flow, and projections;

(e) the total consideration (including the maximum potential total amount of all deferred payment obligations (including earn-outs) and Indebtedness assumed or incurred) in connection with all such Acquisitions during any calendar year shall not exceed \$20,000,000 unless the *pro forma* Consolidated Total Leverage Ratio (calculated on a *pro forma* basis as at the end of the most recently ended fiscal quarter for which financial statements are then available after giving effect to such Acquisition and the incurrence of any Indebtedness incurred in connection therewith) would not exceed 2.50:1.00;

(f) if such Acquisition is an acquisition of the Equity Interests of a Person, such Acquisition is structured so that the acquired Person shall become a wholly-owned Subsidiary of a Loan Party pursuant to the terms of this Agreement;

(g) if such Acquisition is an acquisition of assets, such Acquisition is structured so that a Loan Party shall acquire such assets;

(h) if such Acquisition is an acquisition of Equity Interests, such Acquisition will not result in any violation of Regulation U;

(i) if such Acquisition involves a merger or a consolidation involving a Borrower or any other Loan Party, such Borrower or such Loan Party, as applicable, shall be the surviving entity unless such surviving entity, if other than a Borrower or Loan Party, executes a Joinder Agreement and becomes a Borrower or Loan Party hereunder;

(j) no Loan Party shall, as a result of or in connection with any such Acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation, or other matters) that could reasonably be expected to have a Material Adverse Effect;

(k) unless the Administrative Agent and the Lenders in their sole discretion consent otherwise, in connection with an Acquisition of the Equity Interests of any Person, all Liens on property of such Person shall be terminated, and in connection with an Acquisition of the assets of any Person, all Liens on such assets shall be terminated (except, in each instance, for Liens permitted under Section 6.02);

(l) all actions required to be taken with respect to any newly acquired or formed Subsidiary of a Borrower or a Loan Party, as applicable, required under Section 5.13 shall have been taken, provided, that the Administrative Agent may grant additional time to satisfy such actions in its sole discretion; and

(m) the Borrower Representative shall have delivered to the Administrative Agent (i) the substantially final form documentation relating to such Acquisition within 2 days (or such shorter time as the Administrative Agent may agree in its sole discretion) prior to the consummation thereof, and (ii) the final executed material documentation relating to such Acquisition within 3 days following the consummation thereof.

“Permitted Discretion” means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured lender) business judgment.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;

- (b) carriers', landlord's, warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII; and
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of any Borrower or any Subsidiary;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, except with respect to clause (e) above.

"Permitted Foreign Target" means a Target that is not incorporated, formed or organized in the U.S. or any State or jurisdiction thereof (a "Foreign Target"); provided, however, that an acquisition of a Foreign Target shall only qualify as a Permitted Acquisition if each of the other requirements set forth in the definition of "Permitted Acquisition" (other than those in clauses (f), (g) and (l) of such definition) shall have been satisfied and solely to the extent financed through an investment permitted under clauses (c), (d), (o) and (p) of Section 6.04 or Indebtedness permitted under Section 6.01(r).

"Permitted Investments" means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;
- (c) investments in certificates of deposit, bankers' acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the U.S. or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;
- (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

- (c) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan or Foreign Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations" means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"Platform" means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Prepayment Event" means:

- (a) any sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party or any Subsidiary in excess of \$1,000,000 per annum, other than dispositions described in Section 6.05(a);
- (b) [reserved]; or
- (c) the incurrence by any Loan Party or any Subsidiary of any other Indebtedness, other than Indebtedness permitted under Section 6.01.

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the ~~Federal Reserve~~ Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the ~~Federal Reserve~~ Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Proceeding" means any claim, litigation, investigation, action, suit, arbitration or administrative, judicial or regulatory action or proceeding in any jurisdiction.

"Project Oscar Acquisition" means the direct or indirect Acquisition by Project Oscar Purchaser of all of the issued and outstanding Equity Interests of each Project Oscar Target pursuant to the Project Oscar Acquisition Agreement; provided that, notwithstanding anything in this Agreement to the contrary, the Project Oscar Acquisition



shall be deemed to be a “Permitted Acquisition” for all purposes hereunder subject solely to the satisfaction of the conditions to effectiveness of the Third Amendment set forth in Section 4 of the Third Amendment.

“Project Oscar Acquisition Agreement” means the Share Sale and Purchase Agreement, dated as of May 30, 2021, among the Company, as purchase guarantor, Project Oscar Purchaser, as purchaser, and Richard Cropley, Hugh Cropley, Oliver Cropley and Cropley Nominees Pty Ltd ACN 122 680 559 as trustee for the Cropley Family Trust, as sellers, together with all exhibits, schedules, disclosure letters and attachments thereto, all as in effect on the Third Amendment Effective Date and as may be further amended or modified as permitted under Section 6.11.

---

33

---

“Project Oscar Australian Holdings” means Oscar Aluminium Holdings Pty Ltd, a private limited liability company organized under the laws of Australia and a wholly-owned Subsidiary of the Company.

“Project Oscar Intercompany Debt” means, collectively, the intercompany loans made by and among the Company, Project Oscar US Holdings, Project Oscar Australian Holdings and Project Oscar Purchaser; provided that (i) the proceeds of such intercompany loans shall be used solely to pay all or a portion of the consideration for the consummation of the Project Oscar Acquisition and (ii) such intercompany loans shall be evidenced by a promissory note or other agreement in form and substance reasonably satisfactory to the Administrative Agent that is pledged and delivered to the Administrative Agent, together with a customary allonge executed in blank, pursuant to the Collateral Documents.

“Project Oscar Material Subsidiary” means (a) Project Oscar US Holdings, (b) Project Oscar Australian Holdings, (c) Project Oscar Purchaser, (d) Rhino-Rack Holdings Pty Ltd (formerly known as Cropley Holdings Pty Ltd), a private limited liability company organized under the laws of Australia, (e) Rhino Rack Australia Pty Ltd, a private limited liability company organized under the laws of Australia, and (f) Rhino-Rack USA LLC, a Colorado limited liability company.

“Project Oscar Purchaser” means Oscar Aluminium Pty Ltd, a private limited liability company organized under the laws of Australia and a wholly-owned Subsidiary of the Company.

“Project Oscar Target” means each of the following, collectively or individually as the context requires: (a) Rhino-Rack Holdings Pty Ltd (formerly known as Cropley Holdings Pty Ltd), a private limited liability company organized under the laws of Australia, (b) Rhino Rack Australia Pty Ltd, a private limited liability company organized under the laws of Australia, (c) Roof Rack City (NSW) Pty Ltd, a private limited liability company organized under the laws of Australia, (d) Rhino-Rack USA LLC, a Colorado limited liability company, (e) Rhinorack Canada Limited, a private limited liability company organized under the laws of British Columbia, Canada, and (f) Rhino-Rack New Zealand Ltd, a private limited liability company organized under the laws of New Zealand.

“Project Oscar Transactions” means (a) the formation of Project Oscar US Holdings, Project Oscar Australian Holdings and Project Oscar Purchaser, in each case, solely for the purpose of consummating the Project Oscar Acquisition, (b) the incurrence of the Project Oscar Intercompany Debt and (c) the consummation of the Project Oscar Acquisition and the other transactions contemplated by the Project Oscar Acquisition Agreement (including, without limitation, the Guarantee by the Company of the obligations of the Project Oscar Purchaser arising under and pursuant to the Project Oscar Acquisition Agreement).

“Project Oscar US Holdings” means Oscar Aluminium Holdings Inc., a Delaware corporation and wholly-owned subsidiary of the Company.

“Projections” has the meaning assigned to such term in Section 5.01(e).

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning assigned to such term in Section 5.01.

“Public Side Personnel” has the meaning assigned to such term in Section 5.01.

---

34

---

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning assigned to such term in Section 10.14.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, or any combination thereof (as the context requires).

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBO Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, ~~and~~ (2) if such Benchmark is ~~not LIBO Rate, the time determined by the Administrative Agent in its reasonable discretion~~ the AUD Rate, 11:00 a.m., Sydney, Australia time and (3) if such Benchmark is the NZD Rate, 11:00 a.m., Wellington, New Zealand time.

“Refinance Indebtedness” has the meaning assigned to such term in Section 6.01(f).

“Register” has the meaning assigned to such term in Section 9.04(b).

“Regulation D” means Regulation D of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, partners, members, trustees, employees,

agents, administrators, managers, representatives and advisors of such Person and such Person's Affiliates.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of any substance into the environment.

"Relevant Governmental Body" means ~~the Federal Reserve Board~~ (i) with respect to a Benchmark Replacement in respect of Loans denominated in Dollars, the Board and/or the NYFRB, ~~the CME Term SOFR Administrator, as applicable~~, or a committee officially endorsed or convened by the ~~Federal Reserve Board~~ and/or the NYFRB, or, in each case, any successor thereto; and (ii) with respect to a Benchmark Replacement in respect of Loans denominated in any other Agreed Currency, (a) the central bank for the currency in which such Benchmark Replacement is denominated or any central bank or other supervisor which is responsible for supervising either (1) such Benchmark Replacement or (2) the administrator of such Benchmark Replacement or (b) any working group or committee officially endorsed or convened by (1) the central bank for the currency in which such Benchmark Replacement is denominated, (2) any central bank or other supervisor that is responsible for supervising either (A) such Benchmark Replacement or (B) the administrator of such Benchmark Replacement, (3) a group of those central banks or other supervisors or (4) the Financial Stability Board or any part thereof.

"Relevant Rate" means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the LIBO Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Australian Dollars, the AUD Rate and (iii) with respect to any Term Benchmark Borrowing denominated in New Zealand Dollars, the NZD Rate, as applicable.

"Relevant Screen Rate" means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the LIBO Screen Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Australian Dollars, the AUD Screen Rate and (iii) with respect to any Term Benchmark Borrowing denominated in New Zealand Dollars, the NZD Screen Rate, as applicable.

"Required Lenders" means, at any time, Lenders (other than Defaulting Lenders) having Credit Exposures and unused Commitments representing more than 50.1% of the sum of the Aggregate Revolving Exposure, the Aggregate Term Exposure and the aggregate unused Commitments at such time; provided, however, that, at any time that there are at least two (2) Lenders that are not Affiliates or Approved Funds of one another, "Required Lenders" shall include at least two (2) Lenders that are not Affiliates or Approved Funds of one another.

"Requirement of Law" means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Company or any Subsidiary, or any option, warrant or other right to acquire any such Equity Interests in the Company or any Subsidiary.

"Reuters" means, as applicable, Thomson Reuters Corp, Refinitiv, or any successor thereto.

"Revaluation Date" shall mean (a) with respect to any Loan denominated in any Foreign Currency, each of the following: (i) the date of the Borrowing of such Loan and (ii) each date of a conversion into or continuation of such Loan pursuant to the terms of this Agreement; (b) with respect to any Letter of Credit denominated in a Foreign Currency, each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month and (iii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof; and (c) any additional date as the Administrative Agent may determine at any time when an Event of Default exists.

"Revolving Borrowing" means Revolving Loans of the same Type and Agreed Currency, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

"Revolving Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate permitted amount of such Lender's Revolving Exposure hereunder, as such commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Revolving Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable.

"Revolving Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount Dollar Amount of such Lender's Revolving Loans and its LC Exposure and its Swingline Exposure at such time.

"Revolving Lender" means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"Revolving Loan" means a revolving loan made pursuant to Section 2.01.

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sale and Leaseback Transaction" has the meaning assigned to such term in Section 6.06.

"Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the OFAC, the U.S. Department of State or by the United Nations Security Council, the European Union or any European Union member state, Her Majesty's Treasury of the United Kingdom, the Australian

Department of Foreign Affairs and Trade, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the OFAC or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom, the Australian Department of Foreign Affairs and Trade, or other relevant sanctions authority.

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

“Second Amendment” means that certain Second Amendment to Credit Agreement by and among the Borrowers, the other Loan Parties party hereto, the Lenders party thereto, and the Administrative Agent, dated as of the Second Amendment Effective Date.

---

37

“Second Amendment Effective Date” means November 12, 2020.

“Secured Obligations” means all Obligations, together with all (i) Banking Services Obligations and (ii) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided, however, that the definition of “Secured Obligations” shall not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor.

“Secured Parties” means (a) the Administrative Agent, (b) the Lenders, (c) the Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (g) the successors and assigns of each of the foregoing.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Settlement” has the meaning assigned to such term in Section 2.05(c).

“Settlement Date” has the meaning assigned to such term in Section 2.05(c).

“SOFR” means, ~~with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published as administered by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.~~

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s Website, ~~currently as of the Amendment No. 4 Effective Date~~ at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Standby LC Exposure” means, at any time, the sum of (a) the aggregate undrawn ~~amount~~ Dollar Amount of all standby Letters of Credit outstanding at such time ~~plus~~ (b) the aggregate ~~amount~~ Dollar Amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers at such time. The Standby LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Standby LC Exposure at such time.

“Statements” has the meaning assigned to such term in Section 2.18(g).

---

38

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) ~~expressed as a decimal~~ established by the ~~Federal Reserve Board~~ to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, the LIBOR Market Index Rate, Adjusted AUD Rate or Adjusted NZD Rate, as applicable, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D) ~~or any other reserve ratio or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans~~. Such reserve ~~percentages~~ percentage shall include those imposed pursuant to Regulation D. Term Benchmark Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of the Company or a Loan Party, as applicable.

“Subsidiary Guarantor” means each Loan Party that is not a Borrower.

“Supported QFC” has the meaning assigned to such term in Section 10.14.

“Swap Agreement” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures



of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers or the Subsidiaries shall constitute a Swap Agreement for purposes of this definition.

“Swap Agreement Obligations” means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any such Swap Agreement transaction.

“Swap Obligation” means, with respect to any Loan Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall be the sum of (a) its Applicable Percentage of the aggregate principal amount of all Swingline Loans outstanding at such time (excluding, in the case of any Lender that is a Swingline Lender, Swingline Loans made by it that are outstanding at such time to the extent that the other Lenders shall not have funded their participations in such Swingline Loans), adjusted to give effect to any reallocation under Section 2.20 of the Swingline Exposure of Defaulting Lenders in effect at such time, and (b) in the case of any Revolving Lender that is the Swingline Lender, the aggregate principal amount of all Swingline Loans made by such Revolving Lender outstanding at such time, less the amount of participations funded by the other Lenders in such Swingline Loans.

“Swingline Lender” means JPMCB, in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or the Issuing Bank shall be deemed to be required of the Swingline Lender and any consent given by JPMCB in its capacity as Administrative Agent or Issuing Bank shall be deemed given by JPMCB in its capacity as Swingline Lender.

“Swingline Loan” has the meaning assigned to such term in Section 2.05(a). All Swingline Loans shall be denominated in Dollars.

“Target” shall mean any Person, business, division, subsidiary or assets acquired in any Permitted Acquisition.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Benchmark”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Adjusted LIBO Rate, the Adjusted AUD Rate or the Adjusted NZD Rate.

“Term Benchmark Payment Office” of the Administrative Agent means, for each Foreign Currency, the office, branch, affiliate or correspondent bank of the Administrative Agent for such currency as specified from time to time by the Administrative Agent to the Borrowers and each Lender.

“Term Lenders” means, as of any date of determination, Lenders having an Additional Term Loan Commitment or holding a Term Loan.

“Term Loan Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Term Loans at such time.

“Term Loans” means the Initial Term Loans and the Additional Term Loans. For the avoidance of doubt, after giving effect to the funding of the Additional Term Loans on the Third Amendment Effective Date, all of the Term Loans hereunder shall be deemed to constitute a single tranche of Term Loans held by the Term Lenders as of the Third Amendment Effective Date in such amounts set forth on the Commitment Schedule.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower Representative of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable (and, for the avoidance of doubt, not in the case of an Other Benchmark Rate Election), has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.14 that is not Term SOFR.

“Third Amendment” means that certain Third Amendment to Credit Agreement by and among the Borrowers, the other Loan Parties party hereto, the Lenders party thereto, and the Administrative Agent, dated as of the Third Amendment Effective Date.

“Third Amendment Effective Date” means July 1, 2021.

“Transactions” means the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Treaty” has the meaning assigned to such term in Section 3.24.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, the Central Bank Rate, the Adjusted AUD Rate, the Adjusted NZD Rate, the LIBOR Market Index Rate or the Alternate Base Rate.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

“UK Financial Institutions” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfinanced Capital Expenditures” means, for any period, Capital Expenditures made during such period which are not financed from the proceeds of any Indebtedness (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).

“Unliquidated Obligations” means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (ii) any other obligation (including any guarantee) that is contingent in nature at such time; or (iii) an obligation to provide collateral to secure any of the foregoing types of obligations.

“U.S.” means the United States of America.

~~“U.S. Dollars” or “\$” refers to lawful money of the U.S.~~

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regimes” has the meaning assigned to such term in Section 10.14.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Term Benchmark Loan”) or by Class and Type (e.g., a “Term Benchmark Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Term Benchmark Borrowing”) or by Class and Type (e.g., a “Term Benchmark Revolving Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase “at any time” or “for any period” shall refer to the same time or period for all calculations or determinations within such definition, and (g) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

#### SECTION 1.04. Accounting Terms; GAAP.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Company or any Subsidiary at “fair value”, as defined therein and (ii) without giving effect to any treatment of Indebtedness under Financial Accounting Standards Board Accounting Standards Codification 470-20 or 2015-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of “Capital Lease Obligations,” any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) (“FAS 842”), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

SECTION 1.05. Currency Translations; Currency Matters.

(a) For purposes of this Agreement and the other Loan Documents, the Administrative Agent shall determine any amount, unless expressly provided otherwise, as the Dollar ~~Equivalent Amount~~ thereof as and if required (as determined by the Administrative Agent in its sole discretion) under any Loan Document, and a determination thereof by the Administrative Agent shall be conclusive absent manifest error. In the case of any Loans or LC Exposure denominated in a Foreign Currency, such Dollar Amount shall become effective as of the most recent Revaluation Date for such Obligations and shall be the equivalent of such amounts as so determined until the next Revaluation Date to occur. The Administrative Agent may, but shall not be obligated to, rely on any determination made by any Loan Party in any document or certificate delivered to the Administrative Agent. The Administrative Agent may determine or redetermine the Dollar ~~Equivalent Amount~~ of any amount on any date in its sole discretion. Further, without limitation, for purposes of computations, calculations, or determinations hereunder, unless expressly provided otherwise, where a reference is made to a dollar amount or an amount without reference to a specific currency (including, without limitation, where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, such amounts), the amount is to be considered as the amount in U.S. Dollars and, therefore, any other currency that is a component of such computation, calculation or determination shall be converted into the Dollar ~~Equivalent Amount~~ thereof, as applicable.

