

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

or

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 1-15103

INVACARE CORPORATION

(Exact name of Registrant as specified in its charter)

Ohio
(State or other Jurisdiction of
Incorporation or Organization)

95-2680965
(I.R.S. Employer
Identification Number)

One Invacare Way, Elyria, Ohio 44035
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (440) 329-6000

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

Title of each class	Trading Symbol	Name of exchange on which registered
Common Shares, without par value	IVC	New York Stock Exchange

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined by 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 Act. Yes No

Indicate by check mark whether the Registrant (1) has filed all reports 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 the filing requirements for the past 90 days. Yes No

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

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

Large Accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>	Emerging growth company	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>		

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. Yes No

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

As of June 30, 2021, the aggregate market value of the 32,760,013 Common Shares of the Registrant held by non-affiliates was \$264,373,305 and the aggregate market value of the 3,667 Class B Common Shares of the Registrant held by non-affiliates was \$29,593. While the Class B Common Shares are not listed for public trading on any exchange or market system, shares of that class are convertible into Common Shares at any time on a share-for-share basis. The market values indicated were calculated based upon the last sale price of the Common Shares as reported by The New York Stock Exchange on June 30, 2021, which was \$8.07. For purposes of this information, the 2,244,355 Common Shares and 0 Class B Common Shares which were held by Executive Officers and Directors of the Registrant were deemed to be the Common Shares and Class B Common Shares held by affiliates.

As of March 7, 2022, there were 35,052,180 Common Shares and 3,667 Class B Common Shares outstanding.

Documents Incorporated By Reference

Portions of the Registrant's definitive Proxy Statement to be filed in connection with its 2022 Annual Meeting of Shareholders are incorporated by reference into Part III (Items 10, 11, 12, 13 and 14) of this report.

Except as otherwise stated, the information contained in this Annual Report on Form 10-K is as of December 31, 2021.



Yes, you can.®

**INVACARE CORPORATION
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Item 1. Business.**GENERAL**

Invacare Corporation (“Invacare,” the “company,” including its subsidiaries, unless otherwise noted) is a leading manufacturer and distributor in its markets for medical equipment used in non-acute care settings. At its core, the company designs, manufactures and distributes medical devices that help people to move, breathe, rest and perform essential hygiene. The company provides clinically complex medical device solutions for congenital (e.g., cerebral palsy, muscular dystrophy, spina bifida), acquired (e.g., stroke, spinal cord injury, traumatic brain injury, post-acute recovery, pressure ulcers) and degenerative (e.g., ALS, multiple sclerosis, chronic obstructive pulmonary disease (COPD), age related, bariatric) conditions. The company's products are an important component of care for people facing a wide range of medical challenges, from those who are active and heading to work or school each day and may need additional mobility or respiratory support, to those who are cared for in residential care settings, at home and in rehabilitation centers. The company sells its products principally to home medical equipment providers, through retail and e-commerce channels, residential care operators, dealers and government health services in North America, Europe and Asia Pacific. Invacare's products are sold through its worldwide distribution network by its sales force, independent manufacturers' representatives, and distributors.

Invacare is committed to providing medical products that deliver the best clinical value; promote recovery, independence and active lifestyles; and support long-term conditions and palliative care. The company's global tagline - *Yes, You Can.*[®] is indicative of the "can do" attitude of many of the people who use the company's products and their care providers. In everything it does, the company strives to leave its stakeholders with its brand promise - *Making Life's Experiences Possible*[®].

The company is a corporation organized under the laws of the State of Ohio in 1971. When the company was first established as a stand-alone enterprise in December 1979, it had \$19.5 million in net sales and a limited product line of basic wheelchairs and patient aids. Since then, the company has made approximately fifty acquisitions and, after some recent divestitures to harmonize its portfolio, Invacare's net sales in 2021 were approximately \$900 million. Based upon the company's distribution channels, breadth of product lines and net sales, Invacare is a leading company in many of the following medical product categories: custom power wheelchairs; custom manual wheelchairs; electromotive technology to augment wheelchairs and recreational products; recreational adaptive sports products; non-acute bed systems; patient

transfer and bathing equipment; and supplementary respiratory therapy devices.

THE NON-ACUTE DURABLE MEDICAL EQUIPMENT INDUSTRY

The non-acute durable medical equipment market includes a broad range of equipment and services that enable the care and lifestyle needs of individuals with a broad range of conditions. With expected long-term pressure to control healthcare spending per capita, the company believes the market for equipment and services that support higher acuity care in lower acuity settings will continue to grow. Healthcare payors and providers continue to seek to optimize therapies which result in improved outcomes, reduced cost protocols, and ultimately, earlier discharge, including recovery and treatment in non-acute settings. Care in these settings may reduce exposure to concomitant issues and be preferred by patients.

As healthcare costs continue to increase, the interests of patients and healthcare providers are converging to focus on the most cost-effective delivery of the best care. As healthcare payors become more judicious in their spending, companies that provide better care or demonstrate better clinical outcomes will have an advantage. With its diverse product portfolio, clinical solutions, global scale and focus on the non-acute care setting, the company believes it is well positioned to serve this growing market.

Macro trends are impacting the world's aging population. While institutional care will likely remain an important part of healthcare systems in the wealthiest economies, the company believes care settings other than traditional hospitals will increasingly provide higher acuity care. With a broad product offering, diversified channels of trade, and infrastructure capable of serving many of the largest healthcare economies, the company believes it is well positioned to benefit from these global demographic trends and changes to the provision of healthcare.

North America Market

The population of the United States is growing and aging. As a result, there is a greater prevalence of disability among major U.S. population groups and an increasing need for assistance and care. The U.S. Census Bureau has projected the U.S. population will continue to grow to an estimated 400 million by 2050. Along the way, the bolus of Baby Boomers is expected to continue to raise the average age of the U.S. population. By 2030, the government estimates that more than 20% of the U.S. population will

consist of individuals over the age of 65, a 50% increase compared to the population in 2010.

In the United States, healthcare provision is supported by reimbursement from the federal Centers for Medicare and Medicaid Services (“CMS”), the Department of Veterans Affairs, state agencies, private payors and healthcare recipients themselves. In total, CMS estimates U.S. national healthcare expenditures will grow by more than 5% annually between 2019 and 2028. At this rate, healthcare spending would exceed GDP growth by 1%, which will sustain pressure to deploy care in ways that deliver the best outcomes for lower cost.

The Canadian health care system is a publicly funded model that provides coverage to all citizens. Provinces and territories are primarily responsible for the administration and delivery of Canada's health care services, and all health insurance plans are expected to meet the national guidelines established by the Canada Health Act. The objective of the Canada Health Act is to provide consumer-centered support and funding to residents with long-term physical disabilities and to provide access to personalized assistive devices that meet the basic needs of each patient. Each provincial and territorial health insurance plan differs with respect to reimbursement policies and product specification standards, allowing healthcare services to be adjusted based on regional needs. Invacare sells across Canada, taking into consideration the regional differences among the various provinces and territories.

Europe, Middle East and Africa Markets

While the healthcare equipment market in each country in Europe has distinct characteristics, many of the factors driving demand and affecting reimbursement are consistent with those in North America: population aging; more patients with chronic illnesses; an increasing preference to deliver healthcare outside hospitals; and a focus on the use of technology to increase productivity and reduce ancillary costs. Each European country has variations in product specifications and service requirements, regulations, distribution needs and reimbursement policies. These differences, as well as differences in the competitive landscape, require the company to tailor its approach based on the local market and the reimbursement requirements into which the products are being sold. The company's core strategy is to address these distinct markets with global product platforms that are localized with country-specific adjustments as necessary. This is especially the case for power wheelchairs, manual wheelchairs, and respiratory products. Customers in all European markets typically make product selections based upon quality, features, alignment with local reimbursement requirements, ability to reduce total cost of care, and customer service.

The company serves various markets in Eastern Europe, Middle East and Africa. It approaches these markets with the global portfolio of products developed and manufactured elsewhere. Sales in these markets are made somewhat opportunistically to balance changes in demand and specific product requirements. Often, sales in the Middle East and Africa represent episodic tenders as well as in some cases consistent sustained trade over the years. Most of the company's sales in these markets result from business conducted in Western Europe, as well as through dedicated local distributors.

Asia Pacific Market

The company's Asia Pacific market comprises revenue from products sold in Australia, New Zealand, China, Japan, Korea, India and Southeast Asia. Invacare's Asia Pacific businesses sell through multiple channels. Mobility and seating products are sold directly in New Zealand and through a network of dealers in all other countries, with almost all sales funded to reimbursed levels directly by governmental payors. Homecare products are sold via a dealer network that sells products to the consumer market. Long-term care products are sold via a dealer network and directly to care facilities. The company operates a rental business in New Zealand supporting the three largest hospital districts on New Zealand's North Island. Sales to other parts of Asia are sold via distributors and agents based in China, Japan, Korea, India and Southeast Asia. The company has a distribution and assembly center in Thailand.

Reimbursement

In most markets, the company does not make significant sales directly to end-users. In some markets, such as the United States, the United Kingdom and certain Scandinavian countries, the company sells directly to a government payor. In other markets, the company's customers purchase products to have available for use by, or re-sale to, end-users. These customers then work with end-users to determine what equipment may be needed to address the end-user's particular medical needs. Products are then provided to the end-user, and the company's customer may seek reimbursement on behalf of the end-user or sell the products, as appropriate. Product mix, pricing and payment terms vary by market. The company believes its market position and technical expertise will allow it to respond to ongoing changes in demand and reimbursement.

PRODUCT CATEGORIES

The company designs, manufactures, markets and distributes products in three key product categories: Mobility and Seating, Lifestyle and Respiratory.

Mobility and Seating

- Power Wheelchairs.** This product category includes complex power wheelchairs for individuals who require powered mobility. The company's power wheelchair product offerings include products that can be highly customized to meet an individual end-user's needs, as well as products that are inherently versatile and designed to meet a broad range of requirements. Center-wheel drive power wheelchair lines include the Invacare® TDX® (Total Driving eXperience) product line and the ROVI® X3 and A3 power base product line, offered through the company's Motion Concepts subsidiary and also sold in Asia Pacific. The TDX line of power wheelchairs offers a combination of power, stability and maneuverability, including the Invacare® SureStep® suspension with Stability Lock and available G-Trac™ Technology. Seating systems offer elevate, power tilt and recline features. The ROVI A3 also offers the Multi-Positioning-Standing-MAXX System (MPS), an innovative, highly adjustable system that provides consumers the medical benefits of adjusting to a standing position throughout the day, adding additional independence, function and accessibility.

The company also offers rear-wheel drive power wheelchair technology through the Invacare® Storm Series®. The company launched a new generation of front and rear wheel drive power wheelchairs in early 2020 under the AVIVA® brand name. AVIVA replaces some of the legacy products, with compelling enhancements, and provides new market share opportunities. The market feedback after some months from the launch has been extremely positive. Several of the company's subsidiaries specialize in the development and implementation of complementary technology designed to enhance the utility of wheelchairs to meet unique and complex physiological needs. For example, Adaptive Switch Labs has developed alternative electronic control systems and human/machine input devices that enable wheelchair and environmental control via alternative interfaces to joysticks, such as sip/puff, eye-gaze, or head position inputs. Motion Concepts designs and produces custom powered seating and power positioning systems. The company continues to be a leader in this market with unique intellectual property in wheelchair suspension, and alternative controls.

- Custom Manual Wheelchairs.** This product category includes products for independent everyday use, outdoor recreation, and casual and competitive sports, such as basketball, racing and tennis. These products are marketed under the Invacare® and Invacare® Top End® brand names. The company

markets a premiere line of lightweight, aesthetically-stylish custom manual wheelchairs under the Kuschall® brand name. This Kuschall family of products was updated during 2020, adding to the traditional features, the new hydroforming technology. This technology forms material specifically to the areas of the highest strength needs using less total material. As a consequence, the rigidity and the driving performance of the chair improve significantly while the weight is reduced. These custom manual wheelchairs feature precision components and outstanding driving performance. The company provides a wide range of mobility solutions for everyday activities for active and passive users. The company's competitive advantages include a wide range of features and functionality and the ability to build purposeful custom wheelchairs, along with components which feature cross compatibility across the portfolio and wheelchairs that collapse to fit into very small spaces for ease of transportability.

- Seating and Positioning Products.** At the core of care for seated end-users is the need for proper seating and positioning. Invacare designs, manufactures and markets some of the industry's best custom seating and positioning systems, custom molded and modular seat cushions, back supports and accessories to enable care givers to optimize the posture of their patients in mobility products. The Invacare® Seating and Positioning series provides seating solutions for less complex end-user needs. The Invacare® Matrx® Series offers versatile modular seating components with unique proprietary designs and materials designed to optimize pressure management and to help ensure long-term proper posture. The company's PinDot® series provides custom molded seat modules that can accommodate the most unique anatomic needs, and that can be adapted to fit with a wide range of mobility products. The company's ability to rapidly produce highly-customized products is highly specialized in the market, and is valued by therapists who need timely solutions for their patient's most complex clinical needs.
- Power Add-Ons** The company sells innovative power add-on devices that enable manual wheelchair users to have optional electric power to augment manual propulsion and enable caretakers to more easily maneuver manual wheelchairs. This product category includes six main product lines: stairclimbers (scalamobil® and scalacombi); push and brake aids (viamobil® and viamobil eco), push-rim activated power assists (e-motion®, twion®, smooov®), Joystick controlled add-on kits (e-fix® and Esprit); Handbikes (e-pilot®) and E-Bike drive train components (neodrives®). Add-on drives can be retrofitted to almost any manual wheelchair. The

products are characterized by their light weight design and compactness, which makes them an ideal travel companion. Highly efficient hub motors along with the latest Lithium-Ion battery technology are used to enhance freedom of movement for users and their caregivers.

Lifestyle Products

- **Pressure Relieving Sleep Surfaces.** This product category includes a complete line of therapeutic pressure relieving overlays and mattress systems. The Invacare[®] Softform and microAIR[®] brand names feature a broad range of pressure relieving foam mattresses and powered mattresses with alternating pressure, low-air-loss, or rotational design features, which redistribute weight and assist with moisture management. These mattresses are designed to provide comfort, support and relief to those patients who are immobile or have limited mobility; who may have fragile skin or be susceptible to skin breakdown; and who spend long periods in bed.
- **Safe Patient Handling.** This product category includes products needed to assist caregivers in transferring individuals from surface to surface (e.g., bed to chair). Designed for use in the home or in institutional settings, these products include ceiling and floor lifts, sit-to-stand devices and a comprehensive line of slings. The company has very strong development in these areas with numerous launches in the last year: Birdie[™], Evo, ISA[™], and new Optislings.
- **Beds.** This product category includes a wide variety of Invacare[®] branded semi-electric and fully-electric bed systems designed for both residential and institutional care for a range of patient sizes. The company's offering includes bed accessories, such as bedside rails, overbed tables and trapeze bars. The company's bed systems introduced the split-spring bed design, which is easier for home medical equipment providers to deliver, assemble and clean than other bed designs. Invacare's bed systems also feature patented universal bed-ends, where the headboard and footboard may be used interchangeably. This enables customers to more efficiently deploy their inventory.
- **Manual Wheelchairs.** This product category includes a complete line of manual wheelchairs. The company's manual wheelchairs are sold for use in the home and in institutional care settings. Consumers include people who are chronically or temporarily-disabled, require basic mobility with little or no frame modification, and may propel themselves or be moved by a caregiver. The company's manual wheelchairs are marketed under the Invacare[®] brand

name. Examples include the 9000, Tracer[®] wheelchair product lines, as well as the Action family of products in Europe.

- **Personal Care.** This product category includes a full line of personal care products, including ambulatory aids such as rollators, walkers, and wheeled walkers. The company also distributes bathing safety aids, such as tub transfer benches and shower chairs, as well as patient care products, such as commodes and other toileting aids. In markets where payors value durable long-lasting devices, especially those markets outside of the U.S., personal care products continue to be an important part of the company's lifestyle products business. In certain other markets, and in the U.S. in particular, this product area is focused on residential care.

Respiratory Therapy Products

The company designs and manufactures products that concentrate oxygen for consumers who need supplemental oxygen for breathing. Invacare[®] oxygen products are designed to meet a wide variety of patient needs, including stationary systems for use while at home and portable systems for mobile use. Historically, oxygen therapy required the delivery of large tanks of liquid oxygen or the routine delivery of tanks of compressed oxygen to patients. Industry trends continue to displace modes of oxygen therapy that involve delivery, which is costlier to provide and less convenient for patients who need to coordinate the exchange of oxygen containers. Published industry data suggests a large portion of the costs associated with home oxygen therapy are directly associated with delivery-related activities required to meet the ambulatory oxygen therapy needs of patients. Invacare's newer modalities of oxygen supply replace these costlier and constraining delivery-based forms of care.

- **Stationary Oxygen Concentrators.** Invacare oxygen concentrators are manufactured under the Platinum[®] and Perfecto2[™] brand names and are available in five-, nine-, and ten-liter models. All Invacare stationary oxygen concentrators are designed to provide patients with durable equipment that reliably concentrates oxygen at home or in a healthcare setting. Stationary oxygen concentrators are typically used by people needing home or nocturnal oxygen, or by patients who have advanced-stage lung diseases and whose lifestyles keep them largely at home.
- **Portable Oxygen Concentrators.** One of two primary modalities for non-delivery supplementary ambulatory oxygen is the battery-powered portable category. Invacare's Platinum[®] Mobile Oxygen Concentrator has among the most competitive features in the five-liter equivalent category, including the industry's first wireless informatics

platform in the five-pound category. The informatics platform includes a user centric app which allows remote flow control of the portable concentrator from up to 25ft and a provider facing portal for remote fleet monitoring to help reduce unplanned dispatches and total operating costs.

- **Oxygen Refilling Devices.** The Invacare® HomeFill® Oxygen System is an alternative source of ambulatory oxygen that allows patients to fill their own convenient small portable oxygen cylinders from a stationary oxygen concentrator at home. This enables users to access high-flow stationary oxygen while at home and provides an easy-to-use form of mobile oxygen while away. As a result, medical equipment providers can significantly reduce time-consuming and costly service calls associated with cylinder and/or liquid oxygen deliveries, limit recurring high maintenance expenses and total cost of ownership while at the same time enhancing the lifestyle of the patient.

Other Products and Services

Other products and services include various services, including repair services, equipment rentals and external contracting. In certain regions of Europe and Asia Pacific, refurbishing of products is increasing as governments look for ways to lower costs while still providing needed equipment. A range of distributed products including a heart rate monitor, thermometer and nebulizer were launched for the Asia Pacific market. Portable ramps are sold throughout Asia and Europe, largely to public transport providers.

GEOGRAPHIC SEGMENTS

Europe

The company's Europe segment operates as an integrated unit across the European, Middle Eastern and African markets with sales and operations throughout Europe. The Europe segment is coordinated with other global business units for new product development, supply chain resources and additional corporate resources. This segment primarily includes mobility and seating; lifestyle; and respiratory therapy product lines. Products are sold through home healthcare providers and government provider agencies. In total, the Europe segment comprised 57.2%, 55.0% and 57.4% of net sales in 2021, 2020 and 2019, respectively.

North America

The company's North America segment comprises sales and operations throughout the United States, Mexico and Canada. This segment primarily includes mobility and

seating, lifestyle and respiratory therapy product lines. Products are sold through rehabilitation providers, home healthcare providers, and government provider agencies, such as the U.S. Department of Veterans Affairs. The North America segment represented 39.1%, 40.9% and 37.5% of net sales in 2021, 2020 and 2019, respectively.

All Other

All Other combines sales and services operations supporting customers principally in Australia and New Zealand and increasingly in other regions in the Asia Pacific market. All Other included the Dynamic Controls business, until it was divested in March 2020. All Other represented 3.7%, 4.1% and 5.1% of net sales in 2021, 2020 and 2019, respectively.

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

For financial information regarding reportable segments, including revenues from external customers, products, segment profitability, assets and other information by segments, refer to Business Segments in the Notes to the Consolidated Financial Statements of this Annual Report on Form 10-K.

WARRANTY

Generally, the company's products are covered by warranties against defects in material and workmanship for product-specific warranty periods starting from the date of sale to the customer. Certain components, principally wheelchair and bed frames, carry a lifetime warranty.

COMPETITION

The durable medical equipment markets are highly competitive, and Invacare products face significant competition from other well-established manufacturers and distributors in the industry. Each country into which the company sells and markets its products has a set of unique conditions that impact competition, including healthcare coverage, forms and levels of reimbursement, presence of payor and provider structures and various competitors. Many factors may play a role in the selection of products and success of the company including specific features, aesthetics, quality, availability, service levels and price. Various competitors, from time to time, have instituted price-cutting programs in an effort to gain market share, and they may do so again in the future. In addition, reimbursement pressures may continue to persist in major markets, such as the U.S. These pressures have and may again significantly alter market dynamics. Increasingly, customers have access to manufacturers in low cost locations and are able to source certain products directly in

lieu of purchasing from Invacare or its traditional competitors, particularly for less complex products where price is the primary selection criterion.

The company believes that successfully increasing its market share is dependent on its ability to provide value to its customers based on clinical benefits, quality, performance, and durability of the company's products and services. In addition, the company's cost reduction achievements are expected to improve the market competitiveness of its products. Customers also value the technical and clinical expertise of the company's sales force, the effectiveness of the company's distribution system, the strength of its dealer and distributor network, the availability of prompt and reliable service for its products, and the ease of doing business with the company. The company's focus on quality is paramount. By embracing quality in all aspects of the company's activities, the company believes that its products will be better aligned with customer needs and, brought to market more quickly, resulting in a better customer experience and economic return.

SALES, MARKETING AND DISTRIBUTION

Europe

The company's European operations primarily conduct manufacturing, marketing and distribution functions in Western Europe and coordinate export sales activities through local distributors for markets in Eastern Europe, Middle East and Africa. The company utilizes an employee sales force and independent distributors. In markets where the company has its own sales force, product sales are made to medical equipment dealers and directly to government agencies. Marketing functions are staffed by central and regional teams to optimize coverage and content. The company operates distribution centers in various locations to optimize cost and delivery performance.

Prior to the pandemic, company representatives attended more than 50 trade shows annually across the European and Middle eastern geographies. With the pandemic, most of these trade shows have been cancelled and the company has changed to webinars and digital events. The company builds brand awareness through a strong presence in social media (LinkedIn, Facebook, Twitter, YouTube, Instagram) and has a dedicated blog. Invacare continues to increase the knowledge and awareness of its products by interacting with its target audience through various digital marketing channels including Facebook, YouTube, blog, Instagram, LinkedIn and inbound email marketing actions, as well as improving the customer experience with its renewed websites. In some European countries, the company sponsors key events and several individual wheelchair athletes and

teams. In addition, every year the company conducts numerous marketing campaigns targeted to dealers, therapists, and end users to promote current and new products.

North America

In the United States, Invacare products are marketed primarily to clinical specialists in rehabilitation centers, long-term care facilities, hospice facilities, government agencies and residential care settings. The company markets to these medical professionals, who refer their patients to rehabilitation, HME, and government providers to obtain specific types of the company's medical equipment. The company sells its products to these providers.

In 2021, the North America sales force was primarily organized into three groups of specialized sales professionals focused on complex rehabilitation, post-acute care and respiratory products. Each team is focused on clinically complex products and solutions to support customer needs.

The company contributes extensively to editorial coverage in trade publications concerning the products the company manufactures. Company representatives attend numerous online trade shows and conferences on a national and regional basis in which Invacare products are displayed to providers, health care professionals, managed care professionals and consumers. The company also drives brand awareness through its website, as well as online communities of people who may use its products.

The company raises consumer awareness of its products through a strong presence in social and digital media as well as its sponsorship of a variety of wheelchair sporting events and its support of various philanthropic causes benefiting consumers of the company's products. The company's sponsorship of several individual wheelchair athletes and teams continued in 2020, including top-ranked male and female racers and hand cyclists and wheelchair basketball teams. In addition, the company supports disabled veterans with its continuous sponsorship of the National Veterans Wheelchair Games, the largest annual wheelchair sporting event in the world, although the event did not take place in 2020 as a result of the pandemic. These sporting events bring a competitive and recreational sports experience to military veterans who, due to spinal cord injury, neurological conditions or amputation, use various assistive technology devices for their mobility needs.

The company's products are distributed through a network of facilities and directly from some manufacturing sites to optimize cost, inventory and delivery performance.

All Other

All Other comprises revenue primarily from Australia and New Zealand and to a lesser extent from other regions of the Asia Pacific market. The New Zealand revenues include rental of durable medical equipment. It uses an employee sales force and service representatives to support this revenue. Products are distributed throughout Asia Pacific from a regional distribution center in Thailand, with complex rehabilitation product assembled in Thailand and sourced from global sources via a network of distribution nodes designed to optimize cost, inventory and delivery performance.

Sales and marketing efforts in Asia Pacific region are managed within the region and leveraged from other regions of the company. Sponsorship efforts are focused at the grass roots level and around programs designed to introduce people with disabilities to sports as a pathway to inclusion. While efforts were suspended in 2021 due to the pandemic, historically Invacare Australia sponsored the Summer Down Under Series, which culminated in the Oz Day 10K classic wheelchair race on Australia Day, which the company sponsored in January 2022; Invacare New Zealand sponsored the Halberg Junior Disability Games in 2021 and worked with local organizations to improve access for people with disabilities. Invacare supports a number of sporting organizations in the region, primarily focused on those that introduce people to sports.

PRODUCT LIABILITY COSTS

The company is self-insured in North America for product liability exposures through its captive insurance company, Invatection Insurance Company, which currently has a policy year that runs from September 1 to August 31 and insures annual policy losses up to \$10,000,000 per occurrence and \$13,000,000 in the aggregate. The company has additional layers of external insurance coverage, related to all lines of insurance, insuring up to \$75,000,000 in aggregate losses per policy year arising from individual claims anywhere in the world that exceed the captive insurance company policy limits or the limits of the company's per-country foreign liability limits, as applicable. There can be no assurance that Invacare's current insurance levels will continue to be adequate or available at affordable rates.

Product liability reserves are recorded for individual claims based upon historical experience, industry expertise and other indicators. Additional reserves, in excess of the specific individual case reserves, are provided for incurred unreported claims based upon actuarial valuations at the time such valuations are conducted. Historical claims experience and other assumptions are taken into consideration by the company in estimating the ultimate reserves. For example, the actuarial analysis assumes that

historical loss experience is an indicator of future experience, that the distribution of exposures by geographic area and nature of operations for ongoing operations is expected to be very similar to historical operations with no dramatic changes and that the government indices used to trend losses and exposures are appropriate. Estimated amounts used in the calculation of reserves are adjusted on a regular basis and can be impacted by actual loss awards and claim settlements. While actuarial analysis is used to help determine adequate reserves, the company is responsible for determining and recording adequate reserves in accordance with accepted loss reserving standards and practices and applicable accounting principles.

PRODUCT DEVELOPMENT AND ENGINEERING

The company's strategy includes developing a cadence of meaningful new products in key markets and product areas. The intent is to have close collaboration in the development phase of new products with input from potential end users. As the result of work among the company's development groups in North America, Europe and Asia, Invacare launched a series of new innovations in 2020, including the following:

- AVIVA FX is a Front Wheel Drive (FWD) wheelchair that was designed for maximum comfort and control for both indoor and outdoor rides. It is ideal for getting around in indoor spaces negotiating tight corners with a small turn radius. The design also allows users to get up close to tables and into Wheelchair Accessible Vehicles. It has powerful climbing ability even at slow speeds. AVIVA FX features Invacare 4Sure™ suspension system designed to isolate the seat from vibrations and shock while keeping the seat angle virtually flat when traversing obstacles. All four wheels consistently keep contact with the ground providing optimum weight distribution for stability and traction control.
- AVIVA RX is a Rear Wheel Drive (RWD) wheelchair for indoor and outdoor use. Bringing together the key elements that define performance, these new rear wheel drive power chairs combine an innovative method of managing center of gravity for optimal weight distribution with superior C.T.C. (Control, Traction, Comfort) Suspension. It re-defines rear wheel performance, delivering unbeatable control, exceptional traction and extreme ride comfort. Designed to combat the challenges of everyday modern life whether at home, work or out and about, ready to face the world the AVIVA RX is a mobility product designed to enhance everyday life.
- AVIVA FX MPS Maxx - Multi-Position Power Standing System is an innovative, highly adjustable system incorporating power standing and a full range

of power positioning features in a package that offers a unique combination of independence, functionality, and accessibility. ROVI A3 MPS Maxx - Modular Power Standing System is an innovative, highly adjustable system that combines a power standing function with a full range of power positioning options, all in a modular design that provides consumers with a unique combination of independence, functionality, and accessibility.

- The Motion Concepts 407 seating system utilizes a simple design to optimize the stability of the base of the wheelchair, while providing up to 40° of tilt. This allows the end user to achieve a unique position where the head is below the feet, and the feet are above the heart, to assist with respiratory and circulatory conditions.
- The Motion Concepts UpFront thoughtfully combines a fully functioning power positioning system with 5.5” of forward shift, allowing the end user to access previously difficult to reach surfaces and objects.
- The Motion Concepts HD Series is a seating system which meets the individual needs of larger end users. The HD Series is designed to allow for exceptional driving performance, elegant design and maximum comfort and can accommodate higher weight capacities.
- For bariatric users a new product has been developed with additional functionalities for ease of transport and transfer. The Action AMPLA received seven international awards for innovative product solutions and will improve the quality of life for customers.
- In passive wheelchairs the new Clematis Pro has been launched and includes several improvements for customers. The user’s perception under tilting improved due to a geometry specially designed with human factors in consideration.
- A new bed and mattress system has been developed based on the NordBed, which was introduced in 2019. The NordBed Kid and the new mattresses are especially developed for children to fulfill their special needs with an aesthetically pleasing design.
- In Lifestyle for hygiene products, introduction of new shower chairs built from environmentally friendly material, PICO green. A high content of wood ratio in the material composites improves the antibacterial capabilities as well.
- The Lifestyle walking aids portfolio has been enhanced with a clean design and lightweight new rollator. The Gloss™ is cross foldable and the most lightweight rollator in its segment.

- For all Patient Lifters a new sling line has been launched under the Optislings brand, with improved material mix, improved shape and clarity regarding sizes.

MANUFACTURING AND SUPPLIERS

The company's objective is to efficiently deploy resources in its supply network to achieve the best quality, service performance and lowest total cost. The company seeks to achieve this result through a combination of inputs from Invacare facilities, contract manufacturers and key suppliers.

The company continues to emphasize quality excellence and efficiency across its manufacturing and distribution operations. The company is expanding its culture of deploying current Good Manufacturing Practices (“cGMP”) and Lean Manufacturing principles to eliminate waste throughout the network and will continue to pursue improvements in its manufacturing processes. At its core, the company's operations produce and distribute both custom-configured products for use in specialized clinical situations and standard products.

The company procures raw materials, components and finished goods from a global network of internal and external sources. The company utilizes regional sourcing offices to identify, develop and manage its external supply base. Where appropriate, Invacare utilizes suppliers across multiple regions to ensure flexibility, continuity and responsiveness. The company's network of engineering design centers, product management groups and sources of supply are used to optimize cost and satisfy customer demand.

The company continually reviews its operations network capacity, workforce skills and technologies along with its distribution network to optimize design, manufacture, sourcing and delivery performance, inventory and cost.

Europe

The company's manufacturing and assembly facilities in Europe are operated as centers of excellence, i.e., factories, with specific capabilities. The company manufactures power wheelchair products, wheelchair power add-ons and hygiene products in one single facility in Albstadt, Germany. Manual wheelchair production is based in Fondettes, France. The company manufactures beds in Portugal and Sweden for various markets. Invacare manufactures therapeutic support surfaces as well as seating and positioning products in the U.K. The Europe segment uses these internal sources and some external sources of finished goods and components to create the portfolio of products it distributes. Products manufactured

or assembled in Europe are sold to external European customers as well as to other internal customers.

North America

The company operates several vertically integrated centers of excellence, i.e., factories, in North America, each with specific capabilities: custom powered wheelchairs, seating products and respiratory therapy products (Elyria, OH); manual and passive manual wheelchairs and patient aids (Reynosa, MX); beds and respiratory therapy products (Sanford, FL); manual recreational and sport wheelchair products (Pinellas Park, FL), passive manual and pediatric wheelchairs (Simi Valley, CA); and seating and positioning systems (Toronto, Canada). Products designed and produced in North American operations are sold in North America and are shipped as finished goods and as subcomponents to internal and external customers globally.

Asia Pacific

Invacare Asia Pacific assembles components used primarily in rehabilitation products that serve Asia Pacific markets at a facility based in Thailand. The company operates a centralized distribution node in Thailand, with additional nodes in Australia and New Zealand, to supply customer needs while optimizing cost, inventory and service levels.

BUSINESS OPTIMIZATION ACTIONS

The company is executing a multi-year strategy to return the company to profitability by focusing its resources on products and solutions that provide greater healthcare value in clinically complex rehabilitation and post-acute care. The company's business optimization actions and growth plan balances innovative organic growth, product portfolio changes across all regions, and cost improvements in supply chain and administrative functions. Key elements of the business optimization and growth plans are:

- Globally, continue to drive all business segments and product lines based on their potential to achieve a leading market position and to support profitability goals;
- Supplementing manufacturing centers of excellence with R&D, product management and commercial capability to ensure the most efficient use of resources, and further reducing complexity in the portfolio and supply chain.
- In Europe, leverage centralized innovation and supply chain capabilities while reducing the cost and complexity of a legacy infrastructure;

- In North America, adjust the portfolio to consistently grow profitability amid cost increases by adding new products, reducing costs and continuing to improve customers' experience;
- In Asia Pacific, remain focused on sustainable growth and expansion in the southeast Asia region; and,
- Take actions globally to reduce working capital and improve free cash flow.

As it navigates the uncertain business environment resulting from the pandemic, the company continues to allocate more resources to the business units experiencing increased demand and expects to continue taking actions to mitigate the potential negative financial and operational impacts on other parts of the company's business that have declined. In the medium-term, the company still expects to execute on its business improvement actions, such as the global IT modernization initiative which is expected to ultimately result in optimization of the operating structure.

The company believes that continued generation of earnings driven by operational performance, cash balances on hand, borrowings under its asset-based lending senior secured revolving credit facilities and other incurrences of debt, and expected free cash flow will support the company's on-going business improvement plans and enable it to address future debt maturities and other obligations.

GOVERNMENT REGULATION

The company is governed by regulations that affect the manufacture, distribution, marketing and sale of its products and regulate healthcare reimbursement that may affect its customers and the company directly. These policies differ among and within every country in which the company operates. Changes in regulations, guidelines, procedural precedents, enforcement and healthcare policy take place frequently and can impact the size, growth potential and profitability of products sold in each market.

In many markets, healthcare costs have been consistently increasing in excess of the rate of inflation and as a percentage of GDP. Efforts to control payor's budgets have impacted reimbursement levels for healthcare programs. Private insurance companies often mimic changes in government programs. Reimbursement guidelines in the home healthcare industry have a substantial impact on the nature and type of equipment consumers can obtain and thus, affect the product mix, pricing and payment patterns of the company's customers who are typically the medical equipment providers to end-users.

The company has continued its efforts to influence public policies that impact home-based and long-term non-acute healthcare. The company has been actively educating federal and state legislators about the needs of the patient communities it serves and has worked with policy authors to ensure the industry's healthcare consumer needs are represented. The company believes its efforts have given the company a competitive advantage. Customers and end-users recognize the company's advocacy efforts, and the company has the benefit of remaining apprised of emerging policy direction.

FDA

The United States Food and Drug Administration ("FDA") regulates the manufacture, distribution and marketing of medical devices. Under such regulation, medical devices are classified as Class I, Class II or Class III devices, depending on the level of risk posed to patients, with Class III designating the highest-risk devices. The company's principal products are designated as Class I or Class II. In general, Class I devices must comply with general controls, including, but not limited to, requirements related to establishment registration and device listing, labeling, medical device reporting, and the Quality System Regulation (QSR). In addition to general controls, certain Class II devices must comply with design controls, premarket notification and clearance, and applicable special controls. Domestic and foreign manufacturers of medical devices sold in the U.S. are subject to routine inspections by FDA. In addition, some foreign governments have adopted regulations relating to the design, manufacture and marketing of health care products, and imposing similar controls as the FDA regulations.

2012 Consent Decree, Taylor Street and Corporate Facilities

In December 2012, the company became subject to a consent decree of injunction filed by FDA with respect to the company's Corporate Headquarters and its Taylor Street facility's operations in Elyria, Ohio. The consent decree initially limited the company's (i) manufacture and distribution of power and manual wheelchairs, wheelchair components and wheelchair sub-assemblies at or from its Taylor Street manufacturing facility ("Taylor Street Products"), except in verified cases of medical necessity, (ii) design activities related to wheelchairs and power beds that take place at the impacted Elyria facilities and (iii) replacement, service and repair of products already in use and supplied from the Taylor Street manufacturing facility. Under the terms of the consent decree, in order to resume full operations, the company had to successfully complete independent, third-party expert certification audits at the impacted Elyria facilities, comprised of three distinct certification reports separately submitted to, and accepted by, the FDA; submit its own report to the FDA; and

successfully complete a reinspection by the FDA of the company's Corporate and Taylor Street facilities.

On July 24, 2017, following its June 2017 reinspection of the Corporate and Taylor Street facilities, the FDA notified the company that it was in substantial compliance with the Federal Food, Drug and Cosmetic Act ("FDA Act"), FDA regulations and the terms of the consent decree and that the company was permitted to resume full operations at those facilities including the resumption of unrestricted sales of products made in those facilities.

The consent decree will continue in effect for at least five years from July 24, 2017, during which time the company's Corporate and Taylor Street facilities must complete two semi-annual audits in the first year following the lifting of the injunction and then an annual audit in each of the next four years performed by an independent company-retained audit firm. The expert audit firm will determine whether the facilities remain in continuous compliance with the FDA Act, regulations and the terms of the consent decree and issue post audit reports contemporaneously to the FDA and Invacare. The FDA has the authority to inspect these facilities and any other FDA registered facility, at any time.

In 2018, the company completed the two semi-annual independent expert audits and, in 2019, 2020 and 2021, the company completed the first three annual independent expert audits of the Corporate and Taylor Street facilities, as required under the consent decree, and in each case the facilities were found to remain in compliance with the FDA Act, the FDA regulations and the consent decree. The audit reports have been submitted to FDA.

In 2021, FDA conducted an inspection of the company's Corporate and Taylor Street facilities from May 25 through June 24, 2021. At the close of the inspection, six FDA Form 483 observations were issued, and the company timely responded to FDA, has diligently taken actions to address FDA's inspectional observations, and has provided FDA monthly updates on the corrective actions taken to address these observations. On November 18, 2021, the company received a warning letter from the FDA concerning certain of the inspectional observations in the June 2021 FDA Form 483 related to the complaint handling process, the corrective and preventive action ("CAPA") process, and medical device reporting ("MDR") associated with oxygen concentrators (the "Warning Letter"). On November 16, 2021, the company received a consent decree non-compliance letter from the FDA concerning the same complaint and CAPA handling matters as in the Warning Letter observations but associated with the Taylor Street products (this letter, together with the Warning Letter, the "FDA Letters"). The

company timely responded to the FDA Letters, has diligently taken actions to address FDA's concerns, and has provided FDA with periodic updates on the corrective actions taken to address the matters in the FDA Letters. The company remains committed to resolving the FDA's concerns; however, it is not possible to predict the outcome or timing of a resolution at this time. There can be no assurance that the FDA will be satisfied with the company's responses to the FDA Letters, nor any assurance as to the timeframe that may be required for the company to adequately address the FDA's concerns or whether the matters in the FDA Letters will result in an extension in the duration of the consent decree. See "Item 1A. Risk Factors – Regulatory and Development Risks" for further discussion of potential adverse effects on the company of non-compliance with medical device regulatory requirements. As of the date of filing of this Annual Report on Form 10-K, there has been no impact on the Company's ability to produce and market its products as a result of the FDA Letters.

Under the consent decree, the FDA has the authority to order the company to take a wide variety of actions if the FDA finds that the company is not in compliance with the consent decree, FDA Act or FDA regulations, including requiring the company to cease all operations relating to Taylor Street products. The FDA also can order the company to undertake a partial cessation of operations or a recall, issue a safety alert, public health advisory, or press release, or to take any other corrective action the FDA deems necessary with respect to Taylor Street products.

The FDA also has authority under the consent decree to assess liquidated damages of \$15,000 per violation per day for any violations of the consent decree, FDA regulations or the FDA Act. The FDA also may assess liquidated damages for shipments of adulterated or misbranded devices in the amount of twice the sale price of any such adulterated or misbranded device. The liquidated damages, if assessed, are limited to a total of \$7,000,000 for each calendar year. The authority to assess liquidated damages is in addition to any other remedies otherwise available to the FDA, including civil money penalties.

For additional information regarding the consent decree, refer to the following sections of this Annual Report on Form 10-K: Item 1A. Risk Factors.

Other FDA Matters

The company expects that substantially all of its facilities will be inspected by the FDA or other regulatory agencies from time to time. The frequency, duration, scope, findings and consequences of these inspections cannot be predicted.

From time to time, the company may undertake voluntary recalls or field corrective actions of the company's products to correct potential product safety issues that may arise, in furtherance of the company's high standards of quality, safety and effectiveness.

Other Medical Device Regulators

Outside the U.S., it is customary for foreign governments to have a ministry of health or similar government body that regulates and enforces regulations relating to the design, manufacture, distribution and marketing of medical devices. In some cases, there are common standards for design and testing. In some cases, there are country-specific requirements. These regulations are not always harmonized with those from other jurisdictions and in some cases, the consequence in costs, time to enter a market or support a product may be significant.

EEA and UK Regulators

The regulation of the company's products in Europe falls primarily within the United Kingdom ("UK"), Switzerland and the European Economic Area ("EEA"), which consists of the European Union member states, as well as Iceland, Liechtenstein and Norway. Only medical devices that comply with certain conformity requirements of the European Medical Device Regulation ("EMDR") are allowed to be marketed within the EEA. The company's Class I products were required to comply EMDR as of May 2021. The company's Class IIa and IIb products will be required to comply with the EMDR by no later than the expiration of their respective current European Medical Device Directive ("MDD") certifications, which expire in September 2023. Products that fail to be certified with the EMDR may not be marketed or sold in the European Union. As a result of Brexit, beginning on January 1, 2021, the company's products sold in the UK have been required to be registered with the Medical and Healthcare Products Regulatory Agency ("MHRA"). Products in conformity with the EMDR and MDD may continue to be marked with their CE marking in the UK until June 2023, after which time products must be certified by a UK-recognized Notified Body and comply with UK requirements. On May 26, 2021, the EU Commission announced that the Mutual Recognition Agreement between the European Union and Switzerland, which enabled medical devices approved in the European Union to be marketed in Switzerland, was no longer valid. As a result, medical devices must be separately registered with Swissmedic, the Swiss regulatory authority, and the company must comply with Swiss requirements. The regulatory requirements in the UK and Switzerland continue to evolve and the company is monitoring all changes and updates.

In addition, the national health or social security organizations of certain foreign countries, including those

outside Europe, require the company's products to be qualified before they can be marketed in those countries.

Other Audit Requirements

Five countries have agreed to work together to harmonize regulations and allow for one single audit to be used to confirm compliance with those countries' regulations. The five countries that participate include the United States, Canada, Australia, Brazil and Japan. The program is referred to as the Medical Device Single Audit Program, or MDSAP. Under the MDSAP, annual surveillance audits of relevant facilities are conducted by a private organization designated by the MDSAP countries referred to as "Notified Body" which assesses conformity with applicable regulations. Under the EMDR and MDD, Notified Bodies have the right to conduct unannounced audits. Under the EMDR, the company will be subject to annual audits by a Notified Body for its Class IIa and IIb products, which would include on-site audits of the company's facilities in Elyria, Ohio, and unannounced audits at least once every five years. In addition, the company's facilities in Europe are subject to audits by the applicable medical device regulatory authorities.

Other Quality Accomplishments

In 2021, the company's main facilities in Europe, Asia and North America were again certified as meeting ISO 13485-2016 requirements, a stringent international standard for quality management systems, demonstrating its continued commitment to quality excellence.

National Competitive Bidding

In the United States, CMS is a significant payor and governs healthcare reimbursement for Medicare services. On January 1, 2011, CMS began its National Competitive Bidding ("NCB") program in nine metropolitan statistical areas (MSA) across the country ("Round 1") to reduce healthcare spending, pursuant to a 2003 federal law. On July 1, 2013, CMS expanded the program to an additional 91 MSAs ("Round 2"). These bid programs have resulted in new, lower Medicare payment rates in these 100 areas. In January 2016, CMS began the deployment of NCB rates to the remainder of the Medicare population that had not yet been impacted by the program. These were primarily less densely populated, rural areas. In 2016, CMS divided the United States into eight regions and applied the average reimbursement reduction per NCB product category in each region from Round 1 and Round 2 to the rural providers in those eight regions.

In November 2018, CMS announced that it was suspending the NCB program for approximately two years, from January 1, 2019 through approximately December 31, 2020, and in the interim will implement changes to the

NCB program. CMS' November 2018 rule also modified payment rates for oxygen, based on Medicare's "budget neutrality" mandate. For the oxygen devices the company sells, the total Medicare payment rate remained substantially similar to 2018 payment rates.

On March 7, 2019, the CMS announced plans to consolidate the competitive bidding areas (CBAs) included in the Round 2 Recompete and Round 1 2017 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) into a single round of competition named Round 2021.

On October 27, 2020, CMS revealed that the Agency would only move forward with off-the-shelf (OTS) back braces and OTS knee braces for Round 2021 of the CBP effective January 1, 2021 and extending through December 31, 2023. CMS removed the remaining 13 product categories for Round 2021 and delayed any changes for three years.

The company's exposure to effects of NCB rate reductions and any similar reductions from private payors or state agencies can increase the company's credit risk associated with customers whose revenue, based on reimbursement, may be significantly reduced. As reimbursement rates are reduced, the company's customers may experience pressure on profitability and liquidity. The company therefore remains focused on being judicious in its extension of credit to its customers and vigilant about collections efforts.

In addition, the consequence of reduced reimbursement has and may continue to compel customers to consider alternative sources of supply, which may be available at lower purchase prices, thereby reducing sales or the price at which customers will transact for certain products.

Although reductions in CMS payments are disruptive to the homecare industry, the company believes it can grow and thrive in this environment. The company expects to continue pursuing productivity initiatives intended to lower the costs to serve customers, in an effort to profitably meet lower customer price targets. The company also produces certain solutions, which can provide lower total cost of business for its customers. As an example, the company's respiratory therapy products can help offset reimbursement reductions by eliminating the need for routine home exchange services of pre-filled oxygen cylinders with end-users. Delivery costs can be a substantial element of cost for its customers. The company's HomeFill oxygen system, Platinum Mobile oxygen concentrator, as well as the company's oxygen concentrators, can provide effective convenient therapy for consumers and cost-effective equipment solutions for providers by eliminating customer's costs associated with home cylinder exchange. Similarly, the informatics capabilities the company

launched for power wheelchairs and respiratory devices in 2017 enable customers to more cost effectively provide service and support their end-user customers. The company intends to continue developing solutions that help providers improve profitability and reduce the overall cost of care for payors.

BACKLOG

The company generally manufactures its products to meet near-term demands by shipping from stock or by building to order based on the specialized nature of certain products. As a result, the company does not ordinarily have a substantial backlog of orders for any particular product. However, at the end of 2021, the order backlogs in Europe and North America were at higher levels than normal as a result of strong demand for respiratory products driven by COVID-19 and supply chain constraints due to pandemic-related disruptions in supply chain, transportation and logistics which are affecting access to components and finished products. See “Item 1A. Risk Factors – Risks Associated with the COVID-19 Pandemic.”

HUMAN CAPITAL

As of December 31, 2021, the company had approximately 3,000 employees. The company believes that its employees are integral to its success and strive to create a rewarding culture through commitment to its core values of Integrity, Innovation, Leadership, Excellence and Accountability. The company's compensation programs are designed to attract, retain and motivate employees to be part of the company's success. The company provides wages that are competitive locally and consistent globally to reward employees for performance. The company's long-term incentive program is equity based to align leadership with the interests of shareholders.

Invacare is committed to its Environmental, Social and Governance program and embraces diversity, equity and inclusion. The company believes that an innovative workforce needs to be diverse, with skills and perspectives drawn from a broad spectrum of backgrounds and experiences.

Global and U.S. demographics include:

December 31, 2021 global gender demographics		
	Female	Male
Manager Level and Above	25%	75%
Individual Contributors	45%	55%
Manufacturing and Warehouse Associates	31%	69%
Total Invacare	37%	63%

December 31, 2021 U.S. race and ethnicity demographics				
	Total U.S.	M&W ¹	IC ²	Mgr and Above ³
Black / African American	10%	17%	7%	3%
Asian	2%	3%	1%	4%
Hispanic / Latino	23%	39%	11%	6%
White	63%	38%	79%	85%
Multiracial, Native American and Pacific Islander	2%	3%	2%	2%
¹ Manufacturing and Warehousing				
² Individual Contributors (below manager who do not supervise others)				
³ Manager and Above				

The company focuses on training employees and conducting self-audits to create a safe work environment. As an essential business during the COVID-19 pandemic, the company instituted policies across the organization to help protect employees who continue to work onsite, while at the same time requiring employees to work remotely whenever possible.

FOREIGN OPERATIONS AND EXPORT SALES

The company also markets its products for export to other foreign countries. In 2021, the company's products were sold in over 100 countries. For information relating to net sales, operating income and identifiable assets of the company's foreign operations, refer to Business Segments in the Notes to the Consolidated Financial Statements.

AVAILABLE INFORMATION

The company files Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any amendments thereto, as well as proxy statements and other documents with the Securities and Exchange Commission (SEC). The SEC maintains a website, <http://www.sec.gov>, which contains all reports,

Item 1. Business

proxy and information statements and other information filed by the company with the SEC.

Additionally, Invacare's filings with the SEC are available on or through the company's website, www.invacare.com, as soon as reasonably practicable after they are filed electronically with, or furnished to, the SEC. Copies of the company's filings also can be requested, free of charge, by writing to: Shareholder Relations Department, Invacare Corporation, One Invacare Way, Elyria, OH 44035. The contents of the company's website are not part of this Annual Report on Form 10-K.

FORWARD-LOOKING INFORMATION

This Form 10-K contains forward-looking statements within the meaning of the “Safe Harbor” provisions of the Private Securities Litigation Reform Act of 1995. Terms such as “will,” “should,” “could,” “plan,” “intend,” “expect,” “continue,” “believe” and “anticipate,” as well as similar comments, denote forward-looking statements that are subject to inherent uncertainties that are difficult to predict. Actual results and events may differ significantly from those expressed or anticipated as a result of various risks and uncertainties, which include, but are not limited to, the following: the duration and scope of the COVID-19 pandemic, the pace of resumption of access to healthcare, including clinics and elective care, and loosening of public health restrictions, or any reimposed restrictions on access to healthcare or tightening of public health restrictions which could impact the demand for the company’s products; global shortages in, or increasing costs for, transportation and logistics services and capacity; the availability and cost of the company needed products, components or raw materials from its suppliers; actions that governments, businesses and individuals take in response to the pandemic, including mandatory business closures and restrictions on onsite commercial interactions; the impact of the pandemic, or political or geopolitical crises such as Russia’s recent invasion of Ukraine, and actions taken in response on global and regional economies and economic activity; the pace of recovery when the COVID-19 pandemic subsides; general economic uncertainty in key global markets and a worsening of global economic conditions or low levels of economic growth, including negative conditions attributable to inflationary economic conditions; the effects of steps the company takes to reduce operating costs; the inability of the company to sustain profitable sales growth, achieve anticipated improvements in segment operating performance, convert high inventory levels to cash or reduce its costs; lack of market acceptance of the company’s new product innovations; revised product pricing and/or product surcharges; circumstances or developments that may make the company unable to implement or realize the anticipated benefits, or that may increase the costs, of its current and planned business initiatives, in particular the key elements of its growth plan such as its new product introductions, commercialization plans, additional investments in sales force and demonstration equipment, product distribution strategy in Europe, supply chain actions and global information technology outsourcing and ERP implementation activities; possible adverse effects on the company’s liquidity, including the company’s ability to address future debt maturities; adverse changes in government and third-party payor reimbursement levels and practices; consolidation of health care providers; increasing pricing pressures in the markets for the company’s products; risks of failures in, or disruptions to, legacy IT systems; risks of cybersecurity attack, data breach or data loss and/or delays in or inability to recover or restore data and IT

systems; adverse effects of the company’s consent decree of injunction with the U.S. Food and Drug Administration (FDA), including but not limited to, compliance costs, inability to rebuild negatively impacted customer relationships, unabsorbed capacity utilization, including fixed costs and overhead; any circumstances or developments that might adversely impact the third-party expert auditor’s required audits of the company’s quality systems at the facilities impacted by the consent decree, including any possible failure to comply with the consent decree or FDA regulations or the inability to adequately address the matters identified in the FDA Letters; regulatory proceedings or the company’s failure to comply with regulatory requirements or receive regulatory clearance or approval for the company’s products or operations in the United States or abroad; adverse effects of regulatory or governmental inspections of the company’s facilities at any time and governmental enforcement actions; product liability or warranty claims; product recalls, including more extensive warranty or recall experience than expected; possible adverse effects of being leveraged, including interest rate or event of default risks; exchange rate fluctuations, particularly in light of the relative importance of the company’s foreign operations to its overall financial performance; legal actions, including adverse judgments or settlements of litigation or claims in excess of available insurance limits; tax rate fluctuations; additional tax expense or additional tax exposures, which could affect the company’s future profitability and cash flow; uncollectible accounts receivable; risks inherent in managing and operating businesses in many different foreign jurisdictions; decreased availability or increased costs of materials which could increase the company’s costs of producing or acquiring the company’s products, including the adverse impacts of tariffs and increases in commodity costs or freight costs; heightened vulnerability to a hostile takeover attempt or other shareholder activism; provisions of Ohio law or in the company’s debt agreements, charter documents or other agreements that may prevent or delay a change in control, as well as the risks described elsewhere in this Annual Report on Form 10-K and from time to time in the company’s reports as filed with the Securities and Exchange Commission. Except to the extent required by law, the company does not undertake and specifically declines any obligation to review or update any forward-looking statements or to publicly announce the results of any revisions to any of such statements to reflect future events or developments or otherwise.

Item 1A. Risk Factors.

The company's business, financial condition, results of operations and prospects are subject to various risks and uncertainties. One should carefully consider the risks and uncertainties described below, together with all the other information in this Annual Report on Form 10-K and in the company's other filings with the SEC, before making any investment decision with respect to the company's securities. The risks and uncertainties described below may not be the only ones the company faces. Additional risks and uncertainties not presently known by the company or that the company currently deems immaterial may also affect the company's business. If any of these known or unknown risks or uncertainties occur, develop or worsen, the company's business, financial condition, results of operations and prospects could change substantially.

Summary of Risk Factors

As noted above, the company is subject to a number of risks that if realized could materially harm its business, financial condition, results of operations and prospects. Some of the more significant risks and uncertainties the company faces include those summarized below. The summary below is not exhaustive and is qualified by reference to the full set of risk factors set forth in this "Item 1A. Risk Factors" section.

Risks Related to the COVID-19 Pandemic

- The COVID-19 pandemic has disrupted, and may continue to disrupt, the company's operations and could have a material adverse effect on the company's business, financial condition and liquidity, including the ability for end users to gain access to the company's products.
- The COVID-19 pandemic has contributed to a persistent global shipping and logistics crisis, including shortages in the availability of, and increasing costs for, container shipping and has disrupted, and may continue to disrupt, the company's ability to obtain critical products, components and raw materials which could have a material, adverse effect on the company's business, financial condition and liquidity.

Commercial and Operational Risks

- If the company's business improvement efforts are ineffective, the company's strategic goals, business plans, financial performance or liquidity could be negatively impacted.

- If the company is unable to attract and retain critical IT Governance, Project Management and Contract Management competencies, it may limit the effectiveness of the company's cost improvement and business efficiency initiatives and adversely affect the company's profitability and growth.
- Changes in government and other third-party payor reimbursement levels and practices have negatively impacted and could continue to negatively impact the company's revenues and profitability.
- If the company's products are not included within an adequate number of customer formularies, or if pricing policies otherwise favor competitors' products, the company's market share and gross margin could be negatively affected.
- The company's industry is highly competitive and the consolidation of customers and competitors could result in a loss of customers or in additional competitive pricing pressures.
- The company's business strategy relies on certain assumptions concerning demographic trends that impact the market for its products. If these assumptions prove to be incorrect, demand for the company's products may be lower than expected.