43

(b) Each payment owing by any Loan Party hereunder shall be made in the relevant currency specified herein or, if not specified herein, specified in any other Loan Document executed by the Administrative Agent (the “Currency of Payment”) at the place specified herein (such requirements are of the essence to this Agreement). If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum due hereunder in a Currency of Payment into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase such Currency of Payment with such other currency in accordance with its normal practice at its head office on the Business Day preceding that on which final judgment is given. The obligations in respect of any sum due hereunder to any Credit Party shall, notwithstanding any adjudication expressed in a currency other than the Currency of Payment, be discharged only to the extent that, on the Business Day following receipt by such Credit Party of any sum adjudged to be so due in such other currency, such Credit Party may, in accordance with normal banking procedures, purchase the Currency of Payment with such other currency. Each Loan Party agrees that (i) if the amount of the Currency of Payment so purchased is less than the sum originally due to such Credit Party in the Currency of Payment, each Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding the result of any such adjudication, such Loan Party shall immediately pay the shortfall (in the Currency of Payment) to such Credit Party and (ii) if the amount of the Currency of Payment so purchased exceeds (a) the sum originally due to such Credit Party, such Credit Party shall promptly pay the excess over to such Loan Party in the currency and to the extent actually received; and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 2.18, such Lender or the Administrative Agent, as the case may be, agrees to remit such excess to such Borrower.

SECTION 1.06. Status of Obligations. In the event that any Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, such Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as “senior indebtedness” and as “designated senior indebtedness” and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Administrative Agent and the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

44

SECTION 1.07. Interest Rates; LIBOR Notification. The interest rate on ~~Term Benchmark Loans and Swingline Loans~~ is ~~determined by reference to the LIBO Rate, which is derived from the London interbank offered rate.~~ a Loan denominated in Dollars or a Foreign Currency may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable laws and regulations, may be permanently discontinued, and/or the basis on which they are calculated may change. The London interbank offered rate (“LIBOR”) is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, the U.K. Financial Conduct Authority (“FCA”) publicly announced that: (a) immediately after December 31, 2021, publication of the 1-week and 2-month U.S. Dollar LIBOR settings will permanently cease; (b) immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar LIBOR settings will permanently cease; and (c) immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA’s consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this ~~agreement~~ Agreement should consult its own advisors to stay informed of any such developments. Public and private sector industry initiatives are currently underway to ~~identify~~ implement new or alternative reference rates to be used in place of LIBOR. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, Sections 2.14(c) and (d) provide a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower Representative, pursuant to Section 2.14, of any change to the reference rate upon which the interest rate on Term Benchmark Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to LIBOR or other rates in the definition of “LIBO Rate” (or “AUD Rate” or “NZD Rate”, as applicable) or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.14(c) or (d), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.14(e)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate (or the AUD Rate or NZD Rate, as applicable) or have the same volume or liquidity as did the London or other applicable offshore interbank offered rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any ~~Benchmark~~ interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to ~~the~~ any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.08. Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Amount of the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Amount of the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the Issuing Bank and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

SECTION 1.09. Divisions. For all purposes under the Loan Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

## ARTICLE II

### THE CREDITS

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, (a) each Revolving Lender severally (and not jointly) agrees to make Revolving Loans in U.S. Dollars Agreed Currencies to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.10) in (i) the Dollar Amount of such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (ii) the Dollar Amount of the Aggregate Revolving Exposure exceeding the Aggregate Revolving Commitments and (b) each Additional Term Lender severally (and not jointly) agrees to make Additional Term Loans in U.S. Dollars to the Borrowers on the Third Amendment Effective Date upon the effectiveness of the Third Amendment, in an aggregate principal amount not in excess of such Lender's Additional Term Loan Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay (without any penalty, premium or other prepayment fee, other than payment of any break funding expenses under Section 2.16) and reborrow Revolving Loans. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed. The Initial Term Loans were funded on the Effective Date and may not be reborrowed.

#### SECTION 2.02. Loans and Borrowings.

(a) Each Revolving Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Revolving Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Revolving Commitments of the applicable Class. Each Additional Term Loan shall be made as part of a Borrowing on the Third Amendment Effective Date consisting of Additional Term Loans made by the Additional Term Lenders ratably in accordance with their respective Additional Term Loan Commitment. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Swingline Loan shall be made in accordance with the procedures set forth in Section 2.05. The Term Loans shall amortize as set forth in Section 2.10.

(b) Subject to Section 2.14, each Revolving Borrowing and Term Loan Borrowing shall be comprised (A) in the case of Borrowings in Dollars, entirely of ABR Loans or Term Benchmark Loans and (B) in the case of Borrowings in any other Agreed Currency, entirely of Term Benchmark Loans of the same Agreed Currency, as the Borrower Representative may request in accordance herewith, provided that (i) all Borrowings made on the Effective Date must be made as ABR Borrowings but may be converted into Term Benchmark Borrowings in accordance with Section 2.08 and (ii) each ABR Loan and Swingline Loan shall only be made in Dollars. Each Lender at its option may make any Term Benchmark Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000 (or, if such Borrowing is denominated in a Foreign Currency, the Equivalent Amount of such units of such currency). ABR Borrowings may be in any amount. Each Swingline Loan shall be in an amount that is an integral multiple of \$100,000 and not less than \$100,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of 6 Term Benchmark Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the Borrower Representative shall notify the Administrative Agent of such request either in writing (delivered by hand or facsimile) in a form approved by the Administrative Agent and signed by the Borrower Representative or by telephone or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, not later than (a) in the case of a Term Benchmark Borrowing, 10:00 a.m., Chicago time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, noon, Chicago time, on the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., Chicago time, on the date of such proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, facsimile or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower Representative. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the name of the applicable Borrower(s);
- (ii) the Agreed Currency and aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing; and



(v) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period."

If no election as to the currency of a Borrowing is specified, then the requested Borrowing shall be made in Dollars If no election as to the Type of Borrowing is specified, then, in the case of a Borrowing denominated in Dollars, the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the applicable Borrower(s) shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing. Notwithstanding the foregoing, in no event shall any Borrower be permitted to request a CBR Loan (it being understood and agreed that a Central Bank Rate shall only apply to the extent provided in Sections 2.08(e), 2.14(a), 2.14(g) and 2.14(h)).

SECTION 2.04. ~~Intentionally Omitted~~ Determination of Dollar Amounts.

The Dollar Amount of all Loans, Borrowings, Letters of Credit and LC Exposure, as applicable, denominated in Foreign Currencies hereunder shall be determined on each Revaluation Date.

SECTION 2.05. Swingline Loans.

(a) The Administrative Agent, the Swingline Lender and the Revolving Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after the Borrower Representative requests an ABR Borrowing, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the Revolving Lenders and in the amount requested, same day funds to the Borrowers, on the date of the applicable Borrowing to the Funding Account(s) (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a "Swingline Loan"), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(c). Each Swingline Loan shall be denominated in Dollars and shall be subject to all the terms and conditions applicable to other ABR Loans funded by the Revolving Lenders, except that all payments thereon shall be payable to the Swingline Lender solely for its own account and shall bear interest as set forth in Section 2.13(d)(ii). The aggregate amount of Swingline Loans outstanding at any time shall not exceed \$7,500,000.

(b) Upon the making of a Swingline Loan (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan), each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender or the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Swingline Loan in proportion to its Applicable Percentage of the Revolving Commitment. The Swingline Lender or the Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan.

(c) The Administrative Agent, on behalf of the Swingline Lender, shall request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon Chicago time on the date of such requested Settlement (the "Settlement Date"). Each Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) shall transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., Chicago time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amounts of the Swingline Lender's Swingline Loans and, together with Swingline Lender's Applicable Percentage of such Swingline Loan, shall constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender shall be entitled to recover from such Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

SECTION 2.06. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower Representative may request the issuance of Letters of Credit for its own account or for the account of another Borrower denominated in ~~U.S. Dollars~~ Agreed Currencies as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrowers to, or entered into by the Borrowers with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Each Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary's obligations as provided in the first sentence of this paragraph, such Borrower will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(c) to the same extent as if it were the sole account party in respect of such Letter of Credit (such Borrower hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such Subsidiary that is an account party in respect of any such Letter of Credit). Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it, or (iii) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed not to be in effect on the Effective Date for purposes of clause (ii) above, regardless of the date enacted, adopted, issued or implemented.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower Representative shall deliver by hand or facsimile (or transmit through Electronic Systems, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of, but in any event no less than three (3) Business Days prior to the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section 2.06), the amount and Agreed Currency of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the applicable Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the ~~aggregate~~ Dollar Amount of the LC Exposure shall not exceed \$5,000,000, (ii) no Revolving Lender's Revolving Exposure shall exceed its Revolving Commitment and (iii) the Aggregate Revolving Exposure shall not exceed the Aggregate Revolving Commitment.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, including, without limitation, any automatic renewal provision, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Revolving Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate ~~amount~~ Dollar Amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section 2.06, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent an amount in the currency of such LC Disbursement (or, at the sole discretion of the Issuing Bank, in Dollars in the Dollar Amount of such LC Disbursement calculated using the Exchange Rate on the date such LC Disbursement was made) equal to such LC Disbursement (i) not later than 11:00 a.m., Chicago time, on the date that such LC Disbursement is made, if the Borrower Representative shall have received notice of such LC Disbursement prior to 9:00 a.m., Chicago time, on such date, or, (ii) if such notice has not been received by the Borrower Representative prior to such time on such date, then not later than 11:00 a.m., Chicago time, on (A) the Business Day that the Borrower Representative receives such notice, if such notice is received prior to 9:00 a.m., Chicago time, on the day of receipt, or (B) the Business Day immediately following the day that the Borrower Representative receives such notice, if such notice is not received prior to such time on the day of receipt; provided that (x) if such LC Disbursement is denominated in Dollars, the Borrowers may, subject to the conditions to borrowings set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and or (y) if such LC Disbursement is denominated in a Foreign Currency, the Borrowers may, subject to the conditions to borrowings set forth herein, request in accordance with Section 2.03 that such payment be converted into an Equivalent Amount of an ABR Revolving Borrowing denominated in Dollars in an amount equal to the Dollar Amount of such Foreign Currency and, in each case, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrowers of their obligation to reimburse such LC Disbursement. If any Borrower's reimbursement of, or obligation to reimburse, any amounts in any Foreign Currency would subject the Administrative Agent, the Issuing Bank or any Lender to any stamp duty, ad valorem charge or similar tax that would not be payable if such reimbursement were made or required to be made in Dollars, such Borrower shall, at its option, either (x) pay the amount of any such tax requested by the Administrative Agent, the Issuing Bank or the relevant Lender or (y) reimburse each LC Disbursement made in such Foreign Currency in Dollars, in an amount equal to the Dollar Amount thereof, calculated using the applicable Exchange Rates, on the date such LC Disbursement is made.

(f) Obligations Absolute. The Borrowers' joint and several obligation to reimburse the LC Disbursements as provided in paragraph (e) of this Section 2.06 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, ~~or~~ (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.06, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder or (v) any adverse change in the relevant exchange rates or in the availability of the relevant Foreign Currency to the Company or any Subsidiary or in the relevant currency markets generally. None of the Administrative Agent, the Revolving Lenders, the Issuing Bank or any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a nonappealable judgment of a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

( g ) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the applicable Borrower by telephone (confirmed by facsimile or through Electronic Systems) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

( h ) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full in the applicable currency on the date such LC Disbursement is made (or, at the sole discretion of the Issuing Bank, in Dollars in the Dollar Amount of such LC Disbursement calculated using the Exchange Rate on the date such LC Disbursement was made), the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans and such interest shall be payable on the date when such reimbursement is due; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section 2.06, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section 2.06 to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

( i ) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(c). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

( j ) Cash Collateralization. If any Default shall occur and be continuing, on the Business Day that the Borrower Representative receives notice from the Administrative Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount Dollar Amount of the LC Exposure in the applicable currencies as of such date (or, at the sole discretion of the Issuing Bank, in Dollars in the Dollar Amount of such LC Disbursement calculated using the Exchange Rate on the date such deposit is made) plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Secured Obligations. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of a Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three (3) Business Days after all such Defaults have been cured or waived as confirmed in writing by the Administrative Agent.

( k ) LC Exposure Determination. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

#### SECTION 2.07. Funding of Borrowings

(a) Each Lender shall make each Loan to be made by such Lender hereunder on the proposed date thereof solely by wire transfer of immediately available funds (i) in the case of Loans denominated in Dollars, by 1:00 p.m., Chicago time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; and (ii) in the case of each Loan denominated in a Foreign Currency, by 1:00 p.m. Chicago time, in the city of the Administrative Agent's Term Benchmark Payment Office for such currency and Borrower and at such Term Benchmark Payment Office for such currency and Borrower in a Dollar Amount denominated in such currency equal to such Lender's Applicable Percentage provided that, Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower Representative by promptly crediting the funds so received in the aforesaid account of the Administrative Agent to the Funding Account; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section 2.07 and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the ~~NYFRB~~ Applicable Overnight Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to ABR Loans, or in the case of Foreign Currencies, in accordance with such market practice, in each case, as applicable. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing; provided, that any interest received from any Borrower by the Administrative Agent during the period beginning when the Administrative Agent funded the Borrowing until such Lender pays such amount shall be solely for the account of the Administrative Agent.

SECTION 2.08. Interest Elections. (a) Each Borrowing initially shall be of the Type and Agreed Currency specified in the applicable Borrowing Request and, in the

case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.08, the Borrower Representative shall notify the Administrative Agent of such election by telephone (solely in the case of a Borrowing denominated in Dollars) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, Electronic System or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower Representative. Notwithstanding any contrary provision herein, this Section shall not be construed to permit any Borrower to (i) change the currency of any Borrowing, (ii) elect an Interest Period for Term Benchmark Loans that does not comply with Section 2.02(d), (iii) convert any Borrowing to a Borrowing of a Type not available under the Class of Commitments pursuant to which such Borrowing was made or (iv) elect a Central Bank Rate (it being understood and agreed that the Central Bank Rate shall only apply to the extent provided in Sections 2.08(e), 2.14(a), 2.14(g) and 2.14(h)).

(c) Each telephonic and written Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

54

- (i) the name of the applicable Borrower and the Agreed Currency and amount of the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);
- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
- (iii) whether the resulting Borrowing is to be an ABR Borrowing (in the case of a Borrowing denominated in Dollars) or a Term Benchmark Borrowing; and
- (iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period and Agreed Currency to be applicable thereto after giving effect to such election, which Interest Period shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period (i) in the case of a Borrowing denominated in Dollars, such Borrowing shall be converted to an ABR Borrowing and (ii) in the case of a Borrowing denominated in a Foreign Currency in respect of which the applicable Borrower shall have failed to deliver an Interest Election Request prior to the third (3rd) Business Day preceding the end of such Interest Period, such Borrowing shall automatically continue as a Term Benchmark Borrowing in the same Agreed Currency with an Interest Period of one month unless (x) such Term Benchmark Borrowing is or was repaid in accordance with Section 2.11 or (y) such Borrower shall have given the Administrative Agent an Interest Election Request requesting that, at the end of such Interest Period, such Term Benchmark Borrowing continue as a Term Benchmark Borrowing for the same or another Interest Period.

~~(e) Notwithstanding any contrary provision hereof, if a Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as a Default is continuing ~~(i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, each Term Benchmark Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto~~~~

(i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing;

(ii) unless repaid, each Term Benchmark Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto (or the next succeeding Business Day if such day is not a Business Day); and

(iii) unless repaid, each Term Benchmark Borrowing denominated in a Foreign Currency shall, on the last day of the Interest Period applicable thereto (or the next succeeding Business Day if such day is not a Business Day), bear interest at a rate per annum equal to the Central Bank Rate for such Foreign Currency plus the CBR Spread; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for such Foreign Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in such Foreign Currency shall either be (1) converted to an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Amount of such Foreign Currency) at the end of the Interest Period, as applicable, therefor or (2) prepaid at the end of the applicable Interest Period or on the Interest Payment Date, as applicable, in full; provided further that if no election is made by the applicable Borrower by the earlier of (A) the date that is three Business Days after receipt by such Borrower of such notice and (B) the last day of the current Interest Period for the applicable Term Benchmark Loan, such Borrower shall be deemed to have elected clause (1) above.

55

#### SECTION 2.09. Termination of Commitments; Increase in Commitments

(a) Unless previously terminated, (i) the Additional Term Loan Commitments shall terminate on the Third Amendment Effective Date upon the earlier of the funding of the Additional Term Loans (immediately after giving effect to such funding) and 4:00 p.m. (Chicago Time) on the Third Amendment Effective Date and (ii) all other Commitments shall terminate on the Maturity Date. The commitments in respect of the Initial Term Loans terminated in full immediately after giving effect to the funding of the Initial Term Loans on the Effective Date.

(b) The Borrowers may at any time terminate the Revolving Commitments and the Additional Term Loan Commitments upon the Payment in Full of the Secured Obligations.



(c) The Borrower Representative shall notify the Administrative Agent of any election to terminate the Commitments under paragraph (b) of this Section 2.09 at least three (3) Business Days prior to the effective date of such termination, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination of the Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments.

(d) The Borrowers may from time to time elect to increase the Revolving Commitments or enter into one or more additional tranches of term loans (each, an “Incremental Term Loan”), in each case in a minimum amount of \$15,000,000, so long as, there are only a maximum of 3 such requests after the Third Amendment Effective Date and after giving effect thereto, the aggregate amount of all such Revolving Commitment increases and all such Incremental Term Loans after the Third Amendment Effective Date does not exceed \$50,000,000. Each request from the Borrower Representative, on behalf of the Borrowers, pursuant to this Section 2.09 shall set forth the requested amount and proposed terms of the relevant Revolving Commitment increase or Incremental Term Loans. The Borrowers may arrange for any such Revolving Commitment increase or Incremental Term Loan to be provided by one or more Lenders (each Lender so agreeing to an increase in its Revolving Commitment, or to participate in such Incremental Term Loans, an “Increasing Lender”), or by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an “Augmenting Lender” and, together with each Increasing Lender, collectively, the “Additional Lenders”), to increase their existing Revolving Commitments, or to participate in such Incremental Term Loans, or extend Revolving Commitments, as the case may be; provided, that each Augmenting Lender shall be subject to the approval of the Borrower Representative and the Administrative Agent and, except in the case of an Incremental Term Loan, the Swingline Lender and the Issuing Bank, which approvals shall not be unreasonably withheld, delayed or conditioned. No existing Lender shall have any obligation or be required to provide any Revolving Commitment increase or any Incremental Term Loan unless it expressly so agrees. No consent of any Lender (other than the Lenders participating in such Revolving Commitment increase or Incremental Term Loan) shall be required for any such increase or Incremental Term Loan pursuant to this Section 2.09.