Risks Related to Financial Results and Liquidity

- The terms of the company's current and future debt facilities and financing arrangements may limit the company's flexibility in operating its business.
- The company's leverage and debt obligations could adversely affect its financial condition, limit its ability to raise additional capital to fund its operations, impact the way it operates its business and prevent it from fulfilling its debt service and other obligations.
- The company may not be able to repay or refinance its convertible notes or other debt obligations, and the issuance of common shares upon conversion of the convertible notes could cause dilution to the company's existing shareholders.
- The company's convertible notes have certain fundamental change and conditional conversion

features which, if triggered, may adversely affect the company's financial condition.

Risks Related to Information Technology and Reliance on Third Parties

- Any major disruption or failure of the company's information technology systems, or its failure to successfully implement new technology effectively, could adversely affect the company.
- Cyber security threats and more sophisticated and targeted computer crime pose a risk to the company's systems, networks, products and services, and a risk to the company's compliance with data privacy laws.
- As the company outsources functions, it becomes more dependent on the entities performing those functions. Disruptions or delays at, or lack of performance by, the company's third-party service providers could adversely impact its operations.

Regulatory and Development Risks

- The company remains subject to a consent decree of injunction with the U.S. Food and Drug Administration, and failure by the company to comply with the consent decree could adversely affect the company.
- Any failure by the company to comply with medical device regulatory requirements or receive regulatory clearance or approval for the company's products or operations in the United States or abroad could adversely affect the company.
- If the company fails to comply with applicable health care laws or regulations, the company could suffer severe civil or criminal sanctions or may be required to make significant changes to the company's operations.
- Legislative developments in all regions in which the company operates may adversely affect the company.

Intellectual Property Risks

- The company's operating results and financial condition could be adversely affected if the

company becomes involved in litigation regarding its patents or other intellectual property rights.

- If the company is unable to protect its intellectual property rights or resolve successfully claims of infringement brought against it, the company's product sales and business could be affected adversely.

Manufacturing and Supply Risks

- Decreased availability or increased costs of materials could increase the company's costs of producing its products.
- Inflationary economic conditions have increased, and may continue to increase, the company's costs of producing its products.
- Geopolitical risks, such as those associated with Russia's recent invasion of Ukraine, could result in increased market volatility and uncertainty, which could negatively impact the company's business, financial condition, and results of operations.
- The company's ability to manage an effective supply chain is a key success factor.

Other Regulatory and Litigation Risks

- The company is subject to certain risks inherent in managing and operating businesses in many different foreign jurisdictions.
- The impact of "Brexit" may adversely affect the company.
- The company's products may be subject to product liability claims or recalls, which could be costly, harm the company's reputation and adversely affect its business.

Other Risk Factors – Other Financial Risks, Risks Related to Employees and the Company's Common Shares

- The company has long-term finance leases on significant facilities which can affect the company's liquidity and cash flow.
- The company's revenues and profits are subject to exchange rate and interest rate fluctuations which can affect the company's profitability and cash flow.

Item 1A. Risk Factors

- Additional tax expense or additional tax exposures could affect the company's future profitability and cash flow.
- The company's net operating losses, foreign tax credits and interest carryforwards may be limited for U.S. federal income tax purposes under Section 382 of the Internal Revenue Code.
- The company's reported results may be adversely affected by increases in reserves for uncollectible accounts receivable.
- The inability to attract and retain, or loss of the services of, the company's key management and personnel could adversely affect its ability to operate the company's business.
- Volatility in the market price of the company's common shares could adversely affect its shareholders, its ability to finance operations or attract and retain leadership.

Risks Related to the COVID-19 Pandemic

The COVID-19 pandemic has disrupted, and may continue to disrupt, the company's operations and could have a material adverse effect on the company's business, financial condition and liquidity, including the ability for end users to access to the company's products.

The present COVID-19 pandemic has disrupted the company's operations and affected the company's business, and may continue to do so, due to many factors, including imposition by government authorities of mandatory closures, work-from-home orders, social distancing protocols, increased employee absenteeism due to illness and/or quarantine requirements, and voluntary facility closures or other restrictions that could materially adversely affect the company's ability to adequately staff and maintain its operations. Specifically, the company experienced at least one mandatory temporary facility closure, and may experience in the future other temporary facility closures, in response to government mandates in certain jurisdictions in which the company operates or in response to positive diagnoses for COVID-19 in certain facilities for the safety of the company's associates or as a result of employee absenteeism due to infections.

The COVID-19 pandemic has also disrupted, and is expected to continue to disrupt, the company's operations and the operations of the company's suppliers and may materially adversely impact its ability to secure raw materials, components and supplies for its facilities and to provide personal protective equipment for its employees. There may also be long-term negative effects on the economic well-being of company's customers and in the economies of affected countries, which may limit their

access or expenditures on health care. The pandemic has caused, and may in the future cause, temporary closure of, or restricted access to, health care provider facilities where the company's products are demonstrated, trialed, fitted and sold. Limitations on non-acute care due to the pandemic have delayed or reduced, and if reimposed may in the future delay or reduce, the ability for end users to gain access to the company's products.

Government actions in response to the COVID-19 pandemic continue to change and evolve. As a result, the countries in which the company's products are manufactured and distributed remain under varying stages of restrictions. Certain jurisdictions have had to, or may in the future have to, re-establish restrictions due to a resurgence in COVID-19 cases or the development of new strains of COVID-19. Additionally, although access to elective healthcare by patients and access to healthcare for many of the company's customers has been at least partially restored or increased, such access may again be limited or closed if a resurgence of COVID-19 cases occurs, new strains of COVID-19 develop, or if efforts to combat COVID-19, including vaccine development or distribution, are ineffective or prolonged. Even as government restrictions have been lifted and economies gradually reopened, the shape of the economic recovery remains uncertain and may continue to negatively impact the company's results of operations, cash flows and financial position in subsequent quarters. Given this current level of economic and operational uncertainty over the impacts of COVID-19, the ultimate financial impact cannot be reasonably estimated at this time.

The COVID-19 pandemic or a similar widespread outbreak of disease in the future could have a material adverse effect on the company's ability to operate, results of operations, financial condition and liquidity. In addition, public health restrictions and preventive measures the company may voluntarily put in place, could have a material adverse effect on the company's business for an indefinite period of time, such as the potential shut down of certain locations, decreased employee availability and border closures, among others. The pandemic could cause an increasingly competitive labor market due to sustained labor shortages or increased turnover rates within the company's employee base. The company's suppliers and customers may also face these and other challenges, which could lead to continued disruption in the company's supply chain, as well as decreased customer demand for the company's products. These issues may also materially affect the company's future access to its sources of liquidity, particularly its cash flows from operations, financial condition and capitalization. Although these disruptions are anticipated to continue in 2022, the long-term economic impact and near-term financial impacts of

such issues, may not be reasonably estimated due to the uncertainty of future developments.

The COVID-19 pandemic has contributed to a global shipping and logistics crisis, including shortages in the availability of, and increasing costs for, container shipping and has disrupted, and is expected to continue to disrupt, the company's ability to obtain critical products, components and raw materials which could have a material, adverse effect on the company's business, financial condition and liquidity.

The global impacts surrounding the COVID-19 pandemic, including operational and manufacturing disruptions, logistical constraints and travel restrictions, have contributed to substantial and ongoing delays, disruptions and shortages in the availability of shipping and logistics services. In particular, shortages of the availability of, and soaring cost increases for, container shipping have disrupted the company's ability to obtain, and increased the cost of obtaining, critical products, components and raw materials for its business. These factors have negatively impacted the company's ability to operate and to the extent that these negative impacts continue, they could have a material adverse effect on the company's business, financial condition and liquidity.

The impact of COVID-19 may also exacerbate many of the other risks discussed in this Risk Factors section and throughout this report.

Commercial and Operational Risks

If the company's business improvement efforts are ineffective, the company's strategic goals, business plans, financial performance or liquidity could be negatively impacted.

The company has been implementing a multi-year business improvement strategy intended to substantially improve its business and re-orient its resources to a more clinically complex mix of products and solutions. To date, this strategy has included actions to re-orient the company's global commercial team, continue the company's innovation pipeline, shift its product mix, develop and expand its talent, and strengthen its balance sheet. The company also has taken steps to realign infrastructure and processes that are intended to drive efficiency and reduce costs.

The company may not be successful in achieving the full long-term growth and profitability, operating efficiencies and cost reductions, or other benefits expected from these business improvement efforts in a timely manner or at all. The company also may experience business disruptions associated with these activities. Further, the full benefits of the strategy, if realized, may be

realized later than expected, the costs of implementing the strategy may be greater than anticipated, and the company may lack adequate cash or capital or may not be able to attract and retain the necessary talent, to complete the improvement actions. In addition, the negative impacts of the COVID-19 pandemic may result in increased costs associated with, and delayed execution of, business improvement initiatives. If these business improvement measures are not successful, the company may undertake additional actions, which could result in future expenses. If the company's business improvement efforts prove ineffective, the company's ability to achieve its strategic goals and business plans, and the company's financial performance, including its ability to repay or refinance its indebtedness and satisfy other obligations, may be materially adversely affected. Under these circumstances, the company may require additional financing, which may be difficult or expensive to obtain, and the company can make no assurances that it would be available on terms acceptable to the company, if at all. Refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources." The company also may evaluate and implement changes to its strategic goals and business plans, which may involve restructuring of its operations. If undertaken, any such restructuring may be substantial and involve significant effort and expense, and the company can make no assurances that such efforts, if undertaken, would be successful and result in improvements to the company business performance and financial condition,

If the company is unable to attract and retain critical IT Governance, Project Management and Contract Management competencies it may limit the effectiveness of the company's cost improvement and business efficiency initiatives and adversely affect the company's profitability and growth.

The company is implementing a multi-year business improvement strategy which involves projects focused on streamlining the company's supply chain and operations infrastructure, upgrading and modernizing its information technology capabilities and implementation of new ERP systems in conjunction with its third-party outsourcing service provider. In addition, the company has outsourced certain key functions to third-party service providers and may continue to do so in the future. The success of these activities is dependent on the company's ability to maintain an adequate IT governance management structure and adequate capabilities in project management and contract management functions. Despite its efforts to build and maintain these capabilities, the company could have inadequate skills, personnel, management skills, or processes necessary to successfully implement the programs and projects necessary to successfully improve the business and achieve the intended operating efficiencies and cost reductions from such programs and

projects, which in turn may adversely affect the company's profitability and growth.

Changes in government and other third-party payor reimbursement levels and practices have negatively impacted and could continue to negatively impact the company's revenues and profitability.

The company's products are sold primarily through a network of medical equipment and home health care providers, extended care facilities and other providers such as various government-provider agencies throughout the world. Many of these providers (the company's customers) are reimbursed for the products and services provided to their customers and patients by third-party payors, such as government programs, including Medicare and Medicaid, private insurance plans and managed care programs. Most of these programs set maximum reimbursement levels for some of the products sold by the company in the United States and abroad. If third-party payors deny coverage, make the reimbursement process or documentation requirements more uncertain or reduce their levels of reimbursement, or if the company is unable to reduce its costs of production to keep pace with decreases in reimbursement levels, the company may be unable to sell the affected product(s) through its distribution channels on a profitable basis.

Reduced government reimbursement levels and changes in reimbursement policies have in the past added, and could continue to add, significant pressure to the company's revenues and profitability. For example, the National Competitive Bidding, or "NCB", program introduced by CMS beginning in January 2011 has had the effect of substantially reducing reimbursement and payment rates for medical equipment and supplies by Medicare. The reduced reimbursement and payment rates have, in some cases, prompted customers to consider lower-priced alternatives to the company's products and compelled the company to reduce prices on certain products, which has negatively impacted the company's revenues and profitability. In October 2020, CMS announced the delay to changes to NCB for three years. The potential impact of any modifications may be uncertain and may further negatively impact the company's revenues and profitability. Refer to "Item 1. Business - Government Regulation-National Competitive Bidding."

Similar trends and concerns are occurring in state Medicaid programs. These recent changes to reimbursement policies, and any additional unfavorable reimbursement policies or budgetary cuts that may be adopted in the future, could adversely affect the demand for the company's products by customers who depend on reimbursement from the government-funded programs. The percentage of the company's overall sales that are

dependent on Medicare or other insurance programs may increase as the portion of the U.S. population over age 65 continues to grow, making the company more vulnerable to reimbursement level reductions by these organizations. Reduced government reimbursement levels also could result in reduced private payor reimbursement levels because some third-party payors index their reimbursement schedules to Medicare fee schedules. Reductions in reimbursement levels also may affect the profitability of the company's customers and ultimately force some customers without strong financial resources to become unable to pay their bills as they come due or go out of business. The reimbursement reductions may prove to be so dramatic that some of the company's customers may not be able to adapt quickly enough to survive. The company is one of the industry's significant creditors and an increase in bankruptcies or financial weakness in the company's customer base could have an adverse effect on the company's financial results.

Outside the U.S., reimbursement systems vary significantly by country. Many foreign markets have government-managed health care systems that govern reimbursement for home health care products. The ability of hospitals and other providers supported by such systems to purchase the company's products is dependent, in part, upon public budgetary constraints. Various countries have tightened reimbursement rates and other countries may follow. If adequate levels of reimbursement from third-party payors outside of the U.S. are not obtained, international sales of the company's products may decline, which could adversely affect the company's net sales.

The impact of all the above is uncertain and could have a material adverse effect on the company's business, financial condition, liquidity and results of operations.

If the company's products are not included within an adequate number of customer formularies, or if pricing policies otherwise favor competitors' products, the company's market share and gross margin could be negatively affected.

Many of the medical equipment and home health care providers to whom the company sells its products negotiate the price of products and develop formularies which establish pricing and reimbursement levels. Many of these providers also compensate their sales personnel based on the formulary position of the products they sell. Exclusion of a product from a formulary, unfavorable positioning of a product within a formulary, or lower compensation levels for customer sales personnel associated with the products can lead to such product's sharply reduced usage in the provider's patient population. If the company's products are not included, or favorably positioned, within an adequate number of formularies, or if the pricing policies or sales

compensation programs of providers otherwise favor other products, the company's sales revenues, market share and gross margin could be negatively affected, which could have a material adverse effect on the company's results of operations and financial condition.

The company's industry is highly competitive and the consolidation of health care provider customers and the company's competitors could result in a loss of customers or in additional competitive pricing pressures.

The home medical equipment market is highly competitive and the company's products face significant competition from other well established manufacturers. Numerous initiatives and reforms instituted by legislators, regulators and third-party payors to reduce home medical equipment costs have caused pricing pressures which have resulted in a consolidation trend in the home medical equipment industry as well as among the company's customers, including home health care providers. In the past, some of the company's competitors, which may include distributors, have been lowering the purchase prices of their products in an effort to attract customers. This in turn has resulted in greater pricing pressures, including pressure to offer customers more competitive pricing terms, exclusion of products from or unfavorable position on provider formularies and the exclusion of certain suppliers from important market segments as group purchasing organizations, independent delivery networks and large single accounts continue to consolidate purchasing decisions for some of the company's customers. Further consolidation could result in a loss of customers, increased collectability risks, or increased competitive pricing pressures. In addition, as reimbursement pressures persist, some customers may directly source their own products to secure a low-cost advantage.

The company's business strategy relies on certain assumptions concerning demographic trends that impact the market for its products. If these assumptions prove to be incorrect, demand for the company's products may be lower than expected.

The company's ability to achieve its business objectives is subject to a variety of factors, including the relative increase in the aging of the general population. The company believes that these trends will increase the need for its products. The projected demand for the company's products could materially differ from actual demand if the company's assumptions regarding these trends and acceptance of its products by health care professionals and patients prove to be incorrect or do not materialize. If the company's assumptions regarding these factors prove to be incorrect, the company may not be able to successfully implement the company's business strategy, which could adversely affect the company's results of operations. In

addition, the perceived benefits of these trends may be offset by competitive or business factors, such as the introduction of new products by the company's competitors or the emergence of other countervailing trends, including lower reimbursement and pricing.

Risks Related to Financial Results and Liquidity

The terms of the company's current and future debt facilities and financing arrangements may limit the company's flexibility in operating its business.

The company's credit agreement provides the company and certain of the company's U.S., Canadian, U.K. and French subsidiaries with the ability to borrow under senior secured revolving credit, letter of credit and swing line loan facilities. The aggregate borrowing availability under the credit facilities is determined based on borrowing base formulas set forth in the credit agreement. The credit facilities are secured by substantially all the company's domestic and Canadian assets, other than real estate, and by substantially all the personal property assets of the company's U.K. subsidiaries and Netherlands subsidiary. The credit agreement contains customary default provisions, with certain grace periods and exceptions, that include, among other things, failure to pay amounts due, breach of covenants, representations or warranties, bankruptcy, the occurrence of a material adverse effect, exclusion from any medical reimbursement program, and an interruption of any material manufacturing facilities for more than ten consecutive days.

In addition, the company may incur substantial additional debt in the future. Although the terms of the agreements governing existing debt restrict the company's ability to incur additional debt (including secured debt), such restrictions are subject to several exceptions and qualifications and such restrictions and qualifications may be waived or amended, and debt (including secured debt) incurred in compliance with such restrictions and qualifications (as they may be waived or amended) may be substantial. To the extent new debt, in particular secured debt, is added to the company's current debt levels, the substantial leverage risks described above and below would increase.

The restrictive terms of the company's credit agreement and future debt may limit the company's ability to conduct and expand its business and pursue its business strategies. The company's ability to comply with the provisions of its credit agreements and agreements governing future debt can be affected by events beyond its control, including changes in general economic and business conditions, or by government enforcement actions, such as, for example, adverse impacts from the FDA consent decree of injunction. If the company is

Item 1A. Risk Factors

unable to comply with the provisions in the credit agreement or other debt, it could result in a default which could trigger acceleration of, or the right to accelerate, the related debt. Because of cross-default provisions in its agreements and instruments governing certain of the company's indebtedness, a default under the credit agreement or other debt could result in a default under, and the acceleration of, certain other company indebtedness. In addition, the company's lenders would be entitled to proceed against the collateral securing the indebtedness.

The company's ability to meet its liquidity needs will depend on many factors, including the operating performance of the business, as well as the company's continued compliance with the covenants under its credit agreement. Refer to "Commercial and Operational Risks - If the company's business improvement efforts are ineffective, the company's strategic goals, business plans, financial performance or liquidity could be negatively impacted." and Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources." Notwithstanding the company's expectations, if the company's operating results decline, the company may be unable to comply with the financial covenants, and its lenders could demand repayment of the amounts outstanding under the company's credit facility.

The company also has an agreement with De Lage Landen, Inc. ("DLL"), a third-party financing company, to provide financing to the company's U.S. customers. Either party could terminate this agreement with 180 days' notice or 90 days' notice by DLL upon the occurrence of certain events. Should this agreement be terminated, the company's borrowing needs under the credit agreement could increase.

The company's leverage and debt obligations could adversely affect its financial condition, limit its ability to raise additional capital to fund its operations, impact the way it operates its business and prevent it from fulfilling its debt service and other obligations.

The company has significant outstanding indebtedness and may incur significant additional debt in the future. As of December 31, 2021, the company had outstanding, \$2,650,000 aggregate principal amount of 4.50% Convertible Senior Notes that mature in June 2022 (the "2022 Notes"), \$72,909,000 aggregate principal amount of 5.00% Series I Convertible Senior Notes that mature in November 2024 (the "Series I 2024 Notes"), \$79,222,000 aggregate principal and accretion amount of 5.00% Series II Convertible Senior Notes that mature in November 2024 (the "Series II 2024 Notes") and \$125,000,000 aggregate principal amount of 4.25% Convertible Senior Notes that mature in March 2026 (the "2026 Notes"). The company has an Amended and

Restated Credit Agreement providing for asset-based lending senior secured revolving credit facilities which mature in January 2024 with outstanding indebtedness at December 31, 2021 of \$35,502,000.

The company's indebtedness could have important negative consequences, including:

- reduced availability of cash for the company's operations and other business activities after satisfying interest payments and other requirements under the terms of its debt instruments;
- less flexibility to plan for or react to competitive challenges, and suffer a competitive disadvantage relative to competitors that do not have as much indebtedness;
- difficulty in obtaining additional financing in the future;
- inability to comply with covenants in, and potential for default under, the company's debt instruments; and
- challenges to repaying or refinancing any of the company's debt.

The company's ability to satisfy its debt and other obligations will depend principally upon its future operating performance. As a result, prevailing economic conditions and financial, business, legal and regulatory and other factors, many of which are beyond the company's control, may affect its ability to make payments on its debt and other obligations. If it does not generate sufficient cash flow to satisfy its debt and other obligations, the company may have to undertake alternative financing plans, such as refinancing or restructuring its debt, exchanging debt for equity, selling assets, seeking additional capital or reducing or delaying capital investments. The company's ability to restructure or refinance its debt will depend on the capital markets and the company's financial condition at the time. Restructuring or refinancing indebtedness could require the company to issue additional debt (including secured debt), pay additional fees and interest, issue potentially dilutive additional equity, further encumber certain of the company's assets, agree to covenants that could restrict its future operations and pay related transaction fees and expenses. Any such measures would require agreements with counterparties, including potentially the company's existing creditors, and may not be successful on attractive terms or otherwise. Whether or not successful, any such measures may have a negative impact on the company's financial condition and results of operations, including on the market price of the company's common stock and debt securities.

Refer to Item 7. “Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources.”

The company may not be able to repay or refinance its convertible notes, and the issuance of common shares upon conversion of the convertible notes could cause dilution to the company's existing shareholders.

As of December 31, 2021, the company had outstanding \$2,650,000, \$72,909,000, \$79,222,000 and \$125,000,000 aggregate principal amount (with accretion in the case of the Series II 2024 Notes) of its 2022 Notes, Series I 2024 Notes, its Series II 2024 Notes and 2026 Notes, respectively. Prior to the close of business on the business day immediately preceding December 1, 2021 (with respect to the 2022 Notes) and prior to the close of business on the business day preceding May 15, 2024 (with respect to the Series I 2024 Notes and Series II 2024 Notes), the notes will be convertible only upon satisfaction of certain conditions. Holders may convert their 2022 Notes at their option at any time after December 1, 2021 until the close of business on the second scheduled trading day immediately preceding June 1, 2022, holders may convert their Series I 2024 and Series II 2024 Notes at their option at any time after May 15, 2024 until the close of business on the second scheduled trading day immediately preceding November 15, 2024 and holders may convert their 2026 Notes at their option at any time after September 15, 2025 until the close of business on the second scheduled trading day immediately preceding March 15, 2026.

Any use of cash upon conversion or maturity of the notes could adversely affect the company's liquidity, and the company may not have enough available cash or be able to obtain financing at the time it is required to pay cash in settlement of notes being converted or maturing. Furthermore, the company may seek to refinance the 2022 Notes, the Series I 2024, the Series II 2024 Notes and/or the 2026 Notes prior to maturity, and there is no assurance that the company will be able to do so on attractive terms or at all.

The company may settle conversions of the notes by paying or delivering, as the case may be, cash, common shares, or a combination of cash and common shares, at the company's election. If any such conversions occur and the company has authority, and so elects, to settle some or all of the converted notes in common shares, the number of shares issued could be significant and such an issuance could cause dilution to the interests of the existing shareholders.

The company's convertible notes have certain fundamental change and conditional conversion features which, if triggered, may adversely affect the company's financial condition.

If a fundamental change occurs under the company's 2022 Notes, Series I 2024, Series II 2024 Notes or its 2026 Notes the holders of the notes may require the company to purchase for cash any or all of the notes. A fundamental change includes a delisting of the company's common stock from eligible securities exchanges, subject to certain exceptions. Certain fundamental changes are beyond the control of the company. However, there can be no assurance that the company will have sufficient funds at the time of the fundamental change to purchase all of the notes delivered for purchase, and it may not be able to arrange necessary financing on acceptable terms, if at all. Likewise, if one of the conversion contingencies of the notes is triggered, holders of notes will be entitled to convert the notes at any time during specified periods. If the company desires to settle any portion of any converted notes through the payment of cash, there can be no assurance that it will have sufficient funds to purchase all of the notes delivered for purchase, and the company may not be able to arrange necessary financing on acceptable terms, if at all. If the company elects to settle any converted notes through the issuance of common shares, it would have a dilutive effect on shareholders' interests.

If a fundamental change occurs under the company's 2022 Notes, the company may be obligated to settle the outstanding common shares warrants issued to the respective counterparties in connection with the issuance of the 2022 Notes. If exercised, the warrants may obligate the company to issue a substantial number of common shares to the counterparty, which would have a dilutive effect on shareholders' interests. If the warrant is terminated upon a fundamental change, the company may be obligated to make a substantial cash termination payment to the counterparty, and there can be no assurance that the company will have sufficient funds to do so.

In addition, whether following a fundamental change or otherwise, the counterparties to the company's convertible note hedge and warrant transactions and capped call transactions or their respective affiliates may modify their initial hedge positions by entering into or unwinding various derivatives contracts with respect to the company's common shares and/or purchasing or selling common shares or other securities of the company in secondary market transactions prior to the maturity of the notes. This activity could cause, or prevent what would otherwise be a significant change in the market price of the company's common shares.

Risks Related to Information Technology and Reliance on Third Parties

Any major disruption or failure of the company's information technology systems, or its failure to successfully implement new technology effectively, could adversely affect the company.

The company relies on various information technology systems to manage its operations. The company has outsourced substantially all of its information technology services to Birlasoft Solutions, Inc. The company has contracted with Birlasoft to implement, over a multi-year period, modifications and upgrades to the company's systems, including making changes to legacy systems, replacing legacy systems with successor systems with new functionality and acquiring new systems with new functionality. Among other projects, the company has engaged Birlasoft to assist in implementing a new enterprise resource planning ("ERP") system across the company. These activities subject the company to inherent risks associated with replacing and upgrading these systems, including impairment of its ability to fulfill customer orders, potential disruption of its internal control structure, additional administration and operating expenses, reliance on Birlasoft providing sufficiently skilled personnel to implement and operate the new systems, demands on management time, and other risks and costs of delays or difficulties in transitioning to new or upgraded systems or of integrating new or upgraded systems into the company's current systems. If any of these inherent risks develop or if Birlasoft's capabilities prove to be insufficient to successfully implement and operate the new systems, implementation may be substantially delayed, the assistance of alternative service providers may be engaged, the company's business may be disrupted, and costs may substantially increase. Even if successfully implemented, the new systems may not result in productivity improvements at a level that outweighs the risks and burdens of implementation, or at all. In addition, the difficulties with implementing new or upgraded technology systems may cause disruptions in its business operations. Any of these developments may have an adverse effect on the company's business and operations.

Cybersecurity threats and more sophisticated and targeted computer crime pose a risk to the company's systems, networks, products and services, and a risk to the company's compliance with data privacy laws.

Global IT security threats and more sophisticated and targeted computer crime pose a risk to the security of the company's systems and networks as well as the confidentiality, protection, availability and integrity of the company's data and any personal data on such networks or systems, including regulatory risks under the EU General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA) and the U.S. Health Insurance Portability and Accountability Act (HIPAA),

among other risks. In addition, data security breaches can also occur as a result of a failure by the company or its employees to follow policies, procedures or training, or by acts, omissions or breaches by persons with whom the company has commercial relationships that result in the unauthorized release of personal or confidential information.

Through its sales channels, the company may collect and store personal or confidential information that customers provide to purchase products or services, enroll in promotional programs and register on the company's website, among other reasons. The company may also acquire and retain information about customers, product end users, suppliers and employees in the normal course of business. The company also creates and maintains proprietary information that is critical to its business, such as its product designs and manufacturing processes. In addition to the company's own databases, it uses third-party service providers to store, process and transmit confidential or personal information on its behalf. Although the company contractually requires these service providers to implement and use reasonable security measures and to comply with laws relating to privacy and data protection, the company cannot control third parties and cannot guarantee that a data security breach will not occur in the future either at their location or within their systems. Some of the company's information technology systems have aged and are no longer supported or maintained by the original system vendors. Despite the company's efforts to secure its systems and networks, and any personal or sensitive information stored thereon, the company could experience a significant data security breach. Computer hackers may attempt to penetrate the company's or its vendors' information systems and, if successful, misappropriate confidential customer, supplier, employee or other business or personal information, including company intellectual property. Third parties could also gain control of company systems and use them for criminal purposes. Depending on their nature and scope, such threats could result in the loss of existing customers, difficulty in attracting new customers, exposure to claims from customers, governmental or data privacy or data protection authorities, financial institutions, payment card associations, employees and other persons, imposition of regulatory sanctions or penalties, incurring of additional expenses or lost revenues, or other adverse consequences, any of which could have a material adverse effect on the company's business and results of operations.

As the company outsources functions, it becomes more dependent on the entities performing those functions. Disruptions or delays at the company's third-party service providers could adversely impact its operations.

As part of its actions to improve business efficiency, the company has sought opportunities to provide essential business services in a more cost-effective manner. In some cases, this results in the outsourcing of functions or parts of functions that can be performed more effectively by external service providers. For example, the company has recently outsourced a significant portion of its information technology functions to Birlasoft Solutions Inc. While the company believes it conducts appropriate diligence before entering into agreements with any outsourcing entity, the failure of one or more of such entities to meet the company's performance standards and expectations, including with respect to service levels, data security, compliance with data protection and privacy laws, providing services on a timely basis or providing services at the prices the company expects, may have an adverse effect on the company's results of operations or financial condition. In addition, the company could face increased costs or disruption associated with finding replacement vendors or hiring new employees in order to return these services in-house. The company may outsource other functions in the future, which would increase its reliance on third parties.

Regulatory and Development Risks

The company remains subject to a consent decree of injunction with the U.S. Food and Drug Administration, and failure by the company to comply with the consent decree could adversely affect the company.

In December 2012, the company became subject to a consent decree of injunction filed by the FDA with respect to the company's Corporate facility and its Taylor Street manufacturing facility in Elyria, Ohio. The consent decree initially limited the company's (i) manufacture and distribution of power and manual wheelchairs, wheelchair components and wheelchair sub-assemblies at or from its Taylor Street manufacturing facility, except in verified cases of medical necessity, (ii) design activities related to wheelchairs and power beds that take place at the impacted Elyria facilities and (iii) replacement, service and repair of products already in use from the Taylor Street manufacturing facility. Under the terms of the consent decree, in order to resume full operations, the company had to successfully complete independent, third-party expert certification audits at the impacted Elyria facilities, comprising three distinct certification reports separately submitted to, and accepted by, the FDA; submit its own report to the FDA; and successfully complete a reinspection by the FDA of the company's Corporate and Taylor Street facilities.

On July 24, 2017, following its reinspection, the FDA notified the company that it was in substantial compliance with the QSR and the Federal Food, Cosmetic

& Drug Act (The FDA Act), the FDA regulations and the terms of the consent decree that the company was permitted to resume full operations at those facilities including the resumption of unrestricted sales of products made in those facilities.

The consent decree will continue in effect for a minimum of five years from July 24, 2017, during which time the company's Corporate and Taylor Street facilities must complete two semi-annual audits in the first year and then four annual audits in the next four years performed by an independent company retained audit firm. The expert audit firm will determine whether the facilities remain in continuous compliance with the FDA Act, regulations and the terms of the consent decree. Thus far, the two semi-annual audits and the first three annual audits have been completed successfully. The FDA has the authority to inspect these facilities and any other FDA registered facility, at any time.

In 2021, FDA conducted an inspection of the company's Corporate and Taylor Street facilities from May 25 through June 24, 2021. At the close of the inspection, six FDA Form 483 observations were issued, and the company timely responded to FDA, has diligently taken actions to address FDA's inspectional observations, and has provided FDA monthly updates on the corrective actions taken to address these observations. On November 18, 2021, the company received a warning letter from the FDA, which we refer to as the Warning Letter, concerning certain of the inspectional observations in the June 2021 FDA Form 483 related to the complaint handling process, the corrective and preventive action, or CAPA, process, and medical device reporting, or MDR, associated with oxygen concentrators. On November 16, 2021, the company received a consent decree non-compliance letter from the FDA concerning the same complaint and CAPA handling matters as in the Warning Letter observations but associated with the Taylor Street products, which letter we refer to together with the Warning Letter as the FDA Letters. The company timely responded to the FDA Letters, has diligently taken actions to address FDA's concerns, and has provided FDA with periodic updates on the corrective actions taken to address the matters in the FDA Letters. The company remains committed to resolving the FDA's concerns; however, it is not possible to predict the outcome or timing of a resolution at this time. There can be no assurance that the FDA will be satisfied with the company's responses to the FDA Letters, nor any assurance as to the timeframe that may be required for the company to adequately address the FDA's concerns or whether the matters in the FDA Letters will result in an extension in the duration of the consent decree. See "Item 1. Business – Government Regulation– 2012 Consent Decree, Taylor Street and Corporate Facilities" for further discussion of the FDA Letters.

The FDA also has the authority to order the company to take a wide variety of remedial actions if the FDA finds that the company is not in compliance with the consent decree or FDA regulations. The FDA also has authority under the consent decree to assess liquidated damages for any violations of the consent decree, FDA regulations or the FDA Act. Any such failure by the company to comply with the consent decree, the FDA Act or FDA regulations, or any need to complete significant remediation as a result of any such audits or inspections, or actions taken by the FDA as a result of any such failure to comply, could have a material adverse effect on the company's business, financial condition, liquidity or results of operations.

The limitations previously imposed by the FDA consent decree negatively affected net sales in the North America segment and, to a certain extent, the Asia Pacific region beginning in 2012. The limitations led to delays in new product introductions. Further, uncertainty regarding how long the limitations would be in effect limited the company's ability to renegotiate and bid on certain customer contracts and otherwise led to a decline in customer orders.

Although the company has been permitted to resume full operations at the Corporate and Taylor Street facilities, the negative effect of the consent decree on customer orders and net sales in the North America segment and Asia Pacific region has been considerable, and it is uncertain as to whether, or how quickly, the company will be able to rebuild net sales to more typical historical levels, irrespective of market conditions. Accordingly, when compared to the company's 2010 results, the previous limitations in the consent decree had, and likely may continue to have, a material adverse effect on the company's business, financial condition and results of operations. Refer to Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Any failure by the company to comply with medical device regulatory requirements or receive regulatory clearance or approval for the company's products or operations in the United States or abroad could adversely affect the company's business.

The company's medical devices are subject to extensive regulation in the United States by the FDA, and by similar governmental authorities in the foreign countries where the company does business. The FDA regulates virtually all aspects of a medical device's development, testing, manufacturing, labeling, promotion, distribution and marketing. In addition, the company is required to file reports with the FDA if the company's products may have caused, or contributed to, a death or serious injury, or if they malfunction and would be likely to cause, or

contribute to, a death or serious injury if the malfunction were to recur. In general, unless an exemption applies, the company's mobility and respiratory therapy products must receive a pre-market clearance from the FDA before they can be marketed in the United States. The FDA also regulates the export of medical devices to foreign countries. The company cannot be assured that any of the company's devices, to the extent required, will be cleared by the FDA through the pre-market clearance process or that the FDA will provide export certificates that are necessary to export certain of the company's products for sale in certain foreign countries. If the company is unable to obtain export certificates for its products, it will limit the company's ability to support foreign markets with such products, which may have an adverse impact on the company's business and results of operations.

Additionally, the company is required to obtain pre-market clearances to market modifications to the company's existing products or market its existing products for new indications. The FDA requires device manufacturers themselves to make and document a determination as to whether a modification requires a new clearance; however, the FDA can review and disagree with a manufacturer's decision. The company may not be successful in receiving clearances in the future or the FDA may not agree with the company's decisions not to seek clearances for any particular device modification. The FDA may require a clearance for any past or future modification or a new indication for the company's existing products. Such submissions may require the submission of additional data and may be time consuming and costly, and ultimately, may not be cleared by the FDA.

If the FDA requires the company to obtain pre-market clearances for any modification to a previously cleared device, the company may be required to cease manufacturing and marketing the modified device or to recall the modified device until the company obtains FDA clearance, and the company may be subject to significant regulatory fines or penalties. In addition, the FDA may not clear these submissions in a timely manner, if at all. The FDA also may change its policies, adopt additional regulations or revise existing regulations, each of which could prevent or delay pre-market clearance of the company's devices, or could impact the company's ability to market a device that was previously cleared. Any of the foregoing could adversely affect the company's business.

Any failure by the company to comply with the regulatory requirements of the FDA and other applicable U.S. regulatory requirements may subject the company to administrative or judicially imposed sanctions. These sanctions include warning letters, civil penalties, criminal penalties, injunctions, consent decrees, product seizure or detention, product recalls and total or partial suspension of production, any of which could materially adversely affect

the company's business, financial condition, liquidity and results of operations. In November 2021, the company received the FDA Letters. See the preceding risk factor “– The company remains subject to a consent decree of injunction with the U.S. Food and Drug Administration, and failure by the company to comply with the consent decree could adversely affect the company” and “Item 1. Business – Government Regulation – 2012 Consent Decree, Taylor Street and Corporate Facilities.”

As part of its regulatory function, the FDA routinely inspects the facilities of medical device companies and has continued to actively inspect the company's facilities, other than through the processes established under the consent decree. The company expects that the FDA will from time to time, inspect substantially all the company's domestic and foreign FDA-registered operational facilities and may do so repeatedly. The results of regulatory claims, proceedings or investigations are difficult to predict. An unfavorable resolution or outcome of any matter that may arise out of any FDA inspection of the company's facilities, including, for example, the matters in the FDA Letters, could materially and adversely affect the company's business, financial condition, liquidity and results of operations.

In many of the foreign countries in which the company manufactures or markets its products, the company is subject to extensive medical device regulations that are similar to those of the FDA, including those in Europe. The regulation of the company's products in Europe falls primarily within the United Kingdom (“UK”) and the European Economic Area, which consists of the European Union member states, as well as Iceland, Liechtenstein and Norway. Only medical devices that comply with certain conformity requirements of the European Medical Device Regulation (“EMDR”) are allowed to be marketed within the European Economic Area and the United Kingdom. The company's Class I products were required to comply with the EMDR as of May 2021. Class IIa and IIb products are required to comply with the EMDR by no later than the expiration of their respective current Medical Device Directive (“MDD”) certifications, which will begin to expire in September 2023. Products that fail to be certified with the EMDR may not be marketed or sold in the European Union. As a result of Brexit, beginning on January 1, 2021, the company's products sold in Great Britain have been required to be registered with the Medical and Healthcare Products Regulatory Agency (“MHRA”) and the company is required to appoint an Authorized Representative (“AR”) in the UK. Products in conformity with the MDD may continue to be marked with their CE marking in the UK until June 2023, after which time products must be certified by a UK recognized Notified Body. In addition, beginning May 26, 2021, the company's products sold in Switzerland have been required to be registered with Swissmedic and the company is required to appoint an AR in Switzerland. In addition, the national health or social

security organizations of certain foreign countries, including those outside Europe, require the company's products to be qualified before they can be marketed in those countries. Failure to receive, or delays in the receipt of, relevant foreign qualifications in the European Economic Area, the UK, Switzerland or other foreign countries could have a material adverse effect on the company's business. The company and its products are subject to registration requirements and regulations in various states and political subdivisions inside and outside of the United States. Failure by the company to comply with these requirements and regulations could have an adverse effect on the company or its business.

Under the EMDR and MDD, Notified Bodies have the right to conduct unannounced audits. Under the EMDR, the company will be subject to annual audits by a Notified Body for its Class IIa and IIb products, which would include on-site audits of the company's facilities in Elyria, Ohio and unannounced audits at least once every five years. In addition, the relevant regulatory authorities in various European countries may conduct audits of the company's facilities. Any significant findings from any such audits may impact the company's ability to manufacture or market certain products in those markets, or result in other unfavorable outcomes, that could materially and adversely affect the company's business.

If the company fails to comply with applicable health care laws or regulations, the company could suffer severe civil or criminal sanctions or may be required to make significant changes to the company's operations.

The company sells its products principally to medical equipment and home health care providers who resell or rent those products to consumers. Many of those providers (the company's customers) are reimbursed by third-party payors, including Medicare and Medicaid, for the company products sold to their customers and patients. The U.S. federal government and the governments in the states and other countries in which the company operates regulate many aspects of the company's business and the business of the company's customers. As a part of the health care industry, the company and its customers are subject to extensive government regulation, including numerous laws directed at preventing fraud and abuse and laws regulating reimbursement under various government programs. The marketing, invoicing, documenting and other practices of health care suppliers and manufacturers are all subject to government scrutiny. Government agencies periodically open investigations and obtain information from health care suppliers and manufacturers pursuant to the legal process. Violations of law or regulations can result in severe administrative, civil and criminal penalties and sanctions, including disqualification from Medicare and other reimbursement programs, which could have a material adverse effect on the company's business. While the company has established numerous

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policies and procedures to address compliance with these laws and regulations, there can be no assurance that the company's efforts will be effective to prevent a material adverse effect on the company's business from noncompliance issues.

Health care is an area of rapid regulatory change. Changes in the law and new interpretations of existing laws may affect permissible activities, the costs associated with doing business, and reimbursement amounts paid by federal, state and other third-party payors, all of which may affect the company and its customers. The company cannot predict the future of federal, state and local regulation or legislation, including Medicare and Medicaid statutes and regulations, or possible changes in health care policies in any country in which the company conducts business. Future legislation and regulatory changes could have a material adverse effect on the company's business.

Legislative developments in all regions in which the company operates may adversely affect the company.

Future healthcare legislation, including any significant reform of existing healthcare laws, whether in the U.S. or in our other global markets, along with any programs implemented by such laws, whether at a federal or state level, may reduce reimbursements for the company's products, may impact the demand for the company's products and may impact the prices at which the company sells its products. Such changes could have a material adverse effect on the company's business, results of operations and/or financial condition.

Intellectual Property Risks

The company's operating results and financial condition could be adversely affected if the company becomes involved in litigation regarding its patents or other intellectual property rights.

Litigation involving patents and other intellectual property rights is common in the company's industry, and other companies within the company's industry have used intellectual property litigation in an attempt to gain a competitive advantage. The company has been a party to lawsuits involving patents or other intellectual property. If the company were to receive an adverse judgment in any such proceeding, a court or a similar foreign governing body could invalidate or render unenforceable the company's owned or licensed patents, require the company to pay significant damages, seek licenses and/or pay ongoing royalties to third parties, require the company to redesign its products, or prevent the company from manufacturing, using or selling its products, any of which could have an adverse effect on the company's results of operations and financial condition. The company has

brought actions against third parties for infringement of the company's intellectual property rights. The company may not succeed in these actions. The defense and prosecution of intellectual property actions and lawsuits in the courts, proceedings before the U.S. Patent and Trademark Office or its foreign equivalents and related legal and administrative proceedings are both costly and time consuming. Protracted litigation to defend, prosecute or enforce the company's intellectual property rights could seriously detract from the time the company's management would otherwise devote to running its business. Intellectual property litigation relating to the company's products could cause its customers or potential customers to defer or limit their purchase or use of the affected products until resolution of the litigation.

If the company is unable to protect its intellectual property rights or resolve successfully claims of infringement brought against it, the company's product sales and business could be affected adversely.

The company's business depends in part on its ability to establish, protect, safeguard and enforce its intellectual property and contractual rights and to defend against any claims of infringement, both of which involve complex legal, factual and marketplace uncertainties. The company relies on a combination of patent, trade secret, copyright and trademark law and security measures to protect its intellectual property, but effective intellectual property protection may not be available in all places that the company sells its products or services, particularly in certain foreign jurisdictions, and patents provide protection for finite time periods. In addition, the company uses nondisclosure, confidentiality agreements and invention assignment agreements with many of its employees, and nondisclosure and confidentiality agreements with certain third parties, in an effort to help protect its proprietary technology and know-how. If these agreements are breached or the company's intellectual property is otherwise infringed, misappropriated or violated, the company may have to rely on litigation to enforce its intellectual property rights. If any of these measures are unsuccessful in protecting the company's intellectual property, the company's business may be affected adversely.

In addition, the company may face claims of infringement, misappropriation or other violation of third parties' intellectual property that could interfere with its ability to use technology or other intellectual property rights that are material to the company's business operations. In the event that a claim of infringement, misappropriation or other violation against the company is successful, the company may be required to pay royalties or license fees to continue to use technology or other intellectual property rights that the company was using, or

the company may be unable to obtain necessary licenses from third parties at a reasonable cost or within a reasonable time. If the company is unable to obtain licenses on reasonable terms, it may be forced to cease selling or using the products that incorporate the challenged intellectual property, or to redesign or, in the case of trademark claims, rename its products to avoid infringing the intellectual property rights of third parties, which may not be possible, or if possible, may be time-consuming. Any litigation of this type, whether successful or unsuccessful, could result in substantial costs to the company and adversely affect the company's business and financial condition.

The company also holds patent and other intellectual property licenses from third parties for some of its products and on technologies that are necessary in the design and manufacture of some of the company's products. The loss of these licenses could prevent the company from, or could cause additional disruption or expense in, manufacturing, marketing and selling these products, which could harm the company's business.

Manufacturing and Supply Risks

Decreased availability or increased costs of materials could increase the company's costs of producing its products.

The company purchases raw materials, fabricated components, some finished goods and services from a variety of suppliers. Raw materials such as plastics, steel and aluminum, purchased electronics and other components are considered key raw materials. Where appropriate, the company employs contracts with its suppliers, both domestic and international. From time to time, however, the prices, availability, or quality of these materials fluctuate due to global market demands, import duties and tariffs, delays or interruptions in production or delivery, including ongoing shipping and logistics disruptions exacerbated by the COVID-19 pandemic or economic conditions, which could impair the company's ability to procure necessary materials or increase the cost of these materials. For example, global shortages of microprocessors for production of printed circuit boards have had, and may continue to have, an adverse effect on the company's ability to produce its products. Inflationary and other increases in costs of these materials have occurred in the past and may recur from time to time. In addition, freight costs associated with shipping and receiving product and sales are impacted by fluctuations in the cost of oil and gas. In addition, freight and transportation costs have been negatively impacted by the pandemic. A reduction in the supply or increase in the cost or change in quality of those materials or transportation costs, could impact the company's ability to manufacture

its products and could increase the cost of production, which could negatively impact the company's revenues and profitability. For example, the tariffs on steel and aluminum on a wide range of products and components imported from China imposed by the U.S. as well as material cost increases imposed by domestic suppliers influenced by the tariffs, have had, and may continue to have, a significant adverse effect on the company's cost of product. The company is attempting to mitigate the adverse impacts of these tariffs, through identifying long-term alternative supply chain opportunities and other actions, including tariff exemptions which expired on January 1, 2021. The company's actions to date have greatly reduced the impact of tariffs. However, if the company is unsuccessful in mitigating the impact of tariffs in the future, its revenues, profitability and results of operations may continue to be adversely affected.

Inflationary economic conditions have increased, and may continue to increase, the company's costs of producing its products.

The company's products are manufactured using various metals and other commodity-based materials, including, steel and aluminum. Additionally, the company uses certain component parts, such as microprocessors, which may be in short supply and difficult or costly to obtain. Freight and labor costs also are significant elements of the company's production costs. Inflationary economic conditions increase these various costs. If the company is unable to mitigate inflationary increases through customer pricing actions, alternative supply arrangements or other cost reduction initiatives, its profitability may be adversely affected.

The company has fixed-price contracts with certain of its customers, which could subject the company to losses if it has cost overruns. While fixed price contracts enable the company to benefit from performance improvements, cost reductions and efficiencies, they also subject the company to the risk of reduced margins or incurring losses if the company is unable to achieve estimated costs and revenues. This risk is further exacerbated when inflationary economic conditions persist.

Geopolitical risks, such as those associated with Russia's recent invasion of Ukraine, could result in increased market volatility and uncertainty, which could negatively impact the company's business, financial condition, and results of operations.

The uncertain nature, magnitude, and duration of hostilities stemming from Russia's recent military invasion of Ukraine, including the potential effects of sanctions limitations, retaliatory cyber-attacks on the world economy and markets, and potential shipping delays, have

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contributed to increased market volatility and uncertainty, which could have an adverse impact on macroeconomic factors that affect the company's business. As a result of Russia's invasion of Ukraine, the United States, the United Kingdom and the European Union governments, among others, have developed coordinated economic and financial sanctions packages. As the invasion of Ukraine continues, there can be no certainty regarding whether such governments or other governments will impose additional sanctions, or other economic or military measures against Russia.

The impact the invasion of Ukraine, including economic sanctions or additional war or military conflict, as well as potential responses to them by Russia, is currently unknown and they could adversely affect the company's business, supply chain, suppliers or customers. In addition, the continuation of the invasion of Ukraine by Russia could lead to other disruptions, instability and volatility in global markets and industries that could negatively impact the company's operations. It is not possible to predict the broader consequences of this conflict, which could include further sanctions, embargoes, regional instability, geopolitical shifts and adverse effects on macroeconomic conditions, the availability of raw materials, supplies, freight and labor, currency exchange rates and financial markets, all of which could impact the company's business, financial condition and results of operations.

The company's ability to manage an effective supply chain is a key success factor.

The company needs to manage its supply chain efficiently from sourcing to manufacturing and distribution. Successful supply chain management is based on building strong supplier relationships, built on conforming, quality products delivered on-time and at a fair price and operating efficiency. Cost reduction efforts depend on the company's execution of global and regional product platforms that create leverage in sourcing. If the company's supply chain management or cost reduction optimization efforts are ineffective, or if the supply chain continues to be adversely affected by disruption due to shortages, trade barriers or other factors, such as the COVID-19 pandemic, the company's revenues and profitability can be negatively impacted.

Other Regulatory and Litigation Risks

The company is subject to certain risks inherent in managing and operating businesses in many different foreign jurisdictions.

The company has significant international operations, including operations in Australia, Canada, New

Zealand, Mexico, Asia (primarily Thailand) and Europe. There are risks inherent in operating and selling products internationally, including:

- different regulatory environments and reimbursement systems;
- difficulties in enforcing agreements and collecting receivables through certain foreign legal systems;
- foreign customers who may have longer payment cycles than customers in the United States;
- fluctuations in foreign currency exchange rates;
- tax rates in certain foreign countries that may exceed those in the United States and foreign earnings that may be subject to withholding requirements;
- the imposition of tariffs, exchange controls or other trade restrictions including transfer pricing restrictions when products produced in one country are sold to an affiliated entity in another country;
- potential adverse changes in trade agreements between the United States and foreign countries, including the United States-Mexico-Canada Agreement (USMCA);
- potential adverse changes in economic and political conditions in countries where the company operates or where end-users of the company's products reside, or in their diplomatic relations with the United States;
- government control of capital transactions, including the borrowing of funds for operations or the expatriation of cash;
- potential adverse tax consequences, including those that may result from new United States tax laws, rules, regulations or policies;
- security concerns and potential business interruption risks associated with political and/or social unrest, or public health crisis, in foreign countries where the company's facilities or assets are located;
- the potential effects of geopolitical conflicts, such as the military conflict between Russia and Ukraine, including retaliatory and regulatory actions, in response to such conflicts;
- difficulties associated with managing a large organization spread throughout various countries;

- difficulties in enforcing intellectual property rights and weaker intellectual property rights protection in some countries;
- required compliance with a variety of foreign laws and regulations; and
- differing consumer product preferences.

The factors described above also could disrupt the company's product manufacturing and assembling operations or its key suppliers located outside of the United States or increase the cost to the company of conducting those operations or using those suppliers. For example, the company relies on its manufacturing operation in Mexico and suppliers in China and other countries to produce its products or components, and the global COVID-19 pandemic resulted in interruptions in production and supply of components and product on a global basis. Disruptions in, or increased costs related to, the company's foreign operations, particularly in Mexico, may impact the company's revenues and profitability. The factors described above also or the failure of the company to adequately comply with regulatory and legal requirements in foreign countries could adversely affect the company's ability to sell its products in those foreign countries or could subject the company to fines, penalties, or other adverse legal or regulatory enforcement.

The impact of "Brexit" may adversely affect the company.

In 2020, the United Kingdom ("UK") exited the European Union (the "EU") and subsequently entered into a Free Trade Agreement with the EU. The company markets its main products in the UK, has contracts with the UK government and manufactures mattresses, seating and upholstery products in the UK. Changes in customs and value added tax accounting requirements have led to increased costs and logistical difficulties in delivering products into the UK. The company's operations in the UK are subject to UK regulatory requirements, which may diverge from EU requirements over time and lead to increased compliance costs. Brexit may increase the company's foreign exchange risk should the exchange rates between the British Pound and other currencies such as the U.S. Dollar and Euro materially change. The company has taken actions to mitigate such risks associated with Brexit but there is no assurance that its efforts will be entirely successful. If the company's mitigation efforts are not sufficient, the company's financial results could be adversely affected.

The company's products may be subject to product liability claims or recalls, which could be costly, harm the company's reputation and adversely affect its business.

The manufacture and sale of medical devices and related products exposes the company to a significant risk

of product liability claims. From time to time, the company has been, and currently is, subject to a number of product liability claims alleging that the use of the company's products has resulted in serious injury or even death.

Even if the company is successful in defending against any liability claims, these claims could nevertheless distract the company's management, result in substantial costs, harm the company's reputation, adversely affect the sales of all the company's products and otherwise harm the company's business. If there is a significant increase in the number of product liability claims, the company's business could be adversely affected.

The company is self-insured in North America for product liability exposures through its captive insurance company, Invatection Insurance Company, which currently has a policy year that runs from September 1 to August 31 and insures annual policy losses up to \$10,000,000 per occurrence and \$13,000,000 in the aggregate. The company also has additional layers of external insurance coverage, related to all lines of insurance coverage, insuring up to \$75,000,000 in aggregate losses per policy year arising from individual claims anywhere in the world that exceed the captive insurance company policy limits or the limits of the company's per country foreign liability limits, as applicable. There can be no assurance that Invacare's current insurance levels will continue to be adequate or available at affordable rates.

Product liability reserves are recorded for individual claims based upon historical experience, industry expertise and indications from the third-party actuary. Additional reserves, in excess of the specific individual case reserves, are provided for incurred but not reported claims based upon actuarial valuations at the time such valuations are conducted. Historical claims experience and other assumptions are taken into consideration to estimate the ultimate reserves. For example, the actuarial analysis assumes that historical loss experience is an indicator of future experience, that the distribution of exposures by geographic area and nature of operations for ongoing operations is expected to be very similar to historical operations with no dramatic changes and that the government indices used to trend losses and exposures are appropriate. Estimates made are adjusted on a regular basis and can be impacted by actual loss awards and settlements on claims. While actuarial analysis is used to help determine adequate reserves, the company is responsible for the determination and recording of adequate reserves in accordance with accepted loss reserving standards and practices. If the company's reserves are not adequate to cover actual claims experience, the company's financial results could be adversely affected.

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In addition, as a result of a product liability claim or if the company's products are alleged to be defective, the company may have to recall some of its products, may have to incur significant costs or may suffer harm to its business reputation.

The company is subject to ongoing medical device reporting regulations that require the company to report to the FDA or similar governmental authorities in other countries if the company's products cause, or contribute to, death or serious injury, or if they malfunction and would be likely to cause, or contribute to, death or serious injury if the malfunction were to recur. If a deficiency, defect in design or manufacturing or defect in labeling is discovered, the company may voluntarily elect to recall or correct the company's products. In addition, the FDA and similar regulatory authorities in other countries could force the company to do a field correction or recall of the company's products in the event of material deficiencies or defects in design or manufacturing. A government mandated or voluntary recall or field correction by the company could occur for various reasons, such as component failures, manufacturing errors or design defects, including defects in labeling. Any recall or field correction could divert managerial and financial resources and could harm the company's reputation with its customers, product users and the health care professionals that use, prescribe and recommend the company's products. The company could have product recalls or field actions that result in significant costs to the company in the future, and these actions could have a material adverse effect on the company's business. The company could have difficulty in implementing product recalls or field corrections in countries in which the company lacks adequate resources, facilities or personnel, and the failure to comply with the recall or field correction requirements of foreign governmental authorities could have an adverse impact on the company.

Other Risk Factors - Other Financial Risks, Risks Related to Employees and the Company's Common Shares

The company has long-term finance leases on significant facilities which can affect the company's liquidity and cash flow.

Under the terms of the real estate leases for the company's facilities in Elyria and North Ridgeville, Ohio, and Sanford, Florida, defaults by the company under any one of such leases, would trigger a cross default under all related leases with the owner/landlord. The company also has a finance lease for its Albstadt, Germany facility. Should a default by the company occur, there could be a material adverse effect on the company's business, operations, financial condition or liquidity.

The company's revenues and profits are subject to exchange rate and interest rate fluctuations which can affect the company's profitability and cash flow.