---

56

(e) Revolving Commitment increases and Incremental Term Loans created pursuant to this Section 2.09 shall become effective on the date agreed by the Borrower Representative, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders, and the Administrative Agent shall notify each Lender thereof. Notwithstanding the foregoing, no increase in the Revolving Commitments (or in the Revolving Commitment of any Lender) or Incremental Term Loan shall become effective under this paragraph unless (i) on the proposed date of the effectiveness of such Revolving Commitment increase or Incremental Term Loan, (A) the conditions set forth in paragraphs (a) and (b) of Section 4.02 shall be satisfied both before and immediately after giving effect to such Revolving Commitment increase or Incremental Term Loan or waived by the Required Lenders, and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower Representative and (B) the Loan Parties shall be in pro forma compliance with each financial covenant set forth in Sections 6.12 and 6.13, recomputed (1) as if such Revolving Commitment increase or Incremental Term Loan (and the application of proceeds thereof to the repayment of any other Indebtedness) had occurred on the first day of the four-fiscal quarter period most recently ended preceding the date thereof for which the Borrower Representative has delivered financial statements, and (2) with Consolidated Total Indebtedness, EBITDA and Interest Expense measured as of the date of and immediately after giving effect to any funding in connection with such Revolving Commitment increase or Incremental Term Loan (and the application of proceeds thereof to the repayment of any other Indebtedness), and assuming the full drawing under any such Revolving Commitment increase or Incremental Term Loan, and (ii) the Administrative Agent shall have received documents consistent with those delivered on the Effective Date as to the corporate power and authority of the Borrowers to borrow hereunder immediately after giving effect to such Revolving Commitment increase or Incremental Term Loan.

(f) On the effective date of any increase in the Revolving Commitments, (i) each relevant Increasing Lender and Augmenting Lender shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such Revolving Commitment increase and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent shall make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) except in the case of any Incremental Term Loans, the Borrowers shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase in the Revolving Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower Representative, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Term Benchmark Loan, shall be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods.

---

57

(g) The Incremental Term Loans (i) shall rank *pari passu* in right of payment with the Revolving Loans and the existing Term Loans, (ii) shall not mature earlier than the Maturity Date (but may have amortization prior to such date), (iii) shall have a weighted average life to maturity that is no earlier than the weighted average life to maturity of the existing Term Loans, and (iv) shall be treated substantially the same as (and in any event no more favorable in any material respect than) the existing Term Loans or Revolving Loans; provided, that (A) any fees applicable to the increase in Revolving Loans and the Incremental Term Loans shall be determined by the Borrowers, the Arranger and the applicable Additional Lenders and (B) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the latest Maturity Date in effect at such time may provide for material additional or different financial or other covenants or prepayment requirements applicable only during periods after such Maturity Date.

(h) Incremental Term Loans may be made hereunder pursuant to an amendment or restatement (an “Incremental Term Loan Amendment”) of this Agreement and, as appropriate, the other Loan Documents, executed by the Borrowers, each Additional Lender participating in such Incremental Term Loan, as applicable, and the Administrative Agent. Each Incremental Term Loan Amendment may, without the consent of any other Lenders (except to the extent required pursuant to the provisions in Section 9.02(a)) or the Required Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.09. Nothing contained in this Section 2.09 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Revolving Commitment hereunder, or provide Incremental Term Loans, at any time. Within a reasonable time after the effective date of any increase or addition, the Administrative Agent shall, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and shall distribute such revised Commitment Schedule to each of the Lenders and the Borrowers, whereupon such revised Commitment Schedule shall replace the old Commitment Schedule and become part of this Agreement.

(i) In connection with any increase of the Revolving Commitments or Incremental Term Loans pursuant to this Section 2.09, any new lending institution becoming a party hereto shall (i) execute such documents and agreements as the Administrative Agent may reasonably request and (ii) provide to the Administrative Agent, its name, address, tax identification number and/or such other information as shall be necessary for the Administrative Agent to comply with “know your customer” and anti-money laundering rules and regulations, including without limitation, the USA PATRIOT Act.

(a) The Borrowers hereby unconditionally promise to pay to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date in the currency of such Loan.

(b) The Borrowers hereby unconditionally promise to pay to the Administrative Agent for the account of each Term Lender on the last Business Day of each calendar quarter set forth below the aggregate principal amount set forth opposite such date (as adjusted from time to time pursuant to Section 2.11(c) or 2.18(b)):

Calendar Quarter Ending	Amount
September 30, 2021	\$ 1,562,500
December 31, 2021	\$ 1,562,500
March 31, 2022	\$ 1,562,500
June 30, 2022	\$ 1,562,500
September 30, 2022 and each calendar quarter ending thereafter	\$ 3,125,000

To the extent not previously paid, the remaining outstanding principal amount of all Term Loans shall be paid in full in cash in Dollars on the Maturity Date.

58

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class Agreed Currency and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section 2.10 shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

#### SECTION 2.11. Prepayment of Loans.

(a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (d) of this Section 2.11 and, if applicable, payment of any break funding expenses under Section 2.16, but without any other penalty premium or other prepayment fee.

(b) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party or any Subsidiary in respect of any Prepayment Event, the Borrowers shall, immediately after such Net Proceeds are received by such Loan Party or any Subsidiary, prepay the Obligations as set forth in Section 2.11(c) below in an aggregate amount equal to 100% of such Net Proceeds; provided that in the case of any event described in clause (a) of the definition of the term "Prepayment Event", if the Borrower Representative shall deliver to the Administrative Agent a certificate of a Financial Officer to the effect that the Loan Parties intend to reinvest the Net Proceeds from such event (or a portion thereof specified in such certificate), within 365 days after receipt of such Net Proceeds, to either (i) acquire (or replace or rebuild) real property, equipment or other tangible assets (excluding inventory) to be used in the business of the Loan Parties, or (ii) consummate a Permitted Acquisition, and certifying that no Event of Default has occurred and is continuing, then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate; provided that the Borrower Representative may request a ninety (90) day extension of such reinvestment period, and the Administrative Agent may agree to such extension in its sole discretion. Any Net Proceeds of such Prepayment Event which have not been so reinvested shall be applied as set forth in Section 2.11(c).

59

(c) All such amounts pursuant to Section 2.11(b) shall be applied, first, to prepay the Term Loans (to be applied to installments of the Term Loans in inverse order of maturity), and second, to prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments and to cash collateralize outstanding LC Exposure.

(d) The Borrower Representative shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by facsimile) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than 10:00 a.m., Chicago time, (A) in the case of prepayment of a Term Benchmark Revolving Borrowing, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of an ABR Revolving Borrowing, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing of any Class shall be applied ratably to the Revolving Loans of such Class included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

(e) If at any time, (i) other than as a result of fluctuations in currency exchange rates, the sum of the aggregate principal Dollar Amount of all of the Revolving Exposures (calculated, with respect to those Loans and Letters of Credit denominated in Foreign Currencies, as of the most recent Revaluation Date with respect to each such Loan and Letter of Credit) exceeds the aggregate Revolving Commitments or (ii) solely as a result of fluctuations in currency exchange rates, the sum of the aggregate principal Dollar Amount of all of the Revolving Exposures (so calculated) exceeds 105% of the aggregate Revolving Commitments, then the Borrowers shall, in each case, following receipt of notice from the Administrative Agent, repay Revolving Borrowings or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate principal amount sufficient to cause the aggregate Dollar Amount of all Revolving Exposures (so calculated) to be less than or equal to the aggregate Revolving Commitments.

#### SECTION 2.12. Fees.

(a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate, on the average daily amount of the Available Revolving Commitment of such Revolving Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees shall be payable in arrears on the first Business Day of each fiscal quarter and on the date on which the Revolving Commitments terminate commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed, (including the first day and last day of each period but excluding the date on which the Revolving Commitments terminate).

(b) [Reserved].

(c) The Borrowers agree to pay to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Term Benchmark Revolving Loans on the average daily ~~amount~~ Dollar Amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure and other fees as otherwise agreed, as well as the Issuing Bank's standard fees and commissions with respect to the issuance, amendment, cancellation, negotiation, transfer, presentment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and other fees accrued through and including the last day of each fiscal quarter shall be payable on the first Business Day of each fiscal quarter following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and other fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

---

60

(d) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(e) All fees payable hereunder shall be paid on the dates due, in Dollars and immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest at the ~~Adjusted LIBO Rate~~ Term Benchmark for the applicable currency and for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender affected thereby" for reductions in interest rates), declare that (i) all Loans shall bear interest at 2% plus the rate applicable to ABR Loans as provided in the preceding paragraphs of this Section 2.13 or (ii) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to ABR Loans as provided in the preceding paragraphs of this Section 2.13.

(d) (i) Accrued interest on each Loan (for ABR Loans, accrued through the last day of the prior fiscal quarter) shall be payable in arrears ~~on~~, in the same Agreed Currency as the applicable Loan, on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (A) interest accrued pursuant to Section 2.13(c) shall be payable on demand, (B) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(ii) Notwithstanding any other provision of this Agreement, subject to Section 2.14, each Swingline Loan shall bear interest at the LIBOR Market Index Rate plus the applicable rate per annum set forth under the caption "Term Benchmark Spread for Revolving Loans" in the definition of "Applicable Rate". With respect to any Swingline Loan, the Interest Payment Date shall be the first day of each calendar month and the Maturity Date, and the Interest Period shall be the period commencing on the date of any Swingline Borrowing and ending one month thereafter; provided that (A) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (B) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. Accrued interest on each Swingline Loan through the last day of the prior calendar month shall be payable in arrears on each Interest Payment Date for such Swingline Loan and upon termination of the Commitments. The applicable LIBOR Market Index Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

---

61

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest (i) computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), ~~and (ii) for Borrowings denominated in Australian Dollars shall be computed on the basis of a year of 365 days and (iii) for Borrowings denominated in New Zealand Dollars shall be computed on the basis of a year of 365 days, and~~ in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day) ~~All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination.~~ The applicable Alternate Base Rate, Adjusted LIBO Rate, ~~or LIBO Rate~~, Adjusted AUD Rate, AUD Rate, Adjusted NZD Rate, NZD Rate, LIBOR Market Index Rate or Central Bank Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest: Illegality.

(a) Subject to clauses (c), (d), (e), (f), (g) and (h) of this Section 2.14, if:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) prior to the commencement of any Interest Period for a Term Benchmark Borrowing that adequate and reasonable means do not exist for ascertaining, (including, without limitation, by means of an Interpolated Rate) the Alternate Base Rate, the Adjusted LIBO Rate ~~or~~ the LIBOR Market Index Rate, the LIBO Rate, the Adjusted AUD Rate, the AUD Rate, the Adjusted NZD Rate or the NZD Rate, as applicable (including because the LIBO Screen Rate is not available or published on a current basis), for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time; or

(ii) the Administrative Agent is advised by the Required Lenders prior to the commencement of any Interest Period for a Term Benchmark Borrowing that the Adjusted LIBO Rate ~~or~~ the LIBO Rate, the LIBOR Market Index Rate, the Adjusted AUD Rate, the AUD Rate, the Adjusted NZD Rate, the NZD Rate, as applicable, for the applicable Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist, ~~(y) with respect to the relevant Benchmark and (z) the Borrower Representative delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (A) for Loans denominated in Dollars, any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Revolving Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for an ABR Borrowing and (B) for Loans denominated in a Foreign Currency, any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing shall be ineffective and any such Term Benchmark Borrowing shall be repaid or converted into an ABR Borrowing on the last day of the then-current Interest Period applicable thereto, and (ii) if any and any Borrowing Request that requests a Term Benchmark Borrowing, such Borrowing shall be made as an ABR Borrowing, for the relevant Benchmark shall be ineffective; provided that, if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted.~~

62

Furthermore, if any Term Benchmark Loan in any Agreed Currency is outstanding on the date of a Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan, then until (x) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (A) for Loans denominated in Dollars, any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, an ABR Loan and (B) for Loans denominated in a Foreign Currency, any Term Benchmark Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for the applicable Foreign Currency plus the CBR Spread; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Foreign Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in such Foreign Currency shall, at the Borrower Representative's election prior to such day: (1) be prepaid by the Borrowers on such day or (2) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in such Foreign Currency shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time.

(b) If any Lender determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain, fund or continue any Term Benchmark Borrowing or any Swingline Loan, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, U.S. Dollars any Agreed Currency, in the London applicable interbank market, then, on notice thereof by such Lender to the Borrower Representative through the Administrative Agent, any obligations of such Lender to make, maintain, fund or continue Term Benchmark Loans or Swingline Loans or to convert ABR Borrowings to Term Benchmark Borrowings, in each case, to the extent of the affected currency and Interest Period, as applicable, will be suspended until such Lender notifies the Administrative Agent and the Borrower Representative that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers will upon demand from such Lender (with a copy to the Administrative Agent), either convert all Term Benchmark Borrowings or Swingline Loans of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Borrowings or Swingline Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrowers will also pay accrued interest on the amount so prepaid or converted. Furthermore, if any Term Benchmark in any Agreed Currency is outstanding on the date of the Borrower Representative's receipt of the notice from the Administrative Agent referred to in this Section 2.14(b) with respect to a Relevant Rate applicable to such Term Benchmark, then until the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist:

63

(i) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day; and

(ii) if such Term Benchmark Loan is denominated in any Foreign Currency, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), bear interest at the Central Bank Rate for such Foreign Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for such Foreign Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in such Foreign Currency shall, at the Borrower Representative's election prior to such day: (A) be prepaid by the Borrower Representative on such day or (B) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in such Foreign Currency shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" with respect to Dollars for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" with respect to any Agreed Currency for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(d) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, with respect to a Loan denominated in Dollars, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (d) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower Representative a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after the occurrence of a Term SOFR Transition Event and may do so in its sole discretion.

(e) ~~Notwithstanding anything to the contrary herein or in any other Loan Document, in~~ connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(f) The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (i) any occurrence of a Benchmark Transition Event ~~a Term SOFR Transition Event~~, or an Early Opt-in Election or an Other Benchmark Rate Election, as applicable ~~and its related Benchmark Replacement Date~~, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (g) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this [Section 2.14](#), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(g) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR ~~or~~ LIBO [Rate](#), [AUD Rate](#) or [NZD Rate](#)) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(h) Upon the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower Representative may revoke any request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, ~~failing that, in the absence of such revocation, either (x)~~ the Borrower Representative will be deemed to have converted any such request [for a Term Benchmark Borrowing denominated in Dollars into a request for a Borrowing of or conversion to ABR Loans or \(y\) any request relating to a Term Benchmark Borrowing denominated in a Foreign Currency shall be ineffective](#). During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

[Furthermore, if any Term Benchmark in any Agreed Currency is outstanding on the date of the Company's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark, then until such time as a Benchmark Replacement for such Agreed Currency is implemented pursuant to this Section 2.14:](#)

[\(i\) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan \(or the next succeeding Business Day if such day is not a Business Day\), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day; and](#)

[\(ii\) if such Term Benchmark Loan is denominated in any Foreign Currency, then such Loan shall, on the last day of the Interest Period applicable to such Loan \(or the next succeeding Business Day if such day is not a Business Day\), bear interest at the Central Bank Rate for the applicable Foreign Currency plus the CBR Spread; provided that if the Administrative Agent determines \(which determination shall be conclusive and binding absent manifest error\) that the Central Bank Rate for such Foreign Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in such Foreign Currency shall at the Company's election prior to such day: \(A\) be prepaid by the Company on such day or \(B\) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in such Foreign Currency shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time.](#)

SECTION 2.15. [Increased Costs.](#) (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate, [Adjusted AUD Rate or Adjusted NZD Rate, as applicable](#)) or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the London [or other applicable offshore](#) interbank market [for the applicable Agreed Currency](#) any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) [\(including, without limitation, pursuant to any conversion of any Borrowing denominated in an Agreed Currency into a Borrowing denominated in any other Agreed Currency\)](#) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit [\(including, without limitation, pursuant to any conversion of any Borrowing denominated in an Agreed Currency into a Borrowing denominated in any other Agreed Currency\)](#) or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise) [\(including, without limitation, pursuant to any conversion of any Borrowing denominated in an Agreed Currency into a Borrowing denominated in any other Agreed Currency\)](#), then the Borrowers will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the



Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.15 shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

---

67

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Term Benchmark Loan (excluding any Swingline Loan bearing interest at the LIBOR Market Index Rate) other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any optional or mandatory prepayment of Loans), (b) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09 and is revoked in accordance therewith), ~~or (d) the failure by any Borrower to make any payment of any Loan or drawing under any Letter of Credit (or interest due thereof) denominated in a Foreign Currency on its scheduled due date or any payment thereof in a different currency or (e) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or 9.02(d), then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Term Benchmark Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Term Benchmark Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Term Benchmark Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Term Benchmark Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market.~~ A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17. Withholding of Taxes; Gross-Up.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrowers. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

---

68

(c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this Section 2.17(e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower Representative and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), an executed IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form and substance satisfactory to the Administrative Agent to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) an executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the Beneficial Owner, an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate in form and substance satisfactory to the Administrative Agent, IRS Form W-9, and/or other certification documents from each Beneficial Owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate in form and substance satisfactory to the Administrative Agent on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower Representative and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party’s obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document (including the Payment in Full of the Secured Obligations).

(i) Defined Terms. For purposes of this Section 2.17, the term “Lender” includes any Issuing Bank and the term “applicable law” includes FATCA.

SECTION 2.18. Payments Generally; Allocation of Proceeds; Sharing of Set-offs.

(a) The Borrowers shall make each payment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to (i) in the case of payments denominated in Dollars, 2:00 p.m., Chicago time and (ii) in the case of payments denominated in a Foreign Currency, 2:00 p.m., Chicago time, in the city of the Administrative Agent's Term Benchmark Payment Office for such currency, in each case on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made (i) in the same currency in which the applicable Loan or Letter of Credit was made and (ii) to the Administrative Agent at its offices at 10 South Dearborn Street, Floor L2, Chicago, Illinois, or, in the case of a Loan or a Letter of Credit denominated in a Foreign Currency, the Administrative Agent's Term Benchmark Payment Office for such currency, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. The Administrative Agent shall distribute any such payments denominated in the same currency received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. ~~All payments hereunder shall be made in U.S. Dollars.~~ Notwithstanding the foregoing provisions of this Section, if, after the making of any Loan or Letter of Credit in any Foreign Currency, currency control or exchange regulations are imposed in the country which issues such currency with the result that the type of currency in which the Loan or Letter of Credit was made (the "Original Currency") no longer exists or any Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Original Currency, then all payments to be made by such Borrower hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Amount (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrowers take all risks of the imposition of any such currency control or exchange regulations.

72

(b) Any payments and any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrowers), (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent and the Issuing Bank from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest then due and payable on the Loans ratably, fourth, to prepay principal on the Loans and unreimbursed LC Disbursements, and to pay any amounts owing in respect of Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, ratably (with amounts applied to the Term Loans applied to installments of the Term Loans in the inverse order of maturity), fifth, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate LC Exposure, to be held as cash collateral for such Obligations, sixth, to pay any amounts owing in respect of Banking Services Obligations and Swap Agreement Obligations not already paid pursuant to clause "fourth" above, ratably, and seventh, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding the foregoing amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any Term Benchmark Loan of a Class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding ABR Loans of the same Class and, in any such event, the Borrowers shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including Swingline Loans) and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03, 2.04 or 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

73

(d) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower Representative prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the ~~NYFRB~~ Applicable Overnight Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender hereunder. Application of amounts pursuant to clauses (i) and (ii) above shall be made in any order determined by the Administrative Agent in its discretion.