Currency exchange rates are subject to fluctuation due to, among other things, changes in local, regional or global economic conditions, the imposition of currency exchange restrictions and unexpected changes in regulatory or taxation environments. The predominant currency used by the company's subsidiaries outside the U.S. to transact business is the functional currency used for each subsidiary. Through the company's international operations, the company is exposed to foreign currency fluctuations, and changes in exchange rates can have a significant impact on net sales and elements of cost. The company conducts a significant number of transactions in currencies other than the U.S. dollar. In addition, because certain of the company's costs and revenues are denominated in other currencies, such as those from its European operations, the company's results of operations are exposed to foreign exchange rate fluctuations as the financial results of those operations are translated from local currency into U.S. dollars upon consolidation. For example, in prior years, the devaluation of the Euro had a negative impact on the translation of company's European segment net income into U.S. dollars, and the foreign currency impact of Brexit in the U.K. had a negative impact on acquisition of dollar and Euro denominated goods in the U.K. If other countries also exit the European Union, similar negative impacts may result. In addition, in light of the military conflict between Russia and Ukraine and the resulting tensions between the European Union, other European countries, as well as the United States, with Russia, any resulting material change to the valuation of the Euro relative to the U.S. dollar could adversely impact the company's operating results.

The company uses foreign exchange forward contracts primarily to help reduce its exposure to transactional exchange rate risk. Despite the company's efforts to mitigate these risks, however, the company's revenues and profitability may be materially adversely affected by exchange rate fluctuations. The company does not have any similar arrangements that mitigate the company's exposure to foreign exchange translation risk and does not believe that any meaningful arrangement to do so is available to the company.

The company also is exposed to market risk through various financial instruments, including fixed rate and floating rate debt instruments. The company does at times use interest rate swap contracts to mitigate its exposure to interest rate fluctuations, but those efforts may not adequately protect the company from significant interest rate risks. Interest on some of the company's debt was based on the London Interbank Offered Rate (LIBOR) and

has transitioned to being based primarily on the Secured Overnight Financing Rate (SOFR). These interest rates have been historically low. Increases in SOFR could have a significant impact on the company's reported interest expense, to the extent that the company has outstanding borrowings subject to SOFR-based interest rates.

Additional tax expense or additional tax exposures could affect the company's future profitability and cash flow.

The company is subject to income taxes in the United States and various non-U.S. jurisdictions. The domestic and international tax liabilities are dependent upon the allocation of income among these different jurisdictions. The company's tax expense includes estimates of additional tax which may be incurred for tax exposures and reflects various other estimates and assumptions. In addition, the assumptions include assessments of future earnings of the company that could impact the valuation of its deferred tax assets. The company's future results of operations could be adversely affected by changes in the company's effective tax rate which could result from changes in the mix of earnings in countries with differing statutory tax rates, changes in the overall profitability of the company, changes in tax legislation and rates, changes in generally accepted accounting principles, changes in the valuation of deferred tax assets and liabilities, the results of audits and examinations of previously filed tax returns and continuing assessments of its tax exposures. Corporate tax reform and tax law changes continue to be analyzed in many jurisdictions, including the potential impacts of new United States tax laws, rules, regulations or policies, and any legislation or regulations which may result from those policies.

The Tax Cuts and Jobs Act ("Tax Act") was enacted on December 22, 2017. The Tax Act significantly revamped U.S. taxation of corporations, including a reduction of the federal income tax rate from 35% to 21%, a limitation on interest deductibility, and a new tax regime for foreign earnings. The limitation on interest deductibility, the new U.S. taxes on accumulated and future foreign earnings, other adverse changes resulting from the Tax Act, or a change in the mix of domestic and foreign earnings, might offset the benefit from the reduced tax rate, and the company's future effective tax rates and/or cash taxes may increase, even significantly, or not decrease much, compared to recent or historical trends. Many of the provisions of the Tax Act are highly complex and may be subject to further interpretive guidance from the IRS or others. Some of the provisions of the Tax Act may be changed by a future Congress or challenged by the World Trade Organization ("WTO") or be subject to trade or tax retaliation by other countries. Although the company

cannot predict the nature or outcome of such future interpretive guidance, or actions by a future Congress, WTO or other countries, they could adversely impact the company's financial condition, results of operations and cash flows.

The company's net operating losses, foreign tax credits and interest carryforwards may be limited for U.S. federal income tax purposes under Section 382 of the Internal Revenue Code.

If a corporation with net operating losses, foreign tax credit carryforwards and interest carryforwards ("Tax Attributes Carryforwards") undergoes an "ownership change" within the meaning of Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), then such corporation's use of such "pre-change" Tax Attributes Carryforwards to offset income incurred following such ownership change generally will be subject to an annual limitation specified in Section 382. Such limitation also may apply to certain losses or deductions that are "built-in" (i.e., attributable to periods prior to the ownership change, but not yet taken into account for tax purposes) as of the date of the ownership change that are subsequently recognized. An ownership change generally occurs when there is either (i) a shift in ownership involving one or more "5% shareholders," or (ii) an "equity structure shift" and, as a result, the percentage of stock of such corporation owned by one or more 5% shareholders (based on value) has increased by more than 50 percentage points over the lowest percentage stock of such corporation owned by shareholders during the "testing period" (generally the three years preceding the testing date). If the use of the company's Tax Attributes Carryforwards to offset income is subject to such an annual limitation, it is possible that cash flows, business operations or financial condition could be adversely affected. Based on information that is publicly available, the company believes that a Section 382 ownership change has not occurred as of December 31, 2021. We will update our analysis prior to using our tax attributes.

The company's reported results may be adversely affected by increases in reserves for uncollectible accounts receivable.

The company has a large balance of accounts receivable and has established a reserve for the portion of such accounts receivable that the company estimates will not be collected because of the company's customers' non-payment. The specific reserve is based on historical trends and a general reserve is recorded to capture macroeconomic trends.

The inability to attract and retain, or loss of the services of, the company's key management and personnel could adversely affect its ability to operate the company's business.

The company's future success will depend, in part, upon the continued service of key managerial, engineering, marketing, sales and technical and operational personnel. In addition, the company's future success will depend on its ability to continue to attract and retain highly qualified personnel, including personnel experienced in sales, supply chain, marketing and manufacturing of medical equipment and in quality systems and regulatory affairs. If the company is not successful in retaining its current personnel or in hiring or retaining qualified personnel in the future, the company's business may be adversely affected. The company's future success depends, to a significant extent, on the abilities and efforts of its executive officers and other members of its management team, such as the company's Chairman, President and Chief Executive Officer and its Senior Vice President and Chief Financial Officer, as well as other members of its management team. The company had significant turnover in personnel in recent years and has had years in which annual bonuses and incentive compensation have not been earned and paid, and as a result, the company cannot be certain it can adequately recruit, hire and retain personnel or that its executive officers and other key employees will continue in their respective capacities for any period of time, and these employees may be difficult to replace. If the company loses the services of any of its management team or other key personnel, the company's business may be adversely affected.

Volatility in the market price of the company's common shares could adversely affect its shareholders, its ability to finance operations or attract and retain leadership.

The market price of the company's common shares may be influenced by lower trading volume and concentrated ownership relative to many other publicly-held companies. Because several of the company's shareholders own significant amounts of the company's outstanding common shares, the common shares are relatively less liquid and therefore more susceptible to price fluctuations than many other companies' shares. If any one or more of these shareholders were to sell all or a portion of their holdings of company common shares at once or within short periods of time, or there was an expectation that such a sale was imminent, then the market price of the company's common shares could be negatively affected.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties

Item 2. Properties.

The company owns or leases its manufacturing facilities, warehouses and offices and believes that these facilities are well maintained, adequately insured and suitable for their present and intended uses. Information concerning certain leased facilities of the company as of December 31, 2021 is set forth in Leases and Commitments in the Notes to the Consolidated Financial Statements of the company included in this report. The company's corporate headquarters is in Elyria, Ohio and a summary of the company's materially important properties by segment is as follows:

	Owned		Leased	
	Number	Square Feet	Number	Square Feet
Manufacturing Facilities				
Europe	2	305,146	5	520,452
North America	1	152,256	10	481,656
	<u>3</u>	<u>457,402</u>	<u>15</u>	<u>1,002,108</u>
Warehouse and Office Facilities				
Europe	2	33,444	29	371,527
North America	—	—	8	256,897
All Other (Asia Pacific)	—	—	4	32,724
	<u>2</u>	<u>33,444</u>	<u>41</u>	<u>661,148</u>

Item 3. Legal Proceedings.

In the ordinary course of its business, the company is a defendant in a number of lawsuits, primarily product liability actions in which various plaintiffs seek damages for injuries allegedly caused by defective products. All the product liability lawsuits that the company faces in the United States have been referred to the company's captive insurance company and/or excess insurance carriers while all non-U.S. lawsuits have been referred to the company's commercial insurance carriers. All such lawsuits are generally contested vigorously. The coverage territory of the company's insurance is worldwide with the exception of those countries with respect to which, at the time the product is sold for use or at the time a claim is made, the U.S. government has suspended or prohibited diplomatic or trade relations. Management does not believe that the outcome of any of these actions will have a material adverse effect upon the company's business or financial condition.

In December 2012, the company became subject to a consent decree of injunction filed by the FDA in the U.S. District Court for the Northern District of Ohio with respect to the company's Corporate facility and its Taylor Street manufacturing facility in Elyria, Ohio. On July 24, 2017, following its reinspection of the Corporate and Taylor Street facilities, FDA notified the company that it was in substantial compliance with the FDA Act, FDA regulations and the terms of the consent decree and that the company was permitted to resume full operations at those facilities, including the resumption of unrestricted sales of products made in those facilities.

The consent decree will continue in effect for at least five years from July 24, 2017, during which time the company's Corporate and Taylor Street facilities must complete to two semi-annual audits in the first year and then four annual audits in the next four years performed by a company-retained expert firm. The expert audit firm will determine whether the facilities remain in continuous compliance with the FDA Act, regulations and the terms of the consent decree.

The FDA has the authority to inspect the Corporate and Taylor Street facilities, and any other FDA registered facility, at any time. The FDA also has the authority to order the company to take a wide variety of actions if the FDA finds that the company is not in compliance with the consent decree, FDA Act or FDA regulations, including requiring the company to cease all operations relating to Taylor Street products. The FDA also can order the company to undertake a partial cessation of operations or a recall, issue a safety alert, public health advisory, or press release, or to take any other corrective action the FDA deems necessary with respect to Taylor Street products.

The FDA also has authority under the consent decree to assess liquidated damages of \$15,000 per violation per day for any violations of the consent decree, FDA Act or FDA regulations. The FDA also may assess liquidated damages for shipments of adulterated or misbranded devices in the amount of twice the sale price of any such adulterated or misbranded device. The liquidated damages, if assessed, are limited to a total of \$7,000,000 for each calendar year. The authority to assess liquidated damages is in addition to any other remedies otherwise available to the FDA, including civil money penalties.

In November 2021, the company received a Warning Letter from the FDA concerning certain of the June 2021 FDA Form 483 inspectional observations related to the complaint handling, CAPA and MDR processes, associated with oxygen concentrators. The company also received a consent decree non-compliance letter from the FDA concerning the same complaint and CAPA handling matters as in the Warning Letter but associated with the Taylor Street products. The company timely responded to the FDA Letters, has diligently taken actions to address FDA's concerns, and has provided FDA with periodic updates on the corrective actions taken to address the matters in the FDA Letters. The company remains committed to resolving the FDA's concerns; however, it is not possible to predict the outcome or timing of a resolution at this time. There can be no assurance that the FDA will be satisfied with the company's responses to the FDA Letters, nor any assurance as to the timeframe that may be required for the company to adequately address the FDA's concerns or whether the matters in the FDA Letters will result in an extension in the duration of the consent decree. See "Item 1A. Risk Factors Regulatory and Development Risks –The company remains subject to a consent decree of injunction with the U.S. Food and Drug Administration, and failure by the company to comply with the consent decree could adversely affect the company" and "Item 1. Business – Government Regulation – 2012 Consent Decree, Taylor Street and Corporate Facilities."

Additional information regarding the consent decree and the FDA Letters is included in Item 1. Business - Government Regulation; Item 1A. Risk Factors.

Item 4. Mine Safety Disclosures.

None.

Executive Officers of the Registrant*

The following table sets forth the names of the executive officers of the company, each of whom serves at the pleasure of the Board of Directors, as well as certain other information.

Name	Age	Position
Matthew E. Monaghan	54	Chairman, President and Chief Executive Officer
Kathleen P. Leneghan	58	Senior Vice President and Chief Financial Officer
Anthony C. LaPlaca	63	Senior Vice President, General Counsel, Chief Administrative Officer and Secretary
Geoffrey P. Purtill	52	Senior Vice President and General Manager, Europe, Middle East & Africa and Asia Pacific
Joost Beltman	53	Senior Vice President and General Manager, North America
Angela Goodwin	57	Senior Vice President and Chief Information Technology Officer
Rick A. Cassiday	56	Senior Vice President and Chief Human Resources Officer

* The description of executive officers is included pursuant to Instruction 3 to Section (b) of Item 401 of Regulation S-K.

Matthew E. Monaghan serves as the company's President and Chief Executive Officer since April 2015 and was appointed Chairman of the Board in May 2015. Prior to joining Invacare, Mr. Monaghan served as a business unit leader at Zimmer Holdings (now Zimmer Biomet NYSE: ZBH), a major orthopedic implant company, serving first as Vice President and General Manager of the company's Global Hips business (December 2009 to January 2014) and later as Senior Vice President of Hips and Reconstructive Research (January 2014 until joining Invacare). While at Zimmer, Mr. Monaghan was responsible for the Hip Division's new product development, engineering, marketing, clinical studies, quality, regulatory affairs and results of the shared sales and supply chain functions. Later, those responsibilities also included directing global research for various areas of material, process and product innovation. Prior to joining Zimmer in 2009, Mr. Monaghan spent eight years as an operating executive for two leading private equity firms, Texas Pacific Group (TPG) and Cerberus Capital Management, where he led acquisitions and operational improvements of portfolio companies, including medical device, personal insurance, branded apparel and consumer products companies. For the first 13 years of his career, Mr. Monaghan held various engineering, financial and management positions at General Electric (NYSE:GE). Since November 2016, Mr. Monaghan has served as a director of Syneos Health (NASDAQ:SYNH), formerly known as INC Research, a contract research and contract commercial organization serving the needs of biopharmaceutical clients.

Kathleen P. Leneghan serves as the Senior Vice President and Chief Financial Officer of the company since February 2018, after having served as interim Chief Financial Officer since November 2017. She served as Vice President and Corporate Controller of the company since 2003. Ms. Leneghan has been employed by the company since 1990, serving in various financial roles of increasing responsibility in North America and Europe.

Prior to joining the company, Ms. Leneghan was an audit manager with Ernst & Young LLP.

Anthony C. LaPlaca serves as Senior Vice President, General Counsel, Chief Administrative Officer and Secretary of the company and oversees legal affairs, corporate governance, compliance and regulatory affairs. Prior to joining the company in October 2008, Mr. LaPlaca served as Vice President and General Counsel of Bendix Commercial Vehicle Systems LLC, Elyria, Ohio, a member of the Knorr-Bremse group, a supplier of commercial vehicle safety systems, since 2002. Prior to that, he served as Vice President and General Counsel of Honeywell Transportation & Power Systems and General Counsel to Honeywell Commercial Vehicle Systems LLC. Before joining Honeywell's predecessor, AlliedSignal Inc. in 1997, Mr. LaPlaca practiced law at a Cleveland-based national law firm for 13 years, the last 3 years of which as a partner in the firm.

Geoffrey P. Purtill serves as the company's Senior Vice President and General Manager, EMEA and APAC since December 2021 and leads the company's global strategy efforts. Previously, he served for 11 years as Vice President and General Manager of the company's Asia Pacific region. Prior to joining the company, Mr. Purtill held various sales, category management and supply chain leadership roles at Johnson & Johnson and Nestle. Mr. Purtill spent 14 years in the Australian Army where he was a Captain in the Intelligence Corps.

Joost Beltman serves as the company's Senior Vice President and General Manager, North America, since August 2020. Previously he served as Vice President of Sales and Marketing North America since 2018. Prior to that, Mr. Beltman was the Managing Director for the BENELUX region and Italy of the company. Prior to joining the company in 2008, Mr. Beltman held several management positions of increasing responsibility with providers in the telecommunications industry.

Angela Goodwin serves as Senior Vice President and Chief Information Technology Officer of the company since March 2019. Prior to joining Invacare, Ms. Goodwin served as CIO for Fresenius Kabi, a global healthcare company specializing in pharmaceutical and technological innovations for critically and chronically ill patients from 2012 to 2018. Prior to that, she was CIO of Fenwal, Inc., a global blood technology company supporting transfusion and cell therapies from 2009 to 2012. Ms. Goodwin has over 30 years of global IT leadership experience.

Rick A. Cassidy serves as the company's Senior Vice President and Chief Human Resources Officer since June 2021. He is responsible for leading the human capital strategy globally at the company. Prior to joining the company, Mr. Cassidy served for more than five years as Corporate Vice President and Chief Human Resources Officer for Guardian Industries, a global leader in architectural glass manufacturing. Prior to that he was employed for 26 years at The Dow Chemical Company serving in various roles of increasing responsibility in global Human Resources.

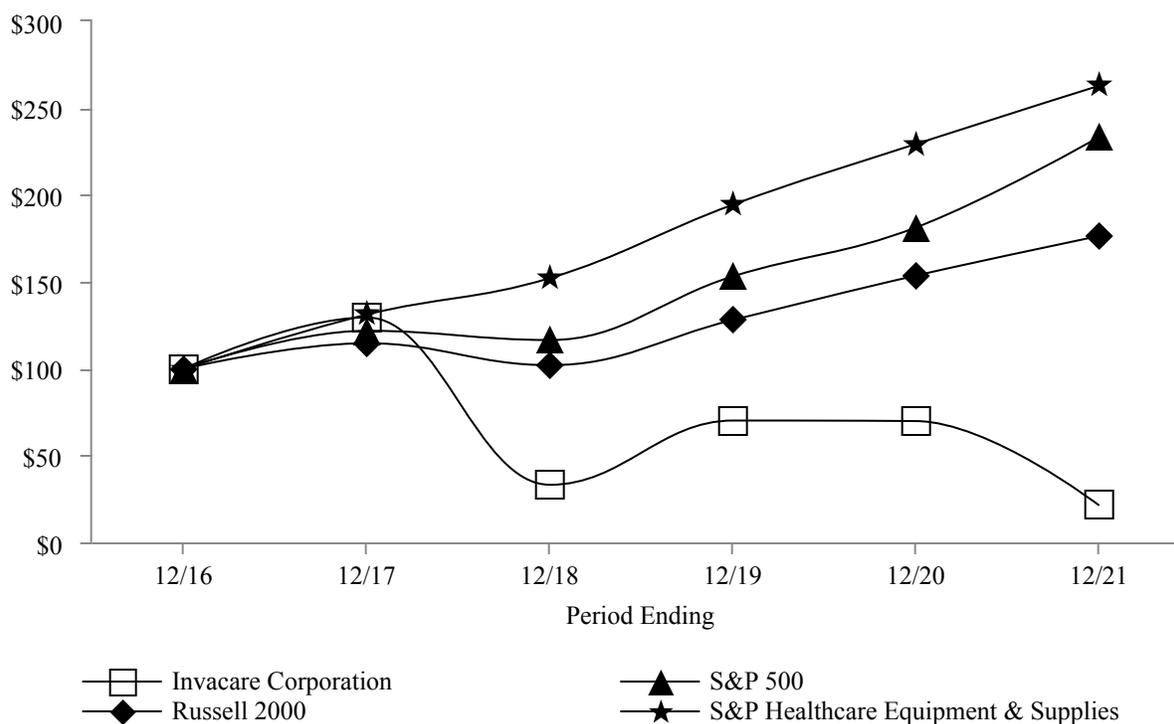
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Invacare's Common Shares, without par value, trade on the New York Stock Exchange (NYSE) under the symbol "IVC." Ownership of the company's Class B Common Shares (which are not listed on the NYSE or any other established trading market) cannot be transferred, except, in general, to family members without first being converted into Common Shares. Class B Common Shares may be converted into Common Shares at any time on a share-for-share basis. The number of record holders of the company Common Shares and Class B Common Shares at March 7, 2022 was 1,780 and 15, respectively.

SHAREHOLDER RETURN PERFORMANCE GRAPH

The following graph compares the yearly cumulative total return on Invacare's Common Shares against the yearly cumulative total return of the companies listed on the Standard & Poor's 500 Stock Index, the Russell 2000 Stock Index and the S&P Healthcare Equipment & Supplies Index. The S&P Healthcare Equipment & Supplies Index is a capitalization-weighted average index comprised of health care companies in the S&P 500 Index.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN
Among Invacare Corporation, the S&P 500 Index, the Russell 2000 Index, and S&P Healthcare
Equipment & Supplies Index**



	12/16	12/17	12/18	12/19	12/20	12/21
Invacare Corporation	\$ 100.00	\$ 129.49	\$ 33.14	\$ 70.13	\$ 69.82	\$ 21.22
S&P 500	100.00	121.83	116.49	153.17	181.35	233.41
Russell 2000	100.00	114.65	102.02	128.06	153.62	176.39
S&P Healthcare Equipment & Supplies	100.00	131.16	152.15	194.46	229.39	262.93

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The graph assumes \$100 invested on December 31, 2016 in the Common Shares of Invacare Corporation, S&P 500 Index, Russell 2000 Index and the S&P Healthcare Equipment & Supplies Index, including reinvestment of dividends, through December 31, 2021.

The following table presents information with respect to repurchases of common shares made by the company during the three months ended December 31, 2021.

Period	Total Number of Shares Purchased (1)	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs (2)
10/1/2021 - 10/31/21	—	\$ —	—	2,453,978
11/1/2021 - 11/30/21	452	4.24	—	2,453,978
12/1/2021 - 12/31/21	—	—	—	2,453,978
Total	452	\$4.24	—	2,453,978

- (1) All 452 shares repurchased between October 1, 2021 and December 31, 2021 were surrendered to the company by employees for minimum tax withholding purposes in conjunction with the vesting of restricted shares awarded to the employees or exercise of non-qualified options under the company's equity compensation plans.
- (2) In 2001, the Board of Directors authorized the company to purchase up to 2,000,000 Common Shares, excluding any shares acquired from employees or directors as a result of the exercise of options or vesting of restricted shares pursuant to the company's performance plans. The Board of Directors reaffirmed its authorization of this repurchase program on November 5, 2010, and on August 17, 2011 authorized an additional 2,046,500 shares for repurchase under the plan. To date, the company has purchased 1,592,522 shares under this program, with authorization remaining to purchase 2,453,978 shares. The company purchased no shares pursuant to this Board authorized program during 2021.

Under the terms of the company's Credit Agreement, repurchases of shares by the company generally are not permitted except in certain limited circumstances in connection with the vesting or exercise of employee equity compensation awards. Refer to Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources, regarding covenants of the company's senior credit facilities with respect to share purchases.

The equity compensation plan information required under Item 201(d) of Regulation S-K is incorporated by reference to the information under the caption "Equity Compensation Plan Information" in the company's definitive Proxy Statement on Schedule 14A for the 2022 Annual Meeting of Shareholders.

Item 6. [Reserved]

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

OVERVIEW

Management's discussion and analysis should be read in conjunction with the consolidated financial statements and accompanying notes that appear elsewhere in this Annual Report on Form 10-K.

Invacare is a multi-national company with integrated capabilities to design, manufacture and distribute durable medical devices. The company makes products that help people move, breathe, rest and perform essential hygiene, and with those products the company supports people with congenital, acquired and degenerative conditions. The company's products and solutions are important parts of care for people with a range of challenges, from those who are active and involved in work or school each day and may need additional mobility or respiratory support, to those who are cared for in residential care settings, at home and in rehabilitation centers. The company operates in facilities in North America, Europe and Asia Pacific, which are the result of dozens of acquisitions made over the company's forty-two-year history. Some of these acquisitions have been combined into integrated operating units, while others have remained relatively independent.

COVID-19 Impact

The company continues to actively monitor the impact of the pandemic, which negatively impacted the company's business in 2021 with regard to supply chain disruptions as it impacted both input costs and availability of components, resulting in reduced net sales on a global basis year-over-year and compressed gross margins. While the company took actions to mitigate the negative impact of higher input costs, the benefit of those actions continue to lag the impact from the supply chain disruptions, influenced by timing of pricing actions becoming effective. The company realized growth in its mobility and seating product category in 2021 as compared to 2020 as a result of improved access to healthcare and loosening of public health restrictions during the year. However, demand has not returned to pre-pandemic levels.

The company continues to experience high demand globally for its respiratory products which are being deployed in the fight against the COVID-19 pandemic. The company continues to work to increase its capacity to produce these critical products and resolve global supply chain challenges that are compounded by the effects of the pandemic. However, the company has and continues to experience availability issues with electronic components which may limit the ability to increase output and meet this demand. In addition, the company has

continued to experience cost increases from pandemic-related supply chain disruptions.

The company experienced Omicron-related impacts during the first quarter of 2022 across its employee, production and supplier base, with the extent of the disruptions varying by country. The company experienced absenteeism early in the quarter as a result of Omicron which caused temporary inefficiencies in operations, and which have since subsided.

The extent to which the company's operations will be impacted by the pandemic will depend largely on future developments, which remain highly uncertain and difficult to accurately predict, including, among other things, new information which may emerge concerning the severity of the pandemic and actions by government authorities to contain COVID-19 or treat its impact, such as reimposed public health restrictions or restrictions on access to healthcare facilities. In addition, supply chain disruptions continue to negatively impact the global economy and may affect the business including availability and cost of components and freight, which may have a negative impact on the company and results of operations, if mitigation actions are not effective.

Strategy

The company historically had a strategy to be a leading provider of durable medical equipment to health care providers in global markets by providing the broadest portfolio available. This strategy has not kept pace with certain reimbursement changes, competitive dynamics and company-specific challenges. Since 2015, the company has made a major shift in its strategy. The company has since been aligning its resources to produce products and solutions that assist customers and end-users with their most clinically complex needs. By focusing the company's efforts to provide the best possible assistance and outcomes to the people and caregivers who use its products, the company aims to improve its financial condition for sustainable profit and growth. As a result, the company is undertaking a substantial multi-year business optimization plan.

Business Optimization Efforts

The company continues to execute a multi-year strategy to return the company to profitability by focusing its resources on products and solutions that provide greater healthcare value in clinically complex rehabilitation and post-acute care.

Cost pressures on the business impacted by supply chain disruptions and inflationary economic conditions are anticipated to continue in 2022. While the company has implemented actions to mitigate these cost increases, additional actions may be needed to drive profitability and

cash. These actions may include further restructuring actions including organization optimization, supply chain rationalization, and product line rationalization for those product categories which do not deliver adequate profitability given the higher cost inputs being incurred. These actions are anticipated to result in restructuring costs, to the extent implemented, during 2022.

The company's business optimization actions balance product portfolio changes across all regions and cost improvements in supply chain and administrative functions. Key elements of the global business optimization plans are:

- Continue to drive all business segments and product lines based on their potential to achieve a leading market position and to support profitability goals;
- Simplify the organization to leverage a reduced cost structure while allocating resources to the business units or product categories which deliver improved financial returns;
- Product rationalization and discontinuation with consideration of cost increases incurred by the company and those anticipated to continue. Adjust the product portfolio to consistently grow profitability amid cost increases by adding new products, reducing costs and continuing to improve customer experiences; and,
- Take actions globally to reduce working capital and improve free cash flow.

As it navigates the uncertain business environment resulting from the pandemic, the company continues to allocate more resources to the business units experiencing increased demand and expects to continue taking actions to mitigate the potential negative financial and operational impacts on other parts of the business that have declined. In the medium-term, the company still expects to execute on its business optimization strategy, such as the global IT modernization initiative which is intended to optimize the operating structure.

In 2021, the company made significant progress to improve future financial performance and strengthened its overall business profile by taking actions such as:

- Introduced a new modern ERP, including e-commerce capabilities, in North America for non-configured products which is anticipated to improve the customer experience and deliver long-term cost savings;
- Launched innovative new products designed to drive incremental sales growth and expand margins;

- Implemented mitigation actions to offset higher material, freight and labor costs; and,
- Increased balance sheet flexibility with the issuance of new convertible notes which allowed the company to retire nearly all of its 2022 convertible notes and extend the overall debt maturity profile to 2026.

The company made substantial progress in 2021 with more work to be done in 2022. The company intends to continue to make significant investments in its business improvement initiatives with a focus on improving profitability and free cash flow generation. As a result, the company may take actions which may reduce sales in certain areas, refocus resources away from less profitable activities, and look at its global infrastructure for opportunities to further optimize the business. As part of the company's efforts to streamline its operations and focus its resources on core product lines that provide the greatest value and financial returns, the company continuously evaluates opportunities and activities, including potential divestitures, which it considers from time to time, particularly if they involve businesses or assets outside of the company's primary areas of focus.

Outlook

The company participates in durable healthcare markets and serves a persistent need for its products. By continuing to drive for improved operating efficiency, the company expects to grow revenue and profit, and improve its cash flow performance into the future.

Cost pressures on the business due to supply chain disruptions and inflationary economic conditions are anticipated to continue into 2022. The company continues to see higher input costs related to freight and materials, increasing the challenges to schedule deliveries of key components, including electronic components for respiratory and mobility and seating products. While the company has implemented actions to mitigate these cost increases, additional restructuring actions may be implemented to drive profit and improve cash flows. These restructuring actions may include organization simplification and supply chain rationalization. These actions are expected to include organization and supply chain changes and a narrowing of the product portfolio for those items which no longer meet customer or business needs. These actions are anticipated to take effect in 2022, with key initiatives being finalized during the second quarter. In addition, as part of its restructuring plans, the company anticipates incurring additional costs related to its restructuring actions.

Revenues for 2022 are not anticipated to increase, largely as a result of product rationalization and discontinuations which may not be completely mitigated by the pricing actions implemented by the business. In addition, sales volumes may be adversely impacted by customers reactions to the company's mitigation actions.

The company anticipates profit and free cash flow to improve for the full year compared to the prior year and sequentially for the last three quarters of the year as these expected profit improvement actions take effect.

The company recognizes that these near-term external factors, as well as cost associated with restructuring actions, may require balance sheet action, including additional financing to support working capital requirements. The company will continue to take actions to optimize its business as required to operate in the present landscape.

Consistent with historical patterns, the company anticipates 1Q22 revenues to be sequentially lower. The company experienced Omicron-related impacts during 1Q22 across its employee, production and supplier bases, causing temporary inefficiencies in operations, which have since subsided. In addition, the company anticipates 1Q22 will continue to be challenged by inflation, supply chain disruptions and component availability. As a result, gross margins are expected to be temporarily impacted. While the company has taken steps to mitigate higher input costs from freight and materials, the benefit of these actions is expected to lag the impact of cost changes. SG&A expense is expected to be higher in the first half of the year compared to the second half based on the timing of restructuring actions. The company also anticipates unfavorable foreign exchange headwinds due to changes in foreign currency rates compared to 2021.

Taken together, the company anticipates negative profitability for 1Q22, a decline compared to the prior year, ahead of sequential improvements for the balance of the year. As pricing and restructuring actions become effective, the company anticipates profit and cash flow to improve sequentially for the last three quarters of the year.

The company has historically had negative free cash flow during the first half of the year due to a confluence of company and industry seasonal patterns. This pattern is expected to continue due to the timing of annual payments such as customer rebates, higher working capital usage from seasonal inventory increases, and decreases in accounts payable. The absence of these payments in other parts of the year along with seasonally stronger sales in the second half of the year, and the benefits of the anticipated restructuring and cost mitigation actions are expected to drive more favorable free cash flow performance in the second half of the year. The company will continue to

manage working capital and the balance sheet to support normal operating needs and to fund restructuring actions. The company anticipates spending approximately \$20 million on capital expenditures in 2022.

Favorable Long-term Demand

Ultimately, demand for the company's products and services is based on the need to provide care for people with certain conditions. The company's medical devices provide solutions for end-users and caregivers. Therefore, the demand for the company's medical equipment is largely driven by population growth and the incidence of certain conditions where treatment may be supplemented by the company's devices. The company also provides solutions to help equipment providers and residential care operators deliver cost-effective and high-quality care. The company believes that its commercial team, customer relationships, products and solutions, supply chain infrastructure, and strong research and development pipeline will create favorable business potential.

RESULTS OF OPERATIONS

NET SALES

2021 Versus 2020

(\$ in thousands USD)	2021	2020	% Change Fav/(Unfav)	Foreign Exchange % Impact	Divestiture % Impact	Constant Currency % Change Fav/(Unfav)
Europe	499,118	468,041	6.6	5.8	—	0.8
North America	340,980	348,307	(2.1)	0.5	—	(2.6)
All Other (Asia Pacific)	32,359	34,341	(5.8)	7.4	(8.2)	(5.0)
Consolidated	<u>872,457</u>	<u>850,689</u>	<u>2.6</u>	<u>3.7</u>	<u>(0.3)</u>	<u>(0.8)</u>

The table above provides net sales change as reported and as adjusted to exclude the impact of foreign exchange translation and divestitures (constant currency net sales). "Constant currency net sales" is a non-Generally Accepted Accounting Principles ("GAAP") financial measure, which is defined as net sales excluding the impact of foreign currency translation and divestitures. The current year's functional currency net sales are translated using the prior year's foreign exchange rates. These amounts are then compared to the prior year's sales to calculate the constant currency net sales change. For the divestiture impact, the company adjusted the net sales of the Dynamic Controls business which was divested as of March 7, 2020. Management believes that this financial measure provides meaningful information for evaluating the core operating performance of the company.

Consolidated reported net sales for 2021 increased 2.6% for the year, to \$872,457,000 from \$850,689,000 in 2020. Foreign currency translation increased net sales by 3.7 percentage points with the divestiture decreasing net sales by 0.3 percentage points. Constant currency net sales decreased 0.8% compared to 2020 driven by declines in lifestyle products offset by growth in respiratory and mobility and seating products. Both mobility and seating and lifestyle product categories continue to be impacted by restrictions which limited customer and end-user access to certain product selections. All products were also impacted by component shortages influenced by the supply chain challenges.

Europe - European reported net sales increased 6.6% in 2021 compared to 2020 to \$499,118,000 from \$468,041,000 as foreign currency translation increased net sales by 5.8 percentage points. Constant currency net sales increased 0.8% compared to 2020 driven by lifestyle products and mobility and seating products partially offset by respiratory products. Lifestyle product growth was helped by the company's decision to invest in inventory given the longer-supply chain related to these products.

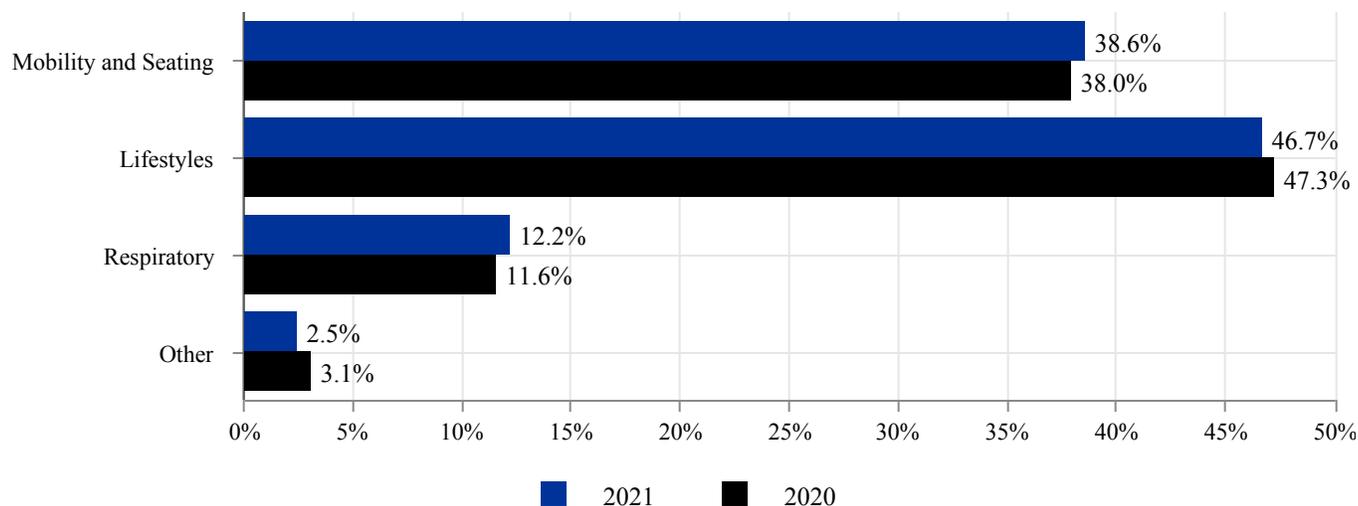
Mobility and seating products benefiting from improved access to healthcare and easing of public health restrictions across Europe starting in the second half of 2021. Respiratory products were limited by component shortages from global supply challenges. The countries which the company has a significant portion of the operations are France, Germany, UK and the Nordic countries. Changes in exchange rates have had, and may continue to have, a significant impact on sales in this segment.

North America - North America reported net sales decreased 2.1% in 2021 versus the prior year to \$340,980,000 from \$348,307,000. Foreign currency translation decreased net sales by 0.5 percentage points. Constant currency net sales decreased, driven by a 10.7% reduction in lifestyle products, which more than offset respiratory improvement of 11.7%. Mobility and seating products were flat. Lifestyle product sales continued to be impacted by supply chain challenges as well as the enterprise resource planning (ERP) implementation launched in 4Q21. We successfully launched our new ERP for all of our lifestyle products, however, this temporarily impacted the timing of order fulfillment as we manually reviewed all transactions and shipments processed in the new system for accuracy. While demand for mobility and seating products continued to be impacted by pandemic-related restrictions limiting access to healthcare professionals and institutions, reported net sales were flat compared to 2020 with sequential and year over year growth in the second half of 2021.

All Other - Reported net sales, which relate entirely to the Asia Pacific region, decreased 5.8% in 2021 from the prior year to \$32,359,000 from \$34,341,000. Foreign currency translation increased net sales by 7.4 percentage points and the impact of the Dynamic Controls divestiture in 2020 decreased net sales by 8.2 percentage points. Constant currency net sales decreased 5.0% compared to 2020 primarily due to lack of timely arrival of inventory in

major markets. Changes in exchange rates have had, and may continue to have, a significant impact on sales in the Asia Pacific region.

Constant Currency Product Mix Shift



The sales mix shift in 2021 from 2020 reflects some return to access to healthcare professionals but the pandemic continued to limit the access to healthcare professionals and institutions needed for certain product selections, specifically mobility and seating and non-bed lifestyle products as well as higher demand for pandemic related respiratory and bed and mattress products. In

addition, all product categories were impacted by component shortages from global supply chain challenges.

2020 Versus 2019

(\$ in thousands USD)	2020	2019	Reported % Change	Foreign Exchange % Impact	Divestiture % Impact	Constant Currency % Change
Europe	468,041	533,048	(12.2)	0.6	—	(12.8)
North America	348,307	348,201	—	(0.1)	—	0.1
All Other (Asia Pacific)	34,341	46,715	(26.5)	(2.6)	(29.2)	5.3
Consolidated	850,689	927,964	(8.3)	0.4	(1.5)	(7.2)

Consolidated net sales for 2020 decreased 8.3% for the year, to \$850,689,000 from \$927,964,000 in 2019. Foreign currency translation increased net sales by 0.4 percentage points with the divestiture decreasing net sales by 1.5 percentage points. Constant currency net sales decreased 7.2% compared to 2019 as mobility and seating declined by \$60,432,000, or 15.6% and lifestyle products declined by \$28,520,000 or 6.6%. Both of these product categories were negatively impacted by the pandemic as a result of restrictions which limited access to certain product selections. These were partially offset by increases for respiratory products of \$26,168,000 or 36.1%.

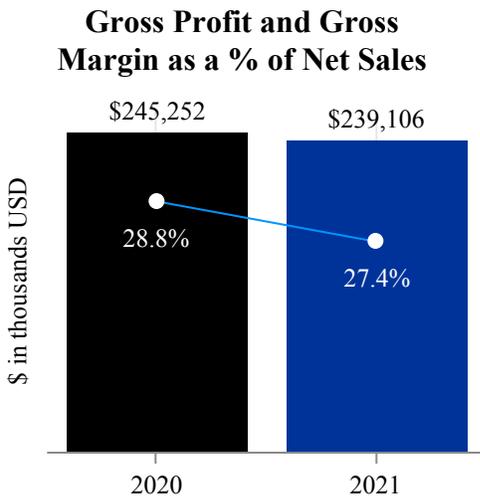
Europe - European net sales decreased 12.2% in 2020 compared to 2019 to \$468,041,000 from \$533,048,000 as foreign currency translation increased net sales by 0.6 percentage points. Constant currency net sales decreased 12.8% compared to 2019 driven by a 18.3% decrease in sales of mobility and seating products and 8.8% decrease in sales of lifestyle products. Net sales were significantly impacted by the pandemic and by public health restrictions in certain countries limiting access to healthcare professionals and institutions needed for certain product selections.

North America - North America net sales were flat in 2020 versus the prior year to \$348,307,000 from \$348,201,000. Foreign currency translation decreased net sales by 0.1 percentage points. Constant currency net sales increased, driven by higher sales of respiratory products of \$20,688,000 or 40.1%, which offset declines in mobility and seating and lifestyle products. Demand for mobility and seating and non-bed lifestyle products were impacted by the pandemic, with public restrictions limiting access to healthcare professionals and institutions to provide certain products.

All Other - Net sales, which relate entirely to the Asia Pacific region, decreased 26.5% in 2020 from the prior year to \$34,341,000 from \$46,715,000. Foreign currency translation decreased net sales by 2.6 percentage points and the Dynamic Controls divestiture in 2020 decreased net sales by 29.2 percentage points. Constant currency net sales increased 5.3% compared to 2019 primarily from net sales increases in lifestyle products of 21.7%, primarily bed and bed related products.

GROSS PROFIT

2021 Versus 2020



Consolidated gross profit as a percentage of net sales decreased by 140 basis points to 27.4% in 2021 as compared to 28.8% in 2020. Gross profit as a percentage of net sales declined significantly for North America while Europe and All Other margins declined slightly. Gross profit was significantly impacted by higher input costs of material, freight and labor from supply chain challenges impacting all regions. This was partially offset by favorable product mix.

Europe - Gross profit as a percentage of net sales decreased 10 basis points in 2021 compared to the prior year and gross profit dollars increased by \$9,315,000. The increase in gross profit dollars was principally due to higher sales but margins were burdened significantly by increased freight and material costs stemming from global supply chain challenges. In addition, given the supply disruptions, operations costs were also unfavorable.

North America - Gross profit as a percentage of net sales decreased by 170 basis points in 2021 compared to the prior year while gross margin dollars decreased by \$14,152,000. The decrease in gross profit dollars was primarily due to higher material and freight costs impacted by supply chain challenges, and reduced sales.

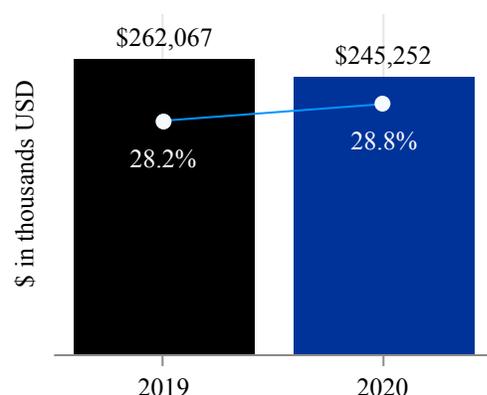
All Other - Gross profit as a percentage of net sales, decreased 30 basis points in 2021 compared to the prior year and gross profit dollars decreased \$1,309,000. All other primarily relates to the company's Asia Pacific businesses. The decrease in gross profit dollars was primarily driven by reduced sales in the distribution business given untimely arrival of inventory in the region, and from the divestiture of the Dynamic Controls business as of March 7, 2020.

Research and Development

The company continued to invest strategically in research and development activities in 2021. The company dedicated funds to applied research activities to ensure that new and enhanced design concepts are available to its businesses. Research and development expenditures, which are included in costs of products sold, decreased to \$8,656,000 in 2021 from \$12,275,000 in 2020. The expenditures, as a percentage of net sales, were 1.0% and 1.4% in 2021 and 2020, respectively. The decline in expense in 2021 was primarily due to cost savings initiatives and to a lesser extent, the divestiture of Dynamic Controls.

2020 Versus 2019

Gross Profit and Gross Margin as a % of Net Sales



Consolidated gross profit as a percentage of net sales increased by 60 basis points to 28.8% in 2020 as compared to 28.2% in 2019. Gross profit as a percentage of net sales improved significantly for North America and All Other, while Europe margins declined significantly impacted by the pandemic. Gross profit dollars decreased due to lower net sales in 2020, primarily in Europe.

Europe - Gross profit as a percentage of net sales decreased 110 basis points in 2020 compared to the prior year and gross margin dollars decreased by \$22,951,000. The decrease in margin dollars was principally due to lower sales as result of the pandemic and unfavorable manufacturing variances on lower volume.

North America - Gross profit as a percentage of net sales increased by 260 basis points in 2020 compared to the prior year while gross margin dollars increased by \$11,133,000. The increase in gross profit dollars was primarily due to favorable material costs, improved product mix and lower freight costs offset by unfavorable operational variances.

All Other - Gross profit as a percentage of net sales, increased 610 basis points in 2020 compared to the prior year and gross profit dollars decreased \$4,997,000. All other primarily relates to the company's Asia Pacific businesses. The decrease in gross profit dollars was primarily driven by reduced sales from the divestiture of the Dynamic Controls business as of March 7, 2020.

Research and Development

The company continued to invest strategically in research and development activities in 2020. The company dedicated funds to applied research activities to ensure that new and enhanced design concepts are available to its businesses. Research and development expenditures, which are included in costs of products sold, decreased to \$12,275,000 in 2020 from \$15,836,000 in 2019. The decline in expense in 2020 was primarily related to the divestiture of Dynamic Controls. The expenditures, as a percentage of net sales, were 1.4% and 1.7% in 2020 and 2019, respectively.

SELLING, GENERAL AND ADMINISTRATIVE EXPENSES

2021 Versus 2020

(\$ in thousands USD)	2021	2020	Reported Change	Foreign Exchange Impact	Divestiture Impact	Constant Currency Change
SG&A Expenses - \$	232,242	236,357	(4,115)	7,583	(826)	(10,872)
SG&A Expenses - % change			(1.7)	3.2	(0.3)	(4.6)
% to net sales	26.6	27.8				

The table above provides selling, general and administrative (SG&A) expense change as reported and as adjusted to exclude the impact of foreign exchange translation (constant currency SG&A). "Constant currency SG&A" is a non-GAAP financial measure, which is defined as SG&A expenses excluding the impact of foreign currency translation and divestitures. The current year's functional currency SG&A expenses are translated using the prior year's foreign exchange rates. These amounts are then compared to the prior year's SG&A expenses to calculate the constant currency SG&A expense change. Management believes that this financial measure provides meaningful information for evaluating the core operating performance of the company.

The divestiture impact is related to the SG&A expenses related to the Dynamic Controls business divested on March 7, 2020.

Consolidated SG&A expenses as a percentage of net sales were 26.6% in 2021 and 27.8% in 2020. The overall dollar decrease was \$4,115,000, or 1.7%, with foreign currency translation increasing expense by \$7,583,000. Excluding the impact of foreign currency translation and the divestiture of Dynamic Controls, SG&A expenses decreased \$10,872,000, or 4.6%, primarily driven by reduced employee-related costs.

Europe - European SG&A expenses decreased by 1.6%, or \$1,772,000, in 2021 compared to 2020. Foreign currency translation increased expense by approximately \$6,127,000 or 5.6%. Excluding the foreign currency translation impact, SG&A expenses decreased by \$7,899,000, or 7.2%, primarily driven by reduced employee-related costs.

North America - SG&A expenses for North America decreased 3.0%, or \$2,775,000, in 2021 compared to 2020 with foreign currency translation increasing expense by \$691,000 or 0.6%. Excluding the foreign currency translation, SG&A expense decreased \$3,466,000, or 3.8%, driven primarily driven by reduced employee-related costs.

All Other - SG&A expenses increased \$432,000 in 2021 compared to 2020. Foreign currency translation increased expense by \$765,000. All Other includes SG&A related to the Asia Pacific businesses and non-allocated corporate costs.

SG&A expenses related to non-allocated corporate costs for 2021 decreased 13.9%, or \$3,747,000, compared to 2020. The decrease was primarily driven by reduced employee-related costs, including stock compensation. Stock compensation was lower in 2021 due to lowered projected vesting assumptions on multi-year cycle performance awards.

Related to the Asia Pacific businesses, 2021 SG&A increased 52.9%, or \$4,179,000, compared to 2020 with foreign currency translation increasing SG&A expenses \$765,000. The divestiture of Dynamic Controls decreased expense by \$826,000 or 10.5%. Constant currency SG&A expenses increased \$4,240,000, primarily driven by unfavorable foreign currency exchange transactions.

2020 Versus 2019

(\$ in thousands USD)	2020	2019	Reported Change	Foreign Exchange Impact	Divestiture Impact	Constant Currency Change
SG&A Expenses - \$	236,357	260,061	(23,704)	1,756	(3,484)	(21,976)
SG&A Expenses - % change			(9.1)	0.8	(1.3)	(8.6)
% to net sales	27.8	28.0				

Consolidated SG&A expenses as a percentage of net sales were 27.8% in 2020 and 28.0% in 2019. The overall dollar decrease was \$23,704,000, or 9.1%, with foreign currency translation increasing expense by \$1,756,000. Excluding the impact of foreign currency translation and the divestiture of Dynamic Controls in 2020, SG&A expenses decreased \$21,976,000, or 8.6%, primarily driven by reduced employee-related costs.

Europe - European SG&A expenses decreased by 7.9%, or \$9,459,000, in 2020 compared to 2019. Foreign currency translation increased expense by approximately \$1,775,000 or 1.5%. Excluding the foreign currency translation impact, SG&A expenses decreased by \$11,234,000, or 9.4%, primarily driven by reduced employee-related costs.

North America - SG&A expenses for North America decreased 6.1%, or \$5,909,000, in 2020 compared to 2019 with foreign currency translation decreasing expense by \$132,000 or 0.2%. Excluding the foreign currency translation, SG&A expense decreased \$5,777,000, or 5.9%, driven primarily driven by reduced employee-related costs.

All Other - SG&A expenses decreased \$8,336,000 in 2020 compared to 2019. Foreign currency translation increased expense by \$113,000. All Other includes SG&A related to the Asia Pacific businesses and non-allocated corporate costs.

SG&A expenses related to non-allocated corporate costs for 2020 decreased 7.4%, or \$2,137,000, compared to 2019. The decrease was primarily driven by reduced employee-related costs, primarily stock compensation. Stock compensation was lower in 2020 due to lowered projected vesting assumptions on multi-year cycle performance awards impacted by the pandemic and was partially offset by modification of performance awards in the fourth quarter of 2020.

Related to the Asia Pacific businesses, 2020 SG&A decreased 44.0%, or \$6,199,000, compared to 2019 with foreign currency translation increasing SG&A expenses \$113,000, or 7.4%. The divestiture of Dynamic Controls decreased expense by \$3,484,000 or 24.7%. Constant currency SG&A expenses decreased \$2,828,000, or 26.7%, primarily driven by reduced employee-related costs.

OPERATING INCOME (LOSS)

(\$ in thousands USD)	2021	2020	2019	2021 vs. 2020		2020 vs. 2019	
				\$ Change	% Change	\$ Change	% Change
Europe	33,769	22,682	36,174	11,087	48.9	(13,492)	(37.3)
North America	(1,928)	9,449	(7,592)	(11,377)	120.4	17,041	224.5
All Other	(24,977)	(23,236)	(26,576)	(1,741)	(7.5)	3,340	12.6
Gain on sale of business	—	9,790	—	(9,790)	(100.0)	9,790	100.0
Charges related to restructuring	(2,534)	(7,358)	(11,829)	4,824	65.6	4,471	37.8
Impairment of goodwill	(28,564)	—	—	(28,564)	100.0	—	—
Impairment of an intangible asset	—	—	(587)	—	—	587	(100.0)
Consolidated Operating Income (Loss)	(24,234)	11,327	(10,410)	(35,561)	313.9	21,737	208.8

2021 Versus 2020

Consolidated operating loss increased by \$35,561,000 to \$24,234,000 in 2021 as compared to operating income of \$11,327,000 in 2020 primarily due to non-cash goodwill impairment charge of \$28,564,000 in North America in 2021 (the result of changes in operating structure of the business following the recent IT implementation) and gain on sale of Dynamic Controls of \$9,790,000 in 2020, partially offset by a decrease in restructuring costs of \$4,824,000. Consolidated operating loss excluding goodwill impairment charge, gain on sale of business and restructuring costs declined by \$2,031,000. This decline was primarily driven by higher input costs for material, freight and labor, influenced by the global supply chain challenges.

Europe - Operating income increased by \$11,087,000 in 2021 compared to 2020 primarily related to higher gross profit on higher sales and a smaller benefit from reduced SG&A expenses partially offset by higher freight costs.

North America - Operating income (loss) decreased by \$11,377,000 in 2021 compared to 2020 driven primarily by decreased gross profit impacted by higher input costs and lower sales partially offset by reduced SG&A expenses.

All Other - Operating loss increased by \$1,741,000 in 2021 compared to 2020 driven by higher SG&A expenses in the Asia Pacific business and lower sales.

Charge Related to Restructuring Activities

The company's restructuring charges were originally necessitated primarily by continued declines in Medicare and Medicaid reimbursement by the U.S. government, as well as similar healthcare reimbursement pressures abroad, which negatively affect the company's customers (e.g. home health care providers) and continued pricing

pressures faced by the company due to the outsourcing by competitors to lower cost locations. Restructuring decisions were also the result of reduced profitability in each of the segments. In addition, as a result of the company's business improvement strategy, additional restructuring actions continued in 2021. The company expects reduced salary and benefit costs principally impacting Selling, General and Administrative expenses and Cost of Products Sold.

Charges for the year ended December 31, 2021 totaled \$2,534,000 which were related to Europe (\$1,560,000), North America (\$964,000) and All Other (\$10,000). The European charges incurred related to severance (\$886,000) and lease termination costs (\$674,000). In North America and All other, all charges incurred were related to severance. Payments for the year ended December 31, 2021 were \$8,305,000 and the cash payments were funded with company's cash on hand. The majority of the 2021 accrued balances are expected to be paid out within twelve months.

Charges for the year ended December 31, 2020 totaled \$7,358,000 which were related to Europe (\$5,934,000), North America (\$1,306,000) and All Other (\$118,000). The European charges incurred related to severance (\$5,588,000) and lease termination costs (\$346,000) primarily related to the German facility consolidation. In North America and All Other, all charges incurred were related to severance. Payments for the year ended December 31, 2020 were \$8,132,000 and the cash payments were funded with company's cash on hand.

To date, the company's liquidity has been sufficient to absorb these charges; however, the company's disclosure below in Liquidity and Capital Resources and in "Item 1A. Risk Factors" highlights risks that could negatively impact the company's liquidity. Refer also to "Charges Related to Restructuring Activities" in the Notes to the Consolidated

Financial Statements included in this Annual Report on Form 10-K.

2020 Versus 2019

Consolidated operating income increased by \$21,737,000 to \$11,327,000 in 2020 from an operating loss of \$10,410,000 in 2019 primarily due to a \$23,704,000 decrease in SG&A expenses, principally attributable to lower employment costs, gain on sale of Dynamic Controls of \$9,790,000 and decrease in restructuring costs of \$4,471,000, which more than offset lower gross profit on lower sales, primarily impacted by the pandemic.

Europe - Operating income decreased by \$13,492,000 in 2020 compared to 2019 primarily related to lower gross profit on lower sales and unfavorable manufacturing variances, partially offset by reduced SG&A expenses, primarily driven by reduced employee-related costs. This segment was significantly impacted by the pandemic.

North America - Operating income increased by \$17,041,000 in 2020 compared to 2019 driven primarily by lower SG&A expenses, due to decreased employee-related costs, as well as improved gross margin driven by product mix and cost reductions.

All Other - Operating loss improved in 2020 compared to 2019 driven by decreased SG&A expense driven by reduced employee-related costs, primarily stock compensation expense, and improved profitability in the Asia Pacific business.

Charge Related to Restructuring Activities

Charges for the year ended December 31, 2020 totaled \$7,358,000 which were related to Europe (\$5,934,000), North America (\$1,306,000) and All Other (\$118,000). The European charges incurred related to severance (\$5,588,000) and lease termination costs (\$346,000) primarily related to the German facility consolidation. In North America, all charges incurred related to severance. All Other charges were related to severance. Payments for the year ended December 31, 2020 were \$8,132,000 and the cash payments were funded with company's cash on hand.