(g) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the "Statements"). The Administrative Agent is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrowers' convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

#### SECTION 2.19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee (other than any Ineligible Institution) that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers shall have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank and the Swingline Lender), which consent shall not unreasonably be withheld, delayed or conditioned, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each party hereto agrees that (x) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform approved by the Administrative Agent as to which the Administrative Agent and such parties are participants), and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 2.20. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Commitments of such Defaulting Lender pursuant to Section 2.12(a) and (b);

(b) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Revolving Commitment and Revolving Exposure and, if applicable, Additional Term Loan Commitment and Term Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(c) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only (x) to the extent that the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower Representative shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time) and (y) to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrowers shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize, for the benefit of the Issuing Bank, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(c) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.12(a) and 2.12(c) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(c) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender and a Revolving Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend, renew, extend or increase any Letter of Credit, unless it is satisfied that the related exposure and such Defaulting Lender's

then outstanding LC Exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(c), and Swingline Exposure related to any such newly made Swingline Loan or LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders that are Revolving Lenders in a manner consistent with Section 2.20(c)(i) (and such Defaulting Lender shall not participate therein).

(e) If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall continue or (ii) the Swingline Lender or the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Swingline Lender or the Issuing Bank, as the case may be, shall have entered into arrangements with the Borrowers or such Lender, satisfactory to the Swingline Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

(f) In the event that each of the Administrative Agent, the Borrower, the Swingline Lender and the Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

**SECTION 2.21. Returned Payments.** If after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

**SECTION 2.22. Banking Services and Swap Agreements.** Each Lender or Affiliate thereof providing Banking Services (excluding Lease Financing) for, or having Swap Agreements with, any Loan Party or any Subsidiary of a Loan Party shall upon request of the Administrative Agent, deliver to the Administrative Agent, from time to time a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. For the avoidance of doubt, so long as JPMCB or its Affiliate is the Administrative Agent, neither JPMCB nor any of its Affiliates providing Banking Services for, or having Swap Agreements with, any Loan Party or any Subsidiary of a Loan Party shall be required to provide any notice described in this Section 2.22 in respect of such Banking Services or Swap Agreements.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Lenders that:

**SECTION 3.01. Organization; Powers.** Each Loan Party and each Subsidiary is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business, and is in good standing, in every jurisdiction where such qualification is required.

**SECTION 3.02. Authorization; Enforceability.** The Transactions are within each Loan Party's organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**SECTION 3.03. Governmental Approvals; No Conflicts.** The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any Subsidiary, (c) will not violate or result in a default under any indenture, material agreement or other material instrument binding upon any Loan Party or any Subsidiary or the assets of any Loan Party or any Subsidiary, or give rise to a right thereunder to require any payment to be made by any Loan Party or any Subsidiary, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any Subsidiary, except Liens created pursuant to the Loan Documents.

#### **SECTION 3.04. Financial Condition; No Material Adverse Change.**

(a) The Company has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal year ended December 31, 2018, reported on by Deloitte & Touche LLP, independent public accountants. Such financial statements present fairly, in all material respects, the financial position and results of operations of the Company and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes.

(b) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December 31, 2018.

**SECTION 3.05. Properties.** (a) As of the Second Amendment Effective Date, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Each of the Loan Parties and each of its Subsidiaries has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens other than those permitted by Section 6.02.

(b) Each Loan Party and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted. The use of such intellectual property by each Loan Party and each Subsidiary does not infringe in any material respect upon the rights of any other Person, and each Loan Party's and each Subsidiary's rights thereto are not subject to any licensing agreement or similar arrangement (other than licenses of Intellectual Property permitted by Section 6.05). A correct and complete list of registered intellectual property and applications for any such registrations owned by each Loan Party and each Subsidiary, as of the Effective Date, is set forth on Schedule 3.05.

SECTION 3.06. Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened in writing against or affecting any Loan Party or any Subsidiary (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any Loan Document or the Transactions.

(b) Except for the Disclosed Matters (i) no Loan Party or any Subsidiary has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability that could reasonably be expected to have a Material Adverse Effect and (ii) and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, no Loan Party or any Subsidiary (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability or (D) knows of any evidence of any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party and each Subsidiary is in compliance with (i) all Requirement of Law applicable to it or its property and (ii) all indentures, agreements and other instruments binding upon it or its property. No Default has occurred and is continuing. No Loan Party has contravened or will contravene Chapter 2E or 2J of the Australian Corporations Act or sections 76 to 81 of the NZ Companies Act by entering into a Loan Document or participating in any transaction in connection with any Loan Document.

SECTION 3.08. Investment Company Status. No Loan Party or any Subsidiary is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each Loan Party and each Subsidiary has timely filed or caused to be filed all federal, state, and material local and other Tax returns and reports required to have been filed by it and has paid or caused to be paid all federal, state, and material local and other Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) Taxes in respect of which the aggregate liability does not exceed \$250,000. No tax liens (other than Liens permitted by Section 6.02) have been filed and no claims in excess of \$250,000 (individually or in the aggregate) are being asserted with respect to any such taxes except Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$250,000 the fair market value of the assets of all such underfunded Plans. None of the Loan Parties or any of their Subsidiaries is an entity deemed to hold “plan assets” (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. Except where non-compliance or the incurrence of an obligation could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, and neither the Company nor any of its Subsidiaries has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

SECTION 3.11. Disclosure.

(a) The Loan Parties have disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date (it being understood that forecasts and projections are subject to contingencies and no assurance can be given that any forecast or projection will be realized).

(b) As of the Third Amendment Effective Date, to the best knowledge of any Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Third Amendment Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.12. Material Agreements. All material agreements and contracts to which any Loan Party or any Subsidiary is a party or is bound as of the Effective Date are listed on Schedule 3.12. To the knowledge of any Loan Party, no Loan Party or any Subsidiary is in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in (i) any material agreement or contract to which it is a party or (ii) any agreement or instrument evidencing or governing Indebtedness having an outstanding principal amount in excess of \$500,000.

SECTION 3.13. Solvency.

(a) Upon and immediately after the consummation of the Transactions to occur on the Third Amendment Effective Date, and immediately after the making of each advance of a Loan hereunder, and in all instances after giving effect to the application of the proceeds of such Loan, (i) the fair value of the assets of the Loan Parties, taken as a whole, at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of the Loan Parties, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Loan Parties, taken as a whole, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Loan Parties, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Third Amendment Effective Date.

(b) The Loan Parties, taken as a whole, do not intend to, and do not believe that they will, incur debts beyond their ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by them and the timing of the amounts of cash to be payable on or in respect of their Indebtedness.

SECTION 3.14. Insurance. Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Effective Date. As of the Effective Date, all premiums in respect of such insurance have been paid. Each Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks which, to the knowledge of the Borrowers, are adequate and customarily maintained by comparable companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 3.15. Capitalization and Subsidiaries. As of the Effective Date, Schedule 3.15 sets forth (a) a correct and complete list of the name and relationship to the Company of each and all of the Company's Subsidiaries, (b) a true and complete listing of each class of each Borrower's (other than the Company's) authorized Equity Interests, all of which issued Equity Interests are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.15, and (c) the type of entity of the Company and each of its Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. There are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Loan Party other than the Company.

SECTION 3.16. Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, and, upon filing of UCC financing statements and the taking of any other actions or making of filings required for perfection under the laws of the relevant Collateral Documents and specified herein or in such Collateral Documents, as, and when necessary and required, and if applicable, the taking of actions or making of filings with respect to intellectual property registrations or applications issued or pending as specified, such Liens constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law or agreement permitted hereunder and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

SECTION 3.17. Employment Matters. As of the Effective Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened in writing. The hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters which would have a Material Adverse Effect on the Loan Parties. All material payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party or such Subsidiary.

SECTION 3.18. Federal Reserve Regulations. No Borrower is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Loan or Letter of Credit extension hereunder will be used to buy or carry any Margin Stock or for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of the Borrowers only or of the Borrowers and their Subsidiaries on a consolidated basis) will be Margin Stock.

SECTION 3.19. Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly, as set forth in Section 5.08.

SECTION 3.20. No Burdensome Restrictions. No Loan Party is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under Section 6.10.

SECTION 3.21. Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries and their respective officers and directors and, to the knowledge of such Loan Party, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary or any of their respective directors, officers or, to the knowledge of any such Loan Party or Subsidiary, employees, or (b) to the knowledge of any such Loan Party or Subsidiary, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

SECTION 3.22. Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the other Loan Parties and (ii) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

SECTION 3.23. Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

SECTION 3.24. Carrying on Business: Assets. Each Loan Party is a resident of the United States for purposes of the Canada-United States Income Tax Convention (the "Treaty") and is entitled to the full benefits of the Treaty. No Loan Party has any taxable income earned in Canada from a source that is neither a treaty-protected business nor a treaty-protected property, and does not carry on its business principally in Canada.

SECTION 4.01. Effective Date. The effectiveness of the Agreement on the Effective Date was subject to satisfaction of the following conditions precedent:

( a ) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement, (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document and (iii) such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender and a written opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Bank and the Lenders and the other Secured Parties, all in form and substance satisfactory to the Administrative Agent and its counsel.

( b ) Financial Statements and Projections. The Lenders shall have received (i) audited consolidated financial statements of the Company for the 2017 and 2018 fiscal years, (ii) unaudited interim consolidated financial statements of the Company for each fiscal month and quarter ended after the date of the latest applicable financial statements delivered pursuant to clause (i) of this paragraph as to which such financial statements are available, and such financial statements shall not, in the reasonable judgment of the Administrative Agent, reflect any material adverse change in the consolidated financial condition of the Company and its Subsidiaries, as reflected in the audited, consolidated financial statements described in clause (i) of this paragraph and (iii) satisfactory projections through fiscal year 2023.

( c ) Closing Certificates; Certified Certificates of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of the Borrower, its Financial Officers, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

( d ) No Default Certificate. The Administrative Agent shall have received a certificate, signed by a Financial Officer of each Borrower and each other Loan Party, dated as of the Effective Date (i) stating that no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date, and (iii) certifying as to any other factual matters as may be reasonably requested by the Administrative Agent.

---

83

( e ) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Administrative Agent on or before the Effective Date.

( f ) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each jurisdiction where the Loan Parties are organized and where the assets of the Loan Parties are located, and such search shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

( g ) Payoff of Existing Facility. All obligations outstanding under that certain Credit Agreement, dated June 27, 2018, among the Borrowers, JPMorgan Chase Bank, N.A., as administrative agent, and the other lenders party thereto, shall have been repaid in full in cash and all lending commitments thereunder terminated.

( h ) Funding Account. The Administrative Agent shall have received a notice setting forth the deposit account(s) of the Borrowers (the "Funding Account") to which the Administrative Agent is authorized by the Borrowers to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

( i ) Solvency. The Administrative Agent shall have received a solvency certificate signed by a Financial Officer dated the Effective Date.

( j ) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation.

( k ) Letter of Credit Application. If a Letter of Credit is requested to be issued on the Effective Date, the Administrative Agent shall have received a properly completed letter of credit application (whether standalone or pursuant to a master agreement, as applicable).

( l ) Tax Withholding. The Administrative Agent shall have received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

( m ) Approvals. (i) All governmental and third party approvals reasonably necessary in connection with the financing contemplated hereby and the continuing operations of the Company and its Subsidiaries (including shareholder approvals, if applicable) shall have been obtained on terms satisfactory to Administrative Agent and shall be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on any of the transactions contemplated hereby; and (ii) there are no injunctions or temporary restraining order which, in the judgment of the Administrative Agent, would prohibit the financing contemplated hereby.

( n ) Corporate Structure. The corporate structure, capital structure and other material debt instruments, material accounts and governing documents of the Borrowers and their Affiliates shall be acceptable to the Administrative Agent in its sole discretion.

---

84

( o ) Insurance. The Administrative Agent shall be satisfied with the amount, types and terms and conditions of all insurance maintained by the Loan Parties and their Subsidiaries. The Administrative Agent shall have received copies of insurance policies, declaration pages, certificates and endorsements of insurance or insurance binders evidencing liability, casualty, property, flood, terrorism and business interruption insurance meeting the requirements set forth in the Loan Documents.

( p ) USA PATRIOT Act, Etc. (i) The Administrative Agent shall have received, at least five (5) days prior to the Effective Date, all documentation and other information regarding the Loan Parties requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Loan Parties at least ten (10) days prior to the Effective Date, and (ii) to the extent any Borrower qualifies as a "legal

entity customer” under the Beneficial Ownership Regulation, at least five (5) days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrowers at least ten (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to each Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(q) Other Documents. The Administrative Agent shall have received such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably requested.

The Administrative Agent shall notify the Borrowers, the Lenders and the Issuing Bank of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects, subject to such materiality qualifier).

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in clauses (a) and (b) of this Section 4.02. Notwithstanding anything in this Agreement to the contrary, the only conditions to funding the Additional Term Loans on the Third Amendment Effective Date shall be the satisfaction of the conditions to effectiveness of the Third Amendment set forth in Section 4 of the Third Amendment.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 5.01. Financial Statements; Other Information. The Borrowers will furnish to the Administrative Agent:

(a) within ninety (90) days after the end of each fiscal year of the Company, the Company’s audited consolidated balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a “going concern” or like qualification, commentary or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants;

(b) within forty-five (45) days after the end of each fiscal quarter of the Company, its consolidated and consolidating balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer of the Borrower Representative as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) within twenty (20) days after the end of each fiscal month of the Company, its consolidated and consolidating balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer of the Borrower Representative as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit E (a “Compliance Certificate”) (i) certifying, in the case of the financial statements delivered under clause (b) and (c), as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations of the Consolidated Total Leverage Ratio demonstrating compliance with Section 6.12, (iv) setting forth reasonably detailed calculations of the Consolidated Fixed Charge Coverage Ratio demonstrating compliance with Section 6.13, and (v) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(e) no later than 60 days after the end of each fiscal year of the Company, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement and cash flow statement) of the Company, in each case, for each month of the upcoming fiscal year (the “Projections”) in form reasonably satisfactory to the Administrative Agent;

(f) promptly upon request of Administrative Agent, copies of all tax returns filed by any Loan Party with the U.S. Internal Revenue Service;

(g) if requested by the Administrative Agent, as of the period then ended, a detailed listing of all intercompany loans made by the Loan Parties during such prior period;

(h) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Loan Party or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed by any Borrower to its shareholders generally, as the case may be; provided that any filings available on EDGAR shall be deemed delivered to the Administrative Agent;

(i) promptly after any request therefor by the Administrative Agent or any Lender, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if a Borrower or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the applicable Borrower or the applicable ERISA Affiliate shall promptly make a request for such documents and notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof;

(j) promptly following any request therefor, (x) such other information regarding the operations, changes in ownership of Equity Interests, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request, and (y) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation;

(k) The Loan Parties acknowledge that the Administrative Agent may order, at the Borrowers’ expense (which shall be limited to once per annum if no Event of Default has occurred and is continuing), periodic certificates of good standing or the substantive equivalent available in the jurisdictions of incorporation, formation or organization for each Loan Party from the appropriate governmental officer such jurisdiction; and

---

87

(l) The Loan Parties hereby acknowledge that (a) the Administrative Agent may, but shall not be obligated to, (and shall with respect to documents required to be delivered pursuant to Sections 5.01(a), (b), and (c)) make available to the Lenders and the Issuing Bank materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on the Platform and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrowers or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities (such personnel, the “Public Side Personnel”). The Loan Parties hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Loan Parties shall be deemed to have authorized the Administrative Agent, the Issuing Bank and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.12); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the Loan Parties shall be under no obligation to mark any Borrower Materials “PUBLIC”. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Loan Parties or their securities for purposes of United States Federal or state securities laws; provided that such individual with access to the “Private Side Information” shall not share such information with the Public Side Personnel.

SECTION 5.02. Notices of Material Events. The Borrowers will furnish to the Administrative Agent prompt (but in any event within any time period that may be specified below) written notice of the following:

(a) the occurrence of any Default;

(b) receipt of any notice of any investigation by a Governmental Authority or any litigation or proceeding commenced or threatened in writing against any Loan Party or any Subsidiary that (i) seeks damages in excess of \$1,500,000, (ii) seeks injunctive relief that could reasonably be expected to have a Material Adverse Effect, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets and asserts liability on the part of any Loan Party or Subsidiary in excess of \$1,000,000, (iv) alleges criminal misconduct by any Loan Party or any Subsidiary, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, in each case that could reasonably be expected to have a Material Adverse Effect, (vi) asserts liability on the part of any Loan Party or any Subsidiary in excess of \$1,000,000 in respect of any tax, fee, assessment, or other governmental charge, or (vii) involves any material product recall;

(c) any Lien (other than Permitted Encumbrances) or claim made or asserted against any of the Collateral for an amount in excess of \$500,000;

(d) any loss, damage, or destruction to the Collateral in the amount of \$500,000 or more, whether or not covered by insurance;

(e) promptly following any request therefor, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Loan Parties by independent accountants in connection with the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request;

(f) all material amendments to Material Indebtedness or Subordinated Indebtedness, together with a copy of each such amendment;

---

88

(g) if requested by the Administrative Agent, any Loan Party entering into a Swap Agreement (or an amendment thereto), together with (if requested by the Administrative Agent) copies of all agreements evidencing such Swap Agreement or amendment;

(h) the occurrence of any ERISA Event (or, in the case of any Foreign Plan, a termination, withdrawal or noncompliance with applicable laws or plan terms) that, alone or together with any other ERISA Events (or, in the case of any Foreign Plan, any other termination, withdrawal or noncompliance with applicable laws or plan terms) that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding \$1,000,000;

(i) any other development that results, or could reasonably be expected to result in, a Material Adverse Effect;

(j) notice of any action arising under any Environmental Law or of any noncompliance by the Loan Parties or any Subsidiary with any Environmental Law or any permit, approval, license or other authorization required thereunder that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(k) any material change in accounting or financial reporting practices by the Loan Parties or any Subsidiary which are not mandated by GAAP or the rules and regulations of the Securities and Exchange Commission; and

(l) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**SECTION 5.03. Existence; Conduct of Business.** Each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect (A) its legal existence and (B) except to the extent the failure to do so could, individually or in the aggregate, not be reasonably expected to have a Material Adverse Effect, the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business (including licenses or permits issued, controlled, maintained or otherwise governed by the Bureau of Alcohol, Tobacco, Firearms and Explosives of the United States' Department of Justice), and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except to the extent the failure to do so could, individually or in the aggregate, not be reasonably expected to have a Material Adverse Effect, provided that nothing in this Section 5.03 shall prohibit any merger, consolidation, Division, liquidation or dissolution permitted under Section 6.03, and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

**SECTION 5.04. Payment of Obligations.** Each Loan Party will, and will cause each Subsidiary to, pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes (other than Taxes in respect of which the aggregate liability does not exceed \$250,000), before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect; provided, however, that each Loan Party will, and will cause each Subsidiary to, remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

---

89

---

**SECTION 5.05. Maintenance of Properties.** Each Loan Party will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so could, individually or in the aggregate, not be reasonably expected to have a Material Adverse Effect.