Charges for the year ended December 31, 2019 totaled \$11,829,000 which were related to Europe (\$9,579,000), North America (\$1,617,000) and All Other (\$633,000). The European charges were incurred related to severance (\$9,356,000) and lease termination costs (\$223,000). In North America, costs were incurred related to severance (\$1,573,000) and lease termination costs (\$44,000). All Other charges were related to severance. Payments for the year ended December 31, 2019 were

\$6,484,000 and the cash payments were funded with company's cash on hand.

Impairment of Intangible Asset

In accordance with ASC 350, Intangibles - Goodwill and Other, the company assesses intangible assets for impairment. As a result of the company's 2020 and 2019 intangible asset impairment assessments, the company recognized no impairment on intangible assets for 2020 as compared to \$587,000 (\$435,000 after-tax) impairment in 2019 related to a trademark with an indefinite life in the Industrial Products Group reporting unit, which is part of the North America segment. The fair value of trademarks were calculated using a relief from royalty payment methodology which requires applying an estimated market royalty rate to forecasted net sales and discounting the resulting cash flows to determine fair value.

OTHER ITEMS

2021 Versus 2020

Impairment of goodwill

(\$ in thousands USD)	2021	2020
Impairment of goodwill	28,564	—

During the third quarter of 2021, the company's reporting units of North America / HME and Institutional Products Group were merged into one reporting unit of North America, consistent with the operating segment. Developments in the third quarter of 2021 and the completion of the reporting units merger were tied most closely to the actions of the company to implement components of a new ERP system which both changes the level of discrete financial information readily available and the go-forward manner in which the company assesses performance and allocates resources to the North America operating segment.

The reporting unit change within the North America operating segment in the third quarter of 2021 was a triggering event and required the company to perform an interim goodwill impairment test. Based on the interim goodwill impairment test, the company concluded the carrying value of the North America reporting unit was above its fair value. That conclusion resulted in the recording of impairment of goodwill in the third quarter of 2021 of \$28,564,000.

As a result of the goodwill impairment, the company recorded a reversal of deferred taxes related to the tax deductible goodwill previously deducted by the company, resulting in the company recognizing a tax benefit of \$661,000.

Loss (gain) on debt extinguishment including debt finance changes and fees

(\$ in thousands USD)	2021	2020
Loss (gain) on debt extinguishment including debt finance fees	(9,422)	7,360

During the first quarter of 2021, the company repurchased and retired, at par plus accrued interest, \$78,850,000 of its 2022 Notes. The result of the transaction was a loss on debt extinguishment including debt and finance fees of \$709,000. During the third quarter of 2021, the company applied for forgiveness of its Cares Act loan along with its accrued interest. The company received

notification of approval of its debt forgiveness including accrued interest, in full, and the company recorded a gain on extinguishment of debt of \$10,131,000. These transactions resulted in a combined gain on debt extinguishment including debt and finance fees of \$9,422,000.

During the second quarter of 2020, the company entered into separate, privately negotiated agreements with certain holders of its 5.00% convertible senior notes due 2021 ("2021 Notes") and certain holders of its 2022 Notes to exchange \$35,375,000 in aggregate principal amount of 2021 Notes and \$38,500,000 in aggregate principal amount of 2022 Notes, for aggregate consideration of \$73,875,000 in aggregate principal amount of new Series II 2024 Notes of the company and \$5,593,000 in cash. During the third quarter of 2020, the company repurchased and retired \$24,466,000 its 2021 Notes. These transactions resulted in a combined gain on debt extinguishment including debt and finance fees of \$7,360,000.

Interest

(\$ in thousands USD)	2021	2020	\$ Change	% Change
Interest Expense	24,307	28,499	(4,192)	(14.7)
Interest Income	(1)	(93)	92	98.9

Interest expense declined as a result the adoption of ASU 2020-06 which eliminated interest expense from convertible debt discount amortization effective January 1, 2021 offset by accretion from the Series II 2024 Notes which commenced in the second quarter of 2020. Refer to "Accounting Policies" in the Notes to the Consolidated Financial Statements for discussion of ASU 2020-06 adoption.

Income Taxes

The company had an effective tax rate charge of 16.5% and 15.7% on losses before taxes in 2021 and 2020, respectively, compared to an expected benefit at the U.S. statutory rate of 21.0% on the pre-tax losses for each period, respectively. The company's effective tax rate in 2021 and 2020 was unfavorable compared to the U.S. federal statutory rate expected benefit, principally due to the negative impact of the company's inability to record tax benefits related to the significant losses in countries which had tax valuation allowances. The gain on the divestiture of Dynamic Controls in 2020 was not taxable locally. In addition, the company had accrued withholding taxes on earnings of its Chinese subsidiary based on the expectation of not permanently reinvesting those earnings. The sale of this entity, without such distribution resulted in the reversal

of this accrual in an amount of \$988,000 in 2020. The 2021 and 2020 effective tax rate was increased by certain taxes outside the United States, excluding countries with tax valuation allowances, that were at an effective rate higher than the U.S. statutory rate.

2020 Versus 2019

Net Gain on Convertible Debt Derivatives

(\$ in thousands USD)	Change in Fair Value - Gain	
	2020	2019
Convertible Note Hedge Assets	—	9,600
Convertible Debt Conversion Liabilities	—	(8,403)
Net gain on convertible debt derivatives	—	1,197

The company recognized a net gain of \$0 in 2020 compared to a net gain of \$1,197,000 in 2019 related to the fair value of convertible debt derivatives. As a result of the company's receipt of shareholder approval authorizing the company to elect to settle future conversions of its convertible notes in common shares, the second quarter of 2019 was the last quarter for which the company could recognize gain (or loss) on the fair value of its note hedge assets and convertible debt conversion liabilities. Refer to "Long-Term Debt" in the notes to the Consolidated Financial Statements included elsewhere in this report for more detail.

Loss on debt extinguishment including debt finance changes and fees

(\$ in thousands USD)	2020	2019
Loss on debt extinguishment including debt finance fees	7,360	6,165

During the second quarter of 2020, the company entered into separate, privately negotiated agreements with certain holders of its 2021 Notes and certain holders of its 2022 Notes to exchange \$35,375,000 in aggregate principal amount of 2021 Notes and \$38,500,000 in aggregate principal amount of 2022 Notes, for aggregate consideration of \$73,875,000 in aggregate principal amount of new Series II 2024 Notes of the company and \$5,593,000 in cash. During the third quarter of 2020, the company repurchased and retired \$24,466,000 its 2021 Notes. These transactions resulted in a combined loss on debt extinguishment including debt and finance fees of \$7,360,000.

In the third quarter of 2019, the company repurchased \$16,000,000 in principal amount of the 2021 Notes and in the fourth quarter of 2019, the company entered into

separate privately negotiated agreements with certain holders of its 2021 Notes to exchange \$72,909,000 in aggregate principal amount of 2021 Notes, for aggregate consideration of \$72,909,000 in aggregate principal amount of new Series I 2024 Notes of the company and approximately \$6,928,000 in cash. These transactions resulted in a combined loss on debt extinguishment including debt and finance fees of \$6,165,000.

Interest

(\$ in thousands USD)	2020	2019	\$ Change	% Change
Interest Expense	28,499	29,076	(577)	(2.0)
Interest Income	(93)	(429)	336	78.3

Interest expense did not materially change in 2020 compared to 2019.

Income Taxes

The company had an effective tax rate charge of 15.7% and 21.1% on losses before taxes in 2020 and 2019, respectively, compared to an expected benefit at the U.S. statutory rate of 21.0% on the pre-tax losses for each period, respectively. The company's effective tax rate in 2020 and 2019 was unfavorable compared to the U.S. federal statutory rate expected benefit, principally due to the negative impact of the company's inability to record tax benefits related to the significant losses in countries which had tax valuation allowances. The gain on the divestiture of Dynamic Controls was not taxable locally. In addition, the company had accrued withholding taxes on earnings of its Chinese subsidiary based on the expectation of not permanently reinvesting those earnings. The sale of this entity, without such distribution resulted in the reversal of this accrual in an amount of \$988,000 in 2020. The 2020 and 2019 effective tax rates were increased by certain taxes outside the United States, excluding countries with tax valuation allowances, that were at an effective rate higher than the U.S. statutory rate.

LIQUIDITY AND CAPITAL RESOURCES

The company continues to maintain an adequate liquidity position through its cash balances and unused bank lines of credit (refer to Long-Term Debt in the Notes to the Consolidated Financial Statements included in this report) as described below.

Key balances on the company's balance sheet and related metrics:

(\$ in thousands USD)	December 31, 2021	December 31, 2020	\$ Change	% Change
Cash and cash equivalents	83,745	105,298	(21,553)	(20.5)
Working capital ⁽¹⁾	138,134	144,080	(5,946)	(4.1)
Total debt ⁽²⁾	382,586	339,928	42,658	12.5
Long-term debt ⁽²⁾	376,462	330,903	45,559	13.8
Total shareholders' equity ⁽³⁾	218,489	333,846	(115,357)	(34.6)
Credit agreement borrowing availability ⁽⁴⁾	41,845	36,509	5,336	14.6

⁽¹⁾ Current assets less current liabilities.

⁽²⁾ Long-term debt and Total debt include finance leases but exclude debt issuance costs recognized as a deduction from the carrying amount of debt liability and debt discounts classified as debt or equity and operating leases.

⁽³⁾ 2021 reflects the adoption of ASU 2020-06 "Debt with Conversion and Other Options" on January 1, 2021 which reduced total shareholders' equity by \$25,128,000 and purchase of capped calls, related to the 2026 Notes issued in the first quarter of 2021, also reduced total stockholders' equity by \$18,787,000.

⁽⁴⁾ Reflects the combined availability of the company's North American and European asset-based revolving credit facilities before borrowings. The change in borrowing availability is due to changes in the calculated borrowing base. At December 31, 2021, the company had drawn \$22,150,000 on the North American credit facility and \$13,352,000 on the European credit facility. Outstanding borrowings and availability are calculated on a month lag related to the European credit facility.

The company's cash and cash equivalents were \$83,745,000 and \$105,298,000 at December 31, 2021 and December 31, 2020, respectively. The decrease in cash balances at December 31, 2021 compared to December 31, 2020 is attributable to cash used for continued investment in the company's business improvement strategy and debt related payments.

Refer to "Long-Term Debt" in the Notes to the Consolidated Financial statements included in this report for a summary of the material terms of the company's long-term indebtedness.

Debt repayments, acquisitions, divestitures, the timing of vendor payments, the timing of customer rebate payments, the granting of extended payment terms to significant national accounts and other activity can have a significant impact on the company's cash flow and borrowings outstanding such that the cash reported at the end of a given period may be materially different than cash levels during a given period. While the company has cash balances in various jurisdictions around the world, there are no material restrictions regarding the use of such cash for dividends within the company, loans or other purposes.

The company's total debt outstanding, inclusive of the debt discount related to the debentures included in equity as well as the debt discount and fees associated with the

company's convertible senior notes due 2022 ("2022 Notes") 2024 ("Series I 2024 Notes" and "Series II 2024 Notes") and 2026 ("2026 Notes") and finance leases, increased by \$42,658,000 to \$382,586,000 at December 31, 2021 from \$339,928,000 as of December 31, 2020. The increase is driven the adoption of ASU 2020-06, issuance of \$125,000,000 principal amount of the 2026 Notes and additional credit facilities borrowings, offset by repayment of \$1,250,000 principal amount of 2021 Notes, repurchase of \$78,850,000 principal amount of 2022 Notes and forgiveness of \$10,000,000 for the company's previously outstanding CARES Act loan.

The debt discount and fees associated with the 2021 Notes, 2022 Notes, Series I 2024 Notes, Series II 2024 Notes and 2026 notes reduced the company's reported debt balance by \$7,712,000 and \$28,333,000 as of December 31, 2021 and December 31, 2020, respectively. At December 31, 2021 the company had drawn \$22,150,000 on the North American credit facility and \$13,352,000 on the European credit facility. At December 31, 2020, the company had drawn \$20,000,000 on the North American credit facility and \$11,502,000 on the European credit facility.

In addition, the company may incur substantial additional debt in the future. Although the terms of the agreements governing existing debt restrict the company's

ability to incur additional debt (including secured debt), such restrictions are subject to several exceptions and qualifications and such restrictions and qualifications may be waived or amended, and debt (including secured debt) incurred in compliance with such restrictions and qualifications (as they may be waived or amended) may be substantial.

The company may from time to time seek to repay or purchase, exchange or otherwise retire its convertible notes or other debt obligations, in open market transactions, privately negotiated transactions, tender offers, exchange offers, pursuant to the term of debt or otherwise. The company may also incur additional debt (including secured debt) to fund such transactions, refinance or restructure existing debt and/or exchange existing debt for newly issued debt obligations or equity or equity-like securities. Such transactions, if any, will depend on prevailing market conditions, trading prices of debt from time to time, the company's liquidity requirements and cash position, contractual restrictions and other factors. The amount involved in any such transactions, individually or in the aggregate, may be material. The company cannot provide any assurance as to if or when it will consummate any such transactions or the terms of any such transactions.

The company has an asset-based lending Amended and Restated Revolving Credit and Security Agreement (the "Credit Agreement"), which provides for a revolving line of credit, letter of credit and swing line facility for the company's U.S. and Canadian borrowers in an aggregate principal amount of up to \$60,000,000 (the "U.S. and Canadian Credit Facility") and a similar facility for European borrowers in an aggregate principal amount of up to \$30,000,000 (the "European Credit Facility") each of which is subject to variable rates and availability based on a borrowing base formula.

As determined pursuant to the borrowing base formula for the U.S. and Canadian borrowers, the company's borrowing base including the period ending December 31, 2021 under the U.S. and Canadian Credit Facility of the Credit Agreement was approximately \$38,979,000, with aggregate borrowing availability of approximately \$26,644,000, taking into account the \$3,000,000 minimum availability reserve, then-outstanding applicable letters of credit and other reserves of \$2,585,000, and the \$6,750,000 dominion trigger amount noted below. As determined pursuant to the borrowing base formula for the European borrowers, the company's borrowing base including the period ending December 31, 2021 under the European Credit Facility of the Credit Agreement was approximately \$21,576,000, with aggregate borrowing availability of approximately \$15,201,000, considering the \$3,000,000 minimum availability reserve and the \$3,375,000 dominion trigger amount noted below. As of December 31, 2021, the combined aggregate borrowing availability under the U.S.

and Canadian Credit Facility and the European Credit Facility of the Credit Agreement was \$41,845,000.

As a result of entering into the Credit Agreement, the company incurred fees which were capitalized and are being amortized as interest expense through January 16, 2024 of which \$788,000 are yet to be amortized as of December 31, 2021.

As of December 31, 2021, the company was in compliance with all covenant requirements under the Credit Agreement. The Credit Agreement contains customary representations, warranties and covenants including dominion triggers requiring the company to maintain borrowing capacity of not less than \$6,750,000 on any given business day or for five consecutive days related to the U.S. and Canadian borrowers, and \$3,750,000 on any given business day or \$3,375,000 for five consecutive days related to European borrowers, in order to avoid triggering full control by an agent for the lenders of the company's cash receipts for application to the company's obligations under the agreement.

If the company is unable to comply with the provisions in the Credit Agreement or agreements governing other current or future debt, it could result in a default, which could trigger acceleration of, or the right to accelerate, the related debt. Because of cross-default provisions in its agreements and instruments governing certain of the company's indebtedness, a default under the Credit Agreement or other debt obligations could result in a default under, and the acceleration of, certain other company indebtedness. In addition, the company's lenders would be entitled to proceed against the collateral securing the indebtedness.

Based on the company's current expectations, the company believes that its cash balances and available borrowing capacity under its Credit Agreement and other borrowings or incurrences of debt should be sufficient to meet working capital needs, capital requirements, and commitments for at least the next twelve months. Notwithstanding the company's expectations, if the company's operating results decrease as the result of pressures on the business due to, for example, prolonged, or worsening of, negative impacts of the COVID-19 pandemic, continued supply chain challenges, inflationary economic conditions, currency fluctuations or regulatory issues or the company's failure to execute its business plans or if the company's business improvement actions take longer than expected to materialize or development of one or more of the other risks discussed in "Item 1A. Risk Factors" of this Annual Report on Form 10-K, the company may require additional financing, or may be unable to comply with its obligations under the credit facilities or its other obligations, and its lenders or creditors could demand repayment of any amounts outstanding. If additional financing is required, there can be no assurance

that it will be available on terms satisfactory to the company, if at all. The company also may evaluate and implement changes to its strategic goals and business plans, which may involve restructuring of its operations. If undertaken, any such restructuring may be substantial and involve significant effort and expense, and the company can make no assurances that such efforts, if undertaken, would be successful and result in improvements to the company business performance and financial condition. Refer to "Item 1A. Risk Factors" for a further discussion of risks applicable to the company's liquidity, capital resources and financial condition.

In the first quarter of 2016, the company issued \$150,000,000 aggregate principal amount of 2021 Notes in a private offering which were to bear interest at a rate of 5.00% per year payable semi-annually. At December 31, 2020, outstanding principal on 2021 Notes was \$1,250,000 which was paid in 2021 at maturity on February 16, 2021. Prior to August 15, 2020, the 2021 Notes were convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date.

In the second quarter of 2017, the company issued \$120,000,000 aggregate principal amount of the 2022 Notes in a private offering which bear interest at a rate of 4.50% per year payable semi-annually and will mature in June 2022, unless repurchased or converted in accordance with their terms prior to such date. Prior to December 1, 2021, the 2022 Notes were convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The net proceeds from the offering of the 2022 Notes were approximately \$115,289,000, after deducting fees and offering expenses of \$4,711,000. These debt issuance costs were capitalized and are being amortized as interest expense through June 2022 (net of loss on extinguishment of debt from 2020 transactions as discussed herein) of which \$8,000 have yet to be amortized as of December 31, 2021. A portion of the net proceeds from the offering were used to pay the cost of the convertible note hedge transactions (after such cost is partially offset by the proceeds to the company from the warrant transactions), which was a net cost of \$10,680,000. At December 31, 2021, \$2,650,000 in principal amount of 2022 Notes remained outstanding.

In the fourth quarter of 2019, the company entered into separate privately negotiated agreements with certain holders of its 2021 Notes to exchange \$72,909,000 in aggregate principal amount of 2021 Notes, for aggregate consideration of \$72,909,000 in aggregate principal amount of new Series I 2024 Notes of the company and approximately \$6,928,000 in cash. The Series I 2024 Notes bear interest at a fixed rate of 5.00% per year payable

semi-annually and will mature in November 2024, unless earlier repurchased, redeemed or converted. Prior to May 2024, the Series I 2024 Notes will be convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Prior to maturity, the Series I 2024 Notes will be redeemable by the company upon satisfaction of certain conditions and during certain periods. The fees paid totaled \$1,394,000. These debt issuance costs were capitalized and are being amortized as interest expense through November 2024 of which \$769,000 have yet to be amortized as of December 31, 2021.

In the second quarter of 2020, the company entered into separate privately negotiated agreements with certain holders of its 2021 Notes and 2022 Notes to exchange \$35,375,000 in aggregate principal amount of the company's 2021 Notes and \$38,500,000 in aggregate principal amount of the company's 2022 Notes, for \$73,875,000 in aggregate principal amount of new Series II 2024 Notes and approximately \$5,593,000 in cash. The new Series II 2024 Notes bear interest at a fixed rate of 5% per year payable semi-annually and will mature in November 2024, unless earlier repurchased, redeemed or converted. Prior to May 2024, the Series II 2024 Notes will be convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Prior to maturity, the Series II 2024 Notes will be redeemable by the company upon satisfaction of certain conditions and during certain periods. The principal amount of the Series II 2024 Notes also will accrete at a rate of approximately 4.7% compounding on a semi-annual basis. The accreted portion of the principal is payable in cash upon maturity but does not bear interest and is not convertible into the company's common shares. The amount accreted as of December 31, 2021 was \$5,347,000. The issuance costs were capitalized and are being amortized as interest expense through November 2024 of which \$971,000 have yet to be amortized as of December 31, 2021. The fees paid in 2020 totaled \$1,505,000. A loss on debt extinguishment of \$6,599,000 was recorded as part of the exchange transaction, which included the write-off of fees related to portions of the 2021 Notes and 2022 Notes exchanged.

In the third quarter of 2020, the company repurchased \$24,466,000 aggregate principal amount of its 2021 Notes, resulting in a \$761,000 loss on debt extinguishment.

In the first quarter of 2021, the company issued \$125,000,000 aggregate principal amount of 4.25% Convertible Senior Notes due 2026 (the "2026 Notes") in a private offering.

The notes bear interest at a rate of 4.25% per year payable semi-annually and mature in March 2026, unless repurchased, redeemed or converted in accordance with their terms prior to such date. Prior to September 15, 2025, the 2026 Notes will be convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The 2026 Notes may be settled in cash, the company's common shares or a combination of cash and the company's common shares, at the company's election.

The company may not redeem the 2026 Notes prior to March 20, 2024. The company may, at its election, redeem for cash all or part of the 2026 Notes, on or after March 20, 2024, only upon satisfaction of certain conditions and during certain periods. The redemption price will be equal to 100% of the principal amount of the 2026 Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date (subject to certain limited exceptions).

Debt issuance costs of \$7,305,000 were capitalized and are being amortized as interest expense through March 2026. Debt issuance costs are presented on the balance sheet as a direct deduction from the carrying amount of the related debt liability, of which, \$5,964,000 remained to be amortized at December 31, 2021.

In connection with the pricing of the 2026 Notes, the company entered into capped call transactions (the "Capped Call Transactions") with certain option counterparties. The company used \$18,787,000 of the net proceeds of the private offering of the 2026 Notes to pay the cost of the Capped Call Transactions with the offset recorded to additional paid-in-capital.

The Capped Call Transactions are expected generally to reduce the potential dilution upon conversion of the 2026 Notes and/or offset any cash payments the company is required to make in excess of the principal amount of converted notes, as the case may be, in the event that the market price per share of the company's common shares, as measured under the terms of the Capped Call Transactions, is greater than the strike price of the Capped Call Transactions, which is initially \$10.57, corresponding to the initial conversion price of the 2026 Notes, subject to anti-dilution adjustments. If, however, the market price per company common share, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions, which is initially \$16.58 (subject to adjustments), there would nevertheless be dilution and/or there would not be an offset of such potential cash payments, in each case, to the extent that such market price exceeds the cap price of the Capped Call Transactions. The Capped Call Transactions expire March 15, 2026, subject to earlier exercise. There were 125,000

capped call options related to the 2026 Notes outstanding on December 31, 2021.

The company has used, and intends to continue to use, the remaining net proceeds from the Series I 2024 Notes, Series II 2024 Notes and 2026 Notes offerings for working capital and general corporate purposes, which may include funding portions of the company's ongoing turnaround and addressing potential risks and contingencies. The net proceeds have allowed the company to invest in new products, people, marketing initiatives and working capital to transform the business and pursue growth.

On May 15, 2020 the company entered into an unsecured loan agreement in the aggregate amount of \$10,000,000 pursuant to sections 1102 and 1106 of the Coronavirus Aid, Relief and Economic Security, "CARES," Act which was evidenced by a promissory note, dated May 13, 2020, and would bear interest at a fixed rate of 1.00%. This loan may be forgivable, partially or in full, if certain conditions are met, principally based on having been disbursed for permissible purposes and based on average levels of employment over a designated period of time. At the time of the loan, no assurance could be given that the company would be granted forgiveness of the loan in whole or in part.

In the third quarter of 2021, the company applied for forgiveness of the CARES Act debt along with its accrued interest. The company received notification of approval of its debt forgiveness inclusive of accrued interest, in full, and as a result, the company recorded a gain on extinguishment of debt of \$10,131,000.

The company also has an agreement with De Lage Landen, Inc. ("DLL"), a third-party financing company, to provide lease financing to the company's U.S. customers. Either party could terminate this agreement with 180 days' notice or 90 days' notice by DLL upon the occurrence of certain events. Should this agreement be terminated, the company's borrowing needs under its credit facilities could increase.

Should interest rates increase, the company expects that it would be able to absorb modest rate increases without any material impact on its liquidity or capital resources. For 2021 and 2020, the weighted average interest rate on all borrowings, excluding finance leases, was 4.5% and 4.6%, respectively.

Refer to "Long-Term Debt" and "Leases and Commitments" in the Notes to the Consolidated Financial Statements for more details regarding the company's convertible notes and credit facilities and lease liabilities, respectively.

The company's contractual obligations primarily consist of debt, leases, product liability, the Supplemental Executive Retirement Plan and a purchase obligation. Refer to the Notes to the Consolidated Financial Statements for more details regarding these obligations. Regarding the purchase obligation, in October 2019, the company entered into an agreement to outsource substantially all of the company's information technology business service activities, including, among other things, support, rationalization and upgrading of the company's legacy information technology systems and implementation of a global enterprise resource planning system and eCommerce platform.

CAPITAL EXPENDITURES

There were no individually material capital expenditure commitments outstanding as of December 31, 2021. The company estimates that capital investments for 2022 will be approximately \$20,000,000 compared to actual capital expenditures of \$17,698,000 in 2021. The continued investment at this level relates primarily to the new ERP system. The company believes that its balances of cash and cash equivalents and existing borrowing facilities will be sufficient to meet its operating cash requirements and fund required capital expenditures (refer to "Liquidity and Capital Resources"). The Credit Agreement limits the company's annual capital expenditures to \$35,000,000.

DIVIDEND POLICY

On May 21, 2020, the Board of Directors decided to suspend the quarterly dividend on the company's Common Shares in light of the impacts of COVID-19 on the business. The Board of Directors suspended the company's regular quarterly dividend on the Class B Common Shares starting in the third quarter of 2018. Less than 4,000 Class B Common Shares remain outstanding and suspending the regular Class B dividend allows the company to save on the administrative costs and compliance expenses associated with that dividend. Holders of Class B Common Shares are entitled to convert their shares into Common Shares at any time on a share-for-share basis and would be eligible for any Common Share dividends declared following any such conversion.

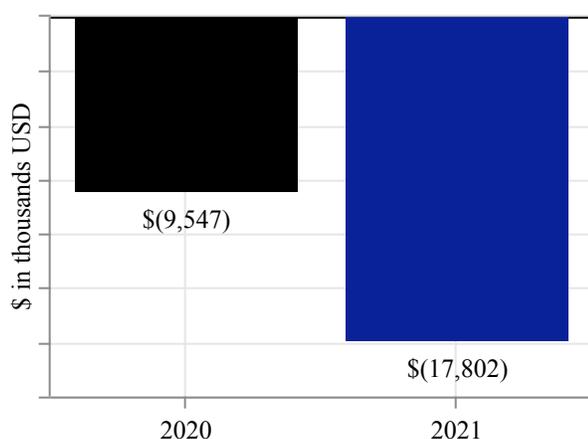
CASH FLOWS

Net Cash Provided (Used) by Operating Activities



Cash flows used by operating activities of \$14,309,000 in 2021 compared to cash provided of \$21,917,000 in the previous year. The 2021 operating cash flows were burdened by investments in inventory and payments related to accrued expenses for VAT and other taxes deferred from 2020 and funding severance costs. These were partially offset by higher accounts payable levels, impacted by the higher inventory levels.

Net Cash Used by Investing Activities



Cash flows used by investing activities were \$17,802,000 in 2021, compared to \$9,547,000 in 2020. The increase in cash flows used for investing was primarily driven by a benefit of \$14,563,000 for proceeds from the sale of Dynamic Controls in the first quarter of 2020.

Net Cash Provided by Financing Activities



Cash flows provided by financing activities in 2021 were \$12,873,000 compared to cash flow provided of \$6,259,000 in 2020.

Cash flows provided in 2021 included the issuance of \$125,000,000 principal amount of 2026 Notes in the first quarter of 2021, payment of \$5,369,000 in financing costs, purchase of capped calls related to the 2026 Notes for \$18,787,000, repurchase of \$78,850,000 principal amount of 2022 Notes and repayment of \$1,250,000 principal amount of 2021 Notes. Borrowing on credit facilities are under the company's Credit Agreement which provides an asset-based-lending senior secured credit facilities.

Cash flows provided in 2020 was driven primarily by borrowing of \$31,502,000 on the North America and Europe credit facility under the company's Credit Agreement as well as an unsecured CARES Act loan of \$10,000,000. This was offset by cash paid of \$24,466,000 to retire the majority of the company's outstanding 2021 Notes in the third quarter of 2020 and \$7,098,000 of cash paid in connection with the exchange 2021 Notes and 2022 Notes for Series II 2024 Notes executed during the second quarter of 2020 for debt fees and payments to note holders.

Free cash flow is a non-GAAP financial measure and is reconciled to the corresponding GAAP measure as follows:

(\$ in thousands USD)	Twelve Months Ended December 31,	
	2021	2020
Net cash provided by operating activities	\$ (14,309)	\$ 21,917
Plus: Sales of property and equipment	33	396
Less: Purchases of property and equipment	(17,698)	(22,304)
Free Cash Flow	\$ (31,974)	\$ 9

Free cash flow usage was \$31,974,000 in 2021 compared to inflow of \$9,000 in 2020. The change in free cash flow was driven by the same items impacting operating activities noted previously. Free cash flow is a non-GAAP financial measure composed of net cash used by operating activities less purchases of property and equipment plus proceeds from sales of property and equipment. Management believes that this financial measure provides meaningful information for evaluating

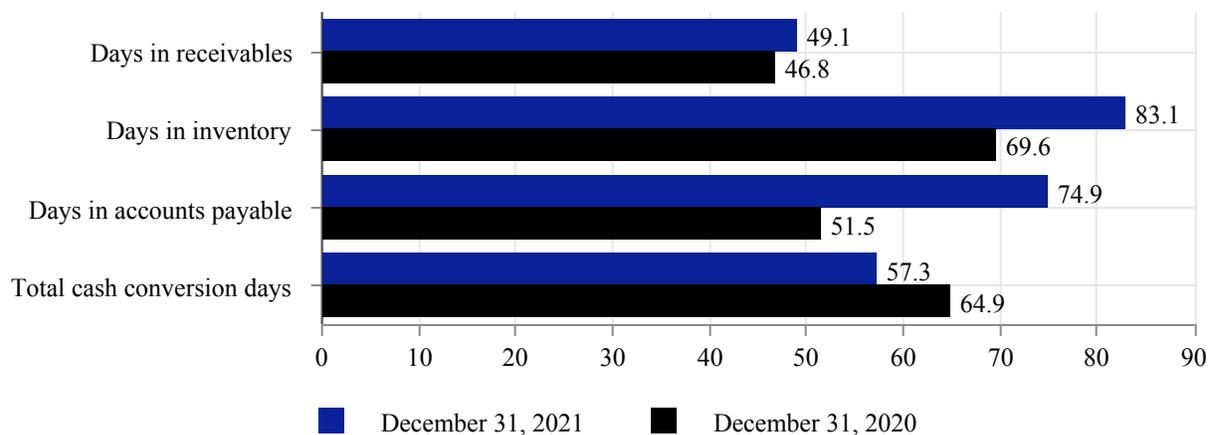
the overall financial performance of the company and its ability to repay debt or make future investments (including acquisitions, etc.).

In the third quarter of 2021, the company initiated accounts receivable factoring programs within the Nordic countries of Norway, Sweden and Denmark which benefited free cash flow by \$7,082,000.

The company historically generates negative free cash flow during the first half of the year. This pattern is expected to continue due to the timing of annual one-time payments such as customer rebates earned during the prior year and higher working capital usage from inventory increases. In addition, for 2022, the company will continue to fund repayment of deferred VAT and other taxes from 2020, from government programs introduced as a result of the pandemic. The absence of these payments and seasonally stronger sales in the second half of the year typically result in more favorable free cash flow in the second half of the year.

The company's approximate cash conversion days at December 31, 2021 and December 31, 2020 are as follows:

Cash Conversion



Days in receivables are equal to current quarter net current receivables divided by trailing four quarters of net sales multiplied by 365 days. Days in inventory and accounts payable are equal to current quarter net inventory and accounts payable, respectively, divided by trailing four quarters of cost of sales multiplied by 365 days. Total cash conversion days are equal to days in receivables plus days in inventory less days in accounts payable.

see the rate at which cash is disbursed, collected and how quickly inventory is converted and sold.

The company invested in incremental inventory to mitigate challenges with supply chain disruptions. This also influences the accounts payable balances. The company provides a summary of days of cash conversion for the components of working capital, so investors may

ACCOUNTING ESTIMATES AND PRONOUNCEMENTS

CRITICAL ACCOUNTING POLICIES

The Consolidated Financial Statements included in the report include accounts of the company and all majority-owned subsidiaries. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions in certain circumstances that affect amounts reported in the accompanying Consolidated Financial Statements and related footnotes. In preparing the financial statements, management has made its best estimates and judgments of certain amounts included in the financial statements, giving due consideration to materiality. However, application of these accounting policies involves the exercise of judgment and use of assumptions as to future uncertainties and, as a result, actual results could differ from these estimates. The following critical accounting policies, among others, affect the more significant judgments and estimates used in preparation of the company's consolidated financial statements.

Revenue Recognition

The company recognizes revenues when control of the product or service is transferred to unaffiliated customers. *Revenues from Contracts with Customers*, ASC 606, provides guidance on the application of generally accepted accounting principles to revenue recognition issues. The company has concluded that its revenue recognition policy is appropriate and in accordance with GAAP under ASC 606.

All of the company's product-related contracts, and a portion related to services, have a single performance obligation, which is the promise to transfer an individual good or service, with revenue recognized at a point in time. Certain service-related contracts contain multiple performance obligations that require the company to allocate the transaction price to each performance obligation. For such contracts, the company allocates revenue to each performance obligation based on its relative standalone selling price at inception of the contract. The company determined the standalone selling price based on the expected cost-plus margin methodology. Revenue related to the service contracts with multiple performance obligations is recognized over time. To the extent performance obligations are satisfied over time, the company defers revenue recognition until the performance obligations are satisfied.

The determination of when and how much revenue to recognize can require the use of significant judgment.

Revenue is recognized when obligations under the terms of a contract with the customer are satisfied; generally, this occurs with the transfer of control of the company's products and services to the customer.

Revenue is measured as the amount of consideration expected to be received in exchange for transferring the product or providing services. The amount of consideration received and recognized as revenue by the company can vary as a result of variable consideration terms included in the contracts such as customer rebates, cash discounts and return policies. Customer rebates and cash discounts are estimated based on the most likely amount principle and these estimates are based on historical experience and anticipated performance. Customers have the right to return product within the company's normal terms policy, and as such, the company estimates the expected returns based on an analysis of historical experience. The company adjusts its estimate of revenue at the earlier of when the most likely amount of consideration the company expects to receive changes or when the consideration becomes fixed. The company generally does not expect that there will be significant changes to its estimates of variable consideration (refer to Receivables in the Notes to the Consolidated Financial Statements include elsewhere in this report).

Depending on the terms of the contract, the company may defer recognizing revenue until the end of a given period as the result of title transfer terms that are based upon delivery and or acceptance which align with transfer of control of the company's products to its customers.

Sales are made only to customers with whom the company believes collection is probable based upon a credit analysis, which may include obtaining a credit application, a signed security agreement, personal guarantee and/or a cross corporate guarantee depending on the credit history of the customer. Credit lines are established for new customers after an evaluation of their credit report and/or other relevant financial information. Existing credit lines are regularly reviewed and adjusted with consideration given to any outstanding past due amounts.

The company records distributed product sales gross as a principal since the company takes title to the products and has the risks of loss for collections, delivery and returns. The company's payment terms are for relatively short periods and thus do not contain any element of financing. Additionally, no contract costs are incurred that would require capitalization and amortization.

Sales, value added, and other taxes the company collects concurrent with revenue producing activities are excluded from revenue. Incidental items that are immaterial in the context of the contract are recognized as expense. Shipping and handling costs are included in cost of products sold.

The majority of the company's warranties are considered assurance-type warranties and continue to be recognized as expense when the products are sold (refer to Current Liabilities in the Notes to the Consolidated Financial Statements include elsewhere in this report). These warranties cover against defects in material and workmanship for various periods depending on the product from the date of sale to the customer. Certain components carry a lifetime warranty. In addition, the company has sold extended warranties that, while immaterial, require the company to defer the revenue associated with those warranties until earned. The company has established procedures to appropriately defer such revenue. A provision for estimated warranty cost is recorded at the time of sale based upon actual experience. The company continuously assesses the adequacy of its product warranty accruals and makes adjustments as needed. Historical analysis is primarily used to determine the company's warranty reserves. Claims history is reviewed and provisions are adjusted as needed. However, the company does consider other events, such as a product recall, which could require additional warranty reserve provisions. Refer to Accrued Expenses in the Notes to the Consolidated Financial Statements for a reconciliation of the changes in the warranty accrual.

Allowance for Uncollectible Accounts Receivable

The estimated allowance for uncollectible amounts is based primarily on management's evaluation of the financial condition of the customer. In addition, as a result of the third-party financing arrangement, management monitors the collection status of these contracts in accordance with the company's limited recourse obligations and provides amounts necessary for estimated losses in the allowance for doubtful accounts and establishing reserves for specific customers as needed and general reserve for macroeconomic considerations.

The company continues to closely monitor the credit-worthiness of its customers and adhere to tight credit policies. The Centers for Medicare and Medicaid Services publishes Medicare contract prices under its NCB program which includes 100% of the Medicare population. The company believes that the NCB program contract pricing could have a significant impact on the collectability of accounts receivable for those customers which have a portion of their revenues tied to Medicare reimbursement. In addition, there is a risk that these precedent-setting price reductions could influence other

non-CMS payors' reimbursement rates for the same product categories. As a result, this is an additional risk factor which the company considers when assessing the collectability of accounts receivable.

The company has an agreement with DLL, a third-party financing company, to provide lease financing to Invacare's U.S. customers. The DLL agreement provides for direct leasing between DLL and the Invacare customer. The company retains a recourse obligation for events of default under the contracts. The company monitors the collections status of these contracts and has provided amounts for estimated losses in its allowances for doubtful accounts.

Goodwill, Intangible and Other Long-Lived Assets

Property, equipment, intangibles and certain other long-lived assets are amortized over their useful lives. Useful lives are based on management's estimates of the period that the assets will generate revenue. Under *Intangibles-Goodwill and Other*, ASC 350, goodwill and intangible assets deemed to have indefinite lives are subject to annual impairment tests. The company's measurement date for its annual goodwill impairment test is October 1 and the analysis is completed in the fourth quarter. Furthermore, goodwill and other long-lived assets are assessed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Most of the company's goodwill and intangible assets relate to the company's Europe reporting unit which was profitable in 2021.

To assess goodwill for impairment in accordance with ASC 350, the company first estimates the fair value of each reporting unit and compares the calculated fair value to the carrying value of each reporting unit. A reporting unit is defined as an operating segment or one level below. The company has determined that its reporting units are the same as its operating segments. To estimate the fair values of the reporting units, the company utilizes a discounted cash flow (DCF) method in which the company forecasts income statement and balance sheet amounts based on assumptions regarding future sales growth, operating income, inventory turns, days' sales outstanding, etc. to forecast future cash flows. The cash flows are discounted using a weighted average cost of capital (WACC) where the cost of debt is based on quoted rates for 20-year debt of companies of similar credit risk and the cost of equity is based upon the 20-year treasury rate for the risk-free rate, a market risk premium, the industry average beta and a small cap stock adjustment. The assumptions used are based on a market participant's point of view and yielded a WACC of 11.19% in 2021 for the company's impairment analyses for the reporting units with goodwill compared to 11.27% in 2020 and 11.88% in 2019. The financial forecast assumptions and WACC used have a significant impact

upon the discounted cash flow methodology utilized in the company's annual impairment testing as lower projections of operating income or a higher WACC decrease the fair value estimates.

The company also utilizes an Enterprise Value (EV) to Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) method to compute the fair value of its reporting units which considers potential acquirers and their EV to EBITDA multiples adjusted by an estimated premium. While more weight is given to the discounted cash flow method, the EV to EBITDA method does provide corroborative evidence of the reasonableness of the discounted cash flow method results.

During the third quarter of 2021, the company's reporting units of North America / HME and Institutional Products Group merged into one reporting unit of North America, consistent with the operating segment. Developments in 2021 and the conclusion of the reporting units merger were tied mostly to actions of the company to implement components of a new ERP system which changes both the level of discrete financial information readily available and the go-forward manner in which the company assesses performance and allocates resources to the North America operating segment.

The reporting unit change within the North America operating segment in the third quarter of 2021 was a triggering event and required the company to perform an interim goodwill impairment test. Based on the interim goodwill impairment test, the company concluded that the carrying value of the North America reporting unit was above its fair value. That conclusion resulted in the recording of impairment of goodwill in the third quarter of 2021 of \$28,564,000.

The company completed its interim test in the third quarter of 2021 consistent with the process of its annual impairment assessment in the fourth quarter of each year or whenever events or changes in circumstances indicate the carrying value of a reporting unit could be below a reporting unit's fair value.

While there was no impairment in 2021 related to goodwill for the Europe, a future potential impairment is possible for Europe should actual results differ materially from forecasted results used in the valuation analysis or if business changes impact the company's assessment of reporting units. Furthermore, the company's valuation of goodwill can differ materially if the financial projections or market inputs used to determine the WACC change significantly. For instance, higher interest rates or greater stock price volatility would increase the WACC and thus increase the chance of impairment. In consideration of this potential, the company assessed the results if the WACC used were 100 basis points higher for the 2021 impairment

analyses and determined that there still would not be any impairment for the Europe reporting unit.

The company also considers the potential for impairment of other intangible assets and other long-lived assets annually or whenever events or circumstances indicate impairment. In 2021 and 2020, the company performed an assessment for potential impairments and recognized no intangible asset impairment charge or other long-lived asset impairment charge. In 2019, the company performed an assessment for potential impairments and recognized an intangible asset impairment charge within the North America operating segment of \$587,000 (\$435,000 after-tax) related to a trademark with an indefinite life. The fair value of the trademark was calculated using a relief from royalty payment methodology which requires applying an estimated market royalty rate to forecasted net sales and discounting the resulting cash flows to determine fair value.

The company's intangible assets consist of intangible assets with defined lives as well as intangible assets with indefinite lives. Defined-lived intangible assets consist principally of customer lists and developed technology. The company's indefinite lived intangible assets consist entirely of trademarks.

The company evaluates the carrying value of definite-lived assets whenever events or circumstances indicate possible impairment. Definite-lived assets are determined to be impaired if the future undiscounted cash flows expected to be generated by the asset or asset group are less than the carrying value of the asset or asset group. Actual impairment amounts for definite-lived assets are then calculated using a discounted cash flow calculation. The company assesses indefinite-lived assets for impairment annually in the fourth quarter of each year and whenever events or circumstances indicate possible impairment. Any impairment amounts for indefinite-lived assets are calculated as the difference between the future discounted cash flows expected to be generated by the asset less than the carrying value for the asset.

Product Liability

The company is essentially self-insured in North America for product liability exposures through its captive insurance company, Invatection Insurance Company, which currently has a policy year that runs from September 1 to August 31 and insures annual policy losses up to \$10,000,000 per occurrence and \$13,000,000 in the aggregate. The company also has additional layers of external insurance coverage, related to all lines of insurance coverage, insuring up to \$75,000,000 in aggregate losses per policy year arising from individual claims anywhere in the world that exceed the captive insurance company policy limits or the limits of the

company's per country foreign liability limits, as applicable. There can be no assurance that Invacare's current insurance levels will continue to be adequate or available at affordable rates.

Product liability reserves are recorded for individual claims based upon historical experience, industry expertise and other indicators. Additional reserves, in excess of the specific individual case reserves, are provided for incurred but not reported claims based upon actuarial valuations at the time such valuations are conducted. Historical claims experience and other assumptions are taken into consideration by the company in estimating the ultimate reserves. For example, the actuarial analysis assumes that historical loss experience is an indicator of future experience, that the distribution of exposures by geographic area and nature of operations for ongoing operations is expected to be very similar to historical operations with no dramatic changes and that the government indices used to trend losses and exposures are appropriate. Estimates made are adjusted on a regular basis and can be impacted by actual loss awards and settlements on claims. While actuarial analysis is used to help determine adequate reserves, the company is responsible for the determination and recording of adequate reserves in accordance with accepted loss reserving standards and practices.

Warranty

Generally, the company's products are covered by assurance-type warranties against defects in material and workmanship for various periods depending on the product from the date of sale to the customer. Certain components carry a lifetime warranty. In addition, the company has sold extended warranties that, while immaterial, require the company to defer the revenue associated with those warranties until earned. A provision for estimated warranty cost is recorded at the time of sale based upon actual experience. The company continuously assesses the adequacy of its product warranty accrual and makes adjustments as needed. Historical analysis is primarily used to determine the company's warranty reserves. Claims history is reviewed and provisions are adjusted as needed. However, the company does consider other events, such as a product recall, which could warrant additional warranty reserve provision. Refer to Accrued Expenses in the Notes to the Consolidated Financial Statements for a reconciliation of the changes in the warranty accrual.

Accounting for Stock Compensation

The company accounts for stock compensation under the provisions of *Compensation—Stock Compensation*, ASC 718. The company has not made any modifications to the terms of any previously granted awards (other than the modification in the fourth quarter of 2020 (refer to Equity

Compensation in the Notes to the Consolidated Financial Statements) and no changes have been made regarding the valuation methodologies or assumptions used to determine the fair value of awards granted and the company continues to use a Black-Scholes valuation model to value options granted. As of December 31, 2021, there was \$8,612,000 of total unrecognized compensation cost from stock compensation arrangements, which is related to non-vested awards, and includes \$6,866,000 related to restricted stock awards and \$1,746,000 related to performance awards.

Most of the options awarded have been granted at exercise prices equal to the market value of the underlying stock on the date of grant. Restricted stock awards granted without cost to the recipients are expensed on a straight-line basis over the vesting periods. Performance awards granted are expensed based on estimated achievement of the performance objectives over the relevant performance award periods.

Income Taxes

As part of the process of preparing its financial statements, the company is required to estimate income taxes in various jurisdictions. The process requires estimating the company's current tax liability, including assessing uncertainties related to tax return filing positions, as well as estimating temporary differences due to the different treatment of items for tax and accounting policies. The temporary differences are reported as deferred tax assets and or liabilities. The company also must estimate whether it will more likely than not realize its deferred tax assets and whether a valuation allowance should be established. The company's deferred tax assets are offset by a valuation allowance in the U.S., Australia, Switzerland and New Zealand. In the event that actual results differ from its estimates, the company's provision for income taxes could be materially impacted. The company does not believe that there is a substantial likelihood that materially different amounts would be reported related to its critical accounting policies.

Accounting for Convertible Debt and Related Derivatives

In 2016 and 2017, the company issued \$150,000,000 and \$120,000,000 aggregate principal amount of the 2021 and 2022 Notes, respectively. In 2019, the company repurchased \$16,000,000 in aggregate principal amount of 2021 Notes for cash and entered into separate privately negotiated agreements with certain holders of its 2021 Notes to exchange \$72,909,000 in aggregate principal amount of 2021 Notes for new 5.00% Convertible Senior Exchange Notes Series I due 2024 of the company and \$6,928,000 in cash.

In 2020, the company repurchased \$24,466,000 in aggregate principal amount of 2021 Notes for cash and

entered into separate privately negotiated agreements with certain holders of its 2021 Notes to exchange \$35,375,000 in aggregate principal amount of the company's 2021 Notes and certain holders of its 2022 Notes to its 2022 Notes to exchange \$38,500,000 in aggregate principal amount of the company's 2022 Notes for new 5.00% Convertible Senior Exchange Notes Series II due 2024 of the company and \$5,593,000 in cash. In connection with the original offering of the 2021 Notes and 2022 Notes, the company entered into privately negotiated convertible note hedge transactions with certain counterparties. These transactions cover, subject to customary anti-dilution adjustments, the number of the company's common shares that will initially underlie the Notes, and are expected generally to reduce the potential equity dilution, and/or offset any cash payments in excess of the principal amount due, as the case may be, upon conversion of the Notes.

The company entered into separate, privately negotiated warrant transactions with the option counterparties at a higher strike price relating to the same number of the company's common shares, subject to customary anti-dilution adjustments, pursuant to which the company sold warrants to the option counterparties. The warrants could have a dilutive effect on the company's outstanding common shares and the company's earnings per share to the extent that the price of the company's common shares exceeds the strike price of those warrants. The initial strike price of the warrants is \$22.4175 and \$21.4375 per share on the 2021 and 2022 Notes, respectively, and is subject to certain adjustments under the terms of the warrant transactions.

As a result of the repurchase of 2021 Notes in third quarter of 2019 and the exchange of 2021 Notes for new notes in the fourth quarter of 2019, a partial unwind of the note hedge options and warrants entered into with the issuance of the 2021 Notes also occurred during the fourth quarter of 2019. Note hedge options outstanding were reduced from the original number of 300,000 to 138,182 and warrants were reduced from the initial number of 9,007,380 to 3,860,624. The partial unwind of the note hedge options and warrants resulted in no net impact to cash or paid in capital.

As a result of the repurchase of 2021 Notes in the third quarter of 2020 and the exchange of 2021 Notes for new notes in the second quarter of 2020, a partial unwind of the note hedge options and warrants entered into with the issuance of the 2021 Notes also occurred. Note hedge options outstanding were reduced from the original number of 300,000 to 62,341 and warrants were reduced from the initial number of 9,007,380 to 3,141,943. The partial unwind of the note hedge options and warrants resulted in no net impact to cash or paid in capital.

The convertible debt conversion liabilities and the convertible note hedges were accounted for as derivatives and accounted for at fair value quarterly until no longer accounted for separately as a result of obtaining shareholder approval in May 2019 to settle the Notes with common shares. The warrants are included as equity. The fair value of the convertible debt conversion liabilities and the convertible note hedges were estimated using a lattice model incorporating the terms and conditions of the notes and considering, for example, changes in the prices of the company's common shares, company stock price volatility, risk-free rates and changes in market rates. The valuations were, among other things, subject to changes in both the company's credit worthiness and the counter-parties to the instruments as well as change in general market conditions.

The company adopted ASU 2020-06 effective January 1, 2021, using the modified retrospective method, which resulted in the removal of convertible debt discounts of \$25,218,000, adjustment of \$34,798,000 to additional paid-in-capital and \$9,670,000 adjustment to retained earnings. Convertible debt discounts prior to adoption of ASU 2020-06 were amortized over the convertible debt term through interest expense. Subsequent to adoption, convertible debt discounts are not applicable when accounting for debt as a single unit of account. Interest expense for 2020 and 2019 related to debt discount amortization (which was not recognized in 2021 due to adoption) were \$9,673,000 or \$0.28 per basic and diluted share and \$12,325,000 or \$0.37 per basic and diluted share, respectively. There was no impact of adoption on performance metrics used for short-term or long-term incentive compensation. Accretion specific to the Series II 2024 Notes was unaffected by adoption. Due to the valuation allowance, there was no net impact to income taxes for the adoption. Subsequent to adoption weighted average shares when calculating diluted earnings per share requires the application of the if-converted method for all convertible instruments.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

For the company's disclosure regarding recently issued accounting pronouncements, refer to Accounting Policies - Recent Accounting Pronouncements in the Notes to the Consolidated Financial Statements.

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

The company is at times exposed to market risk through various financial instruments, including fixed rate and floating rate debt instruments. Based on December 31, 2021 debt levels, a 1% change in interest rates would have no impact on annual interest expense as the company did not have any variable rate debt outstanding. Additionally, the company operates internationally and, as a result, is exposed to foreign currency fluctuations. Specifically, the exposure results from intercompany loans, intercompany sales or payments and third-party sales or payments. In an attempt to reduce this exposure, foreign currency forward contracts are utilized to hedge intercompany purchases and sales as well as third-party purchases and sales. The company does not believe that any potential loss related to these financial instruments would have a material adverse effect on the company's financial condition or results of operations.

The company is party to the Credit Agreement which was originally entered into on January 16, 2015 and matures in January 2024, as extended by an amendment to the Credit Agreement which became effective on May 29, 2020. Accordingly, while the company is exposed to increases in interest rates, its exposure to the volatility of the current market environment is currently limited until the Credit Agreement expires. The Credit Agreement contains customary default provisions, with certain grace periods and exceptions, which provide that events of default that include, among other things, failure to pay amounts due, breach of covenants, representations or warranties, bankruptcy, the occurrence of a material adverse effect, exclusion from any medical reimbursement program, and an interruption of any material manufacturing facilities for more than ten consecutive days. Should the company fail to comply with these requirements, the company would potentially have to attempt to obtain alternative financing and thus likely be required to pay much higher interest rates.

As of December 31, 2021, the company had \$22,150,000 on the North American credit facility and \$13,352,000 on the European credit facility under its Credit Agreement, which provides for a senior secured revolving credit facility for U.S. and Canadian borrowers of up to \$60,000,000 at variable rates, subject to availability based on a borrowing base formula, and in addition provides for a revolving credit, letters of credit and swing line loan facility for European borrowers allowing borrowing up to an aggregate principal amount of \$30,000,000 at variable rates, also subject to availability based on a borrowing base formula. As of December 31, 2021, the company had \$2,650,000, \$72,909,000, \$79,222,000 in principal (including accretion, only

applicable for the Series II 2024 Notes) and \$125,000,000 amount outstanding of its fixed rate 2022 Notes, Series I 2024 Notes, Series II 2024 Note and 2026 Notes, respectively.

Item 8. Financial Statements and Supplementary Data.

Reference is made to the Report of Independent Registered Public Accounting Firm (PCAOB ID: 42), Consolidated Balance Sheets, Consolidated Statements of Comprehensive Income (Loss), Consolidated Statements of Cash Flows, Consolidated Statement of Shareholders' Equity, Notes to Consolidated Financial Statements and Financial Statement Schedule of this Annual Report on Form 10-K.

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

None.

Item 9A. Controls and Procedures.

(a) Evaluation of Disclosure Controls and Procedures

As of December 31, 2021, an evaluation was performed, under the supervision and with the participation of the company's management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the company's disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)). Based on that evaluation, the company's management, including the Chief Executive Officer and Chief Financial Officer, concluded that the company's disclosure controls and procedures were effective as of December 31, 2021, in ensuring that information required to be disclosed by the company in the reports it files and submits under the Exchange Act is (1) recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms and (2) accumulated and communicated to the company's management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow for timely decisions regarding required disclosure.

(b) Management's Annual Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining a system of adequate internal control over financial reporting that provides reasonable assurance that assets are safeguarded and that transactions are authorized, recorded and reported properly. The system includes self-monitoring mechanisms; regular testing by the company's

internal auditors; a Code of Conduct; written policies and procedures; and a careful selection and training of employees. Actions are taken to correct deficiencies as they are identified. An effective internal control system, no matter how well designed, has inherent limitations—including the possibility of the circumvention or overriding of controls—and therefore can provide only reasonable assurance that errors and fraud that can be material to the financial statements are prevented or would be detected on a timely basis. Further, because of changes in conditions, internal control system effectiveness may vary over time.

Management's assessment of the effectiveness of the company's internal control over financial reporting is based on the Internal Control—Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework).

In management's opinion, internal control over financial reporting is effective as of December 31, 2021.

(c) Attestation Report of the Independent Registered Public Accounting Firm

The company's independent registered public accounting firm, Ernst & Young LLP, audited the company's internal control over financial reporting and, based on that audit, issued its report regarding the company's internal control over financial reporting, which is included in this Annual Report on Form 10-K.

(d) Changes in Internal Control Over Financial Reporting

The company is currently implementing a new enterprise resource planning (ERP) system. This project is a multi-year initiative and is intended to improve efficiency and effectiveness of certain financial and business transaction processes, as well as the underlying systems environment. These initiatives are not being implemented in response to any identified internal control deficiency or weakness.

During 2021, the company continued its phased implementation of the new ERP.

Other than the ERP system implementation described above, no other changes in the company's internal control over financial reporting have occurred during the company's last fiscal quarter that have materially affected, or are reasonably likely to materially affect, the company's internal control over financial reporting.

Item 9B. Other Information.

On March 7, 2022, C. Martin Harris, M.D. informed the Board of Directors of the company (the "Board") of his decision to not stand for re-election as a director at the

company's 2022 annual meeting of shareholders, at which time his term as a director will expire. Dr. Harris' decision to not stand for re-election to the Board is due to his other personal and professional obligations and not due to disagreement with the company.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

Item 10. Directors, Executive Officers and Corporate Governance.

Information required by Item 10 as to the executive officers of the company is included in Part I of this Annual Report on Form 10-K. The other information required by Item 10 as to the directors of the company, the Audit Committee, the Audit Committee financial experts, the procedures by which security holders may recommend nominees to the Board of Directors, compliance with Section 16(a) of the Exchange Act, code of ethics and corporate governance is incorporated herein by reference to the information set forth under the captions “Election of Directors,” “Corporate Governance,” and “Delinquent Section 16(a) Reports” in the company's definitive Proxy Statement on Schedule 14A for the 2022 Annual Meeting of Shareholders.