**SECTION 5.06. Books and Records; Inspection Rights.** Each Loan Party will, and will cause each Subsidiary to, (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (b) permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers, agents and appraisers retained by the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, environmental assessment reports and Phase I or Phase II studies, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested. Upon the Administrative Agent's prior written request, at the Borrowers' expense, the Loan Parties will deliver to the Administrative Agent on a one time basis an environmental assessment of the real property prepared by an environmental engineer reasonably acceptable to the Administrative Agent, and accompanied by such reports, certificates, studies or data as the Administrative Agent may reasonably require, all in form and substance satisfactory to the Administrative Agent.

**SECTION 5.07. Compliance with Laws and Material Contractual Obligations.** Except where the failure to do so could, individually or in the aggregate, not be reasonably expected to have a Material Adverse Effect, each Loan Party will, and will cause each Subsidiary to, (i) comply with each Requirement of Law applicable to it or its property (including without limitation Environmental Laws) and (ii) perform in all material respects its obligations under material agreements to which it is a party. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

**SECTION 5.08. Use of Proceeds.**

(a) The proceeds of the Revolving Loans, Swingline Loans and the Letters of Credit will be used only for financing the working capital needs of the Borrowers and their Subsidiaries in the ordinary course of business and/or for other general corporate purposes of the Borrowers and their Subsidiaries which are permitted hereunder (including, without limitation, to pay any consideration, fees or expenses in connection with the Project Oscar Acquisition). The proceeds of the Term Loans will be used only for Permitted Acquisitions and for the working capital and general corporate needs of the Borrowers and their Subsidiaries in the ordinary course of business; provided that, notwithstanding the foregoing, the proceeds of the Additional Term Loans shall be used solely to pay all or a portion of the consideration, fees and expenses in respect of the Project Oscar Acquisition substantially concurrently with the occurrence of the Third Amendment Effective Date. Notwithstanding the foregoing or anything else contained in this Agreement, after the Effective Date, if the proceeds of the Loans are directly deposited into a deposit account of the Company by the Administrative Agent or any Lender pursuant to this Agreement, the Company shall cause all of such proceeds to be contributed (by intercompany loan or Equity Interest contribution) to a Borrower (other than the Company) in immediately available funds, other than any proceeds used (i) in connection with ordinary course administrative, maintenance or other similar obligations, fees, costs or expenses associated with the Company's ownership of its Subsidiaries or the Company's obligations under the Loan Documents, (ii) for nonconsensual obligations imposed by operation of law, (iii) for ordinary course administrative or other similar obligations, fees, costs or expenses with respect to the Company's Equity Interests and existence (including payroll and other expenses with respect to employees of the Company or taxes owed by the Company) and for other general corporate and working capital purposes consistent with past practice, and (iv) to make investments permitted under Section 6.04(c) (other than to a Loan Party that is not a Borrower), intercompany loans permitted under Section 6.04(d) (other than to a Loan Party that is not a Borrower) and Section 6.04(m), and Restricted Payments permitted under Section 6.08(a)(iii). No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

---

90

---

(b) No Borrower will request any Borrowing or Letter of Credit, and no Borrower shall use, and each Borrower shall procure that its Subsidiaries and its and their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

**SECTION 5.09. Accuracy of Information.** The Loan Parties will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder (other than projections, forward-looking information and information of a general economic or industry specific nature), taken as a whole, contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading,



and the furnishing of such information shall be deemed to be a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section 5.09; provided that, with respect to projected financial information, the Loan Parties will only ensure that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that forecasts and projections are subject to contingencies and no assurance can be given that any forecast or projection will be realized).

SECTION 5.10. Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including, without limitation: loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrowers will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained. Furthermore, the Loan Parties will furnish to the Administrative Agent, lender's loss payable and additional insured insurance endorsements with respect to the property and general liability insurance policies required to be maintained pursuant to the Loan Documents, in form and substance satisfactory to the Administrative Agent in its Permitted Discretion and (ii) insurance certificates with respect to the insurance policies required to be maintained pursuant to the Loan Documents, in each case, in form and substance satisfactory to the Administrative Agent in its Permitted Discretion.

SECTION 5.11. Casualty and Condemnation. The Borrowers will (a) furnish to the Administrative Agent prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

---

91

SECTION 5.12. Depository Banks. Each Borrower and each other Loan Party will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity and other deposit accounts for the conduct of its business; provided that the Loan Parties shall not be required to satisfy the foregoing requirements with respect to any deposit account that is an Excluded Account (as defined in the Security Agreement).

SECTION 5.13. Additional Collateral; Further Assurances.

(a) Subject to applicable Requirement of Law, each Loan Party will cause each Material Subsidiary formed or acquired (or designated pursuant to the definition of Material Subsidiary) after the date of this Agreement and, subject to the Third Amendment, each Project Oscar Material Subsidiary, in each case, to become a Loan Party by executing a Joinder Agreement. Upon execution and delivery thereof, each such Person (i) shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral.

(b) Each Loan Party will cause 100% of the issued and outstanding Equity Interests of each of its directly-owned Subsidiaries to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, pursuant to the terms and conditions of the Loan Documents or other security documents as the Administrative Agent shall reasonably request.

(c) Without limiting the foregoing, but subject to Sections 5.13(e) and (g), each Loan Party will, and will cause each Subsidiary to, grant Liens and security interests in favor of the Administrative Agent on all assets other than Excluded Property (as defined in the Security Agreement) and to execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01 and Section 5.15, as applicable), which may be required by any Requirement of Law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Loan Parties.

(d) If any assets constituting Collateral are acquired by any Loan Party after the Effective Date (other than assets constituting Collateral under the Security Agreement that become subject to the Lien under the Security Agreement upon acquisition thereof), the Borrower Representative will (i) notify the Administrative Agent and the Lenders thereof and, if requested by the Administrative Agent or the Required Lenders, cause such assets to be subjected to a Lien securing the Secured Obligations and (ii) take, and cause each applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties.

---

92

(e) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, the Administrative Agent may (but shall not be obligated to) determine in its sole and reasonable discretion that (i) the cost to the Loan Parties of granting and perfecting any Lien is disproportionate to the benefit to be realized by the Administrative Agent, the Lenders and the other Secured Parties by perfecting a Lien in a given asset or group of assets included in the Collateral or (ii) a Foreign Subsidiary shall not be required to become a Loan Party or provide Collateral if, in the reasonable credit judgment of the Administrative Agent, doing so would result in a violation of applicable law or such Foreign Subsidiary would not otherwise provide customary credit support to the Secured Obligations substantially similar to that provided by Loan Parties organized under the laws of the United States of America or England and Wales, which determination may be based upon (x) the amount and enforceability of, and any limitations applicable to, the Guarantee that would be provided by the relevant Person, (y) the value (including after giving consideration to the extent of perfection and priority of Liens on such Collateral) and enforceability of, and any limitations applicable to, any security interest that may be granted with respect to any Collateral of the relevant Person and (z) any political risk, Requirement of Law or duties (fiduciary, trustee or otherwise) associated with the relevant jurisdiction, and, in each such case, the Administrative Agent shall be permitted to, without the consent of the Lenders or Required Lenders, waive any requirement related thereto under the Loan Documents.

(f) Notwithstanding anything to the contrary in this Agreement or the Third Amendment, (i) with respect to each Subsidiary incorporated under the laws of Australia which is required to become a Loan Party pursuant to Section 5.13(a) or the Third Amendment, if doing so constitutes financial assistance for the purposes of section 260A of the Australian Corporations Act (x) each such Subsidiary shall comply with section 260B of the Australian Corporations Act and (y) the shareholders of each such Subsidiary and the shareholders of the ultimate Australian holding company of each such Subsidiary shall approve the giving of financial assistance by undertaking the procedures referred to in section 260B of the Australian Corporations Act, in each case, in connection with the entry into and performance of obligations by such Subsidiaries under and in connection with the Loan Documents, and (ii) with respect to each Subsidiary incorporated under the laws of New Zealand which is required to become a Loan Party pursuant to Section 5.13(a) or the Third Amendment, if doing so constitutes financial assistance for the purposes of section 76 of the NZ Companies Act each such Subsidiary shall procure that the financial assistance is approved under sections 76 and 77 (or sections 107 and 108) of the NZ Companies Act in connection with the entry into and performance of obligations by such Subsidiaries under and in connection with the Loan Documents.

(g) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary: (i) no perfection action will be required in jurisdictions where Loan Parties are not incorporated or organized but perfection action may be required in the jurisdiction of incorporation or organization of one Loan Party in relation to security

granted by another Loan Party incorporated or organized in a different jurisdiction; (ii) all Collateral (other than share security over subsidiaries which are also a Loan Party) shall be governed by the law of the jurisdiction of incorporation or organization of that Loan Party; (iii) no Loan Party will be under any obligation to obtain any landlord, warehouseman or bailee waiver, consent or agreement with respect to waiving or granting any liens or encumbrances or accessing Collateral, and the Collateral Documents shall not operate so as to prevent transactions which are permitted or not prohibited under the Credit Agreement or to require any additional consents or authorizations from Persons that are not Affiliates of the Loan Parties; (iv) the Collateral Documents shall only operate to create a security interest of the Administrative Agent, for the benefit of the Secured Parties, rather than to impose new commercial obligations and any new Collateral Documents shall not contain additional representations or undertakings (such as, without limitation, in respect of insurance, notice provisions, further assurances, indemnities, distribution of proceeds, maintenance of assets, information or the payment of costs) unless the same are substantially consistent with those contained in the existing Loan Documents and with local market practice or are otherwise required or necessary for the creation, perfection or preservation of the Administrative Agent's security interest and shall not operate so as to prevent transactions which are otherwise permitted under the Loan Documents or to require additional consents or authorizations from Persons that are not Affiliates of the Loan Parties; (v) from and after the Third Amendment Effective Date, there will be no security interest granted to the Administrative Agent, for the benefit of the Secured Parties, over real property unless such security interest may be granted as part of an "all assets" or similar type of security interest (e.g., an all assets debenture) or, if specific security is required (e.g., a mortgage), such real property is owned real property with a fair market value (as reasonably determined by the Borrower and the Administrative Agent) of \$10,000,000 or more; and (vi) in the case of an Australian Loan Party, subject to Section 5.13(e) and the other provisions of this paragraph (g), security interests in favor of the Administrative Agent will be taken over substantially all of the assets of such Australian Loan Party.

SECTION 5.14. Other Debt. If at any time the Loan Parties enter into any agreement in respect of any secured Indebtedness (other than Refinance Indebtedness) having a principal amount in excess of \$5,000,000 which has negative covenants, financial covenants and events of default which are, taken as a whole, more favorable to the provider of such Indebtedness or more restrictive on the Loan Parties than the terms contained herein, the Loan Parties shall, at the request of the Administrative Agent, promptly enter into an amendment to this Agreement to provide the Lenders hereunder with the benefit of the terms of such other Indebtedness.

SECTION 5.15. Real Estate Requirements.

(a) Except as set forth in Section 5.13, with respect to each parcel of real property owned or acquired by any Loan Party, each Loan Party shall deliver no later than sixty (60) days after the acquisition thereof (or such longer time as the Administrative Agent shall agree) each of the following, in form and substance reasonably satisfactory to the Administrative Agent:

- (i) a Mortgage on such property;
- (ii) evidence that a counterpart of the Mortgage has been recorded in the place necessary, in the Administrative Agent's judgment, to create a valid and enforceable first priority Lien in favor of the Administrative Agent for the benefit of itself, the Lenders and the other Secured Parties;
- (iii) ALTA or other mortgagee's title policy;
- (iv) an ALTA survey prepared and certified to the Administrative Agent by a surveyor acceptable to the Administrative Agent;
- (v) an opinion of counsel in the state in which such parcel of real property is located in form and substance and from counsel reasonably satisfactory to the Administrative Agent;
- (vi) flood certifications and, if any such parcel of real property is determined by the Administrative Agent to be in a flood zone, a flood notification form signed by the Borrower Representative and evidence that flood insurance is in place for the building and contents of a type and in an amount sufficient to comply with the Flood Laws, all in form and substance satisfactory to the Administrative Agent;
- (vii) estoppel certificates executed by all tenants of such real property, subordination, non-disturbance and attornment agreements in form and substance reasonably satisfactory to the Administrative Agent and such other consents, agreements and confirmations of lessors and third parties have been delivered as the Administrative Agent may deem necessary or desirable, together with evidence that all other actions that the Administrative Agent may deem necessary or desirable in order to create perfected first priority Liens on the real property described in the Mortgages have been taken; and

- (viii) such other information, documentation, and certifications relating to or in connection with the delivery of items (i) – (vii) above as may be reasonably required by the Administrative Agent or required by any Requirement of Law;

provided that, with respect to any real property not located in the United States, the foregoing requirements shall be subject in all respects to Section 5.13(g).

- (b) Notwithstanding the foregoing:

(i) the Administrative Agent shall not accept any Mortgage from any Loan Party in respect of any real property located in the United States until the date that is (1) if the Mortgage relates to a property not located in a "special flood hazard area", ten (10) Business Days or (2) if the Mortgaged relates to a property located in a "special flood hazard area", thirty (30) days (in each case, a "Mortgage Notice Period"), in each case, after the Administrative Agent has delivered to the Lenders the following documents in respect of such real property: (x) a completed flood hazard determination from a third party vendor; (y) if such real property is located in a "special flood hazard area", (A) a notification to the applicable Loan Parties of that fact and (if applicable) notification to the applicable Loan Parties that flood insurance coverage is not available and (B) evidence of the receipt by the applicable Loan Parties of such notice; and (z) if required by Flood Laws, evidence of required flood insurance; provided that any such Mortgage may be accepted by the Administrative Agent prior to the Mortgage Notice Period expiring if the Administrative Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction; and

(ii) no MIRE Event may be closed until the date that is (1) if there are no Mortgaged Properties in a "special flood hazard area", ten (10) Business Days or (2) if there are any Mortgaged Properties in a "special flood hazard area", thirty (30) days (in each case, a "MIRE Event Notice Period"), in each case, after the Administrative Agent has delivered to the Lenders the following documents in respect of such real property: (x) a completed flood hazard determination from a third party vendor; (y) if such real property is located in a "special flood hazard area", (A) a notification to the applicable Loan Parties of that fact and (if applicable) notification to the applicable Loan Parties that flood insurance coverage is not available and (B) evidence of the receipt by the applicable Loan Parties of such notice; and (z) if required by Flood Laws, evidence of required flood insurance; provided that any such MIRE Event may be closed prior to the MIRE Event Notice Period if the Administrative Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

ARTICLE VI  
NEGATIVE COVENANTS

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

SECTION 6.01. Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

- (a) the Secured Obligations;
- (b) Indebtedness existing on the Effective Date and set forth in Schedule 6.01 and extensions, renewals, refinancings and replacements of any such Indebtedness in accordance with clause (f) hereof;
- (c) Indebtedness of any Loan Party to any Subsidiary or any other Loan Party and of any Subsidiary to any Loan Party or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to any Loan Party shall be subject to the limitations set forth in Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;
- (d) Guarantees by any Loan Party of Indebtedness of any Subsidiary or another Loan Party and by any Subsidiary of Indebtedness of any Loan Party or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to the limitations set forth in Section 6.04 and (iii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations (if such Indebtedness is so subordinated to the Secured Obligations);
- (e) Indebtedness of any Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) below; provided that (i) such Indebtedness is incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) together with any Refinance Indebtedness in respect thereof permitted by clause (f) below, shall not exceed \$10,000,000 at any time outstanding;
- (f) Indebtedness which represents extensions, renewals, refinancing or replacements (such Indebtedness being so extended, renewed, refinanced or replaced being referred to herein as the "Refinance Indebtedness") of any of the Indebtedness described in clauses (b) and (e) of Section 6.01 hereof (such Indebtedness being referred to herein as the "Original Indebtedness"); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the Original Indebtedness (except in an amount equal to prepayment premiums, customary fees, customary expenses or similar customary amounts payable in respect thereof), provided that any interest rate may be increased in an amount equal to the greater of (A) an additional 4% and (B) such rates as may be prevailing under relevant market conditions, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party or any Subsidiary, (iii) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (iv) the terms of such Refinance Indebtedness other than fees and interest are not, taken as a whole, less favorable to the obligor thereunder than the original terms of such Original Indebtedness, taken as a whole, and (v) if such Original Indebtedness was subordinated in right of payment to the Secured Obligations, then the terms and conditions of such Refinance Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Original Indebtedness;
- (g) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;
- (h) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;
- (i) Indebtedness of any Person that becomes a Subsidiary after the date hereof other than as a result of a Division; provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (ii) the aggregate principal amount of Indebtedness permitted by this clause (i) together with any Refinance Indebtedness subsequently incurred in respect thereof which is permitted by clause (f) above shall not exceed \$5,000,000 at any time outstanding;
- (j) other unsecured Indebtedness in an aggregate principal amount not exceeding \$10,000,000 at any time outstanding;
- (k) Subordinated Indebtedness; provided that the aggregate principal amount of Indebtedness permitted by this clause (k), together with any Refinance Indebtedness subsequently incurred in respect thereof which is permitted by clause (f) above, shall not exceed \$5,000,000 at any time outstanding;
- (l) obligations (contingent or otherwise) of any Loan Party or any Subsidiary existing or arising under any Swap Agreement; provided, that, such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates, and not for purposes of speculation or taking a "market view";
- (m) unsecured Indebtedness of the Company or its Subsidiaries in respect of Earn-Outs owing to sellers of assets or Equity Interests to such Borrower or its Subsidiaries that is incurred in connection with the consummation of one or more Permitted Acquisitions;
- (n) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;
- (o) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price (including working capital adjustments), non-compete, or similar obligation (for the avoidance of doubt, excluding any Earn-Outs) of Company or the applicable Subsidiary incurred in connection with the consummation of one or more Permitted Acquisitions;

- (p) Indebtedness representing deferred compensation owing to employees, directors and officers of the Company or any of its Subsidiaries in the ordinary course of business;
- (q) other Indebtedness so long as the aggregate principal amount of the Indebtedness outstanding at any time pursuant to this clause (q) does not exceed \$5,000,000;
- ( r ) Indebtedness of any non-Loan Party Foreign Subsidiary provided that (i) the aggregate principal amount of the Indebtedness outstanding at any time pursuant to this clause (r) does not exceed \$5,000,000 and (ii) such Indebtedness is not directly or indirectly recourse to any of the Loan Parties or their respective assets;

- (s) to the extent constituting Indebtedness, the Project Oscar Transactions; and
- (t) Indebtedness arising pursuant to hire purchase arrangements entered into in the ordinary course of business; provided that (i) the aggregate principal amount of Indebtedness outstanding at any time pursuant to this clause (t) does not exceed \$1,500,000 and (ii) such Indebtedness is not directly or indirectly recourse to any assets of any Borrower or Subsidiary other than the equipment or other assets subject to the applicable hire purchase arrangement.
- SECTION 6.02. Liens. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues or rights in respect of any thereof, except, in each case, so long as no Default or Event of Default shall then exist or would result therefrom:
- (a) Liens created pursuant to any Loan Document;
- (b) Permitted Encumbrances;
- (c) any Lien on any property or asset of any Borrower or any Subsidiary existing on the Effective Date and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of such Borrower or Subsidiary or any other Borrower or Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the Effective Date, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;
- (d) Liens on fixed or capital assets acquired, constructed or improved by any Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Liens shall not apply to any other property or assets of such Borrower or Subsidiary or any other Borrower or Subsidiary;
- (e) any Lien existing on any property or asset prior to the acquisition thereof by any Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Loan Party and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Loan Party, as the case may be;
- (f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;
- (g) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06;
- (h) Liens granted by a Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;
- (i) Liens solely on equipment and/or real property (and fixtures thereon); provided that such Liens secure solely Indebtedness permitted by clause (q) of Section 6.01 and, upon the request of the Administrative Agent, the Loan Parties provide or cause to be provided an access agreement with respect to such equipment and/or real property (and fixtures thereon), in form and substance satisfactory to the Administrative Agent in its Permitted Discretion;

- (j) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under Section 6.01;
- (k) purported Liens evidenced by the filing of a precautionary UCC-1 financing statement relating solely to operating leases of equipment;
- (l) leases, licenses, subleases or sublicenses of real property or equipment granted to others in the ordinary course of business which do not (i) interfere in any material respect with the business of any Borrower and its Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;
- (m) Liens solely encumbering Equity Interests issued by a joint venture that is not a Subsidiary and arising under rights of first offer, rights of first refusal, tag-along rights, drag-along rights, and other customary restrictions on the transfer of such Equity Interests contained in organizational documents governing the terms of such joint venture to which a Loan Party is a party or by which such Person is bound;
- (n) licenses of Intellectual Property permitted by Section 6.05;
- (o) Liens on any cash earnest money deposit, escrow arrangements or similar arrangements made by any Borrower or any Subsidiary in connection with any letter of intent or acquisition agreement with respect to a Permitted Acquisition;
- (p) any interest or title of a lessor under any operating lease entered into by any Loan Party or any Subsidiary in the ordinary course of business covering only the assets so leased;
- (q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;
- (r) Liens securing Indebtedness permitted by clause (q) of Section 6.01;

(s) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$500,000;

(t) Liens solely on the assets of any non-Loan Party Foreign Subsidiary; provided that such Liens secure solely Indebtedness permitted by clause (r) of Section 6.01 and such Liens do not encumber any Equity Interests of such non-Loan Party Foreign Subsidiary pledged by a Loan Party as Collateral pursuant to the Loan Documents; and

(u) Liens securing Indebtedness arising under hire purchase arrangements permitted by clause (t) of Section 6.01; provided that such Liens shall encumber only the equipment or other assets subject to the applicable hire purchase arrangement and shall not apply to any other property or assets of any Borrower or Subsidiary.

SECTION 6.03. Fundamental Changes. (a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, consummate a Division as the Dividing Person, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing (i) any Subsidiary of any Borrower may merge into a Borrower in a transaction in which such Borrower (or the Company or any Borrower if multiple Borrowers are involved) is the surviving entity, (ii) any Loan Party (other than a Borrower) may merge into any other Loan Party in a transaction in which the surviving entity is a Loan Party, (iii) any Subsidiary that is not a Loan Party may liquidate or dissolve if the Loan Party which owns such Subsidiary determines in good faith that such liquidation or dissolution is in the best interests of such Loan Party and is not materially disadvantageous to the Lenders, (iv) any Loan Party (other than a Borrower) may liquidate or dissolve if all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party are transferred to a Loan Party that is not liquidating or dissolving (v) any Borrower may merge into any other Borrower, and (vi) the Company and its Subsidiaries may merge or consolidate with a target in connection with a Permitted Acquisition provided that if a Loan Party is a constituent party to any such merger or consolidation, such Loan Party shall be the surviving entity unless the surviving entity is an entity organized under the laws of a jurisdiction located in the U.S., executes a Joinder Agreement and becomes a Borrower or Loan Party hereunder; provided that any such merger or Division involving a Person that is not a wholly-owned Subsidiary immediately prior to such merger or Division shall not be permitted unless also permitted by Section 6.04.

(a) No Loan Party will, nor will it permit any Subsidiary to, engage in (including, without limitation, by the making of any investment in, acquisition of or loan to any Person that would otherwise be permitted under the Loan Documents) any business other than (I) businesses in which the Loan Parties are engaged on the Effective Date, (II) businesses that are reasonably similar, ancillary, or complementary or a line of business that is a reasonable extension, development or expansion, in each case, solely to the businesses that a Loan Party is engaged on the Effective Date, and (III) businesses otherwise approved by the Administrative Agent in its sole discretion.

(b) The Company will not engage in any business or activity other than the ownership of all the outstanding Equity Interests of its Subsidiaries and activities incidental thereto. The Company will not own or acquire any assets (other than Equity Interests of its Subsidiaries, the cash proceeds of any Restricted Payments permitted by Section 6.08, investments permitted under clause (ii) to the proviso to Section 6.04(c) and intercompany loans permitted under clause (A) to the proviso to Section 6.04(d), Section 6.04(m) and Section 6.04(n)) or incur any liabilities (other than liabilities under the Loan Documents, the Guarantee under the Project Oscar Acquisition Agreement and liabilities reasonably incurred in connection with its maintenance of its existence and operations).

(c) No Loan Party will, nor will it permit any Subsidiary to, change its fiscal year from the basis in effect on the Effective Date provided that each Project Oscar Target may change the end of its fiscal year to match the fiscal year of the Company.

(d) No Loan Party will change the accounting basis upon which its financial statements are prepared unless consistent with GAAP.

(e) No Loan Party will change the tax filing elections it has made under the Code.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, form any subsidiary after the Effective Date, or purchase, hold or acquire (including pursuant to any merger with, or as a Division Successor pursuant to the Division of, any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger or Division) any evidences of Indebtedness or Equity Interests or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

(a) Permitted Investments, subject to control agreements in favor of the Administrative Agent for the benefit of the Secured Parties or otherwise subject to a perfected security interest in favor of the Administrative Agent for the benefit of the Secured Parties;

(b) investments in existence on the Effective Date and described in Schedule 6.04;

(c) investments by the Loan Parties and their Subsidiaries in Equity Interests in their respective Subsidiaries (which may include Subsidiaries created after the Effective Date), provided that, in each case, (i) any such Equity Interests held by a Loan Party shall be pledged pursuant to the Security Agreement, (ii) the aggregate amount of investments by Loan Parties in Subsidiaries that are not Loan Parties (together, in each case, with outstanding intercompany loans permitted under clause (A) to the proviso to Section 6.04(d) and outstanding Guarantees permitted under the proviso to Section 6.04(e)) shall not exceed \$5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs) and (iii) no such investments into a non-Loan Party may be made while a Default is continuing or would result therefrom;

(d) loans or advances made by any Loan Party to any Subsidiary and made by any Subsidiary to a Loan Party or any other Subsidiary, provided that (A) the amount of such loans and advances made by Loan Parties to non-Loan Parties (together, in each case, with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding Guarantees permitted under the proviso to Section 6.04(e)) shall not exceed \$5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs) and (B) no such loans or advances may be made to a non-Loan Party while any Default is continuing or would result therefrom;

(e) Guarantees constituting Indebtedness permitted by Section 6.01, provided that the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is Guaranteed by any Loan Party shall (together, in each case, with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding intercompany loans permitted under clause (A) to the proviso to Section 6.04(d)) shall not exceed \$5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs);

(f) loans or advances made by a Loan Party to its employees on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes up to a maximum of \$1,000,000 in the aggregate at any one time outstanding;

- (g) notes payable, or stock or other securities issued by Account Debtors (as defined in the UCC) to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts (as defined in the UCC) in the ordinary course of business, consistent with past practices;
- (h) investments in the form of Swap Agreements permitted by Section 6.07;
- (i) investments of any Person existing at the time such Person becomes a Subsidiary of a Borrower or consolidates or merges with a Borrower or any of the Subsidiaries (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;
- (j) investments received in connection with the disposition of assets permitted by Section 6.05;
- (k) Permitted Acquisitions;

---

101

(l) Indebtedness owing by Black Diamond Austria GmbH, formerly known as ADMIN BG Holding GmbH, a company organized under the laws of Austria, to the Company, formerly known as Black Diamond, Inc., evidenced by that certain Amended and Restated Intercompany Debt Agreement, dated as of May 31, 2018, as amended by Amendment No. 1 thereto dated January 1, 2019, as amended by Amendment No. 2 thereto dated May 3, 2019, by and between the Company and Black Diamond Austria GmbH, as disclosed to the Administrative Agent prior to the Effective Date (or as subsequently amended, restated, replaced or refinanced so long as such amendment, restatement, replacement or refinancing is consented to by the Administrative Agent in its Permitted Discretion, such consent not to be unreasonably withheld, delayed or conditioned if the debt amount, maturity, amortization and interest rate as set forth therein is not less favorable to the Lenders than the debt amount, maturity, amortization and interest rate existing on the date hereof) (the "Austria GmbH Debt Agreement"), in an aggregate amount not to exceed €10,000,000 at any time outstanding; provided that (i) no loans or advances may be made by the Company to Black Diamond Austria GmbH pursuant to the Austria GmbH Debt Agreement while any Default is continuing or that would result therefrom and (ii) Black Diamond Austria GmbH may assign the Austria GmbH Debt Agreement (and the Indebtedness owing thereunder) to a non-Loan Party Foreign Subsidiary of the Company approved by the Administrative Agent in its Permitted Discretion;

(m) Indebtedness owing by Black Diamond Equipment Europe GmbH, a company organized under the laws of Austria, to Black Diamond, evidenced by that certain Amended and Restated Intercompany Debt Agreement, dated as of May 31, 2018, as amended by Amendment No. 1 thereto dated May 3, 2019, by and between Black Diamond Equipment Europe GmbH and Black Diamond, as disclosed to the Administrative Agent prior to the Effective Date (or as subsequently amended, restated, replaced or refinanced so long as such amendment, restatement, replacement or refinancing is consented to by the Administrative Agent in its Permitted Discretion, such consent not to be unreasonably withheld, delayed or conditioned if the debt amount, maturity, amortization and interest rate as set forth therein is not less favorable to the Lenders than the debt amount, maturity, amortization and interest rate existing on the date hereof) (the "Equipment AG Debt Agreement"), in an aggregate amount not to exceed 6 million Swiss Francs at any time outstanding; provided that (i) no loans or advances may be made by Black Diamond to Black Diamond Equipment Europe GmbH pursuant to the Equipment AG Debt Agreement while any Default is continuing or that would result therefrom and (ii) Black Diamond Equipment Europe GmbH may assign the Equipment AG Debt Agreement (and the Indebtedness owing thereunder) to a non-Loan Party Foreign Subsidiary of the Company approved by the Administrative Agent in its Permitted Discretion;

(n) investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances";

(o) investments to the extent funded exclusively with (i) the identifiable cash proceeds from an issuance of Equity Interests by the Company (net of the payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such issuance of Equity Interests), which such issuance of Equity Interests is made within the 365 consecutive days period (or such longer period as agreed to by the Administrative Agent in its Permitted Discretion) immediately preceding the making of such investment and/or (ii) Indebtedness of Subsidiaries which are not Loan Parties incurred pursuant to Section 6.01(r);

(p) other investments; provided that (i) the aggregate amount of such investments shall not exceed \$5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs) and (ii) no such investments into a non-Loan Party may be made while a Default is continuing or would result therefrom; and

(q) the Project Oscar Transactions.

---

102

SECTION 6.05. Asset Sales. No Loan Party will, nor will it permit any Subsidiary to, sell, transfer, lease or otherwise dispose of any asset (and whether effected pursuant to a Division or otherwise), including any Equity Interest owned by it, nor will any Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to another Borrower or another Subsidiary in compliance with Section 6.04), except:

- (a) sales, transfers and dispositions of (i) inventory in the ordinary course of business and (ii) used, obsolete, worn out or surplus equipment or property in the ordinary course of business;
- (b) sales, transfers and dispositions that are solely among: (i) Loan Parties or (ii) Subsidiaries that are not Loan Parties so long as the investment corresponding to such sale, transfer or other disposition is permitted by clauses (c) and (d) of Section 6.04;
- (c) sales, transfers and dispositions of Accounts in connection with the compromise, settlement or collection thereof;
- (d) sales, transfers and dispositions of or constituting Permitted Investments;
- (e) Sale and Leaseback Transactions permitted by Section 6.06;
- (f) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary;
- (g) non-exclusive licenses of Intellectual Property granted in the ordinary course of business (including, without limitation, customary non-exclusive incidental licenses of Intellectual Property to retailers, distributors and websites, in the ordinary course of business and required for the purposes of marketing the products of the Company and its Subsidiaries), provided that such licenses could not reasonably be expected to materially diminish the net value of such Intellectual Property (after taking into account the reasonably anticipated payments to be received in connection with the granting or performance of such licenses or the sales of products thereunder);
- (h) a true lease or sublease of real property that is no longer necessary or desirable to the business of any Loan Party or any Subsidiary that does not materially

interfere with the business of the Loan Parties and their Subsidiaries;

(i) sales, transfers and other dispositions of assets (other than Equity Interests in a Subsidiary, Accounts, inventory or intellectual property that are not permitted by any other clause of this Section), provided that the aggregate fair market value of all assets sold, transferred or otherwise disposed of in reliance upon this clause (i) shall not exceed \$1,000,000 during any fiscal year of the Company;

(j) sales, transfers and other dispositions of assets of Foreign Subsidiaries that are not Loan Parties that are made for fair value; and

(k) the abandonment or the discontinuation of the use of any Intellectual Property (including any application or right to file any application with respect thereto) that is not used in, useful to, or material to the business of the Company or its Subsidiaries, with the prior written consent of the Administrative Agent in its sole discretion.

---

103

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by clauses (b), (c) (subject to the terms of Section 6.06), (f), (g), (h), (j) and (k) above) shall be made for fair value and for at least 75% cash consideration.

SECTION 6.06. Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a "Sale and Leaseback Transaction"), except for any such sale of any fixed or capital assets by any Borrower or any Subsidiary that is made for fair value of such fixed or capital asset and, unless otherwise waived by the Administrative Agent in its Permitted Discretion, the Loan Parties, to the extent required by the Security Agreement, provide or cause to be provided an access agreement with respect to such equipment and/or real property (and fixtures thereon), in form and substance satisfactory to the Administrative Agent in its Permitted Discretion.

SECTION 6.07. Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of any Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of any Borrower or any Subsidiary.

SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness.

(a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) each of the Loan Parties may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, (ii) any Loan Party may declare and pay dividends to any other Loan Party and any Subsidiary that is not a Loan Party may declare and pay dividends to any Loan Party, (iii) the Loan Parties may make Restricted Payments to its shareholders, so long as (A) the aggregate amount of all such Restricted Payments does not exceed \$10,000,000 during any fiscal year and (B) no Default or Event of Default exists or would result therefrom, and (iv) the Loan Parties may make additional Restricted Payments to its shareholders so long as (A) no Default or Event of Default exists or would result therefrom and (b) the *pro forma* Consolidated Total Leverage Ratio would not exceed 2.50:1.00 (calculated on a *pro forma* basis as at the end of the most recently ended fiscal quarter for which financial statements are then available after giving effect to such Restricted Payment and any Indebtedness incurred in connection therewith).

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(i) payment of Indebtedness created under the Loan Documents;

(ii) required payments of interest and principal payments as and when due in respect of any Indebtedness permitted under Section 6.01, other than payments in respect of the Subordinated Indebtedness prohibited by the subordination provisions thereof;

---

104

(iii) refinancings of Indebtedness to the extent permitted by Section 6.01;

(iv) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by the terms of Section 6.05; and

(v) prepayments in cash of any Indebtedness (including any Project Oscar Intercompany Debt) that is owing to a Loan Party.

SECTION 6.09. Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that (i) are in the ordinary course of business and (ii) are at prices and on terms and conditions not less favorable to such Loan Party or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among Loan Parties not involving any other Affiliate, (c) any investment permitted by Sections 6.04(c), 6.04(d), 6.04(e), 6.04(m) or 6.04(n), (d) any Indebtedness permitted under Section 6.01(c) or 6.01(d), (e) any Restricted Payment permitted by Section 6.08, (f) loans or advances to employees permitted under Section 6.04, (g) the payment of reasonable fees to directors of any Borrower or any Subsidiary who are not employees of such Borrower or Subsidiary, and compensation, consulting fees, and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees or consultants of the Borrowers or their Subsidiaries in the ordinary course of business or otherwise for fair market value, (h) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by a Borrower's board of directors and (i) the Project Oscar Transactions.

SECTION 6.10. Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to any Borrower or any other Subsidiary or to Guarantee Indebtedness of any Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by any Requirement of Law or by any Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the Effective Date identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale or acquisition of a Subsidiary pending such

sale or acquisition, provided that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) the foregoing shall not apply to restrictions and conditions in any indenture, agreement, document, instrument or other arrangement relating to the assets or business of any Subsidiary existing prior to the consummation of an acquisition in which such Subsidiary was acquired (and not created in contemplation of such acquisition), (v) the foregoing shall not apply to customary provisions in joint venture agreements (and other similar agreements) (provided that such provisions apply only to such joint venture and to Equity Interests in such joint venture), (vi) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (vii) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

SECTION 6.11. Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify or waive any of its rights under (a) any agreement relating to any Subordinated Indebtedness, (b) its charter, articles or certificate of incorporation or organization, by-laws, operating, management or partnership agreement or other organizational or governing documents, or (c) the Project Oscar Acquisition Agreement or any agreement, document or instrument evidencing the Project Oscar Intercompany Debt, in each case, to the extent any such amendment, modification or waiver would be materially adverse to the Lenders.

SECTION 6.12. Consolidated Total Leverage Ratio. The Borrowers shall not permit the Consolidated Total Leverage Ratio, determined as of the end of each fiscal quarter of the Company for the period of four fiscal quarters then ending, to exceed (a) 4.25:1.00 for any fiscal quarter ending prior to December 31, 2021, (b) 4.00:1.00 for the fiscal quarter ending December 31, 2021, (c) 3.75:1.00 for the fiscal quarter ending March 31, 2022, and (d) 3.50:1.00 for any fiscal quarter ending after March 31, 2022; provided that, so long as no Event of Default exists at such time or would result therefrom, the Company may elect to increase the maximum Consolidated Total Leverage Ratio permitted under this Section 6.12 to 4.00:1.00 for a period of two consecutive fiscal quarters in connection with a Permitted Acquisition having total consideration in excess of \$40,000,000 that is consummated during the first of such two fiscal quarters.