Item 11. Executive Compensation.

The information required by Item 11 is incorporated by reference to the information set forth under the captions “Corporate Governance”, “Executive Compensation” and “CEO Pay Ratio” in the company's definitive Proxy Statement on Schedule 14A for the 2022 Annual Meeting of Shareholders.

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

The information required by Item 12 is incorporated by reference to the information set forth under the caption “Security Ownership of Certain Beneficial Holders and Management” in the company's definitive Proxy Statement on Schedule 14A for the 2022 Annual Meeting of Shareholders.

Information regarding the securities authorized for issuance under the company's equity compensation plans is incorporated by reference to the information set forth under the captions “Equity Compensation Plan Information” in the company's definitive Proxy Statement on Schedule 14A for the 2022 Annual Meeting of Shareholders.

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

The information required by Item 13 is incorporated by reference to the information set forth under the caption “Certain Relationships and Related Transactions” in the company's definitive Proxy Statement on Schedule 14A for the 2022 Annual Meeting of Shareholders.

Item 14. Principal Accountant Fees and Services.

The information required by Item 14 is incorporated by reference to the information set forth under the caption “Independent Registered Public Accounting Firm Fees and Services” in the company's definitive Proxy Statement on Schedule 14A for the 2022 Annual Meeting of Shareholders.

Item 15. Exhibits and Financial Statement Schedules.**(a)(1) Financial Statements.**

The following financial statements of the company are included in Part II, Item 8:

Consolidated Statements of Comprehensive Income (Loss)—years ended December 31, 2021, 2020 and 2019

Consolidated Balance Sheets—December 31, 2021 and 2020

Consolidated Statements of Cash Flows—years ended December 31, 2021, 2020 and 2019

Consolidated Statements of Shareholders' Equity—years ended December 31, 2021, 2020 and 2019

Notes to Consolidated Financial Statements

(a)(2) Financial Statement Schedules.

The following financial statement schedule of the company is included in Part II, Item 8:

Schedule II—Valuation and Qualifying Accounts

All other schedules have been omitted because they are not applicable or not required, or because the required information is included in the Consolidated Financial Statements or notes thereto.

(a)(3) Exhibits.

Refer to Exhibit Index of this Annual Report on Form 10-K.

Item 16. Form 10-K Summary.

None.

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized as of March 8, 2022.

INVACARE CORPORATION

By: /s/ MATTHEW E. MONAGHAN

Matthew E. Monaghan

**Chairman of the Board of Directors,
President and Chief Executive Officer**

INVACARE CORPORATION
Report on Form 10-K for the fiscal year ended December 31, 2021.

Official Exhibit No.	Description	Reference
2.1	Securities Purchase Agreement among Allied Motion Christchurch Limited, Invacare Holdings New Zealand and Invacare Corporation, dated March 6, 2020. (Pursuant to Item 601(b)(2) of Regulation S-K, the registrant hereby agrees to supplementally furnish to the Securities and Exchange Commission upon request any omitted schedule or exhibit to the agreement.)	(A)
3(a)	Second Amended and Restated Articles of Incorporation	(B)
3(b)	Second Amended and Restated Code of Regulations, as amended	(C)
3(c)	Amendment No. 1 to the Second Amended and Restated Articles of Incorporation	(D)
4(a)	Indenture, dated as of June 14, 2017, by and between Invacare Corporation and Wells Fargo Bank, National Association (including the form of the 4.50% Convertible Senior Notes due 2022).	(E)
4(b)	Indenture, dated as of November 19, 2019, by and between Invacare Corporation and Wells Fargo Bank, N.A., as Trustee (including the form of the 5.00% Convertible Senior Exchange Notes due 2024).	(F)
4(c)	Indenture, dated as of June 4, 2020, by and between Invacare Corporation and Wells Fargo Bank, N.A., as Trustee (including the form of the 5.00% Series II Convertible Senior Exchange Notes due 2024).	(G)
4(d)	Indenture, dated as of March 16, 2021, by and between Invacare Corporation and Wells Fargo Bank, N.A., as Trustee (including the form of the 4.25% Convertible Senior Exchange Notes due 2026).	(H)
4(e)	Description of Securities Registered Under the Exchange Act.	(I)
10(a)	Invacare Retirement Savings Plan, effective January 1, 2001, as amended	(J)*
10(b)	Invacare Corporation 401(K) Plus Benefit Equalization Plan, effective January 1, 2003, as amended and restated	(J)*
10(c)	Invacare Corporation Deferred Compensation Plus Plan, effective January 1, 2005, as amended August 19, 2009 and on November 23, 2010	(K)*
10(d)	Amendment No. 3 to Invacare Corporation Deferred Compensation Plus Plan, effective November 18, 2011	(L)*
10(e)	Invacare Corporation Death Benefit Only Plan, effective January 1, 2005, as amended	(J)*
10(f)	Cash Balance Supplemental Executive Retirement Plan, as amended and restated, effective December 31, 2008	(M)*
10(g)	Amendment No. 1 to the Cash Balance Supplemental Executive Retirement Plan, effective August 19, 2009	(WW)*
10(h)	Form of Participation Agreement, for current participants in the Cash Balance Supplemental Executive Retirement Plan, as of December 31, 2008, entered into by and between the company and certain participants and a schedule of all such agreements with participants	(O)*
10(i)	Invacare Corporation Amended and Restated 2003 Performance Plan	(N)*
10(j)	Form of Director Stock Option Award under Invacare Corporation 2003 Performance Plan	(J)*
10(k)	Form of Director Deferred Option Award under Invacare Corporation 2003 Performance Plan	(K)*
10(l)	Form of Restricted Stock Award under Invacare Corporation 2003 Performance Plan	(L)*
10(m)	Form of Stock Option Award under Invacare Corporation 2003 Performance Plan	(J)*
10(n)	Form of Executive Stock Option Award under Invacare Corporation 2003 Performance Plan	(J)*
10(o)	Form of Switzerland Stock Option Award under Invacare Corporation 2003 Performance Plan	(J)*
10(p)	Form of Switzerland Executive Stock Option Award under Invacare Corporation 2003 Performance Plan	(J)*

Official Exhibit No.	Description	Reference
10(q)	Invacare Corporation 2013 Equity Compensation Plan	(P)*
10(r)	Amendment No. 1 to the Invacare Corporation 2013 Equity Compensation Plan	(S)*
10(s)	Form of Executive Stock Option Award under the Invacare Corporation 2013 Equity Compensation Plan	(R)*
10(t)	Form of Stock Option Award under the Invacare Corporation 2013 Equity Compensation Plan	(R)*
10(u)	Form of Executive Stock Option Award for Swiss Employees under the Invacare Corporation 2013 Equity Compensation Plan	(R)*
10(v)	Form of Stock Option Award for Swiss Employees under the Invacare Corporation 2013 Equity Compensation Plan	(R)*
10(w)	Form of Director Restricted Stock Award under the Invacare Corporation 2013 Equity Compensation Plan	(R)*
10(x)	Form of Restricted Stock Award under the Invacare Corporation 2013 Equity Compensation Plan	(R)*
10(y)	Form of Performance Share Award Agreement under the Invacare Corporation 2013 Equity Compensation Plan	(S)*
10(z)	Form of Restricted Stock Award Agreement for Employees under the Invacare Corporation 2013 Equity Compensation Plan	(T)*
10(aa)	Form of Director Restricted Stock Unit under the Invacare Corporation 2013 Equity Compensation Plan	(U)*
10(ab)	Invacare Corporation Executive Incentive Bonus Plan, as amended and restated	(Q)*
10(ac)	Employment Agreement, dated as of March 27, 2020, by and between the company and Matthew E. Monaghan.	(Y)*
10(ad)	Letter Agreement, dated as of February 20, 2018, by and between Invacare Corporation and Kathleen P. Leneghan.	(Z)*
10(ae)	Letter agreement, dated as of July 31, 2008, by and between the company and Anthony C. LaPlaca.	(O)*
10(af)	Employment Agreement, dated as of October 21, 2016, by and between the company and Ralf Ledda.	(U)*
10(ag)	Letter Agreement, dated as of February 10, 2019, by and between the company and Angela Goodwin.	(V)*
10(ah)	Employment Agreement, dated as of April 22, 2021, by and between the company and Rick Cassidy.	(W)*
10(ai)	Letter Agreement, dated as of October 4, 2021, by and between the company and Joost Beltman.	(X)*
10(aj)**	Amended and Restated Employment Agreement, dated as of March 3, 2022, between Invacare International GmbH and Geoffrey P. Purtil.	*
10(ak)	Change of Control Agreement, dated as of December 31, 2008, by and between the company and Anthony C. LaPlaca	(AA)*
10(al)**	Form of Change of Control Agreement entered into by and between the company and certain of its executive officers and schedule of all such agreements with certain executive officers	*
10(am)	Technical Information & Non-Competition Agreement, dated April 1, 2015, entered into by and between the company and Matthew E. Monaghan	(O)*
10(an)	Technical Information & Non-Competition Agreement entered into by and between the company and certain of its executive officers and schedule of all such agreements with executive officers	(BB)*
10(ao)	Indemnity Agreement, dated April 1, 2015, entered into by and between the company and Matthew E. Monaghan.	(O)*
10(ap)**	Form of Indemnity Agreement entered into by and between the company and its directors and certain of its executive officers and schedule of all such agreements with directors and executive officers	*

Official Exhibit No.	Description	Reference
10(aq)	Director Compensation Schedule	(NN)*
10(ar)	2012 Non-employee Directors Deferred Compensation Plan, effective January 1, 2012, Amended and Restated as of November 17, 2016	(U)*
10(as)	Purchase and Sale Agreement, dated as of February 24, 2015, by and between the company and Industrial Realty Group, LLC.	(CC)
10(at)	Form of Lease Agreement by and among the company and the affiliates of Industrial Realty Group, LLC named therein.	(CC)
10(au)	Amended and Restated Revolving Credit and Security Agreement, dated as of September 30, 2015, by and among the company, the other Borrowers party thereto, the Guarantors party thereto, the Lenders party thereto, PNC Bank, National Association, as administrative agent, JP Morgan Chase Bank, N.A. and J.P. Morgan Europe Limited, as European agent.	(DD)
10(av)	First Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of February 16, 2016, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as administrative agent, and J.P. Morgan Europe Limited, as European agent.	(EE)
10(aw)	Second Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of May 3, 2016 by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as administrative agent, and J.P. Morgan Europe Limited, as European agent.	(U)
10(ax)	Third Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of September 30, 2016, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as administrative agent, and J.P. Morgan Europe Limited, as European agent.	(U)
10(ay)	Fourth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of November 30, 2016, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as agent for the lenders, and J.P. Morgan Europe Limited, as European agent for the lenders.	(FF)
10(az)	Waiver and Fifth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of June 7, 2017, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as agent for the lenders, and J.P. Morgan Europe Limited, as European agent for the lenders.	(GG)
10(ba)	Sixth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of November 13, 2019, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as agent for the lenders, and J.P. Morgan Europe Limited, as European agent for the lenders.	(HH)
10(bb)	Seventh Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of May 29, 2020, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as agent for the lenders, and J.P. Morgan Europe Limited, as European agent for the lenders.	(II)
10(bc)	Eighth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of January 15, 2021, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as agent for the lenders, and J.P. Morgan Europe Limited, as European agent for the lenders.	(JJ)
10(bd)	Ninth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of March 10, 2021, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as agent for the lenders, and J.P. Morgan Europe Limited, as European agent for the lenders.	(KK)
10(be)**	Tenth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of December 29, 2021, by and among the company, the other borrowers party thereto, the guarantors party thereto, the lenders party thereto, PNC Bank, National Association, as agent for the lenders, and J.P. Morgan Europe Limited, as European agent for the lenders.	

Official Exhibit No.	Description	Reference
10(bf)	Call Option Transaction Confirmation entered into between JPMorgan Chase Bank, National Association, London Branch and Invacare Corporation as of February 17, 2016	(LL)
10(bg)	Call Option Transaction Confirmation entered into between Wells Fargo Bank, National Association and Invacare Corporation as of February 17, 2016	(LL)
10(bh)	Warrants Confirmation between Invacare Corporation to JPMorgan Chase Bank, National Association, London Branch as of February 17, 2016	(LL)
10(bi)	Warrants Confirmation between Invacare Corporation to Wells Fargo Bank, National Association as of February 17, 2016	(LL)
10(bj)	Additional Call Option Transaction Confirmation, dated March 4, 2016, between JPMorgan Chase Bank, National Association, London Branch and Invacare Corporation.	(MM)
10(bk)	Additional Call Option Transaction Confirmation, dated March 4, 2016, between Wells Fargo Bank, National Association and Invacare Corporation.	(MM)
10(bl)	Additional Warrants Confirmation, dated March 4, 2016, between JPMorgan Chase Bank, National Association, London Branch and Invacare Corporation.	(MM)
10(bm)	Additional Warrants Confirmation, dated March 4, 2016, between Wells Fargo Bank, National Association and Invacare Corporation.	(MM)
10(bn)	Partial Unwind Agreement, dated as of November 26, 2019, between Invacare Corporation and JPMorgan Chase Bank, National Association, London Branch.	(I)
10(bo)	Partial Unwind Agreement, dated as of November 22, 2019, between Invacare Corporation and Wells Fargo Bank, National Association.	(I)
10(bp)	Partial Unwind Agreement, dated as of June 4, 2020, between Invacare Corporation and Wells Fargo Bank, National Association.	(NN)
10(bq)	Partial Unwind Agreement, dated as of September 11, 2020, between Invacare Corporation and Wells Fargo Bank, National Association.	(NN)
10(br)	Promissory Note dated May 13, 2020, between Invacare Corporation and Key Bank National Association.	(OO)
10(bs)	Form of Performance-Based Stock Option Award under Invacare Corporation 2013 Equity Compensation Plan.	(PP)*
10(bt)	Base Call Option Transaction Confirmation, dated June 8, 2017, between Goldman Sachs & Co. LLC and Invacare Corporation.	(E)
10(bu)	Base Warrants Confirmation, dated June 8, 2017, between Goldman Sachs & Co. LLC and Invacare Corporation.	(E)
10(bv)	Additional Call Option Transaction Confirmation, dated June 9, 2017, between Goldman Sachs & Co. LLC and Invacare Corporation.	(E)
10(bw)	Additional Warrants Confirmation, dated June 9, 2017, between Goldman Sachs & Co. LLC and Invacare Corporation.	(E)
10(bx)	Invacare Corporation 2018 Equity Compensation Plan	(QQ)
10(by)	Amendment No. 1 to Invacare Corporation 2018 Equity Compensation Plan	(D)*
10(bz)	Amendment No. 2 to Invacare Corporation 2018 Equity Compensation Plan	(RR)*
10(ca)	Amendment No. 3 to Invacare Corporation 2018 Equity Compensation Plan	(SS)*
10(cb)	Form of Restricted Stock Award under Invacare Corporation 2018 Equity Compensation Plan	(TT)*
10(cc)	Form of Restricted Stock Unit Award under Invacare Corporation 2018 Equity Compensation Plan	(TT)*
10(cd)	Form of Director Restricted Stock Unit Award under Invacare Corporation 2018 Equity Compensation Plan	(TT)*
10(ce)	Form of Performance Award under Invacare Corporation 2018 Equity Compensation Plan	(TT)*
10(cf)	Form of Performance Unit Award under Invacare Corporation 2018 Equity Compensation Plan	(TT)*
10(cg)	Omnibus Amendment	(BB)*
10(ch)	Master Information Technology Services Agreement by and between Invacare Corporation and Birlasoft Solutions, Inc. effective October 1, 2019.	(UU)

Official Exhibit No.	Description	Reference
21**	Subsidiaries of the company	
23**	Consent of Independent Registered Public Accounting Firm	
31.1**	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	
31.2**	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	
32.1**	Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	
32.2**	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	
99.1	Consent Decree of Permanent Injunction, as filed with the U.S. District Court for the Northern District of Ohio on December 20, 2012.	(VV)
101.INS**	Inline XBRL instance document	
101.SCH**	Inline XBRL taxonomy extension schema	
101.CAL**	Inline XBRL taxonomy extension calculation linkbase	
101.DEF**	Inline XBRL taxonomy extension definition linkbase	
101.LAB**	Inline XBRL taxonomy extension label linkbase	
101.PRE**	Inline XBRL taxonomy extension presentation linkbase	
104	Cover Page Interactive Data File - The cover page from the company's Annual Report on Form 10-K for the year ended December 31, 2021, formatted in Inline XBRL (included in Exhibit 101).	

* Management contract, compensatory plan or arrangement

** Filed herewith

- (A) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated March 9, 2020, which Exhibit is incorporated herein by reference.
- (B) Reference is made to Exhibit 3(a) of the company report on Form 10-K for the fiscal year ended December 31, 2008, which Exhibit is incorporated herein by reference.
- (C) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated February 13, 2014, which Exhibit is incorporated herein by reference.
- (D) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated May 16, 2019, which Exhibit is incorporated herein by reference.
- (E) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated June 14, 2017, which Exhibit is incorporated herein by reference.
- (F) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated November 13, 2019, which Exhibit is incorporated herein by reference.
- (G) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated June 4, 2020, which Exhibit is incorporated herein by reference.
- (H) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated March 16, 2021, which Exhibit is incorporated herein by reference.
- (I) Reference is made to the appropriate Exhibit of the company report on Form 10-K, for the fiscal year ended December 31, 2019, which Exhibit is incorporated herein by reference.
- (J) Reference is made to the appropriate Exhibit of the company report on Form 10-K for the fiscal year ended December 31, 2007, which Exhibit is incorporated herein by reference.
- (K) Reference is made to the appropriate Exhibit of the company report on Form 10-K for the fiscal year ended December 31, 2010, which Exhibit is incorporated herein by reference.
- (L) Reference is made to the appropriate Exhibit of the company report on Form 10-K for the fiscal year ended December 31, 2011, which Exhibit is incorporated herein by reference.
- (M) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated December 31, 2008, which Exhibit is incorporated herein by reference.

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- (N) Reference is made to Exhibit 10.2 of the company report on Form 8-K, dated May 28, 2009, which Exhibit is incorporated herein by reference.
- (O) Reference is made to the appropriate Exhibit of the company report on Form 10-K for the fiscal year ended December 31, 2015, which Exhibit is incorporated herein by reference.
- (P) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated May 21, 2013, which Exhibit is incorporated herein by reference.
- (Q) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated May 15, 2015, which Exhibit is incorporated herein by reference.
- (R) Reference is made to the appropriate Exhibit of the company report on Form 10-Q, for the fiscal quarter ended September 30, 2013, which Exhibit is incorporated herein by reference.
- (S) Reference is made to Exhibit 10.1 of the company report on Form 8-K, dated March 7, 2014, which Exhibit is incorporated herein by reference.
- (T) Reference is made to Exhibit 10.2 of the company report on Form 8-K, dated March 7, 2014, which Exhibit is incorporated herein by reference.
- (U) Reference is made to the appropriate Exhibit of the company report on Form 10-K for the fiscal year ended December 31, 2016, which Exhibit is incorporated herein by reference.
- (V) Reference is made to the appropriate Exhibit of the company report on Form 10-K for the fiscal year ended December 31, 2020, which Exhibit is incorporated herein by reference.
- (W) Reference is made to the appropriate Exhibit of the company report on Form 10-Q for the fiscal quarter ended June 30, 2021, which Exhibit is incorporated herein by reference.
- (X) Reference is made to the appropriate Exhibit of the company report on Form 10-Q for the fiscal quarter ended September 30, 2021, which Exhibit is incorporated herein by reference.
- (Y) Reference is made to Exhibit 99.1 of the company report on Form 8-K, dated March 27, 2020, which Exhibit is incorporated herein by reference.
- (Z) Reference is made to Exhibit 10.1 of the company report on Form 8-K, dated February 23, 2018, which Exhibit is incorporated herein by reference.
- (AA) Reference is made to the appropriate Exhibit of the company report on Form 10-K for the fiscal year ended December 31, 2017, which Exhibit is incorporated herein by reference.
- (BB) Reference is made to the appropriate Exhibit of the company report on Form 10-K for the fiscal year ended December 31, 2018, which Exhibit is incorporated herein by reference.
- (CC) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated April 23, 2015, which Exhibit is incorporated herein by reference.
- (DD) Reference is made to Exhibit 10.1 of the company report on Form 8-K, dated September 30, 2015, which Exhibit is incorporated herein by reference.
- (EE) Reference is made to Exhibit 10.1 of the company report on Form 8-K, dated February 16, 2016, which Exhibit is incorporated herein by reference.
- (FF) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated November 30, 2016, which Exhibit is incorporated herein by reference.
- (GG) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated June 7, 2017, which Exhibit is incorporated herein by reference.
- (HH) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated November 14, 2019, which Exhibit is incorporated herein by reference.
- (II) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated June 1, 2020, which Exhibit is incorporated herein by reference.
- (JJ) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated January 21, 2021, which Exhibit is incorporated herein by reference.
- (KK) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated March 10, 2021, which Exhibit is incorporated herein by reference.
- (LL) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated February 23, 2016, which Exhibit is incorporated herein by reference.
- (MM) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated March 7, 2016, which Exhibit is incorporated herein by reference.
- (NN) Reference is made to the appropriate Exhibit of the company report on Form 10-K, for the fiscal year ended December 31, 2020, which Exhibit is incorporated herein by reference.
- (OO) Reference is made to the appropriate Exhibit of the company report on Form 10-Q, for the fiscal quarter ended June 30, 2020, which Exhibit is incorporated herein by reference.

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- (PP) Reference is made to the appropriate Exhibit of the company report on Form 10-Q, for the fiscal quarter ended March 31, 2017, which Exhibit is incorporated herein by reference.
 - (QQ) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated May 18, 2018, which Exhibit is incorporated herein by reference.
 - (RR) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated May 21, 2020, which Exhibit is incorporated herein by reference.
 - (SS) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated May 21, 2021, which Exhibit is incorporated herein by reference.
 - (TT) Reference is made to the appropriate Exhibit of the company report on Form 10-Q, for the fiscal quarter ended June 30, 2018, which Exhibit is incorporated herein by reference.
 - (UU) Reference is made to the appropriate Exhibit of the company report on Form 10-Q, for the fiscal quarter ended September 30, 2019, which Exhibit is incorporated herein by reference.
 - (VV) Reference is made to the appropriate Exhibit of the company report on Form 8-K, dated December 20, 2012, which Exhibit is incorporated herein by reference.
 - (WW) Reference is made to the appropriate Exhibit of the company report on Form 10-Q, for the fiscal quarter ended September 30, 2009, which Exhibit is incorporated herein by reference.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated as of March 8, 2022.

<u>Signature</u>	<u>Title</u>
/s/ MATTHEW E. MONAGHAN Matthew E. Monaghan	Chairman of the Board of Directors, President and Chief Executive Officer (Principal Executive Officer)
/s/ KATHLEEN P. LENEGHAN Kathleen P. Leneghan	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ SUSAN H. ALEXANDER Susan H. Alexander	Director
/s/ JULIE A. BECK Julie A. Beck	Director
/s/ PETRA DANIELSOHN-WEIL, PhD Petra Danielsohn-Weil, PhD	Director
/s/ STEPHANIE L. FEHR Stephanie L. Fehr	Director
/s/ MARC M. GIBELEY Marc M. Gibeley	Director
/s/ C. MARTIN HARRIS, M.D. C. Martin Harris, M.D.	Director
/s/ CLIFFORD D. NASTAS Clifford D. Nastas	Director

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Invacare Corporation

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Invacare Corporation and subsidiaries (the Company) as of December 31, 2021 and 2020, the related consolidated statements of comprehensive income (loss), shareholders' equity and cash flows for each of the three years in the period ended December 31, 2021, and the related notes and financial statement schedule listed in the Index at Item 15(a), (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at 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 U.S. generally accepted accounting principles.

We also have 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 issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated March 8, 2022 expressed an unqualified opinion thereon.

Adoption of ASU No. 2020-06

As discussed in the *Accounting Policies* note to the consolidated financial statements, the Company changed its method of accounting for convertible instruments in 2021 due to the adoption of ASU No. 2020-06, *Debt-Debt with Conversion and Other options (Subtopic 470-20) and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 8815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*.

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 Matter

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 the critical audit matter does not alter in any way our opinion on the consolidated 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 account or disclosures to which it relates.

Valuation of Goodwill

Description of the matter At December 31, 2021, the carrying amount of the Company's goodwill was \$355.9 million. As discussed in the *Accounting Policies* and *Long-Term Assets - Goodwill* notes to the consolidated financial statements, goodwill is assessed for impairment at the reporting unit level at least annually or whenever events or changes in circumstances indicate its carrying value may not be recoverable.

Auditing management's goodwill impairment assessment was complex and judgmental due to the significant estimation required to determine the fair value of a reporting unit. In particular, the fair value estimate was sensitive to significant assumptions, such as projected future cash flows of the reporting unit and the weighted average cost of capital used in the valuation process to discount future cash flows, which are affected by expectations about future market or economic conditions and the planned business and operating strategies.

How we addressed the matter in our audit We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's goodwill impairment assessment process, including controls over management's review of the significant data and assumptions used in the calculation of the fair value of the reporting unit.

To test the estimated fair value of the reporting unit, our audit procedures included, among others, assessing the valuation methodologies, testing the significant assumptions used to develop the projected financial information, and testing the underlying data used by the Company in its analysis. We compared the projected financial information developed by management to current industry and economic trends as well as to the historical performance of the reporting unit and evaluated the expected impacts of the Company's operating strategies and initiatives on the significant assumptions. We also performed analyses to evaluate the sensitivity of the fair value of the reporting unit resulting from changes in the significant assumptions. In addition, we tested management's reconciliation of the fair value of the reporting unit to the market capitalization of the Company and assessed its reasonableness. In addition, we involved our internal valuation specialists to assist in our evaluation of the methodologies applied and assumptions used by management.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 1984.

Cleveland, Ohio
March 8, 2022

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Invacare Corporation

Opinion on Internal Control over Financial Reporting

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

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2021 and 2020, the related consolidated statements of comprehensive income (loss), shareholders' equity and cash flows for each of the three years in the period ended December 31, 2021, and the related notes and financial statement schedule listed in the Index at Item 15(a) and our report dated March 8, 2022 expressed an unqualified opinion thereon.

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 Annual 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/ Ernst & Young LLP

Cleveland, Ohio
March 8, 2022

INVACARE CORPORATION AND SUBSIDIARIES
Consolidated Statements of Comprehensive Income (Loss)

	Years Ended December 31,		
	2021	2020	2019
	(In thousands, except per share data)		
Net sales	\$ 872,457	\$ 850,689	\$ 927,964
Cost of products sold	633,351	605,437	665,897
Gross Profit	239,106	245,252	262,067
Selling, general and administrative expenses	232,242	236,357	260,061
Gain on sale of business	—	(9,790)	—
Charges related to restructuring activities	2,534	7,358	11,829
Impairment of goodwill	28,564	—	—
Impairment of an intangible asset	—	—	587
Operating Income (Loss)	(24,234)	11,327	(10,410)
Net gain on convertible debt derivatives	—	—	(1,197)
Loss (gain) on debt extinguishment including debt finance charges and fees	(9,422)	7,360	6,165
Interest expense	24,307	28,499	29,076
Interest income	(1)	(93)	(429)
Loss Before Income Taxes	(39,118)	(24,439)	(44,025)
Income tax provision	6,445	3,841	9,302
Net Loss	\$ (45,563)	\$ (28,280)	\$ (53,327)
Net Loss per Share—Basic	\$ (1.31)	\$ (0.83)	\$ (1.59)
Weighted Average Shares Outstanding—Basic	34,875	34,266	33,594
Net Loss per Share—Assuming Dilution	\$ (1.31)	\$ (0.83)	\$ (1.59)
Weighted Average Shares Outstanding—Assuming Dilution	35,274	34,375	33,642
Net Loss	\$ (45,563)	\$ (28,280)	\$ (53,327)
Other comprehensive income (loss):			
Foreign currency translation adjustments	(28,724)	43,405	(8,499)
Defined benefit plans:			
Amortization of prior service costs and unrecognized losses	(427)	(375)	(596)
Deferred tax adjustment resulting from defined benefit plan activity	(39)	55	48
Valuation reserve associated with defined benefit plan activity	39	(55)	(48)
Current period gain (loss) on cash flow hedges	815	(825)	(571)
Deferred tax benefit (expense) related to gain (loss) on cash flow hedges	(112)	103	1
Other Comprehensive Income (Loss)	(28,448)	42,308	(9,665)
Comprehensive Income (Loss)	\$ (74,011)	\$ 14,028	\$ (62,992)

See notes to consolidated financial statements.

INVACARE CORPORATION AND SUBSIDIARIES
Consolidated Balance Sheets

Assets	December 31, 2021	December 31, 2020
	(In thousands)	
Current Assets		
Cash and cash equivalents	\$ 83,745	\$ 105,298
Trade receivables, net	117,115	108,588
Installment receivables, net	218	379
Inventories, net	144,274	115,484
Other current assets	40,036	44,717
Total Current Assets	385,388	374,466
Other Assets		
	5,362	5,925
Intangibles	26,356	27,763
Property and Equipment, net	60,921	56,243
Finance Lease Assets, net	63,029	64,031
Operating Lease Assets, net	12,600	15,092
Goodwill	355,875	402,461
Total Assets	\$ 909,531	\$ 945,981
Liabilities and Shareholders' Equity		
Current Liabilities		
Accounts payable	\$ 130,036	\$ 85,424
Accrued expenses	102,971	126,273
Current taxes payable	3,914	3,359
Current portion of long-term debt	3,107	5,612
Current portion of finance lease obligations	3,009	3,405
Current portion of operating lease obligations	4,217	6,313
Total Current Liabilities	247,254	230,386
Long-Term Debt	305,022	239,441
Long-Term Obligations - Finance Leases	63,736	63,137
Long-Term Obligations - Operating Leases	8,234	8,697
Other Long-Term Obligations	66,796	70,474
Shareholders' Equity		
Preferred Shares (Authorized 300 shares; none outstanding)	—	—
Common Shares (Authorized 150,000 shares; 39,416 and 38,613 issued and outstanding at December 31, 2021 and December 31, 2020, respectively)—no par	9,977	9,816
Class B Common Shares (Authorized 12,000 shares; 4 and 4 issued and outstanding at December 31, 2021 and December 31, 2020, respectively)—no par	2	2
Additional paid-in-capital	276,665	326,088
Retained earnings	22,645	58,538
Accumulated other comprehensive income	16,988	45,436
Treasury Shares (4,397 and 4,184 shares at December 31, 2021 and December 31, 2020, respectively)	(107,788)	(106,034)
Total Shareholders' Equity	218,489	333,846
Total Liabilities and Shareholders' Equity	\$ 909,531	\$ 945,981

See notes to consolidated financial statements.

INVACARE CORPORATION AND SUBSIDIARIES
Consolidated Statements of Cash Flows

	Years Ended December 31,		
	2021	2020	2019
Operating Activities	(In thousands)		
Net loss	\$ (45,563)	\$ (28,280)	\$ (53,327)
Adjustments to reconcile net earnings to net cash used by operating activities:			
Gain on sale of business	—	(9,790)	—
Depreciation and amortization	16,821	14,317	15,563
Amortization operating lease right of use assets	6,273	6,951	8,927
Provision for losses on trade and installment receivables	(16)	427	955
Benefit for deferred income taxes	(224)	(2,192)	(830)
Provision for other deferred liabilities	160	971	1,144
Provision for equity compensation	4,323	8,645	11,110
Loss (gain) on disposals of property and equipment	(278)	(1,046)	182
Loss (gain) on debt extinguishment including debt finance charges and associated fees	(9,422)	7,360	6,165
Impairment of an intangible asset	—	—	587
Impairment of goodwill	28,564	—	—
Amortization of convertible debt discount and accretion of convertible debt	3,534	11,487	12,325
Amortization of debt fees	2,236	1,690	2,384
Net gain on convertible debt derivatives	—	—	(1,197)
Changes in operating assets and liabilities:			
Trade receivables	(11,028)	7,692	1,474
Installment sales contracts, net	388	(481)	434
Inventories, net	(33,129)	8,955	6,466
Other current assets	2,755	(5,313)	(7,314)
Accounts payable	47,101	(2,359)	(3,603)
Accrued expenses	(26,868)	1,713	2,276
Other long-term liabilities	64	1,170	(978)
Net Cash Provided (Used) by Operating Activities	(14,309)	21,917	2,743
Investing Activities			
Purchases of property and equipment	(17,698)	(22,304)	(10,874)
Proceeds from sale of property and equipment	33	396	73
Proceeds from sale of business	—	14,563	—
Change in other long-term assets	(252)	(27)	(781)
Other	115	(2,175)	(32)
Net Cash Used by Investing Activities	(17,802)	(9,547)	(11,614)
Financing Activities			
Proceeds from revolving lines of credit and long-term borrowings	155,033	86,081	—
Repurchases of convertible debt, payments on revolving lines of credit and finance leases	(116,250)	(70,603)	(17,196)
Payment of financing costs	(5,369)	(1,505)	(1,278)
Payment of dividends	—	(414)	(1,645)
Purchases of capped calls	(18,787)	—	—
Payments to debt holders	—	(5,593)	(6,928)
Purchases of treasury shares	(1,754)	(1,707)	(894)
Net Cash Provided (Used) by Financing Activities	12,873	6,259	(27,941)
Effect of exchange rate changes on cash	(2,315)	6,606	(32)
Increase (decrease) in cash and cash equivalents	(21,553)	25,235	(36,844)
Cash and cash equivalents at beginning of year	105,298	80,063	116,907
Cash and cash equivalents at end of year	<u>\$ 83,745</u>	<u>\$ 105,298</u>	<u>\$ 80,063</u>

See notes to consolidated financial statements.

Consolidated Statement of Shareholders' Equity

INVACARE CORPORATION AND SUBSIDIARIES
Consolidated Statements of Shareholders' Equity

(In thousands)	Common Shares	Class B Shares	Additional Paid-in- Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Treasury Shares	Total
January 1, 2019 Balance	\$ 9,419	\$ 2	\$ 297,919	\$ 142,447	\$ 12,793	\$(103,433)	\$ 359,147
Performance awards	29	—	4,370	—	—	(348)	4,051
Non-qualified share options	—	—	1,939	—	—	—	1,939
Restricted share awards	140	—	4,632	—	—	(546)	4,226
Net loss	—	—	—	(53,327)	—	—	(53,327)
Foreign currency translation adjustments	—	—	—	—	(8,499)	—	(8,499)
Unrealized gain on cash flow hedges	—	—	—	—	(570)	—	(570)
Defined benefit plans: Amortization of prior service costs and unrecognized losses and credits	—	—	—	—	(596)	—	(596)
Total comprehensive loss	—	—	—	—	—	—	(62,992)
Convertible debt derivative adjustments	—	—	(220)	—	—	—	(220)
Exchange of convertible notes	—	—	4,010	—	—	—	4,010
Dividends	—	—	—	(1,645)	—	—	(1,645)
December 31, 2019 Balance	<u>9,588</u>	<u>2</u>	<u>312,650</u>	<u>87,475</u>	<u>3,128</u>	<u>(104,327)</u>	<u>308,516</u>
Performance awards	91	—	3,222	—	—	(1,123)	2,190
Restricted share awards	137	—	5,195	—	—	(584)	4,748
Net loss	—	—	—	(28,280)	—	—	(28,280)
Foreign currency translation adjustments	—	—	—	—	43,405	—	43,405
Unrealized loss on cash flow hedges	—	—	—	—	(722)	—	(722)
Defined benefit plans: Amortization of prior service costs and unrecognized losses and credits	—	—	—	—	(375)	—	(375)
Total comprehensive income	—	—	—	—	—	—	14,028
Exchange of convertible notes	—	—	5,021	—	—	—	5,021
Dividends	—	—	—	(414)	—	—	(414)
Adoption of credit loss standard	—	—	—	(243)	—	—	(243)
December 31, 2020 Balance	<u>9,816</u>	<u>2</u>	<u>326,088</u>	<u>58,538</u>	<u>45,436</u>	<u>(106,034)</u>	<u>333,846</u>
Performance awards	52	—	(1,179)	—	—	(668)	(1,795)
Restricted share awards	109	—	5,341	—	—	(1,086)	4,364
Net loss	—	—	—	(45,563)	—	—	(45,563)
Foreign currency translation adjustments	—	—	—	—	(28,724)	—	(28,724)
Unrealized gain on cash flow hedges	—	—	—	—	703	—	703
Defined benefit plans: Amortization of prior service costs and unrecognized losses and credits	—	—	—	—	(427)	—	(427)
Total comprehensive loss	—	—	—	—	—	—	(74,011)
Adoption of ASU 2020-06	—	—	(34,798)	9,670	—	—	(25,128)
Purchase of capped calls	—	—	(18,787)	—	—	—	(18,787)
December 31, 2021 Balance	<u>9,977</u>	<u>2</u>	<u>276,665</u>	<u>22,645</u>	<u>16,988</u>	<u>(107,788)</u>	<u>218,489</u>

See notes to consolidated financial statements.

Accounting Policies

Nature of Operations: Invacare Corporation is a leading manufacturer and distributor of medical equipment used in the home based upon the company's distribution channels, breadth of product line and net sales. The company designs, manufactures and distributes an extensive line of health care products for the non-acute care environment, including the home health care, retail and continuing care markets.

Principles of Consolidation: The consolidated financial statements include the accounts of the company and its wholly owned subsidiaries and include all adjustments, which were of a normal recurring nature, necessary to present fairly the financial position of the company as of December 31, 2021 and the results of its operations and changes in its cash flow for the years ended December 31, 2021, 2020 and 2019, respectively. Certain foreign subsidiaries, represented by the European segment, are consolidated using a November 30 fiscal year end to meet filing deadlines. No material subsequent events have occurred related to the European segment, which would require disclosure or adjustment to the company's financial statements. All significant intercompany transactions are eliminated.

Use of Estimates: The consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States, which require management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results may differ from these estimates.

Cash and Cash Equivalents: The company's policy is to treat investments that are readily convertible to cash and with maturities so near that there is little risk of changes in value due to changes in interest rates as cash and cash equivalents. Cash and cash equivalents are carried at cost, which approximates fair value.

Accounts Receivable: The company records accounts receivable when control of the product or service transfers to its unaffiliated customers, risk of loss is passed and title is transferred. The estimated allowance for uncollectible amounts is based primarily on management's evaluation of the financial condition of specific customers. The company records accounts receivable reserves for amounts that may become uncollectible in the future. The company writes off accounts receivable when it becomes apparent, based upon customer circumstances, that such amounts will not be collected and legal remedies are exhausted.

Reserves for customer bonus and cash discounts are recorded as a reduction in revenue and netted against gross

accounts receivable. Customer rebates in excess of a given customer's accounts receivable balance are classified in Accrued Expenses. Customer rebates and cash discounts are estimated based on the most likely amount principal as well as historical experience and anticipated performance. In addition, customers have the right to return product within the company's normal terms policy, and as such, the company estimates the expected returns based on an analysis of historical experience and adjusts revenue accordingly.

Inventories: Inventories are stated at the lower of cost or net realizable value with cost determined by the first-in, first-out method. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. Finished goods and work in process inventories include material, labor and manufacturing overhead costs. Inventories have been reduced by an allowance for excess and obsolete inventories. The estimated allowance is based on management's review of inventories on hand compared to estimated future usage and sales.

Property and Equipment: Property and equipment are stated based on cost. The company principally uses the straight-line method of depreciation for financial reporting purposes based on annual rates sufficient to amortize the cost of the assets over their estimated useful lives. Machinery and equipment, internal use software as well as furniture and fixtures are generally depreciated using lives of 3 to 10 years, while buildings and improvements are depreciated using lives of 5 to 40 years. Accelerated methods of depreciation are used for federal income tax purposes. Expenditures for maintenance and repairs are charged to expense as incurred. Amortization of assets under finance leases is included in depreciation expense.

Long-lived assets are assessed for impairment whenever events or changes in circumstances indicate the carrying amount may not be recoverable. An asset would be considered impaired when the future net undiscounted cash flows generated by the asset or asset group are less than its carrying value. An impairment loss would be recognized based on the amount by which the carrying value of the asset exceeds its fair value.

Goodwill and Other Intangibles: In accordance with *Intangibles—Goodwill and Other*, ASC 350, goodwill and indefinite lived intangibles are subject impairment. The company completes its annual impairment assessment in the fourth quarter of each year or whenever events or changes in circumstances indicate the carrying value could be below a reporting unit's fair value. For purposes of the

Accounting Policies

goodwill impairment assessment, the fair value of each reporting unit is estimated using an income approach by forecasting cash flows and discounting those cash flows using an appropriate weighted average cost of capital (WACC) as well as considering market and cost approaches, as appropriate. The fair values are then compared to the carrying value of the net assets of each reporting unit. During 2021, the company's reporting units of North America / HME and Institutional Products Group merged into one reporting unit of North America, consistent with the operating segment. The merger of the reporting units was tied most closely to the actions of the company to implement a new ERP system which changed both the level of discrete financial information readily available and the go-forward manner in which the company assesses performance and allocates resources to the North America operating segment. The reporting unit change triggered an interim goodwill impairment test which resulted in the recording of impairment of goodwill of \$28,564,000 in the North America reporting unit.

Intangible assets are also assessed for impairment by estimating forecasted cash flows and discounting those cash flows as needed to calculate impairment amounts. During 2019, the company recognized an intangible asset impairment charge of \$587,000 related to an indefinite-lived trademark recorded in the then Institutional Products Group reporting unit which is part of the North America operating segment.

Accrued Warranty Cost: Generally, the company's products are covered by assurance-type warranties against defects in material and workmanship for various periods depending on the product from the date of sale to the customer. Certain components carry a lifetime warranty. In addition, the company has sold extended warranties that, while immaterial, require the company to defer the revenue associated with those warranties until earned. A provision for estimated warranty cost is recorded at the time of sale based upon actual experience. The company continuously assesses the adequacy of its product warranty accrual and makes adjustments, as needed. Historical analysis is primarily used to determine the company's warranty reserves. Claims history is reviewed and provisions are adjusted, as needed. However, the company does consider other events, such as a product recall, which could necessitate additional warranty reserve provisions. Refer to Accrued Expenses in the Notes to the Consolidated Financial Statements for a reconciliation of the changes in the warranty accrual.

Product Liability Cost: The company is self-insured in North America for product liability exposures through its captive insurance company, Invatection Insurance Company, which currently has a policy year that runs from September 1 to August 31 and insures annual policy losses up to \$10,000,000 per occurrence and \$13,000,000 in the

aggregate. The company also has additional layers of external insurance coverage, related to all lines of insurance coverage, insuring up to \$75,000,000 in aggregate losses per policy year arising from individual claims anywhere in the world that exceed the captive insurance company policy limits or the limits of the company's per country foreign liability limits, as applicable. There can be no assurance that Invacare's current insurance levels will continue to be adequate or available at affordable rates.

Product liability reserves are recorded for individual claims based upon historical experience, industry expertise and other indicators. Additional reserves, in excess of the specific individual case reserves, are provided for incurred but not reported claims based upon actuarial valuations at the time such valuations are conducted. Historical claims experience and other assumptions are taken into consideration by the company in estimating the ultimate reserves. For example, the actuarial analysis assumes that historical loss experience is an indicator of future experience, that the distribution of exposures by geographic area and nature of operations for ongoing operations is expected to be very similar to historical operations with no dramatic changes and that the government indices used to trend losses and exposures are appropriate. Estimates made are adjusted on a regular basis and can be impacted by actual loss awards and settlements on claims. While actuarial analysis is used to help determine adequate reserves, the company is responsible for the determination and recording of adequate reserves in accordance with accepted loss reserving standards and practices.

Revenue Recognition: The company recognizes revenues when control of the product or service is transferred to unaffiliated customers. *Revenues from Contracts with Customers*, ASC 606, provides guidance on the application of generally accepted accounting principles to revenue recognition issues. The company has concluded that its revenue recognition policy is appropriate and in accordance with GAAP under ASC 606.

All of the company's product-related contracts, and a portion related to services, have a single performance obligation, which is the promise to transfer an individual good or service, with revenue recognized at a point in time. Certain service-related contracts contain multiple performance obligations that require the company to allocate the transaction price to each performance obligation. For such contracts, the company allocates revenue to each performance obligation based on its relative standalone selling price at inception of the contract. The company determined the standalone selling price based on the expected cost-plus margin methodology. Revenue related to the service contracts with multiple performance obligations is recognized over time. To the

extent performance obligations are satisfied over time, the company defers revenue recognition until the performance obligations are satisfied.

The determination of when and how much revenue to recognize can require the use of significant judgment. Revenue is recognized when obligations under the terms of a contract with the customer are satisfied; generally, this occurs with the transfer of control of the company's products and services to the customer.

Revenue is measured as the amount of consideration expected to be received in exchange for transferring the product or providing services. The amount of consideration received and recognized as revenue by the company can vary as a result of variable consideration terms included in the contracts such as customer rebates, cash discounts and return policies. Customer rebates and cash discounts are estimated based on the most likely amount principle and these estimates are based on historical experience and anticipated performance. Customers have the right to return product within the company's normal terms policy, and as such, the company estimates the expected returns based on an analysis of historical experience. The company adjusts its estimate of revenue at the earlier of when the most likely amount of consideration the company expects to receive changes or when the consideration becomes fixed. The company generally does not expect that there will be significant changes to its estimates of variable consideration (refer to Receivables in the Notes to the Consolidated Financial Statements include elsewhere in this report).

Depending on the terms of the contract, the company may defer recognizing a portion of the revenue at the end of a given period as the result of title transfer terms that are based upon delivery and or acceptance which align with transfer of control of the company's products to its customers.

Sales are made only to customers with whom the company believes collection is probable based upon a credit analysis, which may include obtaining a credit application, a signed security agreement, personal guarantee and/or a cross corporate guarantee depending on the credit history of the customer. Credit lines are established for new customers after an evaluation of their credit report and/or other relevant financial information. Existing credit lines are regularly reviewed and adjusted with consideration given to any outstanding past due amounts.

The company records distributed product sales gross as a principal since the company takes title to the products and has the risks of loss for collections, delivery and returns. The company's payment terms are for relatively short periods and thus do not contain any element of

financing. Additionally, no contract costs are incurred that would require capitalization and amortization.

Sales, value added, and other taxes the company collects concurrent with revenue producing activities are excluded from revenue. Incidental items that are immaterial in the context of the contract are recognized as expense. Shipping and handling costs are included in cost of products sold.

The majority of the company's warranties are considered assurance-type warranties and continue to be recognized as expense when the products are sold (refer to Current Liabilities in the Notes to the Consolidated Financial Statements include elsewhere in this report). These warranties cover against defects in material and workmanship for various periods depending on the product from the date of sale to the customer. Certain components carry a lifetime warranty. In addition, the company has sold extended warranties that, while immaterial, require the company to defer the revenue associated with those warranties until earned. A provision for estimated warranty cost is recorded at the time of sale based upon actual experience. The company continuously assesses the adequacy of its product warranty accruals and makes adjustments as needed. Historical analysis is primarily used to determine the company's warranty reserves. Claims history is reviewed and provisions are adjusted as needed. However, the company does consider other events, such as a product recall, which could require additional warranty reserve provisions. Refer to Accrued Expenses in the Notes to the Consolidated Financial Statements for a reconciliation of the changes in the warranty accrual. In addition, the company has sold extended warranties that, while immaterial, require the company to defer the revenue associated with those warranties until earned. The company has established procedures to appropriately defer such revenue.

Research and Development: Research and development costs are expensed as incurred and included in cost of products sold. The company's annual expenditures for product development and engineering were approximately \$8,656,000, \$12,275,000 and \$15,836,000 for 2021, 2020 and 2019, respectively.

Advertising: Advertising costs are expensed as incurred and included in selling, general and administrative expenses. Advertising expenses amounted to \$5,062,000, \$5,107,000 and \$7,871,000 for 2021, 2020 and 2019, respectively, the majority of which is incurred for advertising in the United States and Europe.

Income Taxes: The company uses the liability method in measuring the provision for income taxes and recognizing deferred tax assets and liabilities on the balance sheet. The liability method requires that deferred

Accounting Policies

income taxes reflect the tax consequences of currently enacted rates for differences between the tax and financial reporting bases of assets and liabilities.

Value Added Taxes: The company operates internationally and is required to comply with value added tax (VAT) or goods and service tax (GST) regulations, particularly in Europe and Asia Pacific. VAT and GST are taxes on consumption in which the company pays tax on its purchases of goods and services and charges customers on the sale of product. The difference between billings to customers and payments on purchases is then remitted or received from the government as filings are due. The company records tax assets and liabilities related to these taxes and the balances in these accounts can vary significantly from period to period based on the timing of the underlying transactions.

Derivative Instruments: Derivatives and Hedging, ASC 815, requires companies to recognize all derivative instruments in the consolidated balance sheet as either assets or liabilities at fair value. The accounting for changes in fair value of a derivative is dependent upon whether or not the derivative has been designated and qualifies for hedge accounting treatment and the type of hedging relationship. For derivatives designated and qualifying as hedging instruments, the company must designate the hedging instrument, based upon the exposure being hedged, as a fair value hedge, cash flow hedge, or a hedge of a net investment in a foreign operation.

A majority of the company's derivative instruments are designated and qualify as cash flow hedges. Accordingly, the effective portion of the gain or loss on the derivative instrument is reported as a component of other comprehensive income and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The remaining gain or loss on the derivative instrument in excess of the cumulative change in the fair value of the hedged item, if any, is recognized in current earnings during the period of change.

In 2016, the company issued \$150,000,000 aggregate principal amount of 5.00% convertible senior notes due in 2021 and, in the second quarter of 2017, issued \$120,000,000 aggregate principal amount of 4.50% convertible senior notes due 2022 (the "2021 Notes and 2022 Notes"). In connection with the offering of the 2021 Notes and 2022 Notes, the company entered into privately negotiated convertible note hedge transactions with certain financial institutions (the "option counterparties"). The convertible debt conversion liabilities and the convertible note hedges were accounted for as derivatives that were fair valued quarterly until the company obtained shareholder approval on May 16, 2019 to settle its convertible debt using cash or shares, which resulted in no longer accounting for the conversion liabilities and note

hedges as derivatives. The fair value of the convertible debt conversion liabilities and the convertible note hedge assets were estimated using a lattice model incorporating the terms and conditions of the 2021 Notes and 2022 Notes and considering, for example, changes in the prices of the company's common stock, company stock price volatility, risk-free rates and changes in market rates. The valuations were, among other things, subject to changes in both the company's credit worthiness and the counter-parties to the instruments as well as change in general market conditions. The change in the fair value of the convertible note hedges and convertible debt conversion liabilities were recognized in net income (loss) for the respective period.

Foreign Currency Translation: The functional currency of the company's subsidiaries outside the United States is the applicable local currency. The assets and liabilities of the company's foreign subsidiaries are translated into U.S. dollars at year-end exchange rates. Revenues and expenses are translated at monthly average exchange rates. Gains and losses resulting from translation of balance sheet items are included in accumulated other comprehensive earnings.

Net Earnings Per Share: Basic earnings per share are computed based on the weighted-average number of Common Shares and Class B Common Shares outstanding during the year. Diluted earnings per share are computed based on the weighted-average number of Common Shares and Class B Common Shares outstanding plus the effects of dilutive stock options and awards outstanding during the year. For periods in which there was a net loss, loss per share assuming dilution utilized weighted average shares-basic.

Defined Benefit Plans: The company's benefit plans are accounted for in accordance with *Compensation-Retirement Benefits*, ASC 715 which requires plan sponsors to recognize the funded status of their defined benefit postretirement benefit plans in the consolidated balance sheet, measure the fair value of plan assets and benefit obligations as of the balance sheet date and to recognize changes in that funded status in the year in which the changes occur through comprehensive income.

Recent Accounting Pronouncements (Already Adopted):

In June 2016, the FASB issued ASU 2016-13, "Measurement of Credit Losses on Financial Statements." ASU 2016-13 requires a new credit loss standard for most financial assets and certain other instruments. For example, entities are required to use an "expected loss" model that will generally require earlier recognition of allowances for losses for trade receivables. The standard also requires additional disclosures, including disclosures regarding how an entity tracks credit quality. The company adopted ASU

2016-13, effective on January 1, 2020, which resulted in an increase for credit losses of \$243,000 with the offsetting impact recorded to retained earnings.

In January 2017, the FASB issued ASU 2017-04, "Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment." The guidance in ASU 2017-04 eliminates the requirement to determine the fair value of individual assets and liabilities of a reporting unit to measure goodwill impairment. Under the amendments in the new ASU, goodwill impairment testing will be performed by comparing the fair value of the reporting unit with its carrying amount and recognizing an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. The company adopted ASU 2017-04 as of January 1, 2020 with no impact to the company's financial statements upon adoption.

In December 2019, the FASB issued ASU 2019-12, "Income Taxes (Topic 740) - Simplifying the Accounting for Income Taxes," which simplifies the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. ASU 2019-12 removes the following exceptions: 1) exception to the incremental approach for intraperiod tax allocation when there is a loss from continuing operations and income or a gain from other items (for example, discontinued operations or other comprehensive income), 2) exception to the requirement to recognize a deferred tax liability for equity method investments when a foreign subsidiary becomes an equity method investment, 3) exception to the ability not to recognize a deferred tax liability for a foreign subsidiary when a foreign subsidiary becomes a subsidiary and 4) the exception to the general methodology for calculating income taxes in an interim period when a year-to-date loss exceeds the anticipated loss for the year. The ASU also simplifies other areas of Topic 740 by clarifying and amending existing guidance. The amendments in the ASU will be applied using different approaches depending on what the specific amendments relate to. The company early adopted ASU 2019-12 on a prospective basis as of January 1, 2020 with no impact to the company's financial statements upon adoption.

In August 2020, the FASB issued ASU 2020-06 "Debt with Conversion and Other Options" (Subtopic 470-20) and Derivatives and Hedging Contracts in Entity's Own Equity (Subtopic 815-40)", which simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. ASU 2020-06 removes from U.S. GAAP the separation models for (1) convertible debt with a cash conversion feature (CCF) and (2) convertible instrument with a beneficial conversion feature (BCF). As a result, after adopting the ASU's guidance, entities will not

separately present in equity an embedded conversion feature in such debt. Instead, they will account for a convertible debt instrument wholly as debt, and for convertible preferred stock wholly as preferred stock (i.e., as a single unit of account), unless (1) a convertible instrument contains features that require bifurcation as a derivative under ASC 815 or (2) a convertible debt instrument was issued at a substantial premium. The guidance may be early adopted for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years.

The company adopted ASU 2020-06 effective January 1, 2021, using the modified retrospective method, which resulted in the removal of convertible debt discounts of \$25,218,000, adjustment of \$34,798,000 to additional paid-in-capital and \$9,670,000 adjustment to retained earnings. Convertible debt discounts prior to adoption of ASU 2020-06 were amortized over the convertible debt term through interest expense. Subsequent to adoption, convertible debt discounts are not applicable when accounting for debt as a single unit of account. Interest expense for 2020 and 2019 related to debt discount amortization (which was not recognized in 2021 due to adoption) were \$9,673,000 or \$0.28 per basic and diluted share and \$12,325,000 or \$0.37 per basic and diluted share, respectively. There was no impact of adoption on performance metrics used for short-term or long-term incentive compensation. Accretion specific to the Series II 2024 Notes was unaffected by adoption. Due to the valuation allowance, there was no net impact to income taxes for the adoption. Subsequent to adoption weighted average shares when calculating diluted earnings per share requires the application of the if-converted method for all convertible instruments.

Recent Accounting Pronouncements (Not Yet Adopted):

In March 2020, the FASB issued ASU 2020-04 "Reference Rate Reform (Topic 848): Facilitation of Effects of Reference Rate Reform on Financial Reporting," which is intended to provide temporary optional expedients and exceptions to the U.S. GAAP guidance on contract modifications and hedge accounting to ease the financial reporting burden related to the expected market transition from the London Interbank Offered Rate (LIBOR) and other interbank offered rates to alternative reference rates if certain criteria are met. The guidance may be adopted in any period prior to the guidance expiration on December 31, 2022. The company is currently reviewing the impact of the adoption of ASU 2020-04 but does not expect the adoption to have a material impact on the company's financial statements.

Divested Businesses

On March 7, 2020, the company completed the sale (the “Transaction”) of its subsidiary, Dynamic Controls, a New Zealand incorporated unlimited company (“Dynamic Controls”), to Allied Motion Christchurch Limited, a New Zealand limited company (the “Purchaser”), pursuant to a Securities Purchase Agreement among the company, Invacare Holdings New Zealand, a New Zealand incorporated unlimited company, and the Purchaser, dated March 6, 2020 (the “Purchase Agreement”). Dynamic Controls was a producer of electronic control systems for powered medical mobility devices, including systems incorporating the LiNX™ technology platform. Dynamic Controls was a component of the All Other Segment.

Dynamic Controls was a supplier of power mobility products and respiratory components to the company as well as supplying power mobility products to external customers. Sales in 2020 through the date of disposition were \$5,331,000, including intercompany sales of \$2,532,000, compared to sales for the full year of 2019 of \$30,261,000, including intercompany sales of \$13,087,000. Income before income taxes was approximately \$445,000 in 2020, through the date of disposition, compared to \$853,000 in 2019, inclusive of intercompany profits on sales to the company.

The transaction was the result of considering options for the products sold by Dynamic Controls which resulted in selling the business to a third-party which can provide access to further technological innovations to further differentiate the company’s power mobility products.

The gross proceeds from the Transaction were \$14,563,000, net of taxes and expenses. The company realized a pre-tax gain of \$9,790,000.

The Purchase Agreement contains customary indemnification obligations of each party with respect to breaches of their respective representations, warranties and covenants, and certain other specified matters, which are subject to certain exceptions, terms and limitations described further in the Purchase Agreement.

At the closing of the Transaction, the parties entered into a supply agreement pursuant to which Dynamic Controls will supply certain electronic components as required by the company for the five-year period following the Transaction, including ongoing supply and support of the LiNX™ electronic control system with informatics technology, continued contract manufacturing of certain electronic components for the company’s respiratory products and continued infrastructure and applications support for the informatics solution for the company’s

respiratory products. The estimated continued inflows and outflows following the disposal with the Purchaser are not expected to be material to the company.

The assets and liabilities of Dynamic Controls as of March 7, 2020 consisted of the following (in thousands):

	March 7, 2020
Trade receivables, net	\$ 4,129
Inventories, net	3,082
Other assets	855
Property and equipment, net	600
Operating lease assets, net	2,127
Total assets	\$ 10,793
Accounts payable	\$ 4,692
Accrued expenses	2,473
Current taxes payable	41
Current portion of operating lease obligations	366
Long-term obligations	1,019
Total liabilities	\$ 8,591

Trade receivables as of March 7, 2020 includes receivables previously classified as intercompany related to product sold by Dynamic Controls to other Invacare entities.

Current Assets

Receivables

Receivables as of December 31, 2021 and 2020 consist of the following (in thousands):

	<u>2021</u>	<u>2020</u>
Accounts receivable, gross	\$ 142,401	\$ 131,055
Customer rebate reserve	(12,267)	(10,730)
Allowance for doubtful accounts	(3,642)	(4,031)
Cash discount reserves	(9,179)	(7,320)
Other, principally returns and allowances reserves	(603)	(386)
Accounts receivable, net	<u>\$ 117,115</u>	<u>\$ 108,588</u>

Reserves for customer rebates and cash discounts are recorded as a reduction in revenue and netted against gross accounts receivable. Customer rebates in excess of a given customer's accounts receivable balance are classified in Accrued Expenses. Customer rebates and cash discounts are estimated based on the most likely amount principle as well as historical experience and anticipated performance. In addition, customers have the right to return product within the company's normal terms policy, and as such, the company estimates the expected returns based on an analysis of historical experience and adjusts revenue accordingly.

During the third quarter of 2021, the company entered into an agreement with a bank to sell certain trade receivables with governmental entity customers in the Nordic region without recourse. Under ASC 860, the sale of the receivables qualify as a true sale and not a secured borrowing. No gain or loss was recorded on the sale of the receivables. Bank charges, which are recorded as interest expense, attributable to the program were immaterial for the year ended December 31, 2021.

Accounts receivable are reduced by an allowance for amounts that may become uncollectible in the future. Substantially all the company's receivables are due from health care, medical equipment providers and long-term care facilities predominantly located throughout the United States, Australia, Canada, New Zealand and Europe. A significant portion of products sold to providers, both foreign and domestic, are ultimately funded through government reimbursement programs such as Medicare and Medicaid in the U.S. As a consequence, changes in these programs can have an adverse impact on dealer liquidity and profitability.

The company adopted ASU 2016-13, "Measurement of Credit Losses on Financial Statements" on January 1, 2020. Accordingly, the company is now applying an "expected loss" model that will generally require earlier recognition of allowances for losses for trade receivables. In addition, the company expects more variability in its allowance for doubtful accounts as it previously provided for bad debts based on a specific reserve methodology while the new expected loss methodology requires companies to provide for estimated losses beginning at the time of sale. The adoption of the new standard resulted in an increase in credit losses and adjustment to retained earnings of \$243,000 which is reflected in the Consolidated Statement of Shareholders' Equity.

The company's approach is to separate its receivables into good-standing and collection receivables. Good-standing receivables are assigned to risk pools of high, medium and low. The risk pools are driven by the specifics associated with the geography of origination. Expected loss percentages are calculated and assigned to each risk pool, driven primarily by historical experience. The historical loss percentages are calculated for each risk pool and then judgmentally revised to consider current risk factors as well as consideration of the impact of forecasted events, as applicable. The expected loss percentages are then applied to receivables balances each period to determine the allowance for doubtful accounts.

In North America, excluding Canada, good-standing receivables are assigned to the low risk pool and assigned an expected loss percentage of 1.0% as these receivables are deemed to share the same risk profile and collections efforts are the same. Installment receivables in North America are characterized as collection receivables and thus reserves based on specific analysis of each customer. In Canada, good-standing receivables and installment receivables are deemed low risk and assigned a loss percentage of 0.1%.

In Europe, expected losses are determined by each location in each region. Most locations have a majority of their receivables assigned to the low risk pool, which has an average expected loss percentage of 0.6%. About half of the locations have a portion of their receivables assigned as medium risk with an average expected loss percentage of 1.1%. Only a few locations have any receivables characterized as high risk and the average credit loss percentage for those locations is 2.7%. Collection risk is generally low as payment terms in certain key markets, such as Germany, are immediate and in many locations the ultimate customer is the government.

Current Assets

In the Asia Pacific region, receivables are characterized as low risk, which have an average expected loss percentage of 0.3%. Historical losses are low in this region where the use of credit insurance is often customary.

The movement in the trade receivables allowance for doubtful accounts was as follows (in thousands):

	<u>2021</u>
Balance as of beginning of period	\$ 4,031
Current period provision	59
Direct write-offs charged against the allowance	<u>(448)</u>
Balance as of end of period	<u>\$ 3,642</u>

The company did not make any material changes to the assignment of receivables to the different risk pools or to the expected loss reserves in the year. The company is monitoring the impacts of the COVID-19 pandemic and the possibility for an impact on collections, but to date this has not materially impacted 2021.

For collections receivables, the estimated allowance for uncollectible amounts is based primarily on management's evaluation of the financial condition of each customer. In addition, as a result of the company's financing arrangement with DLL, a third-party financing company which the company has worked with since 2000, management monitors the collection status of these contracts in accordance with the company's limited recourse obligations and provides amounts necessary for estimated losses in the allowance for doubtful accounts and establishes reserves for specific customers as needed.

The company writes off uncollectible trade accounts receivable after such receivables are moved to collection status and legal remedies are exhausted. Refer to Concentration of Credit Risk in the Notes to the Consolidated Financial Statements for a description of the financing arrangement. Long-term installment receivables are included in "Other Assets" on the consolidated balance sheet.

The company has recorded a contingent liability in the amount of \$312,000 related to the contingent aspect of the company's guarantee associated with its arrangement with DLL. The contingent liability is recorded applying the same expected loss model used for the trade and installment receivables recorded on the company's books. Specifically, historical loss history is used to determine the expected loss percentage, which is then adjusted judgmentally to consider other factors, as needed.

The company's U.S. customers electing to finance their purchases can do so using DLL. Repurchased DLL

receivables recorded on the books of the company represent a single portfolio segment of receivables to the independent provider channel and long-term care customers. The portfolio segment of these receivables are distinguished by geography and credit quality. These receivables were repurchased from DLL because the customers were in default. Default with DLL is defined as a customer being delinquent by three payments.

The estimated allowance for uncollectible amounts and evaluation for both classes of installment receivables is based on the company's quarterly review of the financial condition of each individual customer with the allowance for doubtful accounts adjusted accordingly. Installments are individually and not collectively reviewed. The company assesses the bad debt reserve levels based upon the status of the customer's adherence to a legally negotiated payment schedule and the company's ability to enforce judgments, liens, etc..

For purposes of granting or extending credit, the company utilizes a scoring model to generate a composite score that considers each customer's consumer credit score and/or D&B credit rating, payment history, security collateral and time in business. Additional analysis is performed for most customers desiring credit greater than \$250,000, which generally includes a detailed review of the customer's financial statements as well as consideration of other factors such as exposure to changing reimbursement laws.

Interest income is recognized on installment receivables based on the terms of the installment agreements. Installment accounts are monitored and if a customer defaults on payments and is moved to collection, interest income is no longer recognized. Subsequent payments received once an account is put on non-accrual status are generally first applied to the principal balance and then to the interest. Accruing of interest on collection accounts would only be restarted if the account became current again.

All installment accounts are accounted for using the same methodology regardless of the duration of the installment agreements. When an account is placed in collection status, the company goes through a legal process for pursuing collection of outstanding amounts, the length of which typically approximates eighteen months. Any write-offs are made after the legal process has been completed.

Installment receivables as of December 31, 2021 and 2020 consist of the following (in thousands):

	2021			2020		
	Current	Long-Term	Total	Current	Long-Term	Total
Installment receivables	\$ 218	\$ 734	\$ 952	\$ 704	\$ 1,105	\$ 1,809
Less: Unearned interest	—	—	—	—	—	—
	218	734	952	704	1,105	1,809
Allowance for doubtful accounts	—	—	—	(325)	(162)	(487)
Installment receivables, net	\$ 218	\$ 734	\$ 952	\$ 379	\$ 943	\$ 1,322

Installment receivables purchased from DLL during the twelve months ended December 31, 2021 were \$140,000 compared to \$346,000 in 2020. No sales of

installment receivables were made by the company during the year.

The movement in the installment receivables allowance for doubtful accounts was as follows (in thousands):

	2021	2020
Balance as of beginning of period	\$ 487	\$ 1,514
Current period provision (benefit)	(75)	66
Direct write-offs charged against the allowance	(412)	(1,093)
Balance as of end of period	\$ —	\$ 487

Installment receivables by class as of December 31, 2021 consist of the following (in thousands):

	Total Installment Receivables	Unpaid Principal Balance	Related Allowance for Doubtful Accounts	Interest Income Recognized
Asia Pacific				
Non-impaired installment receivables with no related allowance recorded	952	952	—	—
Total				
Non-impaired installment receivables with no related allowance recorded	952	952	—	—
Impaired installment receivables with a related allowance recorded	—	—	—	—
Total installment receivables	\$ 952	\$ 952	\$ —	\$ —

Current Assets

Installment receivables by class as of December 31, 2020 consist of the following (in thousands):

	Total Installment Receivables	Unpaid Principal Balance	Related Allowance for Doubtful Accounts	Interest Income Recognized
U.S.				
Impaired installment receivables with a related allowance recorded	\$ 615	\$ 615	\$ 487	\$ —
Asia Pacific				
Non-impaired installment receivables with no related allowance recorded	1,194	1,194	—	—
Canada				
Non-impaired installment receivables with no related allowance recorded	—	—	—	29
Total Canadian installment receivables	—	—	—	29
Total				
Non-impaired installment receivables with no related allowance recorded	1,194	1,194	—	29
Impaired installment receivables with a related allowance recorded	615	615	487	—
Total installment receivables	<u>\$ 1,809</u>	<u>\$ 1,809</u>	<u>\$ 487</u>	<u>\$ 29</u>

Installment receivables with a related allowance recorded as noted in the table above represent those installment receivables on a non-accrual basis. As of December 31, 2021, the company had no U.S. installment receivables past due of 90 days or more for which the company is still accruing interest. Individually, all U.S.

installment receivables are assigned a specific allowance for doubtful accounts based on management's review when the company does not expect to receive both the contractual principal and interest payments as specified in the loan agreement.

The aging of the company's installment receivables was as follows as of December 31, 2021 and 2020 (in thousands):

	December 31, 2021			December 31, 2020		
	Total	U.S.	Asia Pacific	Total	U.S.	Canada
Current	\$ 952	\$ —	\$ 952	\$ 1,194	\$ —	\$ 1,194
0-30 days past due	—	—	—	—	—	—
31-60 days past due	—	—	—	—	—	—
61-90 days past due	—	—	—	—	—	—
90+ days past due	—	—	—	615	615	—
	<u>\$ 952</u>	<u>\$ —</u>	<u>\$ 952</u>	<u>\$ 1,809</u>	<u>\$ 615</u>	<u>\$ 1,194</u>

Inventories, Net

Inventories, net as of December 31, 2021 and 2020 consist of the following (in thousands):

	2021	2020
Finished goods	\$ 62,124	\$ 55,264
Raw materials	69,371	51,174
Work in process	12,779	9,046
Inventories, net	<u>\$ 144,274</u>	<u>\$ 115,484</u>

Other Current Assets

Other current assets as of December 31, 2021 and 2020 consist of the following (in thousands):

	2021	2020
Tax receivables principally value added taxes	\$ 21,943	\$ 22,500
Prepaid insurance	4,462	3,963
Prepaid inventory and freight	2,394	2,700
Recoverable income taxes	2,301	2,182
Receivable due from information technology provider	612	2,995
Derivatives (foreign currency forward contracts)	386	1,321
Prepaid debt fees	379	208
Service contracts	304	633
Prepaid and other current assets	7,255	8,215
Other Current Assets	<u>\$ 40,036</u>	<u>\$ 44,717</u>

Long-Term Assets

Other Long-Term Assets

Other long-term assets as of December 31, 2021 and 2020 consist of the following (in thousands):

	2021	2020
Cash surrender value of life insurance policies	2,481	2,327
Deferred income taxes	1,540	2,048
Installment receivables	734	943
Deferred financing fees	409	411
Investments	86	85
Other	112	111
Other Long-Term Assets	<u>\$ 5,362</u>	<u>\$ 5,925</u>

Property and Equipment

Property and equipment as of December 31, 2021 and 2020 consist of the following (in thousands):

	2021	2020
Machinery and equipment	\$ 278,347	\$ 294,045
Land, buildings and improvements	27,299	28,509
Furniture and fixtures	8,943	10,001
Leasehold improvements	6,782	8,194
Capitalized software	30,448	17,527
Property and Equipment, gross	351,819	358,276
Accumulated depreciation	(290,898)	(302,033)
Property and Equipment, net	<u>\$ 60,921</u>	<u>\$ 56,243</u>

Machinery and equipment includes demonstration units placed in provider locations which are depreciated to their estimated recoverable values over their estimated useful lives.

In the fourth quarter of 2019, the company initiated the first stage of an Enterprise Resource Planning ("ERP") software implementation. Related to the ERP project, the company capitalized certain costs in accordance with ASC 350 as shown in capitalized software above. The net book value of capitalized software was \$28,715,000 and \$17,527,000 at December 31, 2021 and 2020, respectively. Depreciation expense related to capitalized software started in 2021, subsequent to the first stage implementation of the ERP and was \$1,733,000 for the year ended December 31, 2021.

Unpaid purchases of property and equipment at December 31, 2021 and 2020 were \$1,090,000 and \$1,704,000, respectively and are excluded from purchases of property and equipment on the consolidated statements of cash flows for those periods ending and are included in subsequent periods when paid.

Goodwill

The carrying amount of goodwill by reporting unit is as follows (in thousands):

	North America	Europe	Consolidated
Balance at December 31, 2019	28,162	345,241	373,403
Foreign currency translation adjustments	323	28,735	29,058
Balance at December 31, 2020	28,485	373,976	402,461
Foreign currency translation adjustments	79	(18,101)	(18,022)
Impairment of goodwill	(28,564)	—	(28,564)
Balance at December 31, 2021	—	355,875	355,875

In accordance with *Intangibles—Goodwill and Other*, ASC 350, goodwill is assessed for impairment. The company first estimates the fair value of each reporting unit and compares the calculated fair value to the carrying value of each reporting unit. A reporting unit is defined as an operating segment or one level below. The company had historically determined that its reporting units were North America / HME, Europe, Institutional Products Group and Asia Pacific.

During the third quarter of 2021, the company's reporting units of North America / HME and Institutional Products Group merged into one reporting unit of North America, consistent with the operating segment. Developments in 2021 and the conclusion of the reporting units merger were tied mostly to actions of the company to implement components of a new ERP system which changes both the level of discrete financial information readily available and the go-forward manner in which the company assesses performance and allocates resources to the North America operating segment.

The reporting unit change within the North America operating segment in the third quarter of 2021 was a triggering event and required the company to perform an interim goodwill impairment assessment. Based on the interim goodwill impairment assessment, the company concluded that the carrying value of the North America reporting unit was above its fair value. That conclusion resulted in the recording of impairment of goodwill in the third quarter of 2021 of \$28,564,000.

The company completed the interim test in the third quarter of 2021 consistent with the process of its annual impairment assessment in the fourth quarter of each year.

There is no goodwill in the Asia Pacific reporting unit and the results of the Europe reporting unit assessment quantified its fair value to be substantially in excess of carrying value in the goodwill assessments completed in 2021.

The company completes its annual impairment assessment in the fourth quarter of each year or whenever events or changes in circumstances indicate the carrying value could be below a reporting unit's fair value. The fair values of the company's reporting units were calculated using inputs that are not observable in the market and included management's own estimates regarding the assumptions that market participants would use and thus these inputs are deemed Level III inputs in regard to the fair value hierarchy. To calculate the fair values of the reporting units, the company utilizes a discounted cash flow method model in which the company forecasts income statement and balance sheet amounts based on assumptions regarding projected sales growth, operating income, inventory turns, days' sales outstanding, etc. to forecast future cash flows. The projected operating income used has a significant impact upon the discounted cash flow methodology utilized in the company's annual impairment assessment as lower projected operating income would result in lower fair value estimates. The cash flows are discounted using a weighted average cost of capital discount rate where the cost of debt is based on quoted rates for 20-year debt of potential acquirer companies of similar credit risk and the cost of equity is based upon the 20-year treasury rate for the risk-free rate, a market risk premium, the industry average beta and a small cap stock adjustment. The assumptions used are based on a market participant's point of view and yielded a discount rate of 11.19% in 2021 for the company's impairment analyses for the reporting units with goodwill compared to 11.27% in 2020 and 11.88% in 2019. The WACC used has a significant impact on the discounted cash flow methodology utilized in the company's impairment assessment as a higher WACC would decrease the fair value estimates.

The company also utilizes an Enterprise Value (EV) to Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) Method to compute the fair value of its reporting units which considers potential acquirers and their EV to EBITDA multiples adjusted by an estimated premium. While more weight is given to the

Long-Term Assets

discounted cash flow method, the EV to EBITDA Method does provide corroborative evidence of the reasonableness of the discounted cash flow method results.

While there was no impairment in 2021 related to goodwill for the Europe reporting unit, a future potential impairment is possible for Europe should actual results differ materially from forecasted results used in the valuation analysis. Furthermore, the company's valuation of goodwill can differ materially if financial projections or the market inputs used to determine the WACC change significantly. For instance, higher interest rates or greater stock price volatility would increase the WACC and thus increase the chance of impairment. In consideration of this potential, the company assessed the results if the discount rate used were 100 basis points higher for the 2021 impairment analysis and determined that there still would not be impairment of goodwill for the Europe reporting unit. In addition, business changes impacting the company's assessment of reporting units could also have a material impact on impairment assessment results.

As part of the company's assessment of goodwill for impairment, the company also considers the potential for impairment of any intangible assets and other long-lived assets. Refer to Other Long-Term Assets, Property and Equipment and Intangibles in the Notes to the Consolidated Financial Statements.

Intangibles

The company's intangibles consist of the following (in thousands):

	December 31, 2021		December 31, 2020	
	Historical Cost	Accumulated Amortization	Historical Cost	Accumulated Amortization
Customer lists	\$ 52,447	\$ 52,447	\$ 54,502	\$ 54,502
Trademarks	24,137	—	25,112	—
Developed technology	7,652	7,149	7,924	7,204
Patents	5,543	5,543	5,556	5,556
License agreements	2,905	1,196	2,899	979
Other	1,147	1,140	1,162	1,151
Intangibles	\$ 93,831	\$ 67,475	\$ 97,155	\$ 69,392

All of the company's intangible assets have been assigned definite lives and continue to be amortized over their useful lives, except for trademarks shown above, which have indefinite lives.

The changes in intangible asset balances reflected on the balance sheet from December 31, 2020 to December 31, 2021 were the result of foreign currency translation on historical cost and accumulated amortization.

The company evaluates the carrying value of definite-lived assets annually in the fourth quarter and whenever events or circumstances indicate possible impairment. For the fourth quarter of 2021, the company concluded there was no impairment to be recorded.

Definite-lived assets are determined to be impaired if the future undiscounted cash flows expected to be generated by the asset are less than the carrying value. Actual impairment amounts for definite-lived assets are then calculated using a discounted cash flow calculation.

Any impairment for indefinite-lived intangible assets is calculated as the difference between the future discounted cash flows expected to be generated by the asset less than the carrying value for the asset. The company evaluated indefinite-lived intangible assets in the fourth quarter of 2021 and concluded there was no impairment to be recorded.

In 2019, the company recognized an intangible asset impairment charge in the Institutional Products Group reporting unit, which is part of the North America segment, of \$587,000 (\$435,000 after-tax) related to a trademark with an indefinite life. The fair value of the trademark was calculated using a relief from royalty payment methodology which requires applying an estimated market royalty rate to forecasted net sales and discounting the resulting cash flows to determine fair value. The fair values of the company's intangible assets were calculated using inputs that are not observable in the market and included

management's own estimates regarding the assumptions that market participants would use and thus these inputs are deemed Level III inputs in regard to the fair value hierarchy.

Amortization expense related to intangible assets was \$404,000, \$377,000 and \$1,827,000 for 2021, 2020 and 2019, respectively. Amortization expense for 2019 includes impairments. Estimated amortization expense for each of the next five years is expected to be \$398,000 for 2022, \$398,000 in 2023, \$348,000 in 2024, \$213,000 in 2025 and \$211,000 in 2026. Amortized intangible assets are being amortized on a straight-line basis over remaining lives of 3 to 8 years with a weighted average remaining life of approximately 6.8 years.

Current Liabilities

Accrued Expenses

Accrued expenses as of December 31, 2021 and 2020 consisted of accruals for the following (in thousands):

	2021	2020
Taxes other than income taxes, primarily value added taxes	\$ 24,012	\$ 32,710
Salaries and wages	23,217	34,029
Warranty	11,198	10,991
Professional	8,697	7,375
Rebates	6,569	8,644
Freight	5,460	3,190
Deferred revenue	4,156	3,516
IT service contracts	4,013	3,799
Interest	3,297	2,076
Product liability, current portion	2,362	2,453
Derivatives (foreign currency forward exchange contracts)	1,938	1,432
Insurance	625	878
Severance	400	6,249
Supplemental Executive Retirement Program liability Plan (SERP)	391	391
Rent	196	585
Other items, principally trade accruals	6,440	7,955
Accrued Expenses	\$ 102,971	\$ 126,273

Generally, the company's products are covered by warranties against defects in material and workmanship for various periods depending on the product from the date of sales to the customer. Certain components carry a lifetime warranty. A provision for estimated warranty cost is recorded at the time of sale based upon actual experience. In addition, the company has sold extended warranties that, while immaterial, require the company to defer the revenue associated with those warranties until earned. The company has established procedures to appropriately defer such revenue. The company continuously assesses the adequacy of its product warranty accrual and makes adjustments as needed. Historical analysis is primarily used to determine the company's warranty reserves. Claims history is reviewed and provisions are adjusted as needed. However, the company does consider other events, such as a product field action and recalls, which could require additional warranty reserve provision.

Accrued rebates relate to several volume incentive programs the company offers its customers. The company accounts for these rebates as a reduction of revenue when the products are sold. Rebates are netted against gross accounts receivables. If rebates are in excess of such receivables, they are then classified as accrued expenses.

The reduction in accrued salaries and wages from December 31, 2020 to December 31, 2021 is primarily attributable to a reduction in performance bonus accrual.

The reduction in taxes other than income taxes from December 31, 2020 to December 31, 2021 is primarily attributable to payments deferred in 2020 from global pandemic relief programs.

The reduction in accrued severance from December 31, 2020 to December 31, 2021 primarily relates to payments of restructuring costs with respect to the German manufacturing facility consolidation.

The following is a reconciliation of the changes in accrued warranty costs for the reporting period (in thousands):

	2021	2020
Balance as of January 1	\$ 10,991	\$ 11,626
Warranties provided during the period	6,361	6,144
Settlements made during the period	(6,718)	(8,043)
Changes in liability for pre-existing warranties during the period, including expirations	564	1,264
Balance as of December 31	<u>\$ 11,198</u>	<u>\$ 10,991</u>

Warranty reserves are subject to adjustment in future periods as new developments change the company's estimate of the total cost. In 2020, warranty expense includes a provision of \$768,000 for a product recall which was related to a component on a respiratory product, recorded in the North America segment.

Long-Term Liabilities

Long-Term Debt

Debt as of December 31, 2021 and 2020 consisted of the following (in thousands):

	2021	2020
Convertible senior notes at 5.00%, due in February 2021	\$ —	\$ 1,242
Convertible senior notes at 4.50%, due in June 2022	2,642	73,869
Convertible senior notes Series I at 5.00%, due in November 2024	72,140	62,984
Convertible senior notes Series II at 5.00%, due in November 2024	78,251	64,919
Convertible senior notes at 4.25%, due in March 2026	119,036	—
Other obligations	36,060	42,039
	<u>308,129</u>	<u>245,053</u>
Less current maturities of long-term debt	(3,107)	(5,612)
Long-Term Debt	<u>\$ 305,022</u>	<u>\$ 239,441</u>

On September 30, 2015, the company entered into an Amended and Restated Revolving Credit and Security Agreement, which was subsequently amended (the "Credit Agreement") and which matures on January 16, 2024. The Credit Agreement was entered into by and among the company, certain of the company's direct and indirect U.S. and Canadian subsidiaries and certain of the company's European subsidiaries (together with the company, the "Borrowers"), certain other of the company's direct and indirect U.S., Canadian and European subsidiaries (the "Guarantors"), and PNC Bank, National Association ("PNC"), JPMorgan Chase Bank, N.A., J.P. Morgan Europe Limited, KeyBank National Association, and Citizens Bank, National Association (the "Lenders"). PNC is the administrative agent (the "Administrative Agent") and J.P. Morgan Europe Limited is the European agent (the "European Agent") under the Credit Agreement. In connection with entering into the company's Credit Agreement, the company incurred fees which were capitalized and are being amortized as interest expense. As of December 31, 2021, debt fees yet to be amortized through January 2024 totaled \$788,000.

The company had outstanding letters of credit of \$3,450,000 and \$7,752,000 as of December 31, 2021 and 2020, respectively. Outstanding letters of credit and other reserves impacting borrowing capacity were \$2,585,000 and \$7,616,000 as of December 31, 2021 and 2020, respectively. The company had outstanding borrowings of \$22,150,000 and \$20,000,000 under its North America Credit Facility as of December 31, 2021 and 2020, respectively. The company had outstanding borrowings of \$7,366,000 (€6,500,000) under its French Credit Facility and \$5,986,000 (£4,500,000) under its UK Credit Facility as of December 31, 2021, together referred to as the European Credit Facility. The company had outstanding borrowings of \$7,636,000 (€6,400,000) under its French

Credit Facility and \$3,866,000 (£2,900,000) under its UK Credit Facility as of December 31, 2020. For 2021 and 2020, the weighted average interest rate on all borrowings, excluding finance leases, was 4.5% and 4.6%, respectively.

North America Borrowers Credit Facility

For the company's North America Borrowers, the Credit Agreement provides for an asset-based-lending senior secured revolving credit facility which is secured by substantially all the company's U.S. and Canadian assets, other than real estate. The Credit Agreement provides the company and the other Borrowers with a credit facility in an aggregate principal amount of \$60,000,000, subject to availability based on a borrowing base formula, under a senior secured revolving credit, letter of credit and swing line loan facility (the "North America Credit Facility"). Up to \$20,000,000 of the North America Credit Facility will be available for issuance of letters of credit. The aggregate principal amount of the North America Credit Facility may be increased by up to \$25,000,000 to the extent requested by the company and agreed to by any Lender or new financial institution approved by the Administrative Agent.

The aggregate borrowing availability under the North America Credit Facility is determined based on a borrowing base formula. The aggregate usage under the North America Credit Facility may not exceed an amount equal to the sum of (a) 85% of eligible U.S. accounts receivable *plus* (b) the lesser of (i) 70% of eligible U.S. inventory and eligible foreign in-transit inventory and (ii) 85% of the net orderly liquidation value of eligible U.S. inventory and eligible foreign in-transit inventory (not to exceed \$4,000,000), *plus* (c) the lesser of (i) 80% of the net orderly liquidation value of U.S. eligible machinery and equipment and (ii) \$0 as of December 31, 2021 (subject to reduction as provided in the Credit Agreement), *plus* (d)

85% of eligible Canadian accounts receivable, *plus* (e) the lesser of (i) 70% of eligible Canadian inventory and (ii) 85% of the net orderly liquidation value of eligible Canadian inventory, *less* (f) swing loans outstanding under the North America Credit Facility, *less* (g) letters of credit issued and undrawn under the North America Credit Facility, *less* (h) a \$3,000,000 minimum availability reserve, *less* (i) other reserves required by the Administrative Agent, and in each case subject to the definitions and limitations in the Credit Agreement. As of December 31, 2021, the company was in compliance with all covenant requirements. As of December 31, 2021, the company had gross borrowing base of \$38,979,000 and net borrowing availability of \$26,644,000 under the North America Credit Facility under the Credit Agreement, considering the minimum availability reserve, then-outstanding letters of credit, other reserves and the \$6,750,000 dominion trigger amount described below.

Interest will accrue on outstanding indebtedness under the Credit Agreement at the LIBOR rate, plus a margin ranging from 2.25% to 2.75%, or at the alternate base rate, plus a margin ranging from 1.25% to 1.75%, as selected by the company. Borrowings under the U.S. and Canadian Credit Facility are subject to commitment fees of 0.25% or 0.375% per year, depending on utilization.

The Credit Agreement contains customary representations, warranties and covenants. Exceptions to the operating covenants in the Credit Agreement provide the company with flexibility to, among other things, enter into or undertake certain sale and leaseback transactions, dispositions of assets, additional credit facilities, sales of receivables, additional indebtedness and intercompany indebtedness, all subject to limitations set forth in the Credit Agreement, as amended. The Credit Agreement also contains a covenant requiring the company to maintain minimum availability under the North America Credit Facility of not less than (i) 12.5% of the maximum amount that may be drawn under the North America Credit Facility for five (5) consecutive business days, or (ii) 11.25% of the maximum amount that may be drawn under the North America Credit Facility on any business day. The company also is subject to dominion triggers under the North America Credit Facility requiring the company to maintain borrowing capacity of not less than \$6,750,000 on any business day or any five consecutive days in order to avoid triggering full control by an agent for the Lenders of the company's cash receipts for application to the company's obligations under the agreement.

The Credit Agreement contains customary default provisions, with certain grace periods and exceptions, which provide for events of default that include, among other things, failure to pay amounts due, breach of covenants, representations or warranties, bankruptcy, the occurrence of a material adverse effect, exclusion from any

medical reimbursement program, and an interruption of any material manufacturing facilities for more than 10 consecutive days. The proceeds of the North America Credit Facility will be used to finance the working capital and other business needs of the company. There was \$22,150,000 outstanding under the North America Credit Facility at December 31, 2021.

European Credit Facility

The Credit Agreement also provides for a revolving credit, letter of credit and swing line loan facility which gives the company and the European Borrowers the ability to borrow up to an aggregate principal amount of \$30,000,000, with a \$5,000,000 sublimit for letters of credit and a \$2,000,000 sublimit for swing line loans (the "European Credit Facility"). Up to \$15,000,000 of the European Credit Facility will be available to each of Invacare Limited (the "UK Borrower") and Invacare Poirier SAS (the "French Borrower" and, together with the UK Borrower, the "European Borrowers"). The European Credit Facility matures in January 2024, together with the North America Credit Facility.

The aggregate borrowing availability for each European Borrower under the European Credit Facility is determined based on a borrowing base formula. The aggregate borrowings of each of the European Borrowers under the European Credit Facility may not exceed an amount equal to (a) 85% of the European Borrower's eligible accounts receivable, *less* (b) the European Borrower's borrowings and swing line loans outstanding under the European Credit Facility, *less* (c) the European Borrower's letters of credit issued and undrawn under the European Credit Facility, *less* (d) a \$3,000,000 minimum availability reserve, *less* (e) other reserves required by the European Agent, and in each case subject to the definitions and limitations in the Credit Agreement. As of December 31, 2021, the gross borrowing base to the European Borrowers under the European Credit Facility was \$21,576,000 and net borrowing availability was \$15,201,000, considering the \$3,000,000 minimum availability reserve and a \$3,375,000 dominion trigger amount described below. Borrowing availability is based on a prior month base in USD. Actual borrowings in GBP and EUR fluctuate in USD between date of borrowing and when translated for consolidated reporting.

The aggregate principal amount of the European Credit Facility may be increased by up to \$10,000,000 to the extent requested by the company and agreed to by any Lender or Lenders that wish to increase their lending participation or, if not agreed to by any Lender, a new financial institution that agrees to join the European Credit Facility and that is approved by the Administrative Agent and the European Agent.

Long-Term Liabilities

Interest will accrue on outstanding indebtedness under the European Credit Facility at the LIBOR rate, plus a margin ranging from 2.50% to 3.00%, or for swing line loans, at the overnight LIBOR rate, plus a margin ranging from 2.50% to 3.00%, as selected by the company. The margin that will be adjusted quarterly based on utilization. Borrowings under the European Credit Facility are subject to commitment fees of 0.25% or 0.375% per year, depending on utilization.

The European Credit Facility is secured by substantially all the personal property assets of the UK Borrower and its in-country subsidiaries, and all the receivables of the French Borrower and its in-country subsidiaries. The UK and French facilities (which comprise the European Credit Facility) are cross collateralized, and the US personal property assets previously pledged under the North America Credit Facility also serve as collateral for the European Credit Facility.

The European Credit Facility is subject to customary representations, warranties and covenants generally consistent with those applicable to the North America Credit Facility. Exceptions to the operating covenants in the Credit Agreement provide the company with flexibility to, among other things, enter into or undertake certain sale/leaseback transactions, dispositions of assets, additional credit facilities, sales of receivables, additional indebtedness and intercompany indebtedness, all subject to limitations set forth in the Credit Agreement. The Credit Agreement also contains a covenant requiring the European Borrowers to maintain undrawn availability under the European Credit Facility of not less than (i) 12.5% of the maximum amount that may be drawn under the European Credit Facility for five (5) consecutive business days, or (ii) 11.25% of the maximum amount that may be drawn under the European Credit Facility on any business day. The European Borrowers also are subject to cash dominion triggers under the European Credit Facility requiring the European Borrower to maintain borrowing capacity of not less than \$3,750,000 on any business day or \$3,375,000 for five consecutive business days in order to avoid triggering full control by an agent for the Lenders of the European Borrower's cash receipts for application to its obligations under the European Credit Facility.

The European Credit Facility is subject to customary default provisions, with certain grace periods and exceptions, consistent with those applicable to the North America Credit Facility, which provide that events of default include, among other things, failure to pay amounts due, breach of covenants, representations or warranties, cross-default, bankruptcy, the occurrence of a material adverse effect, exclusion from any medical reimbursement program, and an interruption in the operations of any material manufacturing facility for more than 10 consecutive days. The proceeds of the European Credit

Facility will be used to finance the working capital and other business needs of the company. As of December 31, 2021, the company had borrowings of \$7,366,000 (€6,500,000) under its French Credit Facility and \$5,986,000 (£4,500,000) under its UK Credit Facility as of December 31, 2020, together referred to as the European Credit Facility. The company had outstanding borrowings of \$7,636,000 (€6,400,000) under its French Credit Facility and \$3,866,000 (£2,900,000) under its UK Credit Facility as of December 31, 2020.

In January 2021, the Credit Agreement was amended to provide for, among other things, the addition of the company's Netherlands subsidiary as a guarantor under the European revolving credit facility, amendments to the restrictive covenants in the Credit Agreement to (1) increase the maximum amount of permitted miscellaneous indebtedness to \$30,000,000 from \$10,000,000 and (2) permit up to \$9,000,000 of financing based on certain European public and government receivables, and terms that, upon the occurrence of certain events related to a transition from the use of LIBOR, permit the agent for the lenders to amend the Credit Agreement to replace the LIBOR rate and/or the Euro rate with a benchmark replacement rate.

In March 2021, the Credit Agreement was further amended to permit the issuance of the 2026 Notes and the capped call transactions entered into by the company in connection with the issuance of the 2026 Notes, as further discussed in the sections below.

On December 29, 2021, the Credit Agreement was further amended with the primary provisions to replace the references to the LIBOR rate or Euro rate to a term secured overnight finance rate (SOFR).

Convertible senior notes due 2021

In the first quarter of 2016, the company issued \$150,000,000 aggregate principal amount of 5.00% Convertible Senior Notes due 2021 (the "2021 Notes") in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act. The 2021 Notes bear interest at a rate of 5.00% per year payable semi-annually in arrears on February 15 and August 15 of each year, beginning August 15, 2016. The 2021 Notes matured on February 15, 2021. At maturity, \$1,250,000 principal amount of 2021 Notes were outstanding, which the company repaid in cash.

In connection with the offering of the 2021 Notes, the company entered into privately negotiated convertible note hedge transactions with two financial institutions (the "option counterparties"). The company evaluated the note hedges under the applicable accounting literature, including *Derivatives and Hedging*, ASC 815, and

determined that the note hedges should be accounted for as derivatives. These derivatives were capitalized on the balance sheet as long-term assets and adjusted to reflect fair value each quarter. The fair value of the convertible note hedge assets at issuance was \$27,975,000.

The company entered into separate, privately negotiated warrant transactions with the option counterparties at a higher strike price relating to the same number of the company's common shares, subject to customary anti-dilution adjustments, pursuant to which the company sold warrants to the option counterparties. The warrants could have a dilutive effect on the company's outstanding common shares and the company's earnings per share to the extent that the price of the company's common shares exceeds the strike price of those warrants. The initial strike price of the warrants is \$22.4175 per share and is subject to certain adjustments under the terms of the warrant transactions. The company evaluated the warrants under the applicable accounting literature, including *Derivatives and Hedging*, ASC 815, and determined that the warrants met the definition of a derivative, are indexed to the company's own stock and should be classified in shareholder's equity. The amount paid for the warrants and capitalized in shareholder's equity was \$12,376,000.

The net proceeds from the offering of the 2021 Notes were approximately \$144,034,000, after deducting fees and offering expenses of \$5,966,000, which were paid in 2016. These debt issuance costs were capitalized and were amortized as interest expense through February 2021. Debt issuance costs are presented on the balance sheet as a direct deduction from the carrying amount of the related debt liability.

During the third quarter of 2019, the company used an aggregate of \$14,708,000 in cash to repurchase a total amount of \$16,000,000 in principal amount of 2021 Notes. After recognizing expenses on unamortized fees and discounts associated with the repurchased 2021 Notes, the repurchases resulted in a net reduction of debt of \$14,367,000 and a net loss on the repurchases of \$280,000.

During the fourth quarter of 2019, the company entered into separate privately negotiated agreements with certain holders of its 2021 Notes to exchange \$72,909,000 in aggregate principal amount of 2021 Notes for aggregate consideration of \$72,909,000 in aggregate principal amount of new 5.00% Convertible Senior Exchange Notes due 2024 (the "Series I 2024 Notes") of the company and \$6,928,000 in cash. Refer to "Convertible senior notes Series I due 2024" below for more information. As a result of the exchange transaction in the fourth quarter of 2019 and the repurchase of \$16,000,000 in principal amount of 2021 Notes in the third quarter of 2019, a partial unwind of the note hedge options and warrants entered into with the

issuance of the 2021 Notes also occurred during the fourth quarter of 2019. Note hedge options outstanding related to the 2021 Notes were reduced from the original number of 300,000 to 138,182 and warrants relating to the 2021 Notes were reduced from the initial number of 9,007,380 to 3,860,624. The partial unwind of the note hedge options and warrants resulted in no net impact to cash or paid in capital.

During the second quarter of 2020, the company entered into separate, privately negotiated agreements with certain holders of its 2021 Notes and certain holders of its 2022 Notes to exchange \$35,375,000 in aggregate principal amount of 2021 Notes and \$38,500,000 in aggregate principal amount of 2022 Notes, for aggregate consideration of \$73,875,000 in aggregate principal amount of new 5.00% Series II Convertible Senior Exchange Notes due 2024 (the "Series II 2024 Notes") of the company and \$5,593,000 in cash.

During the third quarter of 2020, the company repurchased \$24,466,000 aggregate principal amount of 2021 Notes, resulting in a \$761,000 loss on debt extinguishment. As a result of the repurchase of 2021 Notes in the third quarter of 2020 and the exchange of 2021 Notes for new notes in the second quarter of 2020, a partial unwind of the note hedge options and warrants entered into with the issuance of the 2021 Notes also occurred. The partial unwind of the note hedge options and warrants resulted in no net impact to cash or paid-in-capital. Note hedge options outstanding relating to the 2021 Notes were reduced to 62,341 and subsequently expired on February 15, 2021. The warrants began to expire on May 15, 2021 and then partially expire on each trading day over the 220 trading day period following May 15, 2021. Warrants outstanding on December 31, 2021 were 856,920. If exercised, one Common Share is issuable upon exercise of each warrant, but may be adjusted to include additional Common Shares for each warrant under certain circumstances if the relevant share price exceeds the warrant strike price for the relevant measurement period at the time of exercise. Common Shares are reserved for issuance upon exercise of the remaining warrants relating to the 2021 Notes at two Common Shares per warrant.

The liability components of the 2021 Notes consist of the following (in thousands):

	December 31, 2021	December 31, 2020
Principal amount of liability component	\$ —	\$ 1,250
Unamortized discount	—	(7)
Debt fees	—	(1)
Net carrying amount of liability component	\$ —	\$ 1,242

Long-Term Liabilities

The unamortized discount was reduced to \$0 upon adoption of ASU 2020-06, effective January 1, 2021. The effective interest rate on the liability component was 11.1% upon original issuance including consideration of the discount. Non-cash interest expense of \$0 and \$1,782,000 was recognized in 2021 and 2020, respectively. Interest expense of \$8,000 and \$1,632,000 was accrued for in 2021 and 2020, respectively, based on the stated coupon rate of 5.0%.

Convertible senior notes due 2022

In the second quarter of 2017, the company issued \$120,000,000 aggregate principal amount of 4.50% Convertible Senior Notes due 2022 (the “2022 Notes”) in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act. The 2022 Notes bear interest at a rate of 4.50% per year payable semi-annually in arrears on June 1 and December 1 of each year, beginning December 1, 2017. The 2022 Notes will mature on June 1, 2022, unless repurchased or converted in accordance with their terms prior to such date. Prior to December 1, 2021, the 2022 Notes will be convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Prior to May 16, 2019, the 2022 Notes were convertible, subject to certain conditions, into cash only. On May 16, 2019, the company obtained shareholder approval under applicable New York Stock Exchange rules such that conversion of the 2022 Notes may be settled in cash, the company’s common shares or a combination of cash and the company’s common shares, at the company’s election. At December 31, 2021, \$2,650,000 aggregate principal amount of the 2022 Notes remained outstanding, following the exchange transactions completed in the second quarter of 2020 and the repurchase of debt completed in the first quarter of 2021, as further discussed below.

Holders of the 2022 Notes may convert their 2022 Notes at their option at any time prior to the close of business on the business day immediately preceding December 1, 2021 only under the following circumstances: (1) during any fiscal quarter commencing after September 30, 2017 (and only during such fiscal quarter), if the last reported sale price of the company’s common shares for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the applicable conversion price for the 2022 Notes on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period (the “measurement period”) in which the “trading price” (as defined in the Indenture) per one

thousand U.S. dollar principal amount of 2022 Notes for each trading day of such measurement period was less than 98% of the product of the last reported sale price of the company’s Common Shares and the applicable conversion rate for the 2022 Notes on each such trading day; or (3) upon the occurrence of specified corporate events described in the Indenture. On or after December 1, 2021 until the close of business on the second scheduled trading day immediately preceding the maturity of the 2022 Notes, holders may convert their 2022 Notes, at the option of the holder, regardless of the foregoing circumstances.

Holders of the 2022 Notes will have the right to require the company to repurchase all or some of their 2022 Notes at 100% of their principal, plus any accrued and unpaid interest, upon the occurrence of certain fundamental changes. The initial conversion rate is 61.6095 common shares per \$1,000 principal amount of 2022 Notes (equivalent to an initial conversion price of approximately \$16.23 per common share). Until the company received shareholder approval on May 16, 2019 authorizing it to elect to settle future conversions of the 2022 Notes in common shares, the company separately accounted for the conversion features as a derivative. The derivative was capitalized on the balance sheet as a long-term liability with adjustment to reflect fair value each quarter until the change to the conversion features as a result of the shareholder approval received on May 16, 2019 resulted in the termination of the derivative. The fair value of the convertible debt conversion liability at issuance was \$28,859,000. The company recognized a loss of \$6,193,000 in 2019 related to the convertible debt conversion liability.

In connection with the offering of the 2022 Notes, the company entered into privately negotiated convertible note hedge transactions with one financial institution (the “option counterparty”). These transactions cover, subject to customary anti-dilution adjustments, the number of the company's common shares that will initially underlie the 2022 Notes, and are expected generally to reduce the potential equity dilution, and/or offset any cash payments in excess of the principal amount due, as the case may be, upon conversion of the 2022 Notes. The company evaluated the note hedges under the applicable accounting literature, including *Derivatives and Hedging*, ASC 815, and determined that the note hedges should be accounted for as derivatives. These derivatives were capitalized on the balance sheet as long-term assets and were adjusted to reflect fair value each quarter. The fair value of the convertible note hedge assets at issuance was \$24,780,000.

The company entered into separate, privately negotiated warrant transactions with the option counterparty at a higher strike price relating to the same number of the company's common shares, subject to customary anti-dilution adjustments, pursuant to which the

company sold warrants to the option counterparties. The warrants could have a dilutive effect on the company's outstanding common shares and the company's earnings per share to the extent that the price of the company's common shares exceeds the strike price of those warrants. The initial strike price of the warrants is \$21.4375 per share and is subject to certain adjustments under the terms of the warrant transactions. The company evaluated the warrants under the applicable accounting literature, including *Derivatives and Hedging*, ASC 815, and determined that the warrants meet the definition of a derivative, are indexed to the company's own shares and should be classified in shareholder's equity. The amount paid for the warrants and capitalized in shareholder's equity was \$14,100,000.

There were 120,000 note hedge options relating to the 2022 Notes outstanding at December 31, 2021, but only 2,650 remained available for exercise. Note hedge options related to the 2022 Notes will expire June 1, 2022.

Warrants relating to the 2022 Notes outstanding on December 31, 2021 were 7,393,141. If exercised, one common share is issued upon exercise of each warrant, but may be adjusted under certain circumstances if the relevant share price exceeds the warrant strike price for the relevant measurement period at the time of exercise. Common shares are reserved for issuance upon exercise of the remaining warrants relating to the 2022 Notes at two common shares per warrant. The warrants will begin to expire on September 1, 2022 and then partially expire on each trading day over the 220 trading day period following September 1, 2022.

The net proceeds from the offering of the 2022 Notes were approximately \$115,289,000, after deducting fees and offering expenses of \$4,711,000, which were paid in 2017. These debt issuance costs were capitalized and are being amortized as interest expense through June 2022. Debt issuance costs are presented on the balance sheet as a direct deduction from the carrying amount of the related debt liability. A portion of the net proceeds from the offering were used to pay the cost of the convertible note hedge transactions (after such cost is partially offset by the proceeds to the company from the warrant transactions), which net cost was \$10,680,000.

During the second quarter of 2020, the company entered into separate, privately negotiated agreements with certain holders of its 2021 Notes and certain holders of its 2022 Notes to exchange \$35,375,000 in aggregate principal amount of 2021 Notes and \$38,500,000 in aggregate principal amount of 2022 Notes, for aggregate consideration of \$73,875,000 in aggregate principal amount of new Series II 2024 Notes and \$5,593,000 in cash.

During the first quarter of 2021, the company repurchased \$78,850,000 in principal amount of 2022 Notes, resulting in a loss on debt extinguishment of \$709,000.

The liability components of the 2022 Notes consist of the following (in thousands):

	December 31, 2021	December 31, 2020
Principal amount of liability component	\$ 2,650	\$ 81,500
Unamortized discount	—	(6,772)
Debt fees	(8)	(859)
Net carrying amount of liability component	<u>\$ 2,642</u>	<u>\$ 73,869</u>

The unamortized discount was reduced to \$0 upon adoption of ASU 2020-06, effective January 1, 2021. The effective interest rate on the liability component was 10.9% upon original issuance including consideration of the discount. Total interest expense subsequent to adoption of ASU 2020-06 includes coupon interest and amortization of debt fees. Non-cash interest expense of \$0 and \$4,894,000 was recognized in 2021 and 2020, respectively. Interest expense of \$859,000 and \$4,404,000 was accrued for the same periods, based on the stated coupon rate of 4.5%. The effective interest rate of the 2022 Notes as of December 31, 2021 was 5.4%.

Convertible senior notes Series I due 2024

During the fourth quarter of 2019, the company entered into separate privately negotiated agreements with certain holders of its 2021 Notes to exchange \$72,909,000 in aggregate principal amount of 2021 Notes for aggregate consideration of \$72,909,000 in aggregate principal amount of new 5.00% Convertible Senior Exchange Notes due 2024 (the "Series I 2024 Notes") of the company and \$6,928,000 in cash.

The notes bear interest at a rate of 5.00% per year payable semi-annually in arrears on May 15 and November 15 of each year, beginning May 15, 2020. The notes will mature on November 15, 2024, unless repurchased, redeemed or converted in accordance with their terms prior to such date. Prior to May 15, 2024, the Series I 2024 Notes will be convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The Series I 2024 Notes may be settled in cash, the company's common shares or a combination of cash and the company's common shares, at the company's election.

Prior to the maturity of the Series I 2024 Notes, the company may, at its election, redeem for cash all or part of

Long-Term Liabilities

the Series I 2024 Notes if the last reported sale price of the company's common shares equals or exceeds 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the company provides notice of redemption. The redemption price will be equal to 100% of the principal amount of the Series I 2024 Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date (subject to certain limited exceptions). No sinking fund is provided for the Series I 2024 Notes, which means the company is not required to redeem or retire the Series I 2024 Notes periodically.

Holders of the Series I 2024 Notes may convert their Series I 2024 Notes at their option at any time prior to the close of business on the business day immediately preceding May 15, 2024 only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending December 31, 2019 (and only during such calendar quarter), if the last reported sale price of the company's common shares for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price for the Series I 2024 Notes on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period (the "measurement period") in which the "trading price" (as defined in the Indenture) per one thousand U.S. dollar principal amount of Series I 2024 Notes for each trading day of such measurement period was less than 98% of the product of the last reported sale price of the company's common shares and the applicable conversion rate for the Series I 2024 Notes on each such trading day; (3) upon the occurrence of specified corporate events described in the Indenture; or (4) if the company calls the Series I 2024 Notes for redemption pursuant to the terms of the Indenture. Holders of the Series I 2024 Notes will have the right to require the company to repurchase all or some of their Series I 2024 Notes at 100% of their principal, plus any accrued and unpaid interest, upon the occurrence of certain fundamental changes. The initial conversion rate is 67.6819 common shares per \$1,000 principal amount of Series I 2024 Notes (equivalent to an initial conversion price of approximately \$14.78 per common share). On or after May 15, 2024 until the close of business on the second scheduled trading day immediately preceding the maturity of the Series I 2024 Notes, holders may convert their Series I 2024 Notes, at the option of the holder, regardless of the foregoing circumstances.

A loss of \$5,885,000 was recorded a part of the exchange transaction, which included the write-off of fees

related to the portion of the 2021 Notes exchanged. Debt issuance costs of \$1,394,000 were capitalized and are being amortized as interest expense through November 15, 2024. Debt issuance costs are presented on the balance sheet as a direct deduction from the carrying amount of the related debt liability.

The liability components of the Series I 2024 Notes consist of the following (in thousands):

	December 31, 2021	December 31, 2020
Principal amount of liability component	\$ 72,909	\$ 72,909
Unamortized discount	—	(8,888)
Debt fees	(769)	(1,037)
Net carrying amount of liability component	<u>\$ 72,140</u>	<u>\$ 62,984</u>

The unamortized discount was reduced to \$0 upon adoption of ASU 2020-06, effective January 1, 2021. The effective interest rate on the liability component was 8.77% upon original issuance including consideration of the discount. Total interest expense subsequent to adoption includes coupon interest and amortization of debt fees. Non-cash interest expense of \$0 and \$1,845,000 was recognized in 2021 and 2020, respectively. Interest expense of \$3,645,000 and \$3,646,000 was accrued in 2021 and 2020, respectively, based on the stated coupon rate of 5.0%. The effective interest rate of the Series I 2024 Notes as of December 31, 2021 was 5.4%. The Series I 2024 Notes were not convertible as of December 31, 2021, nor was the applicable conversion threshold met.

Convertible senior notes Series II due 2024

During the second quarter of 2020, the company entered into separate, privately negotiated agreements with certain holders of its 2021 Notes and certain holders of its 2022 Notes to exchange \$35,375,000 in aggregate principal amount of 2021 Notes and \$38,500,000 in aggregate principal amount of 2022 Notes, for aggregate consideration of \$73,875,000 in aggregate principal amount of new 5.00% Series II Convertible Senior Exchange Notes due 2024 (the "Series II 2024 Notes") of the company and \$5,593,000 in cash.

The Series II 2024 Notes bear interest at a rate of 5.00% per year, payable semi-annually in arrears on May 15 and November 15 of each year, beginning November 15, 2020. The Series II 2024 Notes will mature on November 15, 2024, unless repurchased, redeemed or converted in accordance with their terms prior to such date. Prior to May 15, 2024, the Series II 2024 Notes will be convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day

immediately preceding the maturity date. The Series II 2024 Notes may be settled in cash, the company's common shares or a combination of cash and the company's common shares, at the company's election.

Prior to the maturity of the Series II 2024 Notes, the company may, at its election, redeem for cash all or part of the Series II 2024 Notes, if the last reported sale price of the company's common shares equals or exceeds 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the company provides notice of redemption. The redemption price will be equal to 100% of the accreted principal amount of the Series II 2024 Notes to be redeemed, plus any accrued and unpaid interest, if any, on the original principal amount of the New Notes redeemed to, but excluding, the redemption date (subject to certain limited exceptions). No sinking fund is provided for the Series II 2024 Notes, which means the company is not required to redeem or retire the Series II 2024 Notes periodically.

Holders of the Series II 2024 Notes may convert their Series II 2024 Notes at their option at any time prior to the close of business on the business day immediately preceding May 15, 2024 only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending June 30, 2020 (and only during such calendar quarter), if the last reported sale price of the company's common shares for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than 130% of the conversion price for the Series II 2024 Notes on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period (the "measurement period") in which the "trading price" (as defined in the Indenture) per one thousand U.S. dollar principal amount of Series II 2024 Notes for each trading day of such measurement period was less than 98% of the product of the last reported sale price of the company's common shares and the applicable conversion rate for the Series II 2024 Notes on each such trading day; (3) upon the occurrence of specified corporate events described in the Indenture; or (4) if the company calls the Series II 2024 Notes for redemption pursuant to the terms of the Indenture. Holders of the Series II 2024 Notes will have the right to require the company to repurchase all or some of their Series II 2024 Notes at 100% of the accreted principal amount, plus any accrued and unpaid interest, upon the occurrence of certain fundamental changes. The initial conversion rate is 67.6819 common shares per \$1,000 principal amount of Series II 2024 Notes (equivalent to an initial conversion price of approximately \$14.78 per common share). On or

after May 15, 2024 until the close of business on the second scheduled trading day immediately preceding the maturity of the Series II 2024 Notes, holders may convert their Series II 2024 Notes, at the option of the holder, regardless of the foregoing circumstances.

The principal amount of the Series II 2024 Notes also will accrete at a rate of approximately 4.7% per year commencing June 4, 2020, compounding on a semi-annual basis. The accreted portion of the principal is payable in cash upon maturity but does not bear interest and is not convertible into the company's common shares. The total amount accreted as of December 31, 2021 was \$5,347,000 and \$1,813,000 as of December 31, 2020. Remaining accretion until maturity (at current principal) was \$11,275,000 as of December 31, 2021.