SECTION 6.13. Consolidated Fixed Charge Coverage Ratio. The Borrowers will not permit the Consolidated Fixed Charge Coverage Ratio, determined as of the end of each fiscal quarter of the Borrower for the period of four fiscal quarters then ending, to be less than 1.25 to 1.0.

## ARTICLE VII

### EVENTS OF DEFAULT

If any of the following events ("Events of Default") shall occur:

- (a) the Borrowers shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable and in the Agreed Currency required hereunder, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable and in the Agreed Currency required hereunder under this Agreement or any other Loan Document, when and as the same shall become due and payable;
- (c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been materially incorrect when made or deemed made;
- (d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to a Loan Party's existence), 5.08, 5.15 or in Article VI or in Section 5(b) of the Third Amendment;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those which constitute a default under another Section of this Article), and such failure shall continue unremedied for a period of (i) 5 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of Section 5.01, 5.02 (other than Section 5.02(a)), 5.03 through 5.07, 5.10, 5.11 or 5.12 of this Agreement or (ii) 15 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement;

(f) any Loan Party or Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or that requires any Loan Party to make an offer to prepay, repurchase, redeem or defease thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by Section 6.05;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership, administration or similar law now or hereafter in effect (including, without limitation, the CCAA, the Australian Corporations Act and the BIA) or (ii) the appointment of a receiver, receiver and manager, administrator, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) (x) any Loan Party or Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, administration, scheme of arrangement, deed of company arrangement or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (including, without limitation, the CCAA, the Australian Corporations Act and the BIA), (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, receiver and manager, administrator, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing; or (y) any Loan Party or Subsidiary organized under Australian law is taken under section 459F(1) of the Australian Corporations Act to have failed to comply with a statutory demand or is presumed to be unable to pay its debts or is unable to pay its debts when they become due and payable or is insolvent within the meaning of



section 95A of the Australian Corporations Act; or (z) any Loan Party or Subsidiary that is incorporated under New Zealand law is presumed to be unable to pay its debts in accordance with section 287 of the NZ Companies Act, or appoints a statutory manager in respect of any Loan Party or Subsidiary that is incorporated under New Zealand law;

(j) any Loan Party or Subsidiary shall become unable, admit in writing its inability, or publicly declare its intention not to, or fail generally to pay its debts as they become due;

---

107

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$1,000,000 shall be rendered against any Loan Party, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or Subsidiary to enforce any such judgment; or (ii) any Loan Party or Subsidiary shall fail within thirty (30) days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(l) an ERISA Event (or, in the case of any Foreign Plan, a termination, withdrawal or noncompliance with applicable laws or plan terms) shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events (or, in the case of any Foreign Plan, any other termination, withdrawal or noncompliance with applicable laws or plan terms) that have occurred, could reasonably be expected to result in liability of the Borrowers and their Subsidiaries in an aggregate amount exceeding \$1,000,000 for all periods;

(m) a Change in Control shall occur;

(n) the occurrence of any "default", as defined in any Loan Document (other than this Agreement) or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default or breach continues beyond any period of grace (if any) therein provided;

(o) the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Loan Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Loan Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect, including, but not limited to notice of termination delivered pursuant to Section 10.08;

(p) except as permitted by the terms of any Collateral Document (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Secured Obligation shall cease to be a perfected, first priority Lien;

(q) any Collateral Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document;

(r) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction that evidences its assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms); or

---

108

(s) any Loan Party is criminally indicted or convicted under any law that may reasonably be expected to lead to a forfeiture of any property of such Loan Party having a fair market value in excess of \$1,000,000;

then, and in every such event (other than an event with respect to the Borrowers described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower Representative, take either or both of the following actions, at the same or different times: (i) terminate the Commitments (including the Swingline Commitment), whereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, and (iii) require cash collateral for the LC Exposure in accordance with Section 2.06(j) hereof; and in the case of any event with respect to the Borrowers described in clause (h) or (i) of this Article, the Commitments (including the Swingline Commitment) shall automatically terminate and the principal of the Loans then outstanding and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, and the obligation of the Borrowers to cash collateralize the LC Exposure as provided in clause (iii) above shall automatically become effective, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

#### ARTICLE VIII

#### THE ADMINISTRATIVE AGENT

##### SECTION 8.01. Appointment.

(a) Each of the Lenders, on behalf of itself and any of its Affiliates that are Secured Parties and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and security trustee and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the U.S., each of the Lenders and the Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute any Collateral Document governed by the laws of such jurisdiction on such Lender's or Issuing Bank's behalf. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders (including the Swingline Lender and the Issuing Bank), and the Loan Parties shall not have rights as a third party beneficiary of any of such provisions.

(b) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Bank (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, the Issuing Bank, any other Secured Party or holder of any other Secured Obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term “agent” (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and the transactions contemplated hereby; and

---

109

(ii) where the Administrative Agent is required or deemed to act as a trustee in respect of any Collateral over which a security interest has been created pursuant to a Loan Document expressed to be governed by the laws of Australia, New Zealand, Canada or any other country, or is required or deemed to hold any Collateral “on trust” pursuant to the foregoing, the obligations and liabilities of the Administrative Agent to the Secured Parties in its capacity as trustee shall be excluded to the fullest extent permitted by applicable law.

(c) For the avoidance of doubt, if (i) an administrator (other than an administrator appointed by the Administrative Agent) has been appointed under the Australian Corporations Act to any Australian Loan Party and (ii) the Administrative Agent is entitled under section 441A of the Australian Corporations Act to enforce a Collateral Document over such Australian Loan Party’s property within the “decision period” (as defined in the Australian Corporations Act) provided for under such section, then, in each such case, the Administrative Agent may (without any further instructions) enforce such Collateral Document (including the appointment of a controller) but need not do so (and is not liable to the Secured Parties if it does not do so).

SECTION 8.02. Rights as a Lender. The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Loan Party or any Subsidiary or any Affiliate thereof as if it were not the Administrative Agent hereunder.

SECTION 8.03. Duties and Obligations. The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and, (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any Subsidiary that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower Representative or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. Notwithstanding anything herein to the contrary, the Administrative Agent shall not be liable for, or be responsible for any Liabilities, costs or expenses suffered by the Borrower Representative, any Subsidiary, any Lender or the Issuing Bank as a result of, any determination of the Revolving Exposure, any of the component amounts thereof or any portion thereof attributable to each Lender or the Issuing Bank, or any Exchange Rate or calculation of any Dollar Amount or Equivalent Amount.

---

110

SECTION 8.04. Reliance. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Actions through Sub-Agents. The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

SECTION 8.06. Resignation. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Borrower Representative. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by its successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor, unless otherwise agreed by the Borrowers and such successor. Notwithstanding the foregoing, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Bank and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this paragraph (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any

Collateral Document, including any action required to maintain the perfection of any such security interest), and (b) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, provided that (i) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (ii) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall also directly be given or made to each Lender and the Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

#### SECTION 8.07. Non-Reliance.

(a) Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender and each Issuing Bank further represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any arranger of this credit facility or any amendment thereto or any other Lender or Issuing Bank and their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder, and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and Issuing Bank shall, independently and without reliance upon the Administrative Agent, any arranger of this credit facility or any amendment thereto or any other Lender and their respective Related Parties and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrowers and their Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

#### SECTION 8.08. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent, and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any

other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 8.09. Not Partners or Co-Venturers; Administrative Agent as Representative of the Secured Parties. (a) The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

(b) In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the New York Uniform Commercial Code. Each Lender authorizes the Administrative Agent to enter into each of the Collateral Documents to which it is a party and to take all action contemplated by such documents. Each Lender agrees that no Secured Party (other than the Administrative Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Administrative Agent for the benefit of the Secured Parties upon the terms of the Collateral Documents. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

SECTION 8.10. Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

SECTION 8.11. Payments.

(a) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.11 shall be conclusive, absent manifest error.

---

114

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

(d) Each party's obligations under this Section 8.11 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

---

115

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

- (i) if to any Loan Party, to the Borrower Representative at:

CLARUS CORPORATION  
2084 East 3900 South  
Salt Lake City, Utah 84124  
Attention: Aaron Kuehne  
Facsimile No: 801-278-5544

with a copy to:

KANE KESSLER, P.C.  
600 Third Avenue, 35th Floor

New York, New York 10016  
Attention: Robert L. Lawrence, Esq.  
Facsimile No: (212) 245-3009  
Email: [rlawrence@kanekessler.com](mailto:rlawrence@kanekessler.com)

- (ii) if to the Administrative Agent, JPMCB in its capacity as the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

in the case of a Borrowing denominated in a Foreign Currency:

J.P. MORGAN EUROPE LIMITED  
25 Bank Street, Canary Wharf  
London E14 5JP  
Attention: The Manager, Loan & Agency Services  
Telecopy No. 011-44-207-777-2360

in all other cases:

JPMORGAN CHASE BANK, N.A.  
Middle Market Servicing  
10 South Dearborn, Floor L2, Suite IL1-0480  
Chicago, Illinois 60603-2300  
Email: [jpm.agency.servicing.1@jpmorgan.com](mailto:jpm.agency.servicing.1@jpmorgan.com)

and, in each case,s with a copy to:

JPMORGAN CHASE BANK, N.A.  
201 South Main Street, Suite 300  
Salt Lake City, Utah 84111  
Attention: Kristin L. Gubler  
Facsimile No: (801) 359-4352  
Email: [kristin.l.gubler@chase.com](mailto:kristin.l.gubler@chase.com)

- (iii) if JPMCB in its capacity as an Issuing Bank, to JPMorgan Chase Bank, N.A. at:

JPMORGAN CHASE BANK, N.A.  
Middle Market Servicing  
10 South Dearborn, Floor L2, Suite IL1-0480  
Chicago, Illinois 60603-2300  
Facsimile No: (312) 233-2264  
Email: [chicago.lc.agency.closing.team@jpmorgan.com](mailto:chicago.lc.agency.closing.team@jpmorgan.com)

with a copy to:

JPMORGAN CHASE BANK, N.A.  
201 South Main Street, Suite 300  
Salt Lake City, Utah 84111  
Attention: Kristin L. Gubler  
Facsimile No: (801) 359-4352  
Email: [kristin.l.gubler@chase.com](mailto:kristin.l.gubler@chase.com)

- (iv) if to any other Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (ii) sent by facsimile shall be deemed to have been given when sent, provided that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (iii) delivered through Electronic Systems to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

(b) Notices and other communications to the Borrower Representative, any Loan Party, the Lenders, the Issuing Banks and the Administrative Agent hereunder may be delivered or furnished by Electronic Systems pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Default certificates delivered pursuant to Section 5.01(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrowers or the other Loan Parties, any Lender, the Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of communications through an Electronic System. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications pursuant to this Section, including through an Electronic System.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in Section 2.09 (with respect to any increase in the Revolving Commitments or Incremental Term Loan Amendment), subject to Section 2.14(c), (d) and (e) and Sections 9.02(c) and (e), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that no such agreement (including any such increase in Revolving Commitments or Incremental Term Loan Amendment pursuant to Section 2.09) shall (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (provided that any amendment or modification of the financial covenants in this Agreement (or any defined term used therein) shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii)), (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iv) change Section 2.09(c), 2.18(b) or (d) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby (it being understood that, solely with the consent of the parties to an Incremental Term Loan Amendment, Incremental Term Loans may be included in the determination of Required Lenders on substantially the same basis as the Commitments and the Revolving Loans are included on the Third Amendment Effective Date), (vi) change Section 2.20, without the consent of each Lender (other than any Defaulting Lender), (vii) release any Loan Guarantor from its obligation under its Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), or (viii) except as provided in clause (c) of this Section 9.02 or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender); provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 shall require the consent of the Administrative Agent, the Issuing Bank and the Swingline Lender); provided further that no such agreement shall amend or modify the provisions of Section 2.07 or any letter of credit application and any bilateral agreement between the Borrower Representative and the Issuing Bank regarding the respective rights and obligations between the applicable Borrower and the Issuing Bank in connection with the issuance of Letters of Credit without the prior written consent of the Administrative Agent and the Issuing Bank, respectively. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Any amendment, waiver or other modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(c) The Lenders and the Issuing Bank hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the Payment in Full of all Secured Obligations, and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that, the Administrative Agent may in its discretion, release its Liens on Collateral valued in the aggregate not in excess of \$5,000,000 during any calendar year without the prior written authorization of the Required Lenders (it being agreed that the Administrative Agent may rely conclusively on one or more certificates of the Borrowers as to the value of any Collateral to be so released, without further inquiry). Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender” or “each Lender affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a “Non-Consenting Lender”), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity (other than any Ineligible Institution) which is reasonably satisfactory to the Borrowers, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including

without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each party hereto agrees that (x) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform approved by the Administrative Agent as to which the Administrative Agent and such parties are participants), and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

(c) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

**SECTION 9.03. Expenses; Indemnity; Damage Waiver.** (a) The Loan Parties shall, jointly and severally, pay all (i) reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication and distribution (including, without limitation, via the internet or through an Electronic System) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

- (i) insurance reviews;

- (ii) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;

- (iii) Taxes, fees and other charges for (A) lien and title searches and title insurance and (B) recording the Mortgages, filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;

- (iv) Environmental reviews, surveys and related real estate matters;

- (v) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

- (vi) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in Section 2.18(c).

(b) **Limitation of Liability.** To the extent permitted by applicable law (i) neither any Borrower nor any other Loan Party shall assert, and each Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Arranger, any Issuing Bank and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a "Lender-Related Person") for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 9.03(b) shall relieve any Borrower or any other Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) **Indemnity.** The Loan Parties, jointly and severally, shall indemnify the Administrative Agent, each Arranger, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all Liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, (iv) the failure of a Loan Party to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by such Loan Party for Taxes pursuant to Section 2.17, or (v) any actual or prospective Proceeding relating to any of the foregoing, whether or not such Proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such Liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(d) **Lender Reimbursement.** Each Lender severally agrees to pay any amount required to be paid by the Borrower under paragraphs (a), (b) or (c) of this Section 9.03 to the Administrative Agent, the Issuing Bank and the Swingline Lender, and each Related Party of any of the foregoing Persons (each, an "Agent-Related

Person”) (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Applicable Percentage in effect on the date on which such payment is sought is sought after the date upon which the Commitments shall have terminated and the Obligations shall have been Paid in Full, ratably in accordance with such Applicable Percentage immediately prior to such date), from and against any and all Liabilities and related expenses, including the fees, charges and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent-Related Person in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent-Related Person under or in connection with any of the foregoing; provided that the unreimbursed expense or Liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such.

(c) Payments. All amounts due under this Section 9.03 shall be payable promptly after written demand therefor.

SECTION 9.04. **Successors and Assigns.** (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section 9.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower Representative, provided that the Borrower Representative shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof, and provided further that no consent of the Borrower Representative shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

---

122

---

(B) the Administrative Agent;

(C) the Issuing Bank; and

(D) the Swingline Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consent, provided that no such consent of the Borrower Representative shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, it being understood that non-*pro rata* assignments of or among any of the Commitments, the Revolving Loans and the Term Loan are not permitted;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms “Approved Fund” and “Ineligible Institution” have the following meanings:

“Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Ineligible Institution” means a (a) natural person, (b) a Defaulting Lender or its Lender Parent, (c) company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, such company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business or (d) a Loan Party or a Subsidiary or other Affiliate of a Loan Party.

---

123

---

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any



assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent, the Issuing Bank and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(d), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

---

124

---

(c) Any Lender may, without the consent of the Borrowers, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a “Participant”) other than an Ineligible Institution in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) and (g) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender and the information and documentation required under Section 2.17(g) will be delivered to the Borrowers and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrowers’ request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(d) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under this Agreement or any other Loan Document (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) One or more Additional Lenders may be admitted as Lenders party to this Agreement from time to time in connection with an increase of the aggregate Commitment pursuant to Section 2.09, subject to (i) execution and delivery by any such Additional Lender to the Administrative Agent, for recording in the Register, of an Instrument of Adherence substantially in the form of Exhibit F or such other form reasonably acceptable to the Administrative Agent (an “Instrument of Adherence”), (ii) acceptance of such Instrument of Adherence by each of the Administrative Agent and the Borrower Representative by their respective executions thereof, and (iii) the completion of an Administrative Questionnaire by such Additional Lender promptly delivered to the Administrative Agent. Upon the satisfaction of the foregoing conditions, from and after the effective date specified in each such Instrument of Adherence, the Additional Lender shall be a Lender party hereto and have the rights and obligations of a Lender hereunder.

---

125

---

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of any Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Borrower and each Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrowers and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (d) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of any Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final and in whatever currency denominated) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Loan Party against any of and all the Secured Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmaturing. The applicable Lender shall notify the Borrower Representative and the Administrative Agent of such set-off or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws (and not the laws of conflicts) of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, New York in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Each Foreign Subsidiary that is a party hereto irrevocably designates and appoints the Borrower Representative, as its authorized agent, to accept and acknowledge on its behalf, service of any and all process which may be served in any suit, action or proceeding of the nature referred to in Section 9.09(b) in any federal or New York State court sitting in New York City. The Borrower Representative hereby represents, warrants and confirms that the Borrower Representative has agreed to accept such appointment. Said designation and appointment shall be irrevocable by each such Foreign Subsidiary until Payment in Full of the Secured Obligations. Each Foreign Subsidiary party thereto hereby consents to process being served in any suit, action or proceeding of the nature referred to in Section 9.09(b) in any federal or New York State court sitting in New York City by service of process upon the Borrower Representative as provided in this Section 9.09(d); provided that, to the extent lawful and possible, notice of said service upon such agent shall be mailed by registered or certified air mail, postage prepaid, return receipt requested, to the Borrower Representative and (if applicable to) such Foreign Subsidiary at its address set forth herein or in the Joinder Agreement pursuant to which such Foreign Subsidiary became a party hereto, as applicable, or to any other address of which such Foreign Subsidiary shall have given written notice to the Administrative Agent (with a copy thereof to the Borrower Representative). Each Foreign Subsidiary party hereto irrevocably waives, to

the fullest extent permitted by law, all claim of error by reason of any such service in such manner and agrees that such service shall be deemed in every respect effective service of process upon such Foreign Subsidiary in any such suit, action or proceeding and shall, to the fullest extent permitted by law, be taken and held to be valid and personal service upon and personal delivery to such Foreign Subsidiary. To the extent any Foreign Subsidiary party hereto has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution of a judgment, execution or otherwise), each Foreign Subsidiary hereby irrevocably waives such immunity in respect of its obligations under the Loan Documents. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

---

128

---

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) on a confidential basis to (i) any rating agency in connection with rating the Company or any of its Subsidiaries or the credit facilities provided for herein or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of identification numbers with respect to the credit facilities provided for herein, (h) with the consent of the Borrower Representative, (i) to holders of Equity Interests in any Borrower, (j) to any Person providing a Guarantee of all or any portion of the Secured Obligations, or (k) to the extent such Information (i) is or becomes publicly available other than as a result of a breach of this Section or (ii) is or becomes available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrowers or other Loan Party. To the extent permitted by section 275 of the Australian PPSA, the parties agree to keep all information of the kind mentioned in section 275(1) and 275(4) of the Australian PPSA confidential and not to disclose that information to any other Person, other than to the extent permitted hereunder. For the purposes of this Section, "Information" means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information but in no event less than a reasonable amount of care.

**EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY, AND ITS AFFILIATES, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

---

129

---

**ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWERS OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

SECTION 9.13. Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any Margin Stock for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

SECTION 9.14. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.15. Disclosure. Each Loan Party, each Lender and the Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

SECTION 9.16. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 9.17. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with

all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18. Marketing Consent. The Borrowers hereby authorize JPMCB and its affiliates (collectively, the “JPMCB Parties”), at their respective sole expense, but without any prior approval by the Borrowers, to publish such tombstones and give such other publicity to this Agreement as each may from time to time determine in its sole discretion. The foregoing authorization shall remain in effect unless and until the Borrower Representative notifies JPMCB in writing that such authorization is revoked.

SECTION 9.19. Acknowledgement and Consent to Bail-In of Affected Financial Institutions

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

SECTION 9.20. No Fiduciary Duty, etc. Each Borrower acknowledges and agrees, and acknowledges its subsidiaries’ understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm’s length contractual counterparty to each Borrower with respect to the Loan Documents and the transaction contemplated therein and not as a financial advisor or a fiduciary to, or an agent of, any Borrower or any other person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising any Borrower as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. Each Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Credit Parties shall have no responsibility or liability to any Borrower with respect thereto. Each Borrower further acknowledges and agrees, and acknowledges its subsidiaries’ understanding, that each Credit Party, together with its affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, any Borrower and other companies with which any Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion. In addition, each Borrower acknowledges and agrees, and acknowledges its subsidiaries’ understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which a Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from any Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with such Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to any Borrower, confidential information obtained from other companies.

ARTICLE X

LOAN GUARANTY

SECTION 10.01. Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guarantee) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses, including, without limitation, all court costs and attorneys’ and paralegals’ fees and expenses paid or incurred by the Administrative Agent, the Issuing Bank and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower or any Loan Guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the “Guaranteed Obligations”; provided, however, that the definition of “Guaranteed Obligations” shall not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations. Each Loan Guarantor further agrees that if payment in respect of any Guaranteed Obligation shall be due in a currency other than Dollars and/or at a place of payment other than New York, Chicago or any other Term Benchmark Payment Office and if, by reason of any Change in Law, disruption of currency or foreign exchange markets, war or civil disturbance or other event, payment of such Guaranteed Obligation in such currency or at such place of payment shall be impossible or, in the reasonable judgment of the Administrative Agent, the Issuing Bank or any Lender (or any of its Affiliates), disadvantageous to the Administrative Agent, the Issuing Bank or any Lender (or any of such Lender’s Affiliates) in any material respect, then, at the election of the Administrative Agent, such Loan Guarantor shall make payment of such Guaranteed Obligation in Dollars (based upon the applicable equivalent amount in effect on the date of payment) and/or in New York, Chicago or such other Term Benchmark Payment Office as is designated by the Administrative Agent or such Lender and, as a separate and independent obligation, shall indemnify the Administrative Agent, the Issuing Bank and any

SECTION 10.02. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, the Issuing Bank or any Lender to sue any Borrower, any Loan Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03. No Discharge or Diminishment of Loan Guaranty. (a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than Payment in Full of the Guaranteed Obligations).

SECTION 10.04. Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower, any Loan Guarantor or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

SECTION 10.05. Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Bank and the Lenders.

SECTION 10.06. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Bank and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

SECTION 10.07. Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, the Issuing Bank or any Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 10.08. Release of Subsidiary Guarantors.

(a) A Subsidiary Guarantor shall automatically be released from its obligations under the Loan Guaranty upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Guarantor ceases to be a Material Subsidiary; provided that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise. In connection with any termination or release pursuant to this Section, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to) execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent.

(b) Further, the Administrative Agent may (and is hereby irrevocably authorized by each Lender to), upon the request of the Company, release any Subsidiary Guarantor from its obligations under the Loan Guaranty if such Subsidiary Guarantor is no longer a Material Subsidiary.

(c) Upon Payment in Full of all Secured Obligations, the Loan Guaranty and all obligations (other than those expressly stated to survive such termination) of each Loan Guarantor thereunder shall automatically terminate, all without delivery of any instrument or performance of any act by any Person.

SECTION 10.09. Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Guarantor shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Administrative Agent, Lender or Issuing Bank (as the case may be) receives the amount it would have received had no such withholding been made.

SECTION 10.10. Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transaction Act or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Loan Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10.11. Contribution.

(a) To the extent that any Loan Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and the Payment in Full of the Guaranteed Obligations and the termination of this Agreement, such Loan Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Loan Guarantor shall be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 10.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 10.11 is intended to or shall impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

---

135

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 10.11 shall be exercisable upon the Payment in Full of the Guaranteed Obligations and the termination of this Agreement.

SECTION 10.12. Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Bank and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

SECTION 10.13. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Loan Guaranty in respect of a Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.13 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.13 shall remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 10.14. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

---

136



SECTION 10.15. Joint and Several. Each Borrower hereby unconditionally and irrevocably agrees it is jointly and severally liable to the Administrative Agent, the Issuing Banks and the Lenders for the Secured Obligations. In furtherance thereof, each Borrower agrees that wherever in this Agreement it is provided that a Borrower is liable for a payment, such obligation is the joint and several obligation of each Borrower. Each Borrower acknowledges and agrees that its joint and several liability under this Agreement and the Loan Documents is absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever by the Administrative Agent, any Issuing Bank, any Lender or any other Person. Each Borrower's liability for the Secured Obligations shall not in any manner be impaired or affected by who receives or uses the proceeds of the credit extended hereunder or for what purposes such proceeds are used, and each Borrower waives notice of borrowing requests issued by, and loans or other extensions of credit made to, other Borrowers. Each Borrower hereby agrees not to exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to such Borrower against any party liable for payment under this Agreement and the Loan Documents unless and until the Administrative Agent, each Issuing Bank and each Lender has been paid in full and all of the Secured Obligations are satisfied and discharged following termination or expiration of all commitments of the Lenders to extend credit to the Borrowers. Each Borrower's joint and several liability hereunder with respect to the Secured Obligations shall, to the fullest extent permitted by applicable law, be the unconditional liability of such Borrower irrespective of (i) the validity, enforceability, avoidance or subordination of any of the Secured Obligations or of any other document evidencing all or any part of the Secured Obligations, (ii) the absence of any attempt to collect any of the Secured Obligations from any other Loan Party or any Collateral or other security therefor, or the absence of any other action to enforce the same, (iii) the amendment, modification, waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent or any Lender with respect to any provision of any instrument executed by any other Loan Party evidencing or securing the payment of any of the Secured Obligations, or any other agreement now or hereafter executed by any other Loan Party and delivered to the Administrative Agent, (iv) the failure by the Administrative Agent or any Lender to take any steps to perfect or maintain the perfected status of its Lien upon, or to preserve its rights to, any of the Collateral or other security for the payment or performance of any of the Secured Obligations or the Administrative Agent's release of any Collateral or of its Liens upon any Collateral, (v) the release or compromise, in whole or in part, of the liability of any other Loan Party for the payment of any of the Secured Obligations, (vi) any increase in the amount of the Secured Obligations beyond any limits imposed herein or in the amount of any interest, fees or other charges payable in connection therewith, in each case, if consented to by any other Borrower, or any decrease in the same, or (vii) any other circumstance that might constitute a legal or equitable discharge or defense of any Loan Party. After the occurrence and during the continuance of any Event of Default, the Administrative Agent may proceed directly and at once, without notice to any Borrower, against any or all of Loan Parties to collect and recover all or any part of the Secured Obligations, without first proceeding against any other Loan Party or against any Collateral or other security for the payment or performance of any of the Secured Obligations, and each Borrower waives any provision that might otherwise require the Administrative Agent or the Lenders under applicable law to pursue or exhaust its remedies against any Collateral or other Loan Party before pursuing such Borrower or its property. Each Borrower consents and agrees that neither the Administrative Agent nor any Lender shall be under no obligation to marshal any assets in favor of any Loan Party or against or in payment of any or all of the Secured Obligations.

---

137

## ARTICLE XI

### THE BORROWER REPRESENTATIVE

SECTION 11.01. Appointment; Nature of Relationship. The Company is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the "Borrower Representative") hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XI. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Account(s), at which time the Borrower Representative shall promptly disburse such Loans to the appropriate Borrower(s). The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

SECTION 11.02. Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

SECTION 11.03. Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

SECTION 11.04. Intentionally Omitted.

SECTION 11.05. Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent shall give prompt written notice of such resignation to the Lenders.

SECTION 11.06. Execution of Loan Documents. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including, without limitation, the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

(Signature Pages Follow)

---

138

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

CLARUS CORPORATION,  
a Delaware corporation,  
as a Borrower

By \_\_\_\_\_

Name:

Title:

BLACK DIAMOND RETAIL, INC.,  
a Delaware corporation,  
as a Borrower

By \_\_\_\_\_

Name:  
Title:

BLACK DIAMOND RETAIL - ALASKA, LLC,  
a Delaware limited liability company,  
as a Borrower

By \_\_\_\_\_

Name:  
Title:

SIERRA BULLETS, L.L.C.,  
a Delaware limited liability company,  
as a Borrower

By \_\_\_\_\_

Name:  
Title:

SKINOURISHMENT, LLC,  
a Delaware limited liability company,  
as a Borrower

By \_\_\_\_\_

Name:  
Title:

Signature Page to Credit Agreement

BLACK DIAMOND RETAIL – COLORADO, LLC,  
a Delaware limited liability company,  
as a Borrower

By \_\_\_\_\_

Name:  
Title:

BLACK DIAMOND RETAIL – MONTANA, LLC,  
a Delaware limited liability company,  
as a Borrower

By \_\_\_\_\_

Name:  
Title:

BARNES BULLETS – MONA, LLC, a Delaware  
limited liability company,  
as a Borrower

By \_\_\_\_\_

Name:  
Title:

BLACK DIAMOND EQUIPMENT, LTD.,  
a Delaware corporation,  
as a Loan Guarantor

By \_\_\_\_\_

Name:  
Title:

EVEREST/SAPPHIRE ACQUISITION, LLC,  
a Delaware limited liability company,  
as a Loan Guarantor

By \_\_\_\_\_

Name:  
Title:

Signature Page to Credit Agreement



---

BD EUROPEAN HOLDINGS, LLC,  
a Delaware limited liability company,  
as a Loan Guarantor

By \_\_\_\_\_

Name:

Title:

Signature Page to Credit Agreement

---

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent, Issuing Bank, Swingline  
Lender, and a Lender

By \_\_\_\_\_

Name:

Title:

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By \_\_\_\_\_

Name:

Title:

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, DBA ZIONS BANK, as a  
Lender

By \_\_\_\_\_

Name:

Title:

Signature Page to Credit Agreement

---

COMMITMENT SCHEDULE

Lender	Revolving Commitment	Outstanding Term Loans as of the Third Amendment Effective Date <sup>1</sup>
JPMorgan Chase Bank, N.A.	\$ 30,000,000.00	\$ 37,500,000.00
U.S. Bank National Association	\$ 27,777,777.77	\$ 34,722,222.23
Regions Bank	\$ 15,555,555.56	\$ 19,444,444.44
Bank of America, N.A.	\$ 15,555,555.56	\$ 19,444,444.44
Zions Bancorporation, National Association, dba Zions Bank	\$ 11,111,111.11	\$ 13,888,888.89
<b>Total</b>	<b>\$ 100,000,000.00</b>	<b>\$ 125,000,000.00</b>

---

<sup>1</sup> After giving effect to the funding of the Additional Term Loans on the Third Amendment Effective Date.

---

SCHEDULE 3.05

PROPERTIES

(as of Second Amendment Effective Date)

**Real Property**

<b>Loan Party</b>	<b>Address</b>	<b>Nature of real property (e.g., owned, leased, etc.)</b>
Clarus Corporation	2084 East 3900 S., Salt Lake City, UT 84124	Owned by Black Diamond Equipment, Ltd.
Everest/Sapphire Acquisition, LLC	2084 East 3900 S., Salt Lake City, UT 84124	Owned by Black Diamond Equipment, Ltd.
SKINourishment, LLC	2084 East 3900 S., Salt Lake City, UT 84124	Owned by Black Diamond Equipment, Ltd.
SKINourishment, LLC	691 La Buena Vista, Wimberly, TX 78676	Leased
Black Diamond Retail, Inc.	2084 East 3900 S., Salt Lake City, UT 84124 (HQ)	Owned by Black Diamond Equipment, Ltd.
Black Diamond Retail, Inc.	592 Main Street, Park City, UT 84060 (Park City)	Leased
Black Diamond Retail, Inc.	602 S 700 E C102, Salt Lake City, UT 84102 (Trolley Square)	Leased
Black Diamond Retail, Inc.	3700 Cabela's Blvd Suite 426, Lehi, UT 84043 (Traverse Mountain)	Leased
BD European Holdings, LLC	2084 East 3900 S., Salt Lake City, UT 84124	Owned by Black Diamond Equipment, Ltd.
Sierra Bullets, L.L.C.	1400 West Henry Street, Sedalia, MO 65301	Owned
Sierra Bullets, L.L.C.	Wastewater Treatment Facility located at 1400 West Henry Street, Sedalia, MO 65301	Leased
Sierra Bullets, L.L.C.	1500 W Ewing Drive, Sedalia, MO 65301	Leased
Black Diamond Equipment, Ltd.	2084 East 3900 S., Salt Lake City, UT 84124	Owned
Black Diamond Equipment, Ltd.	BDEL Distribution Center 1851 South 5350 West Salt Lake City, UT 84104	Leased
Black Diamond Equipment, Ltd.	CNBMI Logistics Center Yantuian Bonded Logistics Park Mingzhu Road, Yantian District Shenzhen, Guangdong, China	Leased
Black Diamond Equipment, Ltd.	DI Dawn Patrol Mfg Corp/ Dong In Entech K-1 Inc. Mindanao Ave. Phase II FAB Mariveles, Bataan, Philippines 2016	Leased
Black Diamond Equipment, Ltd	VP BTX Global Logistics 3775 W. California Ave. Salt Lake City, UT 84104	Leased
Black Diamond Equipment, Ltd	Alexander Exhibit 7440 S 228th Street Kent, WA 98032	Leased
Black Diamond Equipment, Ltd	NRI Distribution 9835 Dallas Drive Kamloops, BC, Canada V2C6T4	Leased
Black Diamond Equipment, Ltd	FEDEX Trade Networks 7075 Ordan Dr. Mississauga, Ontario, Canada L5T1K6	Leased
Black Diamond Retail – Colorado, LLC	5050 Factory Shops Blvd. Suite 855 Castle Rock, CO 80108	Leased
Barnes Bullets – Mona, LLC	38 North Frontage Road Mona, Utah 84645	Leased
Black Diamond Retail – Montana, LLC	99 Town Center Avenue, Suite A1 Big Sky, Montana 59716	Leased

## SUBSIDIARIES OF CLARUS CORPORATION

The following are subsidiaries of Clarus Corporation as of December 31, 2021 and the jurisdictions in which they are organized.

<u>Company</u>	<u>State or Jurisdiction of Incorporation/Organization</u>
Everest/Sapphire Acquisition, LLC	Delaware
Black Diamond Equipment, Ltd.	Delaware
Black Diamond Retail, Inc.	Delaware
Black Diamond Retail – Alaska, LLC	Delaware
Black Diamond Retail – Colorado, LLC	Delaware
Black Diamond Retail – Montana, LLC	Delaware
Black Diamond Retail – Wyoming, LLC	Delaware
Black Diamond Retail – Vermont, LLC	Delaware
Black Diamond Retail – Oregon, LLC	Delaware
Black Diamond Equipment Europe GmbH	Austria
Black Diamond Equipment Retail GmbH	Austria
BD European Holdings, LLC	Delaware
Black Diamond Austria GmbH	Austria
PIEPS GmbH	Austria
SKINourishment, LLC	Delaware
Sierra Bullets, L.L.C.	Delaware
Barnes Bullets – Mona, LLC	Delaware
Oscar Aluminium Holdings, Inc.	Delaware
Oscar Aluminium Holdings Pty Ltd	Australia
Oscar Aluminium Pty Ltd	Australia
Rhino-Rack Holdings Pty Ltd	Australia
Roof Rack City (NSW) Pty Ltd	Australia
Rhino Rack Australia Pty Ltd	Australia
Rhino Rack New Zealand Ltd. (NZ)	New Zealand
Rhinorack Canada Limited	Canada
Rhino-Rack USA LLC	Colorado
Simpson Aluminium Pty Ltd	Australia
Maxtrax Australia Unit Trust and its trustee	Australia
Maxtrax Pty Ltd	Australia
Maxtrax Australia Pty Ltd.	Australia

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement No. 333-218754 on Form S-8, Registration Statement No. 333-254105 on Form S-3, and Registration Statement No. 333-254107 on Form S-4 of our reports dated March 7, 2022, relating to the financial statements of Clarus Corporation and the effectiveness of Clarus Corporation's internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ Deloitte & Touche LLP

Salt Lake City, Utah

March 7, 2022

---

## CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Warren B. Kanders, certify that:

1. I have reviewed this annual report on Form 10-K of Clarus Corporation;
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; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer(s) 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 the registrant's board of directors (or persons performing the equivalent functions):
  - (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 7, 2022

By: /s/ Warren B. Kanders

Name: Warren B. Kanders

Title: Executive Chairman

(Principal Executive Officer)

---

## CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Michael J. Yates certify that:

1. I have reviewed this annual report on Form 10-K of Clarus Corporation;
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; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer(s) 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 the registrant's board of directors (or persons performing the equivalent functions):
  - (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 7, 2022

By: /s/ Michael J. Yates

Name: Michael J. Yates

Title: Chief Financial Officer  
(Principal Financial Officer and  
Principal Accounting Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Warren B. Kanders, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Clarus Corporation on Form 10-K for the year ended December 31, 2021, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents in all material respects the financial condition and results of operations of Clarus Corporation.

A signed original of this written statement required by Section 906 has been provided to Clarus Corporation and will be retained by Clarus Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

*Date: March 7, 2022*

*By: /s/ Warren B. Kanders*

*Name: Warren B. Kanders*

*Title: Executive Chairman*

*(Principal Executive Officer)*

---

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael J. Yates, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Clarus Corporation on Form 10-K for the year ended December 31, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents in all material respects the financial condition and results of operations of Clarus Corporation.

A signed original of this written statement required by Section 906 has been provided to Clarus Corporation and will be retained by Clarus Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

*Date: March 7, 2022*

*By: /s/ Michael J. Yates*

*Name: Michael J. Yates*

*Title: Chief Financial Officer*

*(Principal Financial Officer and*

*Principal Accounting Officer)*

---