A loss of \$6,599,000 was recorded a part of the exchange transaction, which included the write-off of fees related to portions of the 2021 Notes and 2022 Notes exchanged. Debt issuance costs of \$1,505,000 were capitalized and are being amortized as interest expense through November 2024. Debt issuance costs are presented on the balance sheet as a direct deduction from the carrying amount of the related debt liability.

The liability components of the Series II 2024 Notes consist of the following (in thousands):

	December 31, 2021	December 31, 2020
Principal amount of liability component - including accretion	\$ 79,222	\$ 75,688
Unamortized discount	—	(9,461)
Debt fees	(971)	(1,308)
Net carrying amount of liability component	<u>\$ 78,251</u>	<u>\$ 64,919</u>

The unamortized discount was reduced to \$0 upon adoption of ASU 220-06, effective January 1, 2021. The effective interest rate on the liability component was 8.99% upon original issuance including consideration of the discount. Total interest expense subsequent to adoption includes coupon interest, accretion and amortization of debt fees. Non-cash interest expense, including accretion, of \$3,534,000 and \$2,966,000 was recognized in 2021 and 2020, respectively. Interest expense of \$3,693,000 and \$2,123,000 was accrued in 2021 and 2020, respectively based on the stated coupon rate of 5.0%. The effective interest rate of the Series II 2024 Notes as of December 31, 2021 including coupon interest, amortization of debt fees and accretion to maturity was 10.4%. The Series II 2024 Notes were not convertible as of December 31, 2021 nor was the applicable conversion threshold met.

Long-Term Liabilities

Convertible senior notes due 2026

In the first quarter of 2021, the company issued \$125,000,000 aggregate principal amount of 4.25% Convertible Senior Notes due 2026 (the “2026 Notes”) in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act.

The notes bear interest at a rate of 4.25% per year payable semi-annually in arrears on March 15 and September 15 of each year, beginning September 15, 2021. The notes will mature on March 15, 2026, unless repurchased, redeemed or converted in accordance with their terms prior to such date. Prior to September 15, 2025, the 2026 Notes will be convertible only upon satisfaction of certain conditions and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The 2026 Notes may be settled in cash, the company’s common shares or a combination of cash and the company’s common shares, at the company’s election.

The company may not redeem the 2026 Notes prior to March 20, 2024. The company may, at its election, redeem for cash all or part of the 2026 Notes, on or after March 20, 2024, if the last reported sale price of the company’s common shares equals or exceeds 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the company provides notice of redemption. The redemption price will be equal to 100% of the principal amount of the 2026 Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date (subject to certain limited exceptions). No sinking fund is provided for the 2026 Notes, which means the company is not required to redeem or retire the 2026 Notes periodically.

Holders of the 2026 Notes may convert their 2026 Notes at their option at any time prior to the close of business on the business day immediately preceding September 15, 2025 in multiples of \$1,000 principal amount, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending June 30, 2021 (and only during such calendar quarter), if the last reported sale price of the company’s common shares for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than 130% of the conversion price for the 2026 Notes on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period (the

“measurement period”) in which the “trading price” (as defined in the Indenture) per one thousand U.S. dollar principal amount of 2026 Notes for each trading day of such measurement period was less than 98% of the product of the last reported sale price of the company’s common shares and the applicable conversion rate for the 2026 Notes on each such trading day; (3) upon the occurrence of specified corporate events described in the Indenture; or (4) if the company calls any or all of the 2026 Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date. Holders of the 2026 Notes will have the right to require the company to repurchase all or some of their 2026 Notes at 100% of their principal, plus any accrued and unpaid interest, upon the occurrence of certain fundamental changes. The initial conversion rate is 94.6096 common shares per \$1,000 principal amount of 2026 notes (equivalent to an initial conversion price of approximately \$10.57 per common share). On or after September 15, 2025 until the close of business on the second scheduled trading day immediately preceding the maturity of the 2026 Notes, holders may convert their 2026 Notes, at the option of the holder, regardless of the foregoing circumstances.

Debt issuance costs of \$7,305,000 were capitalized and are being amortized as interest expense through March 2026. Debt issuance costs are presented on the balance sheet as a direct deduction from the carrying amount of the related debt liability.

The liability components of the 2026 Notes consist of the following (in thousands):

	December 31, 2021
Principal amount of liability component	\$ 125,000
Debt fees	(5,964)
Net carrying amount of liability component	<u>\$ 119,036</u>

Interest expense of \$4,220,000 was accrued for the twelve months ended December 31, 2021 based on the stated coupon rate of 4.25%. The effective interest rate of the 2026 Notes as of December 31, 2021 was 5.4%. The 2026 Notes were not convertible as of December 31, 2021 nor was the applicable conversion threshold met.

In March 2021, in connection with the pricing of the 2026 Notes, the company entered into capped call transactions (the “Capped Call Transactions”) with certain option counterparties. The company used \$18,787,000 of the net proceeds of the private offering of the 2026 Notes to pay the cost of the Capped Call Transactions with the offset recorded to additional paid-in-capital.

The Capped Call Transactions are expected generally to reduce the potential dilution upon conversion of the

2026 Notes and/or offset any cash payments the company is required to make in excess of the principal amount of converted notes, as the case may be, in the event that the market price per share of the company's common shares, as measured under the terms of the Capped Call Transactions, is greater than the strike price of the Capped Call Transactions, which is initially \$10.57, corresponding to the initial conversion price of the 2026 Notes, subject to anti-dilution adjustments. If, however, the market price per company common share, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions, which is initially \$16.58 (subject to adjustments), there would nevertheless be dilution and/or there would not be an offset of such potential cash payments, in each case, to the extent that such market price exceeds the cap price of the Capped Call Transactions. The Capped Call Transactions expire March 15, 2026, subject to earlier exercise. There were 125,000 capped call options related to the 2026 Notes outstanding on December 31, 2021.

The company will not be required to make any cash payments to the option counterparties upon the exercise of the options that are a part of the Capped Call Transactions, but the company will be entitled to receive from the option counterparties a number of company common shares, an amount of cash or a combination thereof generally based on the amount by which the market price per company common share, as measured under the terms of the Capped Call Transactions, is greater than the strike price of the Capped Call Transactions during the relevant valuation period under the Capped Call Transactions. However, if the market price per Company common share, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions during such valuation period, the number of company common shares and/or the amount of cash the company expects to receive upon exercise of the Capped Call Transactions will be capped based on the amount by which the cap price exceeds the strike price of the Capped Call Transactions.

For any conversions of the 2026 Notes prior to September 15, 2025, a corresponding portion of the relevant Capped Call Transactions may be terminated at the company's option. Upon any such termination, the company expects to receive from the option counterparties a number of company common shares, or, if the company so elects, subject to certain conditions, an amount of cash, in each case, with a value equal to the fair value of such portion of the relevant Capped Call Transactions being terminated, as calculated in accordance with the terms of the relevant Capped Call Transaction.

The Capped Call Transactions are separate transactions, in each case, entered into by the company with the option counterparties, and are not part of the terms of the 2026 Notes and will not affect any holder's rights

under the 2026 Notes. Holders of the 2026 Notes will not have any rights with respect to the Capped Call Transactions.

CARES Act Loan

On May 15, 2020, the company entered into an unsecured loan agreement in the aggregate amount of \$10,000,000 pursuant to sections 1102 and 1106 of the Coronavirus Aid, Relief and Economic Security, "CARES," Act which was evidenced by a promissory note, dated May 13, 2020, and would bear interest at a fixed rate of 1.00%. This loan may be forgivable, partially or in full, if certain conditions are met, principally based on having been disbursed for permissible purposes and based on average levels of employment over a designated period of time. At the time of the loan, no assurance could be given that the company would be granted forgiveness of the loan in whole or in part. Originally, payments were to commence in December 2020.

In the third quarter of 2021, the company applied for forgiveness of the CARES Act debt along with its accrued interest. The company received notification of approval of its debt forgiveness inclusive of accrued interest, in full, and as a result, the company recorded a gain on extinguishment of debt of \$10,131,000.

The aggregate minimum maturities of long-term debt (excluding finance leases) for each of the next five years are as follows: \$3,115,000 in 2022, \$92,000 in 2023, \$187,633,000 in 2024, \$0 in 2025, and \$125,000,000 in 2026. Interest paid on all borrowings was \$17,243,000, \$16,909,000 and \$15,042,000 in 2021, 2020 and 2019, respectively.

Long-Term Liabilities

Other Long-Term Obligations

Other long-term obligations as of December 31, 2021 and 2020 consist of the following (in thousands):

	2021	2020
Deferred income taxes	\$ 21,664	\$ 23,234
Product liability	11,342	12,304
Pension	7,814	9,088
Deferred compensation	6,174	5,318
Deferred gain on sale leaseback	5,174	5,502
Supplemental Executive Retirement Plan liability	5,106	5,368
Death benefit obligation plan	4,568	4,723
Uncertain tax obligation including interest	3,171	3,114
Other	1,783	1,823
Other Long-Term Obligations	<u>\$ 66,796</u>	<u>\$ 70,474</u>

On April 23, 2015, the company entered into a real estate sales leaseback transaction which resulted in the recording of an initial deferred gain of \$7,414,000, the majority of which is included in Other Long-Term Obligations and will be recognized over the 20-year life of the leases. The gain realized was \$317,000 and \$305,000 for December 31, 2021 and 2020, respectively.

Leases and Commitments

The company reviews new contracts to determine if the contracts include a lease. To the extent a lease agreement includes an extension option that is reasonably certain to be exercised, the company has recognized those amounts as part of the right-of-use assets and lease liabilities. The company does not combine lease and certain non-lease components, such as common area maintenance, in the calculation of the lease assets and related liabilities. As most lease agreements do not provide an implicit rate, the company uses an incremental borrowing rate (IBR) based on information available at commencement date in determining the present value of lease payments and to help classify the lease as operating or financing. The company calculates its IBR based on the secured rates of the company's recent debt issuances, the credit rating of the company, changes in currencies, lease repayment timing as well as other publicly available data.

The company leases a portion of its facilities, transportation equipment, data processing equipment and certain other equipment. These leases have terms from 1 to 20 years and provide for renewal options. Generally, the company is required to pay taxes and normal expenses associated with operating the facilities and equipment. As of December 31, 2021, the company is committed under non-cancelable leases, which have initial or remaining terms in excess of one year and expire on various dates through 2040.

On April 23, 2015, the company sold and leased back, under four separate lease agreements, four properties located in Ohio and one property in Florida for net proceeds of \$23,000,000, which were used to reduce debt under the North America Credit Facility. The initial total annual rent for the properties was \$2,275,000 and can increase annually over the 20-year term of the leases based on the applicable geographical consumer price index (CPI). Each of the four lease agreements contains three 10-year renewals with the rent for each option term based on the greater of the then-current fair market rent for each property or the then-current rate and increasing annually by the applicable CPI. Under the terms of the lease agreements, the company is responsible for all taxes, insurance and utilities. The company is required to adequately maintain each of the properties and any leasehold improvements will be amortized over the lesser of the lives of the improvements or the remaining lease lives, consistent with any other company leases.

In connection with the transaction, the requirements for sale lease-back accounting were met. Accordingly, the company recorded the sale of the properties, removed the related property and equipment from the company's balance sheet, recognized an initial deferred gain of \$7,414,000 and an immediate loss of \$257,000 related to

one property and recorded new lease liabilities. Specifically, the company recorded four finance leases totaling \$32,339,000 and one operating lease related to leased land, which was not a material component of the transaction. The gains on the sales of the properties were required to be deferred and recognized over the life of the leases as the property sold is being leased back. The deferred gain is classified under Other Long-Term Obligations on the consolidated balance sheet. The gains realized were \$317,000 and \$305,000 in 2021 and 2020, respectively.

Lease expenses for the year ended December 31, 2021 and December 31, 2020, respectively, were as follows (in thousands):

	2021	2020
Operating leases	\$ 7,394	\$ 8,138
Variable and short-term leases	3,541	3,968
Total operating leases	\$ 10,935	\$ 12,106
Finance lease interest cost	\$ 4,601	\$ 2,544
Finance lease depreciation	4,996	3,479
Total finance leases	\$ 9,597	\$ 6,023

Long-Term Liabilities

Future minimum operating and finance lease commitments, as of December 31, 2021, are as follows (in thousands):

	Finance Leases	Operating Leases
2022	\$ 7,030	\$ 4,848
2023	6,943	2,887
2024	6,880	2,217
2025	6,765	1,798
2026	6,675	1,150
Thereafter	72,641	1,763
Total future minimum lease payments	106,934	14,663
Amounts representing interest	(40,189)	(2,212)
Present value of minimum lease payments	66,745	12,451
Less: current maturities of lease obligations	(3,009)	(4,217)
Long-term lease obligations	<u>\$ 63,736</u>	<u>\$ 8,234</u>

Supplemental cash flow amounts for the year ended December 31, 2021 and December 31, 2020, respectively, were as follows (in thousands):

Cash Activity: Cash paid in measurement of amounts for lease liabilities	December 31, 2021	December 31, 2020
Operating leases	\$ 11,089	\$ 12,527
Finance leases	8,166	5,316
Total	<u>\$ 19,255</u>	<u>\$ 17,843</u>

Non-Cash Activity: Right-of-use assets obtained in exchange for lease obligations	December 31, 2021	December 31, 2020
Operating leases	\$ 7,491	\$ 6,155
Finance leases	6,572	40,078
Total	<u>\$ 14,063</u>	<u>\$ 46,233</u>

Weighted-average remaining lease terms and discount rates for finance and operating leases are as follows as of December 31, 2021 and December 31, 2020, respectively,:

	December 31, 2021	December 31, 2020
Weighted-average remaining lease term - finance leases	15.8 years	17.0 years
Weighted-average remaining lease term - operating leases	5.0 years	4.6 years
Weighted-average discount rate - finance leases	6.43%	6.41%
Weighted-average discount rate - operating leases	7.1%	7.82%

Retirement and Benefit Plans

Substantially all full-time salaried and hourly domestic employees are included in the Invacare Retirement Savings Plan sponsored by the company. The company makes matching cash contributions up to 66.7% of employees' contributions up to 3% of compensation. The company also may make quarterly contributions to this Plan equal to a percentage of qualified wages. The company may make discretionary contributions to the domestic plans based on an annual resolution of the Board of Directors. Contribution expense for the Invacare Retirement Savings Plan in 2021, 2020 and 2019 was \$1,022,000, \$1,214,000 and \$1,765,000, respectively.

The company sponsors a Deferred Compensation Plus Plan covering certain employees, which provides for elective deferrals and the company retirement deferrals so that the total retirement deferrals equal amounts that would have contributed to the company's principal retirement plans if it were not for limitations imposed by income tax regulations.

The company sponsors a non-qualified defined benefit Supplemental Executive Retirement Plan (SERP) for certain key executives. Effective December 31, 2008, the SERP was amended, in part to comply with IRS Section 409A. As a result of the amendment, the plan became a defined benefit cash balance plan for the non-retired participants and thus, payments by the company since December 31, 2008 have been based upon a cash balance formula with interest credited at a rate determined annually by the Compensation and Management Development Committee of the Board of Directors. In 2021, 2020 and 2019, respectively, interest was credited at 0% for active participants in the SERP. The plan continues to be unfunded with individual hypothetical accounts maintained for each participant.

The SERP projected benefit obligation related to this unfunded plan was \$5,497,000 and \$5,759,000 at December 31, 2021 and December 31, 2020, respectively, and the accumulated benefit obligation was \$5,497,000 and \$5,759,000 at December 31, 2021 and December 31, 2020, respectively. The projected benefit obligations for the SERP as well as the Death Benefit Only Plan discussed below were calculated using an assumed future salary increase of 3.25% at December 31, 2021 and 2020, respectively. The assumed discount rate, relevant for three participants unaffected by the plan conversion was 2.83% and 2.52% for 2021 and 2020, respectively, based upon the discount rate on high-quality fixed-income investments without adjustment. The retirement age was 67 for 2021 and 2020, respectively. The mortality assumptions used for 2021 and 2020 were based upon the Pri.A-2012 White Collar Fully Generational Mortality Table using Scale

MP-2021 and the Pri.A-2012 White Collar Fully Generational Mortality Table using Scale MP-2020, respectively.

Expense for the SERP in 2021, 2020 and 2019 was \$129,000, \$326,000 and \$574,000, respectively. The expense was composed of interest expense in 2021, 2020 and 2019 of \$4,000, \$213,000 and \$392,000, respectively, with the remaining non-interest expense related to service costs, prior service costs and other gains/losses. Benefit payments in 2021, 2020 and 2019 were \$391,000, \$391,000 and \$391,000, respectively.

The company also sponsors a Death Benefit Only Plan (DBO) for certain key executives that provides a benefit equal to three times the participant's final target earnings should the participant's death occur while an employee and a benefit equal to one time the participant's final earnings upon the participant's death after normal retirement or if a participant dies after his or her employment with the company is terminated following a change in control of the company. Expense for the plan in 2021, 2020 and 2019 was \$30,000, \$640,000, and \$561,000, respectively. The 2021 amount included service and accrual adjustment income of \$68,000 compared to 2020 and 2019 amounts which included service and accrual adjustment expense of \$569,000, and \$488,000, respectively, with the remaining activity in each year related to interest costs. There were no benefit payments in 2021, 2020 and 2019. In conjunction with the company's DBO, the company has invested in life insurance policies related to certain employees to help satisfy the DBO obligations.

In Europe, the company maintains a defined benefit plan in Switzerland. The statutory pension plan is maintained with a private insurance company and, in accordance with Swiss law, the plan functions as a defined contribution plan whereby employee and employer contributions are defined as a percentage of individual salary depending on the age of the employee and a guaranteed interest rate, which is annually defined by the Swiss Pension Fund. Under U.S. GAAP, the plan is treated as defined benefit plan. Income for 2021 for the European plan was \$823,000 compared to 2020 and 2019 expense of \$1,678,000 and \$34,000, respectively.

Revenue

The company has two revenue streams: products and services. Services include repair, refurbishment, preventive maintenance and rental of products. Services for the North America (N.A.) segment include maintenance and repair of products. Services for the Europe segment include repair, refurbishment and preventive maintenance services. Services in All Other, are in the Asia Pacific region, and include rental and repair of products.

The following tables disaggregate the company's revenues by major source and by reportable segment for the year ended December 31, 2021 and December 31, 2020 (in thousands):

	2021		
	Products	Service	Total
Europe	\$ 486,190	\$ 12,928	\$ 499,118
N.A.	340,269	711	340,980
All Other	27,221	5,138	32,359
Total	<u>\$ 853,680</u>	<u>\$ 18,777</u>	<u>\$ 872,457</u>
% Split	98%	2%	100%

	2020		
	Products	Service	Total
Europe	\$ 455,638	\$ 12,403	\$ 468,041
N.A.	347,476	831	348,307
All Other	29,755	4,586	34,341
Total	<u>\$ 832,869</u>	<u>\$ 17,820</u>	<u>\$ 850,689</u>
% Split	98%	2%	100%

The company's revenues are principally related to the sale of products, approximately 98%, with the remaining 2% related to services including repair, refurbishment, preventive maintenance and rental of products. While the company has a significant amount of contract types, the sales split by contract type is estimated as follows: general terms and conditions (30%), large national customers (23%), governments, principally pursuant to tender contracts (22%) and other customers including buying groups and independent customers (25%).

All product revenues and substantially all service revenues are recognized at a point in time. The remaining service revenue, recognized over time, are reflected in the Europe segment and include multiple performance obligations. For such contracts, the company allocates revenue to each performance obligation based on its relative standalone selling price. The company generally determines the standalone selling price based on the expected cost-plus margin methodology.

Revenue is recognized when obligations under the terms of a contract with the customer are satisfied; generally, this occurs with the transfer of control of the company's products and services. The amount of consideration received and revenue recognized by the company can vary as a result of variable consideration terms included in the contracts related to customer rebates, cash discounts and return policies. Revenue is measured as the amount of consideration probable of not having a significant reversal of cumulative revenue recognized when related uncertainties are resolved. Customer rebates and cash discounts are estimated based on the most likely amount principle and these estimates are based on historical experience and anticipated performance. In addition, customers have the right to return products within the company's normal terms policy, and as such the company estimates the expected returns based on an analysis of historical experience. The company adjusts its estimate of revenue at the earlier of when the most likely amount of consideration it expects to receive changes or when the consideration becomes fixed. The company generally does not expect that there will be significant changes to its estimates of variable consideration (refer to "Receivables" and "Accrued Expenses" in the Notes to the Consolidated Financial Statements include elsewhere in this report for more detail).

Depending on the terms of the contract, the company may defer the recognition of a portion of the revenue at the end of a reporting period to align with transfer of control of the company's products to the customer. In addition, to the extent performance obligations are satisfied over time, the company defers revenue recognition until the performance obligations are satisfied. As of December 31, 2021 and December 31, 2020, the company had deferred revenue of \$4,156,000 and \$3,516,000, respectively, related to outstanding performance obligations.

Equity Compensation

The company's Common Shares have a \$0.25 stated value. The Common Shares and the Class B Common Shares generally have identical rights, terms and conditions and vote together as a single class on most issues, except that the Class B Common Shares have ten votes per share and, in general, can only be transferred to family members or for estate planning purposes. Holders of Class B Common Shares are entitled to convert their shares into Common Shares at any time on a share-for-share basis. When Class B Common Shares are transferred out of a familial relationship, they automatically convert to Common Shares.

As of December 31, 2021, 3,667 Class B Common Shares remained outstanding. Prior conversions of Class B Common Shares have virtually eliminated the company's dual class voting structure. As of December 31, 2021, the holders of the Common Shares represented approximately 99.9% of the company's total outstanding voting power.

Equity Compensation Plan

On May 17, 2018, the shareholders of the company approved the Invacare Corporation 2018 Equity Compensation Plan (the "2018 Plan"), which was adopted on March 27, 2018 by the company's Board of Directors (the "Board"). The company's Board adopted the 2018 Plan in order to authorize additional Common Shares for grant as equity compensation, and to reflect changes to Section 162(m) of the Internal Revenue Code (the "Code") resulting from the U.S. Tax Cuts and Jobs Act of 2017.

Following shareholder approval of the 2018 Plan, all of the Common Shares then-remaining available for issuance under the Invacare Corporation 2013 Equity Compensation Plan (the "2013 Plan") and all of the Common Shares that were forfeited or remained unpurchased or undistributed upon termination or expiration of awards under the 2013 Plan and under the Invacare Corporation 2003 Performance Plan (the "2003 Plan"), become available for issuance under the 2018 Plan. Awards granted previously under the 2013 Plan and 2003 Plan will remain in effect under their original terms.

The 2018 Plan uses a fungible share-counting method, under which each Common Share underlying an award of stock options or stock appreciation rights ("SAR") will count against the number of total shares available under the 2018 Plan as one share; and each Common Share underlying any award other than a stock option or a SAR will count against the number of total shares available under the 2018 Plan as two shares. Shares underlying awards made under the 2003 Plan or 2013 Plan that are forfeited or remain unpurchased or undistributed upon

termination or expiration of the awards will become available under the 2018 Plan for use in future awards. Any Common Shares that are added back to the 2018 Plan as the result of forfeiture, termination or expiration of an award granted under the 2018 Plan or the 2013 Plan will be added back in the same manner such shares were originally counted against the total number of shares available under the 2018 Plan or 2013 Plan, as applicable. Each Common Share that is added back to the 2018 Plan due to a forfeiture, termination or expiration of an award granted under the 2003 Plan will be added back as one Common Share.

The Compensation and Management Development Committee of the Board (the "Compensation Committee"), in its discretion, may grant an award under the 2018 Plan to any director or employee of the company or an affiliate. As of December 31, 2021, 3,475,496 Common Shares were available for future issuance under the 2018 Plan in connection with the following types of awards with respect to the company's Common Shares: incentive stock options, nonqualified stock options, SARs, restricted stock, restricted stock units, unrestricted stock and performance shares. The Compensation Committee also may grant performance units that are payable in cash. The Compensation Committee has the authority to determine which participants will receive awards, the amount of the awards and the other terms and conditions of the awards. The Common Shares available for further issuance under the 2018 Plan as of December 31, 2021 includes an additional 2,500,000 Common Shares that were added pursuant to an amendment approved by shareholders at the company's 2021 annual shareholders meeting on May 20, 2021.

The 2018 Plan provides that shares granted come from the company's authorized but unissued Common Shares or treasury shares. In addition, the company's stock-based compensation plans allow employee participants to exchange shares for minimum withholding taxes, which results in the company acquiring treasury shares. Under these provisions, the company acquired approximately 213,000 treasury shares for \$1,754,000 in 2021, 231,000 shares for \$1,707,000 in 2020 and 112,000 shares for \$894,000 in 2019.

Equity Compensation

The amounts of equity-based compensation expense recognized as part of SG&A expenses in All Other in business segment reporting were as follows (in thousands):

	2021	2020	2019
Non-qualified and performance stock options	\$ —	\$ —	\$ 1,939
Restricted stock / units	5,450	5,332	4,772
Performance shares / units	(1,127)	3,313	4,399
Total stock-based compensation expense	<u>\$ 4,323</u>	<u>\$ 8,645</u>	<u>\$ 11,110</u>

As of December 31, 2021, unrecognized compensation expense related to equity-based compensation arrangements granted under the company's 2018 Plan and previous plans, which is related to non-vested options and shares, was as follows (in thousands):

	2021	2020	2019
Restricted stock and restricted stock units	6,866	7,489	8,453
Performance shares and performance share units	1,746	7,260	8,269
Total unrecognized stock-based compensation expense	<u>\$ 8,612</u>	<u>\$ 14,749</u>	<u>\$ 16,722</u>

Total unrecognized compensation cost will be adjusted for future changes in actual and estimated forfeitures and for updated vesting assumptions for the performance share awards (refer to "Stock Options" and "Performance Shares and Performance Share Units" below). No tax benefits for stock compensation were realized during 2021, 2020 and 2019 due to a valuation allowance against deferred tax assets. In accordance with ASC 718, any tax benefits resulting from tax deductions in excess of the compensation expense recognized is classified as a component of financing cash flows.

Stock Options

Generally, non-qualified stock option awards have a term of ten years and were granted with an exercise price per share equal to the fair market value of the company's Common Shares on the date of grant. Stock option awards granted in 2017 were performance-based awards which became exercisable based upon achievement of the performance goals established by the Compensation Committee as achieved over a 3-year period ending in 2019 which were subject to the Compensation Committee's exercise of negative discretion to reduce the number of options vested based on the progress towards other initiatives.

The following table summarizes information about stock option activity for the three years ended 2021, 2020 and 2019:

	2021	Weighted Average Exercise Price	2020	Weighted Average Exercise Price	2019	Weighted Average Exercise Price
Options outstanding at January 1	1,081,804	\$ 16.07	1,441,202	\$ 18.26	1,885,262	\$ 18.78
Forfeited	(331,645)	23.71	(359,398)	24.84	(444,060)	20.49
Options outstanding at December 31	<u>750,159</u>	\$ 12.69	<u>1,081,804</u>	\$ 16.07	<u>1,441,202</u>	\$ 18.26
Options exercise price range at December 31	\$ 12.15		\$ 12.15		\$ 12.15	
	to		to		to	
	\$ 17.47		\$ 33.36		\$ 33.36	
Options exercisable at December 31	750,159		1,081,804		910,267	
Shares available for grant at December 31*	3,475,496		3,540,534		3,851,945	

* Shares available for grant under the 2018 Plan as of December 31, 2021 reduced by net restricted stock and restricted stock unit and performance share and performance share unit award activity of 1,816,618 shares and 2,671,108 shares, respectively. At December 31, 2021, an aggregate of 802,637 Common Shares underlie awards which were forfeited or expired unexercised under the 2003 and 2013 Plans and thus are available for future issuance under the 2018 Plan.

The following table summarizes information about stock options outstanding at December 31, 2021:

Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding At 12/31/21	Weighted Average Contractual Life (Years)	Weighted Average Exercise Price	Number Exercisable At 12/31/21	Weighted Average Exercise Price
\$12.15 – \$20.00	750,159	4.0	\$ 12.69	750,159	\$ 12.69

The 2018 Plan provides for a one-year minimum vesting period for stock options and, generally, options must be exercised within ten years from the date granted. No stock options were issued in 2021, 2020 or 2019.

Restricted Stock and Restricted Stock Units

The following table summarizes information about restricted stock and restricted stock units (primarily for non-U.S. recipients):

	2021	Weighted Average Fair Value	2020	Weighted Average Fair Value	2019	Weighted Average Fair Value
Stock / Units unvested at January 1	1,145,058	\$ 8.62	965,085	\$ 11.32	637,663	\$ 15.04
Granted	652,743	8.42	764,012	7.11	828,484	9.86
Vested	(558,424)	9.33	(475,113)	11.39	(309,150)	14.26
Forfeited	(78,530)	8.44	(108,926)	9.90	(191,912)	12.60
Stock / Units unvested at December 31	<u>1,160,847</u>	\$ 8.17	<u>1,145,058</u>	\$ 8.62	<u>965,085</u>	\$ 11.32

The restricted stock awards generally vest ratably over the three years after the award date. Unearned restricted stock compensation, determined as the market value of the shares at the date of grant, is being amortized on a straight-line basis over the vesting period.

Performance Shares and Performance Share Units

The following table summarizes information about performance shares and performance share units (primarily for non-U.S. recipients):

	2021	Weighted Average Fair Value	2020	Weighted Average Fair Value	2019	Weighted Average Fair Value
Shares / Units unvested at January 1	1,026,785	\$ 8.55	753,272	\$ 11.82	448,294	\$ 14.39
Granted	471,819	8.49	523,329	7.82	576,737	9.93
Vested	—	—	(183,840)	17.48	(255,259)	12.02
Forfeited	(526,316)	9.25	(65,976)	9.48	(16,500)	11.99
Shares / Units unvested at December 31	<u>972,288</u>	\$ 7.76	<u>1,026,785</u>	\$ 8.55	<u>753,272</u>	\$ 11.82

During 2021, 2020 and 2019, the performance shares and performance share units (for non-U.S. recipients) were granted as performance awards with a three-year performance period with payouts based on achievement of certain performance goals. The awards are classified as equity awards as they will be settled in common shares upon vesting. The number of shares earned will be determined at the end of the three-year performance period

based on achievement of performance criteria for January 1, 2019 through December 31 2021, January 1, 2020 through December 31 2022 and January 1, 2021 through December 31, 2023 established by the Compensation Committee at the time of grant. Recipients will be entitled to receive a number of common shares equal to the number of performance shares that vest based upon the levels of achievement which may range between 0% and 150% of

Equity Compensation

the target number of shares with the target being 100% of the initial grant.

The fair value of the performance awards is based on the stock price on the date of grant discounted for the estimated value of dividends foregone as the awards are not eligible for dividends except to the extent vested. The grant fair value is further updated each reporting period while variable accounting applies. The company assesses the probability that the performance targets will be met with expense recognized whenever it is probable that at least the minimum performance criteria will be achieved. Depending upon the company's assessment of the probability of achievement of the goals, the company may not recognize any expense associated with performance awards in a given period, may reverse prior expense recorded or record additional expense to recognize the cumulative estimated achievement level of proportionate term of the award. Performance award compensation expense is generally expected to be recognized over three years. The company continues to recognize expense (benefit) related to the awards granted in 2019, 2020 and 2021 based on probability of performance goals for those awards being met.

In the fourth quarter of 2020 the Compensation Committee considered the adverse impacts of the pandemic and approved the modification of the performance shares and performance share unit awards for the 2019-2021 performance period (the "modification"). Due to the adverse impacts of the pandemic, the previous performance targets which were established prior to the pandemic were deemed to be no longer reasonable or achievable, and accordingly, the vesting of the performance awards were no longer probable. The modification aligned updated performance targets such that vesting of at least a portion of the awards became probable. The modification of the performance awards for the 2019-2021 performance period impacted seven grantees. Incremental stock compensation expense resulting from the modification was \$605,000 in the fourth quarter of 2020.

Accumulated Other Comprehensive Income (Loss) by Component

Changes in accumulated other comprehensive income (loss) ("OCI") during the year ended December 31, 2021 were as follows (in thousands):

	Foreign Currency	Long-Term Notes	Defined Benefit Plans	Derivatives	Total
December 31, 2020	\$ 50,329	\$ (517)	\$ (3,674)	\$ (702)	\$ 45,436
OCI before reclassifications	(31,368)	2,644	(457)	(557)	(29,738)
Amount reclassified from accumulated OCI	—	—	30	1,260	1,290
Net current-period OCI	(31,368)	2,644	(427)	703	(28,448)
December 31, 2021	<u>\$ 18,961</u>	<u>\$ 2,127</u>	<u>\$ (4,101)</u>	<u>\$ 1</u>	<u>\$ 16,988</u>

Changes in OCI during the year ended December 31, 2020 were as follows (in thousands):

	Foreign Currency	Long-Term Notes	Defined Benefit Plans	Derivatives	Total
December 31, 2019	\$ 8,898	\$ (2,491)	\$ (3,299)	\$ 20	\$ 3,128
OCI before reclassifications	41,431	1,974	(1,015)	(2,129)	40,261
Amount reclassified from accumulated OCI	—	—	640	1,407	2,047
Net current-period OCI	41,431	1,974	(375)	(722)	42,308
December 31, 2020	<u>\$ 50,329</u>	<u>\$ (517)</u>	<u>\$ (3,674)</u>	<u>\$ (702)</u>	<u>\$ 45,436</u>

Reclassifications out of accumulated OCI for the year ended December 31, 2021 and December 31, 2020 were as follows (in thousands):

	Amount reclassified from OCI		Affected line item in the Statement of Comprehensive (Income) Loss
	2021	2020	
Defined Benefit Plans:			
Service and interest costs	\$ 30	\$ 640	Selling, general and administrative
Tax	—	—	Income taxes
Total after tax	<u>\$ 30</u>	<u>\$ 640</u>	
Derivatives:			
Foreign currency forward contracts hedging sales	\$ 1,058	\$ (1,359)	Net sales
Foreign currency forward contracts hedging purchases	428	2,826	Cost of products sold
Total loss (income) before tax	1,486	1,467	
Tax	(226)	(60)	Income taxes
Total after tax	<u>\$ 1,260</u>	<u>\$ 1,407</u>	

Capital Stock

Capital Stock

Capital stock activity for 2021, 2020 and 2019 consisted of the following (in thousands of shares):

	Common Stock Shares	Class B Shares	Treasury Shares
January 1, 2019 Balance	37,010	6	(3,841)
Restricted stock awards	599	—	(112)
December 31, 2019 Balance	<u>37,609</u>	<u>6</u>	<u>(3,953)</u>
Conversion of Class B to Common	2	(2)	—
Restricted and performance stock awards	1,002	—	(231)
December 31, 2020 Balance	<u>38,613</u>	<u>4</u>	<u>(4,184)</u>
Restricted and performance stock awards	803	—	(213)
December 31, 2021 Balance	<u>39,416</u>	<u>4</u>	<u>(4,397)</u>

Stock awards for 78,530, 108,926 and 191,912 shares were forfeited in 2021, 2020 and 2019, respectively.

In 2020, dividends of \$0.0125 per Common Share were declared and paid as the Board of Directors suspended the quarterly dividend May 2020. The Board of Directors suspended further dividends on the Class B Common Shares in 2018.

In 2019, dividends of \$0.05 per Common Share were declared and paid.

Charges Related to Restructuring Activities

The company's restructuring charges were originally necessitated primarily by continued declines in Medicare and Medicaid reimbursement by the U.S. government, as well as similar healthcare reimbursement pressures abroad, which negatively affected the company's customers (e.g. home health care providers) and continued pricing pressures faced by the company due to the outsourcing by competitors to lower cost locations. Restructuring decisions were also the result of reduced profitability in each of the segments. Restructuring actions have continued into 2021.

Charges for the year ended December 31, 2021 totaled \$2,534,000 which were related to North America (\$964,000) and Europe (\$1,560,000) and All Other (\$10,000). The North America and All Other costs were for severance costs. The European charges were incurred related to severance (\$886,000) and contract terminations of (\$674,000) related to the closure of a German manufacturing facility. The 2021 ending balances are expected to be paid out within 24 months.

Charges for the year ended December 31, 2020 totaled \$7,358,000 which were related to North America (\$1,306,000), Europe (\$5,934,000) and All Other (\$118,000). The North America and All Other costs were

for severance costs. The European charges were incurred related to severance (\$5,588,000) and contract terminations of (\$346,000) related to the closure of a German manufacturing facility.

Charges for the year ended December 31, 2019 totaled \$11,829,000 which were related to North America (\$1,617,000), Europe (\$9,579,000) and All Other (\$633,000). In North America, costs were incurred related to severance (\$1,573,000) and lease termination costs (\$44,000). The European charges were incurred related to severance (\$9,356,000) and lease termination costs (\$223,000) primarily related to the closure of a German Manufacturing facility. All Other charges were related to severance.

There have been no material changes in accrued balances related to the charges, either as a result of revisions to the plans or changes in estimates. In addition, the savings anticipated as a result of the company's restructuring plans have been or are expected to be achieved, primarily resulting in reduced salary and benefit costs principally impacting selling, general and administrative expenses, and to a lesser extent, costs of products sold. To date, the company's liquidity has been sufficient to absorb these charges and payments.

A progression by reporting segment of the accruals recorded as a result of the restructuring is as follows (in thousands):

	Severance	Contract Terminations	Total
January 1, 2019 Balance			
North America	\$ 656	\$ 25	\$ 681
Europe	181	—	181
All Other	820	—	820
Total	<u>1,657</u>	<u>25</u>	<u>1,682</u>
Charges			
North America	1,573	44	1,617
Europe	9,356	223	9,579
All Other	633	—	633
Total	<u>11,562</u>	<u>267</u>	<u>11,829</u>
Payments			
North America	(2,018)	(69)	(2,087)
Europe	(3,131)	(219)	(3,350)
All Other	(1,047)	—	(1,047)
Total	<u>(6,196)</u>	<u>(288)</u>	<u>(6,484)</u>

Charges Related to Restructuring

	Severance	Contract Terminations	Total
December 31, 2019 Balance			
North America	211	—	211
Europe	6,406	4	6,410
All Other	406	—	406
Total	<u>7,023</u>	<u>4</u>	<u>7,027</u>
Charges			
North America	1,306	0	1,306
Europe	5,588	346	5,934
All Other	118	0	118
Total	<u>7,012</u>	<u>346</u>	<u>7,358</u>
Payments			
North America	(1,338)	—	(1,338)
Europe	(6,090)	(346)	(6,436)
All Other	(358)	—	(358)
Total	<u>(7,786)</u>	<u>(346)</u>	<u>(8,132)</u>
December 31, 2020 Balance			
North America	179	—	179
Europe	5,904	4	5,908
All Other	166	—	166
Total	<u>6,249</u>	<u>4</u>	<u>6,253</u>
Charges			
North America	964	—	964
Europe	886	674	1,560
All Other	10	—	10
Total	<u>1,860</u>	<u>674</u>	<u>2,534</u>
Payments			
North America	(661)	—	(661)
Europe	(6,790)	(678)	(7,468)
All Other	(176)	—	(176)
Total	<u>(7,627)</u>	<u>(678)</u>	<u>(8,305)</u>
December 31, 2021 Balance			
North America	482	—	482
Europe	—	—	—
All Other	—	—	—
Total	<u>\$ 482</u>	<u>\$ —</u>	<u>\$ 482</u>

Income Taxes

Earnings (loss) before income taxes consist of the following (in thousands):

	2021	2020	2019
Domestic	\$ (53,916)	\$ (42,213)	\$ (66,135)
Foreign	14,798	17,774	22,110
	<u>\$ (39,118)</u>	<u>\$ (24,439)</u>	<u>\$ (44,025)</u>

The company has provided for income taxes (benefits) as follows (in thousands):

	2021	2020	2019
Current:			
Federal	\$ 85	\$ 45	\$ 152
State	(12)	(180)	(90)
Foreign	6,596	6,168	10,070
	<u>6,669</u>	<u>6,033</u>	<u>10,132</u>
Deferred:			
Federal	(662)	(26)	(148)
State	—	—	—
Foreign	438	(2,166)	(682)
	<u>(224)</u>	<u>(2,192)</u>	<u>(830)</u>
Income Taxes	<u>\$ 6,445</u>	<u>\$ 3,841</u>	<u>\$ 9,302</u>

Included in the 2019 federal deferred taxes is a benefit of \$148,000 which resulted from the effect of indefinite intangibles and a related 2018 indefinite loss carryforward created, due to the U.S. tax reform legislation, resulting in a deferred tax benefit. The 2021 deferred federal benefit results from the goodwill impairment the company recorded, a reversal of deferred taxes related to the tax-deductible goodwill previously deducted by the company, resulting in the company recognizing a tax benefit of \$662,000.

The company has historically considered the undistributed earnings of the company's foreign subsidiaries to be indefinitely reinvested, and, accordingly, no taxes have been provided on such earnings (other than earnings from the company's Chinese subsidiary which was sold in March 2020 as part of the sale of the Dynamic business). The company reversed withholding taxes in the amount of \$988,000 which were previously provided as a result of the company position that the earnings from the Chinese subsidiary were not permanently reinvested. The

sale of the business occurred without dividends paid from this subsidiary. The company continues to evaluate its plans for reinvestment or repatriation of unremitted foreign. As a result of U.S. tax reform legislation, distributions of profits from non-U.S. subsidiaries are not expected to cause a significant incremental U.S. tax impact in the future. However, these distributions may be subject to non-U.S. withholding taxes if profits are distributed from certain jurisdictions. Undistributed profits of non-U.S. subsidiaries of approximately \$28,683,000 are considered indefinitely reinvested. Determination of the amount of unrecognized deferred tax liability related to indefinitely reinvested profits is not practicable.

The company regularly reviews its cash positions and its determination of permanent reinvestment of foreign earnings. If the company determines all or a portion of such foreign earnings are no longer indefinitely reinvested, the company may be subject to additional foreign withholding taxes and U.S. state income taxes.

Income Taxes

A reconciliation to the effective income tax rate from the federal statutory rate is as follows:

	2021	2020	2019
Statutory federal income tax rate (benefit)	(21.0)%	(21.0)%	(21.0)%
State and local income taxes, net of federal income tax benefit	—	(0.6)	(0.2)
Non-taxable disposition of subsidiaries	—	(11.2)	—
Expiring foreign tax credits	1.7	16.5	40.2
Foreign taxes at other than the federal statutory rate	3.9	8.8	5.1
Federal and foreign valuation allowances	20.4	(4.3)	(20.4)
Withholding taxes	0.1	0.1	0.1
Unremitted earnings	—	(4.0)	0.1
Debt repurchase	—	3.2	1.7
Foreign branch activity	4.0	19.3	12.4
Uncertain tax positions	0.6	2.9	1.4
Nontaxable loan forgiveness	(5.4)	—	—
Foreign goodwill write-off	9.0	—	—
Other, net	3.2	6.0	1.7
Effective federal income tax rate	<u>16.5 %</u>	<u>15.7 %</u>	<u>21.1 %</u>

At December 31, 2021, total deferred tax assets were \$200,042,000, total deferred tax liabilities were \$43,936,000 and the tax valuation allowances total was \$176,230,000 for a net deferred income tax liability of \$20,124,000 compared to total deferred tax assets of \$179,985,000, total deferred tax liabilities of \$37,873,000 and a tax valuation allowances total of \$163,298,000 for a net deferred income tax liability of \$21,186,000 at December 31, 2020. The company recorded a valuation allowance for its U.S. and certain foreign country net deferred tax assets where it is or is projected to be in a three-year cumulative loss.

Significant components of long-term deferred income tax assets and liabilities at December 31, 2021 and 2020 are as follows (in thousands):

	2021	2020
Bad debt	\$ 387	\$ 417
Warranty	1,426	1,280
Other accrued expenses and reserves	484	1,709
Inventory	3,624	3,797
Goodwill and intangibles	(19,910)	(24,291)
Convertible debt	5,193	2,623
Fixed assets	(24,026)	(13,582)
Compensation and benefits	4,271	6,349
Loss and credit carryforwards	127,397	118,290
Product liability	1,596	1,797
State and local taxes	34,794	32,835
Valuation allowances	(176,230)	(163,298)
Lease liability	19,649	9,258
Other, net	1,221	1,630
Net Deferred Income Taxes	<u>\$ (20,124)</u>	<u>\$ (21,186)</u>

The company made net payments for income taxes of \$6,877,000, \$4,377,000, and \$12,463,000 during the years ended December 31, 2021, 2020 and 2019, respectively.

A reconciliation of the beginning and ending balance of unrecognized tax benefits is as follows (in thousands):

	2021	2020
Balance at beginning of year	\$ 3,262	\$ 2,872
Additions to:		
Positions taken during the current year	238	782
Positions taken during a prior year	3	3
Exchange rate impact	—	52
Deductions due to:		
Exchange rate impact	(66)	—
Positions taken during a prior year	(76)	(167)
Lapse of statute of limitations	(212)	(280)
Balance at end of year	<u>\$ 3,149</u>	<u>\$ 3,262</u>

The company recognizes interest and penalties associated with uncertain tax positions in income tax expense. During 2021, 2020 and 2019 the expense (benefit) for interest and penalties was \$15,000, \$(20,000) and \$13,000, respectively. The company had approximately \$525,000 and \$510,000 of accrued interest and penalties as of December 31, 2021 and 2020, respectively.

The company has a federal domestic net operating loss carryforward of \$406,252,000 of which \$276,625,000 expires between 2034 and 2037 and the remaining are non-expiring; domestic interest carryforward of \$94,845,000 which is non-expiring and federal tax credit carryforwards of \$11,302,000 of which \$222,000 expires in 2022 and \$9,070,000 expire between 2023 and 2027, \$2,010,000 expire beginning 2031.

At December 31, 2021, the company also had \$660,471,000 of domestic state and local tax loss carryforwards, of which \$128,493,000 expire between 2022 and 2025, \$330,343,000 expire between 2026 and 2035 and \$166,667,000 expire after 2036 and \$34,968,000 have an unlimited carryforward.

At December 31, 2021, the company had foreign tax loss carryforwards of approximately \$51,996,000 of which \$22,839,000 expire between 2023 and 2028 the remaining are non-expiring all of which are offset by valuation allowances.

As of December 31, 2021 and 2020, the company had a liability for uncertain tax positions, excluding interest and penalties of \$2,646,000 and \$2,604,000, respectively. The total liabilities associated with unrecognized tax benefits that, if recognized, would impact the effective tax rates were \$2,646,000 and \$2,604,000 at December 31, 2021 and 2020, respectively.

The company and its subsidiaries file income tax returns in the U.S. and certain foreign jurisdictions. The company is subject to U.S. federal income tax examinations for calendar years 2018 to 2021 with limited exceptions, and is subject to various U.S. state income tax examinations for 2017 to 2021. With regards to foreign income tax jurisdictions, the company is generally subject to examinations for the periods 2015 to 2021.

Net Loss Per Common Share

The following table sets forth the computation of basic and diluted net earnings (loss) per common share for the periods indicated.

	2021	2020	2019
	(In thousands, except per share data)		
Basic			
Average common shares outstanding	34,875	34,266	33,594
Net loss	\$ (45,563)	\$ (28,280)	\$ (53,327)
Net loss per common share	\$ (1.31)	\$ (0.83)	\$ (1.59)
Diluted			
Average common shares outstanding	34,875	34,266	33,594
Stock options and awards	399	109	48
Average common shares assuming dilution	35,274	34,375	33,642
Net loss	\$ (45,563)	\$ (28,280)	\$ (53,327)
Net loss per common share *	\$ (1.31)	\$ (0.83)	\$ (1.59)

* Net earnings (loss) per share assuming dilution calculated utilizing weighted average shares outstanding - basic for the periods in which there was a net loss.

At December 31, 2021, 2020 and 2019, incremental shares associated with equity compensation plans of 1,414,155, 2,275,832 and 3,626,828, respectively, were excluded from the average common shares assuming dilution, as they were anti-dilutive.

At December 31, 2021, the majority of the anti-dilutive shares were granted at an exercise price of \$12.15, which was higher than the average fair market value price of \$7.13 for 2021. In 2020, the majority of the anti-dilutive shares were granted at an exercise price of \$12.15, which was higher than the average fair market value price of \$7.42 for 2020. In 2019, the majority of the anti-dilutive shares were granted at an exercise price of \$25.24, which was higher than the average fair market value price of \$6.93 for 2019.

For 2021, 2020 and 2019 the diluted net loss per share calculation, all the shares associated with stock options were anti-dilutive because of the company's loss.

For 2021, 2020 and 2019, no shares were included in the common shares assuming dilution related to the company's issued warrants as the average market price of the company stock for these periods did not exceed the strike price of the warrants.

Further, upon adoption of ASU 2020-06, effective in 2021 for the company, use of the if-converted earnings per share method is required. However, no shares were included in the weighted average common shares assuming dilution for 2021 related to the company's convertible senior notes as conversion prices were above the company's average stock price for the period and other requirements for the notes to be convertible to shares were not met.

Concentration of Credit Risk

The company manufactures and distributes durable medical equipment to the home health care, retail and extended care markets. The company performs credit evaluations of its customers' financial condition. The company utilizes De Lage Landen, Inc. ("DLL"), a third-party financing company, to provide lease financing to Invacare's U.S. customers. The DLL agreement provides for direct leasing between DLL and the Invacare customer. The company retains a recourse obligation of \$1,121,000 at December 31, 2021 to DLL for events of default under the contracts, which total \$6,826,000 at December 31, 2021. *Guarantees*, ASC 460, requires the company to record a guarantee liability as it relates to the limited recourse obligation. As such, the company has recorded an immaterial liability for this guarantee obligation within other long-term obligations. The company's recourse is reevaluated by DLL biannually, considers activity between the biannual dates and excludes any receivables purchased by the company from DLL. The company monitors the collections status of these contracts and has provided amounts for estimated losses in its allowances for doubtful accounts in accordance with *Receivables*, ASC 310-10-05-4. Credit losses are provided for in the financial statements.

Substantially all the company's receivables are due from health care, medical equipment providers and long-term care facilities located throughout the United States, Australia, Canada, New Zealand and Europe or also direct from governmental entities in certain countries. A significant portion of products sold to dealers, both foreign and domestic, is ultimately funded through government reimbursement programs such as Medicare and Medicaid. Changes in these programs can have a significant shift in reimbursement to customers from managed care entities. As a consequence, changes in these programs can have an adverse impact on dealer liquidity and profitability. In addition, reimbursement guidelines in the home health care industry have a substantial impact on the nature and type of equipment an end user can obtain as well as the timing of reimbursement and, thus, affect the product mix, pricing and payment patterns of the company's customers.

The company's top 10 customers accounted for approximately 19.7% of 2021 net sales. The loss of business of one or more of these customers may have a significant impact on the company, although no single customer accounted for more than 5.7% of the company's 2021 net sales. Providers who are part of a buying group generally make individual purchasing decisions and are invoiced directly by the company.

Derivatives

ASC 815 requires companies to recognize all derivative instruments in the consolidated balance sheet as either assets or liabilities at fair value. The accounting for changes in fair value of a derivative is dependent upon whether or not the derivative has been designated and qualifies for hedge accounting treatment and the type of hedging relationship. For derivatives designated and qualifying as hedging instruments, the company must designate the hedging instrument, based upon the exposure being hedged, as a fair value hedge, cash flow hedge, or a hedge of a net investment in a foreign operation.

Cash Flow Hedging Strategy

The company uses derivative instruments in an attempt to manage its exposure to transactional foreign currency exchange risk. Foreign forward exchange contracts are used to manage the price risk associated with forecasted sales denominated in foreign currencies and the price risk associated with forecasted purchases of inventory over the next twelve months.

The company recognizes its derivative instruments as assets or liabilities in the consolidated balance sheet measured at fair value. All of the company's derivative instruments are designated and qualify as cash flow hedges. Accordingly, the effective portion of the gain or loss on the derivative instrument is reported as a component of other comprehensive income and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The remaining gain or loss on the derivative instrument in excess of the cumulative change in the fair value of the hedged item, if any, is recognized in current earnings during the period of change.

To protect against increases/decreases in forecasted foreign currency cash flows resulting from inventory purchases/sales over the next year, the company utilizes foreign currency forward contracts to hedge portions of its forecasted purchases/sales denominated in foreign currencies. The gains and losses are included in cost of products sold and selling, general and administrative expenses on the consolidated statement of comprehensive income (loss). If it is later determined that a hedged forecasted transaction is unlikely to occur, any prospective gains or losses on the forward contracts would be recognized in earnings. The company does not expect any material amount of hedge ineffectiveness related to forward contract cash flow hedges during the next twelve months.

The company has historically not recognized any material amount of ineffectiveness related to forward contract cash flow hedges because the company generally limits its hedges to between 50% and 90% of total forecasted transactions for a given entity's exposure to currency rate changes and the transactions hedged are recurring in nature. Furthermore, most of the hedged transactions are related to intercompany sales and purchases for which settlement occurs on a specific day each month. Forward contracts with a total notional amount in USD of \$122,624,000 and \$210,029,000 matured during the twelve months ended December 31, 2021 and 2020, respectively.

Outstanding foreign currency forward exchange contracts qualifying and designated for hedge accounting treatment were as follows (in thousands USD):

	December 31, 2021		December 31, 2020	
	Notional Amount	Unrealized Net Gain (Loss)	Notional Amount	Unrealized Net Gain (Loss)
USD / CHF	—	—	1,675	(11)
USD / EUR	—	—	56,187	(636)
USD / GBP	—	—	2,467	(19)
USD / SEK	—	—	2,658	(41)
USD / MXN	23	1	2,230	334
EUR / CHF	—	—	5,037	10
EUR / GBP	—	—	19,060	44
EUR / NOK	—	—	4,167	(64)
EUR / SEK	—	—	10,162	(73)
AUD / NZD	—	—	781	(13)
DKK / SEK	—	—	3,329	9
NOK / SEK	—	—	3,431	(50)
AUD / THB	—	—	4,963	(221)
NZD / THB	—	—	1,755	(55)
USD / THB	—	—	4,152	(56)
EUR / THB	—	—	1,332	18
GBP / THB	—	—	842	10
	<u>\$ 23</u>	<u>\$ 1</u>	<u>\$ 124,228</u>	<u>\$ (814)</u>

Derivatives Not Qualifying or Designated for Hedge Accounting Treatment

The company utilizes foreign currency forward contracts that are not designated as hedges in accordance with ASC 815. These contracts are entered into to eliminate the risk associated with the settlement of short-term intercompany trading receivables and payables between Invacare Corporation and its foreign subsidiaries. The currency forward contracts are entered into at the same time as the intercompany receivables or payables are created so that upon settlement, the gain/loss on the settlement is offset by the gain/loss on the foreign currency forward contract. No material net gain or loss was realized by the company in 2021 or 2020 related to these contracts and the associated short-term intercompany trading receivables and payables.

Derivatives

Foreign currency forward exchange contracts not qualifying or designated for hedge accounting treatment, as well as ineffective hedges, entered into in 2021 and 2020, respectively, and outstanding were as follows (in thousands USD):

	December 31, 2021		December 31, 2020	
	Notional Amount	Gain (Loss)	Notional Amount	Gain (Loss)
USD / AUD	\$ 3,792	\$ (57)	\$ 6,046	\$ (159)
USD / CAD	14,556	(24)	8,320	88
USD / EUR	70,454	(1,104)	—	—
USD / DKK	10,850	(257)	8,690	207
USD / GBP	4,028	32	16,062	338
AUD / NZD	7,366	(17)	6,579	(35)
USD / NOK	2,352	(81)	9,053	264
USD / SEK	2,344	(131)	—	—
USD / THB	4,500	86	—	—
	<u>\$ 120,242</u>	<u>\$ (1,553)</u>	<u>\$ 54,750</u>	<u>\$ 703</u>

The fair values of the company's derivative instruments were as follows (in thousands):

	December 31, 2021		December 31, 2020	
	Assets	Liabilities	Assets	Liabilities
<u>Derivatives designated as hedging instruments under ASC 815</u>				
Foreign currency forward exchange contracts	\$ 1	\$ —	\$ 424	\$ 1,238
<u>Derivatives not designated as hedging instruments under ASC 815</u>				
Foreign currency forward exchange contracts	385	1,938	897	194
Total derivatives	<u>\$ 386</u>	<u>\$ 1,938</u>	<u>\$ 1,321</u>	<u>\$ 1,432</u>

The fair values of the company's foreign currency forward exchange contract assets and liabilities are included in Other Current Assets and Accrued Expenses, respectively in the Consolidated Balance Sheets.

The effect of derivative instruments on Accumulated Other Comprehensive Income (OCI) and the Consolidated Statements of Comprehensive Income (Loss) was as follows (in thousands):

Derivatives (foreign currency forward exchange contracts) in ASC 815 cash flow hedge relationships	Amount of Gain (Loss) Recognized in Accumulated OCI on Derivatives (Effective Portion)	Amount of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion)	Amount of Gain (Loss) Recognized in Income on Derivatives (Ineffective Portion and Amount Excluded from Effectiveness Testing)
Year ended December 31, 2021	\$ (557)	\$ (1,260)	\$ —
Year ended December 31, 2020	\$ (2,129)	\$ (1,407)	\$ —
Derivatives (foreign currency forward exchange contracts) not designated as hedging instruments under ASC 815	Amount of Gain (Loss) Recognized in Income on Derivatives		
Year ended December 31, 2021	\$ (1,553)		
Year ended December 31, 2020	\$ 703		

The gains or losses recognized as the result of the settlement of cash flow hedge foreign currency forward contracts are recognized in net sales for hedges of inventory sales and in cost of products sold for hedges of inventory purchases. In 2021, net sales were decreased by \$1,058,000 and cost of products sold was increased by \$428,000 for a net pre-tax realized loss of \$1,486,000. In 2020, net sales were increased by \$1,359,000 and cost of products sold was increased by \$2,826,000 for a net pre-tax realized loss of \$1,467,000. In 2019, net sales were increased by \$52,000 and cost of products sold was decreased by \$2,673,000 for a net realized pre-tax gain of \$2,725,000.

A loss of \$1,553,000 in 2021, a gain of \$703,000 in 2020 and a loss of \$78,000 in 2019 were recognized in selling, general and administrative (SG&A) expenses related to forward contracts not designated as hedging instruments. The forward contracts were entered into to offset gains/losses that were also recorded in SG&A expenses on intercompany trade receivables or payables. The gains/losses on the non-designated hedging instruments were substantially offset by gains/losses on intercompany trade payables.

The company's derivative agreements provide the counterparties with a right of set off in the event of a default. The right of set off would enable the counterparty to offset any net payment due by the counterparty to the company under the applicable agreement by any amount due by the company to the counterparty under any other agreement. For example, the terms of the agreement would permit a counterparty to a derivative contract that is also a lender under the company's Credit Agreement to reduce any derivative settlement amounts owed to the company under the derivative contract by any amounts owed to the counterparty by the company under the Credit Agreement. In addition, the agreements contain cross-default provisions that could trigger a default by the company under the agreement in the event of a default by the company under another agreement with the same counterparty.

Fair Values

Pursuant to ASC 820, the inputs used to derive the fair value of assets and liabilities are analyzed and assigned a level I, II or III priority, with level I being the highest and level III being the lowest in the hierarchy. Level I inputs are quoted prices in active markets for identical assets or liabilities.

Level II inputs are quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs are observable in active markets. Level III inputs are based on valuations derived from valuation techniques in which one or more significant inputs are unobservable.

The following table provides a summary of the company's assets and liabilities that are measured on a recurring basis (in thousands):

	Basis for Fair Value Measurements at Reporting Date		
	Quoted Prices in Active Markets for Identical Assets / (Liabilities)	Significant Other Observable Inputs	Significant Other Unobservable Inputs
	Level I	Level II	Level III
<u>December 31, 2021</u>			
Forward exchange contracts—net	—	\$ (1,552)	—
<u>December 31, 2020</u>			
Forward exchange contracts—net	—	\$ (111)	—

The carrying and fair values of the company's financial instruments at December 31, 2021 and 2020 are as follows (in thousands):

	2021		2020	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Cash and cash equivalents	\$ 83,745	\$ 83,745	\$ 105,298	\$ 105,298
Forward contracts in Other Current Assets	386	386	1,321	1,321
Forward contracts in Accrued Expenses	(1,938)	(1,938)	(1,432)	(1,432)
Total debt (including current maturities of long-term debt) *	(308,129)	(259,472)	(245,053)	(237,948)
2021 Notes	—	—	(1,242)	(1,264)
2022 Notes	(2,642)	(2,632)	(73,869)	(70,633)
Series I 2024 Notes	(72,140)	(64,897)	(62,984)	(60,035)
Series II 2024 Notes	(78,251)	(74,165)	(64,919)	(64,090)
2026 Notes	(119,036)	(81,718)	—	—
Other	(36,060)	(36,060)	(42,039)	(41,926)

* The company's total debt is shown net of discount and fees associated with the convertible senior notes due 2021, 2022, 2024 and 2026 on the company's consolidated balance sheet. Accordingly, the fair values of the convertible senior notes due 2021, 2022, 2024 and 2026 are included in the long-term debt presented in this table are also shown net of the discount and fees. Discount balances applicable to the company's convertible senior notes were eliminated upon adoption of ASU 2020-06 on January 1, 2021, but are included in the balances above for the period prior to adoption. Total debt amounts exclude operating and finance lease obligations.

The company, in estimating its fair value disclosures for financial instruments, used the following methods and assumptions:

Cash, cash equivalents: The carrying value reported in the balance sheet for cash, cash equivalents equals its fair value. The fair values are deemed to be categorized as Level 1.

Forward Contracts: The company operates internationally, and as a result, is exposed to foreign currency fluctuations. Specifically, the exposure includes intercompany loans and third-party sales or payments. In an attempt to reduce this exposure, foreign currency forward contracts are utilized and accounted for as hedging instruments. The forward contracts are used to hedge the following currencies: AUD, CAD, CHF, DKK, EUR, GBP, MXN, NOK, NZD, SEK, THB and USD. The company does not use derivative financial instruments for speculative purposes. Fair values for the company's foreign exchange forward contracts are based on quoted market prices for contracts with similar maturities. The fair values are deemed to be categorized as Level 2. The company's forward contracts are included in Other Current Assets or Accrued Expenses in the consolidated balance sheets.

Total debt: Fair value for the company's convertible debt is based on quoted market-based estimates as of the end of the period, while the revolving credit facility fair value is based upon an estimate of the market for similar borrowing arrangements. The fair values are deemed to be categorized as Level 2 in the fair value hierarchy. Other total debt is primarily attributable to credit facilities borrowings where the carrying value reported in the balance approximates its fair value and the CARES Act Loan which utilizes the fair value factor of the 2022 notes to approximate fair value.

Business Segments

The company operates in two primary business segments: North America and Europe with each selling the company's primary product categories, which include: lifestyle, mobility and seating and respiratory therapy products. Sales in Asia Pacific are reported in All Other and include products similar to those sold in North America and Europe. The accounting policies of each segment are the same as those described in the summary of significant accounting policies for the company's consolidated financial statements. Intersegment sales and transfers are based on the costs to manufacture plus a reasonable profit element.

Segment performance is measured and resources are allocated based on a number of factors, with the primary income or loss measure being segment operating income (loss). Segment operating income (loss) represents net sales less cost of products sold less selling general and

administrative expenses. Segment operating income (loss) excludes unallocated corporate general and administrative expenses not allocated to the segments and intersegment sales and profit eliminations, which are included in All Other. In addition, segment operating income (loss) further excludes charges related to restructuring activities, asset impairment and gain on sale of business (as applicable).

This performance measure, segment operating income (loss), is used by the Chief Operating Decision Maker (CODM) for purposes of making decisions about allocating resources to a segment and assessing its performance. In addition, this metric is reviewed by the company's Board of Directors regarding segment performance and is a key metric in the performance management assessment of the company's employees.

The information by segment is as follows (in thousands):

	2021	2020	2019
Revenues from external customers			
Europe (1)	\$ 499,118	\$ 468,041	\$ 533,048
North America (2)	340,980	348,307	348,201
All Other (Asia Pacific)	32,359	34,341	46,715
Consolidated	<u>\$ 872,457</u>	<u>\$ 850,689</u>	<u>\$ 927,964</u>
Intersegment revenues			
Europe	\$ 21,864	\$ 17,384	\$ 14,185
North America	56,681	80,748	80,727
All Other (Asia Pacific)	—	2,528	13,033
Consolidated	<u>\$ 78,545</u>	<u>\$ 100,660</u>	<u>\$ 107,945</u>
Restructuring charges before income taxes			
Europe	\$ 1,560	\$ 5,934	\$ 9,579
North America	964	1,306	1,617
All Other	10	118	633
Consolidated	<u>\$ 2,534</u>	<u>\$ 7,358</u>	<u>\$ 11,829</u>
Depreciation and amortization			
Europe	\$ 8,557	\$ 7,615	\$ 7,851
North America	7,623	6,013	6,429
All Other (3)	641	689	1,283
Consolidated	<u>\$ 16,821</u>	<u>\$ 14,317</u>	<u>\$ 15,563</u>
Net interest expense			
Europe	\$ 2,790	\$ 1,884	\$ 368
North America	21,764	26,510	28,070
All Other	(248)	12	209
Consolidated	<u>\$ 24,306</u>	<u>\$ 28,406</u>	<u>\$ 28,647</u>
Operating income (loss)			
Europe	\$ 33,769	\$ 22,682	\$ 36,174

	2021	2020	2019
North America	(1,928)	9,449	(7,592)
All Other (3)	(24,977)	(23,236)	(26,576)
Charges related to restructuring activities	(2,534)	(7,358)	(11,829)
Gain on sale of business	—	9,790	—
Impairment of goodwill	(28,564)	—	—
Asset write-off	—	—	(587)
Consolidated operating income (loss)	(24,234)	11,327	(10,410)
Net gain on convertible derivatives	—	—	1,197
Loss on debt extinguishment including debt finance charges and fees	9,422	(7,360)	(6,165)
Net interest expense	(24,306)	(28,406)	(28,647)
Loss before income taxes	<u>\$ (39,118)</u>	<u>\$ (24,439)</u>	<u>\$ (44,025)</u>
Assets			
Europe	\$ 675,051	\$ 705,314	\$ 602,471
North America	205,998	207,347	212,733
All Other	28,482	33,320	36,922
Consolidated	<u>\$ 909,531</u>	<u>\$ 945,981</u>	<u>\$ 852,126</u>
Long-lived assets			
Europe (4)	\$ 450,026	\$ 472,599	\$ 408,847
North America (5)	68,240	92,195	79,369
All Other	5,877	6,721	8,033
Consolidated	<u>\$ 524,143</u>	<u>\$ 571,515</u>	<u>\$ 496,249</u>
Expenditures for assets			
Europe	\$ 2,419	\$ 5,221	\$ 6,041
North America (6)	14,055	16,473	3,679
All Other	1,224	610	1,154
Consolidated	<u>\$ 17,698</u>	<u>\$ 22,304</u>	<u>\$ 10,874</u>

- (1) Europe's commissionaire structure reflects the majority of revenues to external customers through Switzerland.
- (2) Revenues from external customers for the United States were \$312,805,000, \$316,687,000 and \$314,512,000 for 2021, 2020 and 2019, respectively.
- (3) Consists of unallocated corporate SG&A costs and intercompany profits, which do not meet the quantitative criteria for determining reportable segments.
- (4) Property and Equipment net book value within France were \$7,342,000, \$8,452,000 and \$8,798,000 and Germany were \$4,119,000, \$5,904,000 and \$8,271,000 at the end of 2021, 2020 and 2019, respectively.
- (5) Property and Equipment net book value within the United States were \$38,411,000, \$27,882,000 and \$15,327,000 at the end of 2021, 2020 and 2019, respectively.
- (6) 2021 and 2020 expenditures for assets primarily driven by the company's ERP project.

Business Segments

Net sales by product, are as follows (in thousands):

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Europe			
Lifestyle	\$ 248,325	\$ 222,668	\$ 245,987
Mobility and Seating	214,398	200,687	249,144
Respiratory Therapy	19,348	24,786	19,258
Other (1)	17,047	19,900	18,659
	<u>\$ 499,118</u>	<u>\$ 468,041</u>	<u>\$ 533,048</u>
North America			
Lifestyle	\$ 148,369	\$ 165,267	\$ 173,039
Mobility and Seating	110,998	109,923	121,955
Respiratory Therapy	80,903	72,285	51,649
Other (1)	710	832	1,558
	<u>\$ 340,980</u>	<u>\$ 348,307</u>	<u>\$ 348,201</u>
All Other (Asia Pacific)			
Mobility and Seating	\$ 12,112	\$ 14,150	\$ 28,448
Lifestyle	11,438	13,503	10,831
Respiratory Therapy	3,101	1,383	1,283
Other (1)	5,708	5,305	6,153
	<u>\$ 32,359</u>	<u>\$ 34,341</u>	<u>\$ 46,715</u>
Total Consolidated	<u>\$ 872,457</u>	<u>\$ 850,689</u>	<u>\$ 927,964</u>

(1) Includes various services, including repair services, equipment rentals and external contracting.

Contingencies

General

In the ordinary course of its business, the company is a defendant in a number of lawsuits, primarily product liability actions in which various plaintiffs seek damages for injuries allegedly caused by defective products. All the product liability lawsuits that the company faces in the United States have been referred to the company's captive insurance company and/or excess insurance carriers while all non-U.S. lawsuits have been referred to the company's commercial insurance carriers. All such lawsuits are generally contested vigorously. The coverage territory of the company's insurance is worldwide with the exception of those countries with respect to which, at the time the product is sold for use or at the time a claim is made, the U.S. government has suspended or prohibited diplomatic or trade relations. The amount recorded for identified contingent liabilities is based on estimates. Amounts recorded are reviewed periodically and adjusted to reflect additional technical and legal information that becomes available. Actual costs to be incurred in future periods may vary from the estimates, given the inherent uncertainties in evaluating certain exposures.

As a medical device manufacturer, the company is subject to extensive government regulation, including numerous laws directed at preventing fraud and abuse and laws regulating reimbursement under various government programs. The marketing, invoicing, documenting, developing, testing, manufacturing, labeling, promoting, distributing and other practices of health care suppliers and medical device manufacturers are all subject to government scrutiny. Most of the company's facilities are subject to inspection at any time by the FDA or similar medical device regulatory agencies in other jurisdictions. Violations of law or regulations can result in administrative, civil and criminal penalties and sanctions, which could have a material adverse effect on the company's business.

Medical Device Regulatory Matters

The FDA in the United States and comparable medical device regulatory authorities in other jurisdictions regulate virtually all aspects of the marketing, invoicing, documenting, development, testing, manufacturing, labeling, promotion, distribution and other practices regarding medical devices. The company and its products are subject to the laws and regulations of the FDA and other regulatory bodies in the various jurisdictions where the company's products are manufactured or sold. The company's failure to comply with the regulatory requirements of the FDA and other applicable medical device regulatory requirements can subject the company to administrative or judicially imposed sanctions or

enforcement actions. These sanctions include injunctions, consent decrees, warning letters, civil penalties, criminal penalties, product seizure or detention, product recalls and total or partial suspension of production.

In December 2012, the company became subject to a consent decree of injunction filed by the FDA with respect to the company's Corporate facility and its Taylor Street manufacturing facility in Elyria, Ohio. The consent decree initially limited the company's (i) manufacture and distribution of power and manual wheelchairs, wheelchair components and wheelchair sub-assemblies at or from its Taylor Street manufacturing facility ("Taylor Street products"), except in verified cases of medical necessity, (ii) design activities related to wheelchairs and power beds that take place at the impacted Elyria facilities and (iii) replacement, service and repair of products already in use from the Taylor Street manufacturing facility. Under the terms of the consent decree, in order to resume full operations, the company had to successfully complete independent, third-party expert certification audits at the impacted Elyria facilities, comprising three distinct certification reports separately submitted to, and subject to acceptance by, the FDA; submit its own report to the FDA; and successfully complete a reinspection by the FDA of the company's Corporate and Taylor Street facilities.

On July 24, 2017, following its June 2017 reinspection of the Corporate and Taylor Street facilities, the FDA notified the company that it was in substantial compliance with the FDA Act, FDA regulations and the terms of the consent decree and, that the company was permitted to resume full operations at those facilities including the resumption of unrestricted sales of products made in those facilities.

The consent decree will continue in effect for at least five years from July 24, 2017, during which time the company's Corporate and Taylor Street facilities must complete two semi-annual audits in the first year and then four annual audits in the next four years performed by an independent company-retained audit firm. The expert audit firm will determine whether the facilities remain in continuous compliance with the Federal Food, Drug and Cosmetic Act ("FDA Act"), FDA regulations and the terms of the consent decree and issue post audit reports contemporaneously to the FDA, and the FDA has the authority to inspect these facilities and any other FDA registered facility, at any time.

The FDA has continued to actively inspect the company's facilities, other than through the processes established under the consent decree. The company expects that the FDA will, from time to time, inspect substantially

Contingencies

all the company's domestic and foreign FDA-registered facilities.

In 2021, FDA conducted an inspection of the company's Corporate and Taylor Street facilities from May 25 through June 24, 2021. At the close of the inspection, six FDA Form 483 observations were issued, and the company timely responded to FDA, has diligently taken actions to address FDA's inspectional observations, and has provided FDA monthly updates on the corrective actions taken to address these observations. On November 18, 2021, the company received a warning letter from the FDA concerning certain of the inspectional observations in the June 2021 FDA Form 483 related to the complaint handling process, the corrective and preventive action ("CAPA") process, and medical device reporting ("MDR") associated with oxygen concentrators (the "Warning Letter"). On November 16, 2021, the company received a consent decree non-compliance letter from the FDA concerning the same complaint and CAPA handling matters as in the Warning Letter observations but associated with the Taylor Street products (this letter, together with the Warning Letter, the "FDA Letters"). The company timely responded to the FDA Letters, has diligently taken actions to address FDA's concerns, and has provided FDA with periodic updates on the corrective actions taken to address the matters in the FDA Letters. The company remains committed to resolving the FDA's concerns; however, it is not possible to predict the outcome or timing of a resolution at this time. There can be no assurance that the FDA will be satisfied with the company's responses to the FDA Letters, nor any assurance as to the timeframe that may be required for the company to adequately address the FDA's concerns or whether the matters in the FDA Letters will result in an extension in the duration of the consent decree. As of the date of filing of the company's Annual Report on Form 10-K, there has been no impact on the Company's ability to produce and market its products as a result of the FDA Letters.

Under the consent decree, the FDA has the authority to order the company to take a wide variety of actions if the FDA finds that the company is not in compliance with the consent decree, FDA Act or FDA regulations, including requiring the company to cease all operations relating to Taylor Street products. The FDA also can order the company to undertake a partial cessation of operations or a recall, issue a safety alert, public health advisory, or press release, or to take any other corrective action the FDA deems necessary with respect to Taylor Street products.

The FDA also has authority under the consent decree to assess liquidated damages of \$15,000 per violation per day for any violations of the consent decree, FDA regulations or the FDA Act. The FDA also may assess

liquidated damages for shipments of adulterated or misbranded devices in the amount of twice the sale price of any such adulterated or misbranded device. The liquidated damages, if assessed, are limited to a total of \$7,000,000 for each calendar year. The authority to assess liquidated damages is in addition to any other remedies otherwise available to the FDA, including civil money penalties.

The results of regulatory claims, proceedings, investigations, or litigation are difficult to predict. An unfavorable resolution or outcome of the FDA Letters, any other FDA warning letters or inspectional observations, or other FDA enforcement related to company facilities, could materially and adversely affect the company's business, financial condition, and results of operations.

The limitations previously imposed by the FDA consent decree negatively affected net sales in the North America segment and, to a certain extent, the Asia Pacific region beginning in 2012. The limitations led to delays in new product introductions. Further, uncertainty regarding how long the limitations would be in effect limited the company's ability to renegotiate and bid on certain customer contracts and otherwise led to a decline in customer orders.

Although the company has been permitted to resume full operations at the Corporate and Taylor Street facilities, the negative effect of the consent decree on customer orders and net sales in the North America segment and Asia Pacific region has been considerable, and it is uncertain as to whether, or how quickly, the company will be able to rebuild net sales to more typical historical levels, irrespective of market conditions. Accordingly, when compared to the company's historic results, the previous limitations in the consent decree had, and likely may continue to have, a material adverse effect on the company's business, financial condition and results of operations.

Warranty Matters

The company's warranty reserves are subject to adjustment in future periods based on historical analysis of warranty claims and as new developments occur that may change the company's estimates related to specific product recalls. Refer to Current Liabilities in the Notes to the Consolidated Financial Statements for the total provision amounts and a reconciliation of the changes in the warranty accrual.

Any of the above contingencies could have an adverse impact on the company's financial condition or results of operations.

Interim Financial Information

(In thousands, except per share data - unaudited)	QUARTER ENDED			
	March 31,	June 30,	September 30,	December 31,
2021				
2021				
Net sales	\$ 196,202	\$ 225,864	\$ 224,200	\$ 226,191
Gross profit	54,638	60,818	60,310	63,340
Income (Loss) before income taxes	(12,174)	(9,578)	(20,919)	3,553
Net income (loss)	(14,044)	(10,698)	(22,759)	1,938
Net income (loss) per share—basic	(0.41)	(0.31)	(0.65)	0.06
Net income (loss) per share—assuming dilution *	(0.41)	(0.31)	(0.65)	0.05
2020				
2016				
Net sales	\$ 218,440	\$ 196,300	\$ 211,906	\$ 224,043
Gross profit	62,988	56,650	60,040	65,574
Income (Loss) from before income taxes	2,832	(15,869)	(5,226)	(6,176)
Net income (loss)	732	(16,619)	(7,276)	(5,117)
Net income (loss) per share—basic	0.02	(0.48)	(0.21)	(0.15)
Net income (loss) per share—assuming dilution *	0.02	(0.48)	(0.21)	(0.15)

* Net earnings (loss) per share assuming dilution calculated utilizing weighted average shares outstanding - basic in periods in which there is a net loss.

The description of significant items affecting each quarter presented are detailed below.

Loss and loss per share for the quarter ended March 31, 2021 reflects restructuring charges of \$1,552,000 (\$1,376,000 after tax or \$0.04 per share assuming dilution) and loss on debt extinguishment including debt finance charges and fees of \$709,000 (\$709,000 after tax or \$0.02 per share assuming dilution).

Loss and loss per share for the quarter ended June 30, 2021 reflects restructuring charges of \$547,000 (\$413,000 after tax or \$0.01 per share assuming dilution).

Loss and loss per share for the quarter ended September 30, 2021 reflects restructuring charges of \$377,000 (\$277,000 after tax or \$0.01 per share assuming dilution), gain on debt extinguishment for forgiveness of the CARES Act debt along with its accrued interest of \$10,131,000 (\$10,131,000 after tax or \$0.29 per share assuming dilution) and impairment of goodwill of \$28,564,000 (\$27,903,000 after tax or \$0.80 per share assuming dilution).

Income and income per share for the quarter ended December 31, 2021 reflects benefits of lower selling, general and administrative expenses, specifically performance bonus and stock compensation expense for performance awards.

Net income and earnings per share for the quarter ended March 31, 2020 reflects restructuring charges of \$1,392,000 (\$1,181,000 after tax or \$0.03 per share assuming dilution) and net gain on sale of business of \$9,590,000 (\$10,578,000 after tax or \$0.31 per share assuming dilution).

Loss and loss per share for the quarter ended June 30, 2020 reflects restructuring charges of \$1,685,000 (\$1,304,000 after tax or \$0.04 per share assuming dilution) and loss on debt extinguishment including debt finance charges and fees of \$6,599,000 (\$6,599,000 after tax or \$0.19 per share assuming dilution).

Loss and loss per share for the quarter ended September 30, 2020 reflects restructuring charges of \$1,580,000 (\$1,092,000 after tax or \$0.03 per share assuming dilution) and loss on debt extinguishment including debt finance charges and fees of \$761,000 (\$761,000 after tax or \$0.02 per share assuming dilution).

Loss and loss per share for the quarter ended December 31, 2020 reflects restructuring charges of \$2,701,000 pre-tax (\$2,062,000 after tax or \$0.06 per share assuming dilution).

SCHEDULE II - VALUATION AND QUALIFYING ACCOUNTS

	COL A.		COL B.		COL C.		COL D.
	Balance At Beginning of Period		Charged To Cost And Expenses		Additions (Deductions) Described Below		Balance At End of Period
(In thousands)							
Year Ended December 31, 2021							
Deducted from asset accounts—							
Allowance for doubtful accounts	\$ 4,518	\$	(16)	\$	(860) (A)	\$	3,642
Inventory obsolescence reserve	20,665		2,389		(3,853) (B)		19,201
Tax valuation allowances	163,298		10,311		2,621 (C)		176,230
Accrued warranty cost	10,991		6,925		(6,718) (B)		11,198
Accrued product liability	14,757		1,084		(2,137) (D)		13,704
Year Ended December 31, 2020							
Deducted from asset accounts—							
Allowance for doubtful accounts	\$ 6,318	\$	427	\$	(2,227) (A)	\$	4,518
Inventory obsolescence reserve	18,178		3,304		(817) (B)		20,665
Tax valuation allowances	162,790		(701)		1,209 (C)		163,298
Accrued warranty cost	11,626		7,408		(8,043) (B)		10,991
Accrued product liability	16,150		1,139		(2,532) (D)		14,757
Year Ended December 31, 2019							
Deducted from asset accounts—							
Allowance for doubtful accounts	\$ 6,810	\$	955	\$	(1,447) (A)	\$	6,318
Inventory obsolescence reserve	18,342		3,542		(3,706) (B)		18,178
Tax valuation allowances	174,659		(8,413)		(3,456) (C)		162,790
Accrued warranty cost	16,353		6,155		(10,882) (B)		11,626
Accrued product liability	16,593		2,527		(2,970) (D)		16,150

Note (A)—Uncollectible accounts written off, net of recoveries and net of foreign currency translation adjustment.

Note (B)—Amounts written off or payments incurred, net of foreign currency translation adjustment.

Note (C)—Other activity not affecting federal or foreign tax expense, net of foreign currency translation adjustment.

Note (D)—Losses paid and loss adjustments, net of foreign currency translation adjustment.

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

between

Invacare International GmbH

Benkenstrasse 260

4108 Witterswil

(the "**Company**")

and

Geoffrey P. Purtil

(the "**Employee**")

(each a "**Party**" and collectively the "**Parties**")

Employee previously entered into an employment agreement with the Company, dated December 6, 2021, as amended by Amendment dated January 31, 2022 (the "**prior agreement**"). This Amended and Restated Employment Agreement (the "**Agreement**") amends and restates the prior agreement and supersedes it in all respects.

1. POSITION AND FIELD OF ACTIVITY

The Employee is employed as Senior Vice President and General Manager, EMEA and Asia Pacific of the Company. He shall report directly to Matthew Monaghan, Chairman, President and CEO of Invacare Corporation.

The Employee shall use best efforts in the performance of his duties under this Agreement and shall at all times act in the best interests of the Company.

The Employee shall perform his duties in accordance with all applicable laws and regulations (including but not limited to any anti-corruption laws), in accordance with all internal regulations and policies established from time to time by the Company and with such instructions or directions as are provided by the Company and/or Matthew Monaghan, Chairman, President and CEO of Invacare Corporation.

The Company has the right to assign other duties and responsibilities to the Employee, which are in line with the Employee's education and skills.

The principal place of work is the Company's offices located in Witterswil, Switzerland. Based on his position and responsibilities the Employee will be required to perform some of his functions and activities in a place other than the principal place of work. As a result, the Employee will be required to travel in Switzerland and abroad.

2. TERM AND STARTING DATE

This Agreement shall be effective as of January 1, 2022, or as soon as the competent authorities have issued the work and residence permit required for the Employee under Swiss law and is entered into for an indefinite term. For seniority calculation, the Employee's entry date in the Company and the Invacare Group, respectively, is August 16, 2010. For the avoidance of doubt, this Agreement supersedes in its entirety the Employment agreement between Invacare New Zealand and Employee dated July 15, 2018.

There shall be no probationary period.

This Agreement may be terminated by either Party by giving notice observing a notice period of six (6) months to the end of a calendar month.

At the end of the month in which the Employee reaches the statutory retirement age of currently 65 the employment relationship will end without notice.

The Company shall be entitled at any time during the Employee's employment, or in any event on termination, to deduct from his salary (or any other monies due to the Employee), any monies due from him to the Company, including (but not limited to) any cash advances, training costs (in accordance with the Company Training funding policy and agreement), any sums to be deducted in accordance with the Company's vehicle policy, the cost of repairing any damage or loss to the Company's property caused by the Employee (and of recovering the same), any sums due from the Employee and any other monies owned by him to the Company including replacement of car park remote control and loaned equipment.

The Company reserves the right to terminate the Employee's employment without notice or payment in lieu of notice if the Company, in particular, has reasonable grounds to believe that (termination "**For Cause**" according to Art. 337 et seq. of the Swiss Code of Obligations [CO]) the Employee:

- Has committed gross misconduct;
- Has taken leave without authorization and notification (except in the case of illness or accident);
- Is in material breach of one of the terms of this Agreement;

- Is convicted of any criminal offense (other than minor offenses under the Road Traffic Acts or the Road Safety Acts for which a fine or non-custodial penalty is imposed or similar) which might reasonably be thought to affect adversely the performance of his duties; and/or
- Has committed any fraud, dishonesty, or conduct tending to bring him, the Company or any of its associated companies into disrepute.

Further examples of gross misconduct are set out under Swiss Labor Laws.

The Company reserves the right to require the Employee not to attend work and/or not to undertake all or any of the duties of employment and/or not to contact any client, customer, supplier, contractor, officer or employee of the Company or any of its associated companies at any time or times during any period of notice served under this Agreement (whether given by him or the Company), provided always that the Company shall continue to pay his salary and contractual benefits whilst the Employee remains employed by the Company ("**Garden Leave**"). During any such period of Garden Leave Employee shall remain readily contactable and available for work.

In addition, the Company shall retain the right to suspend the Employee on full pay and benefits pending any investigation into potential dishonesty, gross misconduct or other circumstances which, if proved, would entitle the Company to dismiss the Employee For Cause.

3. CONFLICTS OF INTERESTS; EXCLUSIVITY OF SERVICES

The Employee shall not engage in any activities which might lead to a conflict of interests with respect to his position with the Company. In particular, the Employee shall not, without the prior written consent of the Company, in any way directly or indirectly (a) be engaged or employed in, or (b) concerned with (in any capacity whatsoever) or (c) provide services to, any other business or organization where this is, or is likely to be, in conflict or competition with the interests of the Company or any of its associated companies or where this may adversely affect the efficient discharge of his duties.

Investments in companies competing or doing business with the Company are subject to the prior written approval by the appropriate authority of the Company and/or the Board of Directors of Invacare Corporation and to the provisions of the Company's Conflicts of Interest Policy.

4. WORKING HOURS; PART-TIME ACTIVITIES

The Employee shall devote his full working capacity, which shall be no less than 40 hours per week (excluding lunch and breaks), exclusively to the Company.

The Employee has taken note of and acknowledges the Company's Conflict of Interest Policy with regard to part-time activities.

5. **BASE SALARY**

The Employee shall receive an annual base salary of CHF 370'000 (gross; less statutory and contractual deductions and, where applicable, tax at source), payable in 12 equal monthly instalments, i.e. CHF 30'833.33 per month. The annual fixed gross salary will be reviewed annually based on performance in the job and the next salary review will be effective January 2023. There is, however, no automatic entitlement to salary increases in any year.

This amount includes all compensation for overtime. Any additional working hours shall not be paid out nor compensated by time off in lieu.

6. **BONUS PLAN MBO**

The Employee shall be eligible to receive a target annual bonus opportunity of 50% of his annual gross base salary. This bonus, if any, is subject to the Invacare Bonus Scheme and will be dependent upon the achievement of goals and objectives, determined by the Company and approved by the Compensation and Management Development Committee of the Board of Directors of Invacare Corporation (the "**Compensation Committee**").

Any bonus payment under this Agreement is entirely discretionary (*gratification* within the meaning of Art. 322d CO) and does not constitute part of the Employee's salary. Any bonus payments, even repeated payments without the reservation of their discretionary nature, do not create a legal claim for the Employee, either in respect to their cause or their amount, to receive such payments in the future.

7. **OTHER PAYMENTS**

- a. The Company will pay Employee a one-time bonus payment in the gross amount of CHF 50'000 (the "**One-Time Bonus**") on the normal payroll date immediately after April 15, 2022, provided that Employee remains employed by the Company on April 15, 2022. In the event the Company terminates Employee's employment for any reason other than For Cause (as defined in Section 2) prior to April 15, 2022, Employee shall be entitled to receive a pro rata portion of the One-Time Bonus payment based on service completed by Employee between September 1, 2021 and the date of termination.
- b. The Employee will be eligible to receive a bonus payment in the amount of CHF 85'000 upon successful completion prior to December 31, 2022 of a project to be defined by the Board of Directors of Invacare Corporation (the "**Project**"), provided

that Employee remains employed by the Company on December 31, 2022 (the “**Project Bonus**”).

If the Company terminates Employee’s employment for any reason other than For Cause before December 31, 2022 but after the Company has substantially completed the Project (to be determined in the Board of Directors of Invacare Corporation, in its reasonable discretion), Employee shall be entitled to receive the Project Bonus in full upon the completion of the Project on or prior to December 31, 2022. In the event that Employee resigns or is terminated For Cause before December 31, 2022, Employee will not be entitled to receive the Project Bonus. This Agreement replaces in its entirety that certain letter agreement between Invacare Corporation and Employee dated September 9, 2021.

8. RESTRICTED STOCK UNITS

Subject to review and approval by the Compensation Committee, the Employee will be eligible to receive restricted stock grants on an annual basis.

Restricted stocks granted, if any, do not constitute part of the Employee’s salary but are a voluntary bonus at the full discretion of the Company pursuant to Art. 322d CO (*gratification*).

9. EXPENSES

The Company shall reimburse the Employee for all reasonable expenses (traveling and hotel expenses, expenses for invitations etc.) incurred in connection with the performance of his employment activities. Reimbursement shall be made in accordance with Company policy against presentation of the corresponding vouchers and receipts. Expense reports should be submitted no later than 30 days after the closing of the previous month.

10. RELOCATION

Employee and Employee’s spouse and son are in the process of relocating to Switzerland. For a smooth relocation, Employee will be provided with the services set forth in this Section 10 (the “**Relocation Services**”).

- a. Temporary Living Expenses. To allow Employee a transition period the Company will support Employee with a Temporary Living Allowance through the year 2025, paid as a monthly lump sum in the amounts noted below:
 - i. 1st and 2nd year (February 2022 – December 2023): 5’000 CHF per month
 - ii. 3rd year (January 2024 – December 2024): 2’500 CHF per month
 - iii. 4th year (January 2025 – December 2025): 1’250 per month

The Company will gross up the respective amount for income taxes (tax at source) and social security contributions.

- b. Document Assistance. All fees incurred by Employee, Employee's spouse, or Employee's son to obtain passports, visas and, if appropriate, work/residence permits shall be expensed to the Company. The Company will gross up this amount for income taxes (tax at source) and social security contributions.
- c. Tax Preparation Assistance. If necessary, appropriate tax consulting sessions with a company-defined accounting firm will be provided to assist Employee with preparing Employee's tax filing obligations in Switzerland, United States and New Zealand for 2021 and 2022. The Company will gross up the respective amount for income taxes (tax at source) and social security contributions. The actual filing of Employee's tax report is Employee's obligation and will not be performed by the accounting firm.
- d. Shipment. At the time of Employee's spouse's and son's relocation, the Company will provide Employee with shipment of Employee's household goods from New Zealand to Switzerland. In the alternative, Employee may elect to receive, in lieu of shipment, a lump sum (net) equivalent to shipment costs, in an amount to be mutually agreed by Employee and the Company. The Company will gross up this amount for income taxes (tax at source).
- e. Family Air Travel. Employee will be granted economy airlines tickets for Employee's son and spouse to Switzerland, at the time of their relocation.
- f. Relocation Allowance, Employee will be entitled to a relocation allowance to support Employee with miscellaneous household items and unexpected fit in expenses in the amount of CHF 30'833,33 gross. The payment will be subject to income tax (tax at source) and normal payroll deductions and will be done at the first month of Employee's employment.
- g. Schooling. At the time of Employee's spouse's and son's relocation, to allow Employee a transition period, the Company will support Employee's son's education while in Switzerland over a period of up to 4 years, based on schooling tuition costs up to the following maximum amounts per year:
 - i. 1st and 2nd year (February 2022 – December 2023): 100% of tuition up to 30'000,00 CHF per year
 - ii. 3rd year (January 2024 – December 2024): 50% of tuition up to 15'000,00 CHF
 - iii. 4th year (January 2025 – December 2025): 25% of tuition up to 7'500,00

The Company will gross up the respective amount for income taxes (tax at source) and social security contributions. Employee will provide school tuition receipts to be

processed by payroll. If the child does not attend school in Switzerland, this allowance is no longer due.

- h. Language Training. Employee will be entitled to receive a one-time lump sum of CHF 5'000 per person, for language training for Employee and Employee's spouse and son (maximum of CHF 15'000). The Company will gross up the amount paid for Employee's spouse and son's language training for income taxes (tax at source) and social security contributions.

If the invoice of the course institution concerning Employee is issued directly to the Company, the Company will cover these costs up to a maximum of CHF 5'000 and Employee's share will not be subject to income taxes (tax at source) and social security contributions. If the course costs are paid to Employee as a lump sum, the Company will gross up the respective amount for income taxes (tax at source) and social security contributions.

11. REPATRIATION

In the event Employee's employment is terminated by the Company for any reason other than For Cause, the Company will pay for (a) airfare (economy class) for Employee and Employee's spouse and son to return to New Zealand; and (b) shipping Employee's household goods and personal effects within limits of those acquired at the beginning of Employee's relocation to Switzerland. The Company will gross up this amount for income taxes (tax at source).

12. VACATION

The Employee is entitled to 29 working days of paid vacation per calendar year (for a full-time position). If the employment relationship begins or ends during a calendar year, the annual vacation entitlement is pro-rated.

The timing of the Employee's vacation is subject to the prior approval by Matthew Monaghan, Chairman, President and CEO of Invacare Corporation.

The Employee shall adhere to the Invacare Corporation public holiday and Company holiday schedule for security reasons.

13. SOCIAL SECURITY

The Employee and the Company shall each pay their mandatory share of the contributions to AHV (Old Age and Survivors' Insurance), IV (Invalidity Insurance), EO (Loss of Earnings) and ALV (Unemployment Insurance). The Employee's contributions are deducted by the Company from his gross salary.

14. PENSION PLAN

The Employee shall participate in the Company's pension plan (basic and supplementary pension plan). The remuneration used for benefits is the Employee's annual gross base salary, exclusive of bonuses, if any.

The contributions and benefits are determined by the rules and regulations of the pension plan, as amended from time to time. The Employee's contributions to the pension plan are deducted by the Company from his gross salary.

15. ILLNESS

In case of the Employee's inability to perform his duties under this Agreement due to illness, the Employee shall receive his salary according to the terms and conditions of the insurance for loss of earnings due to illness (if any). The contributions to the insurance for loss of earnings due to illness shall be paid by the Company.

If an insurance policy for loss of earnings due to illness has not been entered into, the continuation of pay is determined by Art. 324a CO.

16. ACCIDENT

The Employee is insured for occupational as well as non-occupational accidents. The contributions for both the occupational and the non-occupational accident insurance shall be borne by the Company.

17. HEALTH INSURANCE ALLOWANCE

The Company will provide Employee a health insurance allowance of CHF 1'250,00 per month. The Company will gross up the respective amount for income taxes (tax at source) and social security contributions.

18. COMPANY CAR OR ALLOWANCE

The Company will provide Employee a company car or a car allowance in line with the Company's Car Policy. An example of such a car is an Audi A6 or BMW 5 series with a maximum lease price of CHF 1'500,00 per month inclusive of everything, except petrol, which will be reimbursed through expense reporting. A company car is a taxable benefit in line with Swiss Fiscal Legislation. Upon Employee's termination of employment from the Company for any reason, the company car shall be returned no later than the date this Agreement terminates. Should Employee fall ill for a period of more than 1 month, Employee will return the company car and at such time Employee will be provided with a low cost, low maintenance car until such time as Employee returns to full employment capacity or this Agreement terminates.

19. LAPTOP AND MOBILE PHONE

The Company will provide Employee with a laptop and a mobile phone for business purposes during employment and for as long as Employee is physically required to work. Employee may also use the mobile phone for personal calls, provided that such use is reasonable. The privileges set forth in this Section 19 may be withdrawn without redress, should the Company have reasonable cause to believe the equipment is being misused or abused.

20. CONFIDENTIALITY; BUSINESS SECRETS

Due to the Employee's position, the Employee will have access to manufacturing and business secrets as well as customer data of the Company and/or its associated companies. All manufacturing or trade secrets including customer data, technical, organizational and financial information and all other information directly or indirectly related to the business of the Company and/or its associated companies or to the business of any customer of the Company and/or its associated companies, which is disclosed to the Employee by the Company and/or its associated companies or any of its/their employees and which the Employee gets acquainted with in connection with his employment with the Company, shall be treated as confidential information. At all times, both during the employment and after the termination thereof, the Employee shall keep such information secret and shall refrain from disclosing it or using it in any way for his own benefit or for the benefit of any person, entity or organization other than the Company and/or its associated companies.

The Employee must not make or communicate (or cause or facilitate the making or communication of) any oral or written statement to any representative of the press, television, radio or other media on any matter connected with or relating to the Company or any of its associated companies, without the prior written consent of the Company.

21. INTELLECTUAL PROPERTY RIGHTS

Inventions, designs, developments and improvements, which the Employee makes while performing his employment activity and contractual duties or to which the Employee contributes belong to the Company, regardless of their protectability.

Inventions and designs, which the Employee makes while performing his employment activity but not during the performance of his contractual duties or to which the Employees contributes are assigned to the Company without further formalities. The Employee shall immediately inform the Company of such inventions or designs. The Company shall inform the Employee in writing within 6 months whether it wishes to keep the rights to the invention or the design or to release them to the Employee. In case

that the invention or the design is not released to the Employee, the Company shall pay him an adequate compensation within the meaning of Art. 332 para. 4 CO.

The copyrights to works of authorship (drafts, models, plans, drawings, texts, software etc.), which the Employee creates while performing his employment activity, whether or not during the performance of his contractual duties, including the rights to uses not yet known at this time, are transferred completely and exclusively to the Company.

The cost of applications to secure patents or register designs of inventions will be borne by the Company, but the Employee is expected to communicate immediately any invention, improvement, discovery, process or design copyright or similar which he creates or obtains to the Company.

22. NON-COMPETITION AND NON-SOLICITATION

The Employee undertakes for a period of one year following the termination of this Agreement to refrain from engaging, directly or indirectly, in any activity which competes with the Company or any of its associated companies. Without limiting the generality of the foregoing, the Employee shall, in particular, not operate a business for his own account which competes with the Company or any of its associated companies, nor work for, in any capacity (e.g. employee, consultant, partner etc.), nor participate in such business.

The applicable field of the Employee's non-competition obligations under this Section 22 shall be all business or prospective business, current or projected plans in which the Company or any of its associated companies has engaged or planned to engage at any time during the last 12 months prior to the termination of this Agreement. The Employee's restrictions shall apply in all countries in which the Company or any of its associated companies is engaged with business, or plans to engage in business during the 12 months following the termination of this Agreement.

The Employee further undertakes for a period of one year following the termination of this Agreement not to: (a) solicit or attempt to solicit any person who is, or within the preceding 12 months was, an employee of the Company or any of its associated companies, nor induce or attempt to induce such person to leave his or her employment with the Company or any of its associated companies; (b) induce or attempt to induce an independent contractor (who provided services or products to or on behalf of the Company or any of its associated companies within the preceding 12 months of the termination of this Agreement), an investor, client or customer (to whom the Company, within the preceding 12 months, has provided products or services) of the Company or any of its associated companies to terminate or reduce their business relationship with the Company or any of its associated companies; or (c) to commence a business relationship with the Employee, any company or entity of the Employee or any business by which the

Employee may be employed, be a consultant or in any other way associated, and which is competitive to the Company's or any of its associated companies' business.

In case of any breach of the Employee's obligations set forth in this Section 22, the Employee shall pay to the Company liquidated damages in an amount equivalent of 100% of his last annual remuneration (including bonus) per each case and event of violation. Payment of liquidated damages shall not discharge the Employee from observing his non-competition and non-solicitation obligations. The Company's right to claim compensation for damages and financial loss arising out of or in connection with such breach, and exceeding the amount of liquidated damages, is expressly reserved. Independently of the foregoing rights, the Company (i) may request that the Employee cease any violation of his obligations set forth in this Section 21 and (ii) may seek court orders, including interim orders, prohibiting such breaching activity ("*Realexekution*").

23. DATA PROTECTION

In the context of the employment of the Employee by the Company, the Company will collect and process certain personal data relating to the Employee (which may include certain sensitive personal data), including but not limited to the Employee's personal details, bank account number, salary details, education, employment history, appraisals and sick leave (the Personal Data). The Company shall process the Personal Data in accordance with the applicable data protection laws.

The Personal Data will be processed by or on behalf of the Company: (a) in order to comply with legal obligations to which the Company is subject, (b) when such processing is necessary for the execution of this Agreement or any other agreement to which the Employee is party (such as any remuneration or incentive scheme the Employee participates in), or (c) when such processing is necessary to uphold the legitimate interests of the Company (for example, for internal control, for business continuity or to protect the Company's business) or a third party to whom the Personal Data are provided (for example, one of the Company's affiliates).

The Employee acknowledges that the Company may have a legitimate interest to (amongst others) process the Personal Data in the context of an intended transfer or merger (for example, by making the Personal Data available to advisors or potential buyers). Furthermore, the Employee acknowledges that the Company reserves the right to intercept, access, monitor, inspect and record the use of email, internet or electronic devices provided by the Company to the Employee for purposes of monitoring compliance with the Company's policies, internal control and security, investigation and protection of the Company's or third parties' interests (for example, for protection against discrimination, fraud, corruption or other criminal offences and unauthorized disclosure of business and trade secrets or other confidential information), under the condition that

such is in accordance with the applicable data protection laws. The result of such interception, access, monitoring, inspection and recording of the Employee's use of email, internet or electronic devices may lead to disciplinary measures, including termination of this Agreement.

The Employee acknowledges that the Company may share certain Personal Data with third parties, such as an affiliate of the Company, insurers, pension schemes providers, banks, payroll service providers, possible acquirers of (a part of) the business of the Company and trusted advisors. These parties may be located in countries outside the European Economic Area, which countries may offer a lower level of data protection than the country in which the Employee resides. Data transferred to entities located outside the European Economic Area will be subject to standard contractual clauses providing adequate safeguards.

The Personal Data will be retained by the Company as long as necessary for the purposes for which the Personal Data were collected.

The Employee can contact the Company's data protection officer to invoke his rights on the basis of the applicable data protection laws or to obtain more information on the processing of the Personal Data by the Company.

24. WORK ENVIRONMENT

In order that the Company maintains a positive work environment, the Employee shall not engage in nor permit any fellow employee(s) to engage in any form of harassment or unlawful discrimination against another person (whether an employee of the Company or not). This includes harassment and discrimination on the basis of age, sex, race, disability, religion or belief, marriage and civil partnership, pregnancy and maternity, gender reassignment and sexual orientation.

25. POLICIES

Insofar as this Agreement does not derogate from them, the provisions of the following Invacare rules and regulations, which form an integral part of this Agreement, shall apply:

- a) Code of Business Conduct and Ethics
- b) Whistleblower Policy
- c) Conflicts of Interest Policy
- d) Insider Trading Policy

25. FINAL PROVISIONS

This Agreement shall form the entire agreement between the Parties with respect to the subject matter hereof and shall supersede any other agreement between the Parties (whether oral or in writing) which covers the subject matter hereof. For the avoidance of doubt, the Change of Control Agreement dated September 1, 2021, and the Indemnification Agreement dated December 1, 2021, between Invacare Corporation and Employee remain in full force and effect and are not superseded by this Agreement.

Any amendments to or modifications of this Agreement, including this section, shall not be valid unless made in writing and signed by both Parties.

In the event of a conflict between this Agreement and the Company's policies, the terms set forth in this Agreement shall control.

26. SEVERABILITY

If at any time any provision of this Agreement or any part thereof is or becomes invalid or unenforceable, then neither the validity nor the enforceability of the remaining provisions or the remaining part of the provision shall in any way be affected or impaired thereby. The Parties agree to replace the invalid or unenforceable provision or part thereof by a valid or enforceable provision which shall best reflect the Parties' original intention and shall to the extent possible achieve the same economic result.

27. APPLICABLE LAW

This Agreement shall in all respects be governed exclusively by substantive Swiss law.

SIGNATURES

Place/date:

Witterswil / 2nd March 2022

Invacare International GmbH

/s/ Cintia Ferreira

/s/ Lorna Forman

Place/Date:

Witterswil / 3rd March 2022

/s/ Geoffrey P. Purtil

Geoffrey P. Purtil

INVACARE CORPORATION

AGREEMENT

This AGREEMENT (“Agreement”), is made as of the [*] day of [month, year], between INVACARE CORPORATION, an Ohio corporation (“Invacare”), and _____ (the Executive”).

Invacare desires to enter into an agreement with Executive in recognition of the importance of the Executive’s services to the continuity of management of Invacare and based upon its determination that it will be in the best interests of Invacare to encourage the Executive’s continued attention and dedication to the Executive’s duties in the potentially disruptive circumstances of a possible Change of Control of Invacare. (As used in this Agreement, the term “Change of Control” and certain other capitalized terms have the meanings ascribed to them in Section 8 hereof.)

Invacare and the Executive agree, effective as of the date first set forth above (the “Effective Date”), as follows:

1. Severance Benefits if Employment is Terminated in Certain Circumstances Within Two Years of a Change of Control. If, within two years following the occurrence of a Change of Control, the Executive’s employment with Invacare is terminated by Invacare for any reason other than Cause, Disability, or death, or is terminated by the Executive for Good Reason, then the provisions of this Section 1 shall become applicable in all respects and Invacare shall pay to the Executive the amounts specified in Sections 1.1 and 1.2 on the dates indicated therein, and shall cause certain rights of the Executive to vest as provided in Section 1.3:

1.1 Lump Sum Severance Benefit. Subject to Section 1.6, Invacare shall pay to the Executive, on the sixtieth (60th) day after the Termination Date, a lump sum severance benefit in an amount equal to two times: (i) the Executive’s Annual Base Salary plus (ii) the Executive’s Prior Bonus Amount. In addition, Invacare shall pay to the Executive, on the sixtieth (60th) day after the Termination Date, an amount equal to the Executive’s Prorated Bonus Amount.

1.2 Insurance Benefits. Subject to Section 1.6, Invacare shall pay to the Executive, on the sixtieth (60th) day after the Termination Date, a lump sum amount equal to twenty-four (24) times the current monthly COBRA premium rate in effect as of the Termination Date for the level of coverage in which the Executive and his or her eligible dependents were enrolled under Invacare’s medical plan immediately prior to the Termination Date.

1.3 Vesting of Certain Rights. Subject to Section 1.6, Invacare shall cause the Executive’s rights under the Invacare Deferred Compensation Plus Plan to become, as of the Termination Date, immediately vested in full.

1.4 Equity Awards.

(a) *Invacare Remains the Surviving Entity or the Post-CIC Entity Assumes Equity Awards.* If, upon the occurrence of a Change of Control (i) Invacare is the surviving entity following such Change of Control or (ii) all outstanding equity awards held by the Executive are Assumed by the Post-CIC Entity, and if the Executive's employment is terminated by Invacare or the Post-CIC Entity for any reason other than Cause, Disability, or death, or is terminated by the Executive for Good Reason within two years following the occurrence of the Change of Control, then in respect of all options to purchase Invacare stock, all shares of restricted stock, all restricted stock units and all performance shares that have been granted to the Executive pursuant to any award agreement, plan or arrangement sponsored by Invacare (or any corresponding replacement awards granted by a Post-CIC Entity) and which remain outstanding as of the Termination Date, and notwithstanding any other provision to the contrary contained in any award agreement, plan or arrangement, and subject to Section 1.6, Invacare shall:

- (i) with respect to all options, cause such options:
 - (A) to become exercisable in full as of the Termination Date;
 - (B) to continue to be exercisable until the earlier of (1) the expiration date of the option or (2) the second anniversary of the Termination Date; provided that, if the award agreement underlying such option provides for a longer period of exercisability following the Termination Date, then this clause (2) shall be the end of such longer period; and
 - (C) to be exercisable (and/or to be eligible to satisfy any tax withholding requirements in connection with the exercise of the options) using shares of Invacare common stock previously owned by the Executive and/or shares subject to the options being exercised as consideration in lieu of a cash payment or other arrangement, but only to the extent that any such exercise of the option (and/or withholding tax payments) would not result in Invacare being required to take an additional charge in respect of such exercise in determining and reporting its net income for financial accounting purposes; and

- (ii) with respect to any awards of restricted stock or restricted stock units that are not subject to the attainment of performance goals, cause such awards:
 - (A) to become vested in full as of the Termination Date; and
 - (B) to be eligible to satisfy any tax withholding requirements in connection with such vesting of the restricted stock or restricted stock units by using shares of Invacare common stock previously owned by the Executive and/or shares of restricted stock or restricted stock units that become so vested as consideration (in lieu of a cash payment or other arrangement) for the payment of withholding tax, but only to the extent that any such withholding tax payments would not result in Invacare being required to take an additional charge in respect of such accelerated vesting or withholding tax payment in determining and reporting its net income for financial accounting purposes.
- (iii) with respect to any awards of restricted stock, restricted stock units or performance shares that are subject to the attainment of performance goals, cause such awards:
 - (A) to be earned or vest in accordance with their terms as if all of the performance goals applicable to such awards had been achieved at their target levels as of the Termination Date; and
 - (B) to be eligible to satisfy any tax withholding requirements in connection with such vesting of the restricted stock, restricted stock units or performance shares by using shares of Invacare common stock previously owned by the Executive and/or shares of restricted stock, restricted stock units or performance shares that become so vested as consideration (in lieu of a cash payment or other arrangement) for the payment of withholding tax, but only to the extent that any such withholding tax payments would not result in Invacare being required to take

an additional charge in respect of such accelerated vesting or withholding tax payment in determining and reporting its net income for financial accounting purposes.

(b) *Post-CIC Entity Does Not Assume Equity Awards.* If, upon the occurrence of a Change of Control, the Post-CIC Entity does not Assume all options to purchase Invacare stock, all shares of restricted stock, all restricted stock units or all performance shares that have been granted to the Executive pursuant to any award agreement, plan or arrangement sponsored by Invacare and which remain outstanding as of the date of the Change of Control, and notwithstanding any other provision to the contrary contained in any award agreement, plan or arrangement, then:

- (i) any such options, shares of restricted stock, restricted stock units or performance shares not Assumed by the Post-CIC Entity shall become fully vested and exercisable and any restrictions that apply to such awards shall lapse;
- (ii) any awards of restricted stock, restricted stock units or performance shares that are subject to the attainment of performance goals and not Assumed by the Post-CIC Entity shall immediately vest and become immediately payable in accordance with their terms, subject to the last paragraph of this Section 1.4, as if all of the performance goals applicable to such awards had been achieved at their the target levels as of the date of the Change of Control;
- (iii) for each stock option not Assumed by the Post-CIC Entity, the Executive shall receive a payment equal to the difference between the consideration (consisting of cash or other property (including securities of a successor or parent corporation)) received by holders of Invacare's common stock in the Change of Control transaction and the exercise price of the applicable stock option, if such difference is positive. Such payment shall be made in the same form as the consideration received by holders of Invacare's common stock. Any stock option with an exercise price that is higher than the per share consideration received by holders of Invacare's common stock in connection with the Change of Control shall be cancelled for no additional consideration;
- (iv) with respect to any awards of restricted stock or restricted stock units that are not Assumed by the Post-CIC Entity and are not subject to the attainment of performance goals, the Executive shall receive the consideration (consisting of cash or other property (including securities of a successor or parent corporation)) that the Executive would have

received in the Change of Control transaction had he or she been, immediately prior to such transaction, a holder of the number of shares of Invacare's common stock equal to the number of shares of restricted stock or number of restricted stock units held by the Executive; and

- (v) subject to the last paragraph of this Section 1.4, the payments contemplated by Sections 1.3(b) (iii) and (iv) shall be made at the same time as consideration is paid to the holders of Invacare's common stock in connection with the Change of Control.

Notwithstanding anything to the contrary in this Agreement, if the payment or benefit of any award constitutes a deferral of compensation under Code Section 409A, then to the extent necessary to comply with Code Section 409A, payment or delivery with respect to such award shall be made on the date of payment or delivery originally provided for such payment or benefit.

1.5 Later Time for Payment on Account of Termination.

Notwithstanding the preceding provisions of Section 1, solely to the extent required to comply with applicable provisions of Code Section 409A with respect to any amounts or benefits not exempt from Code Section 409A, payments made pursuant to Sections 1.1, 1.2, 1.3 or 1.4, on account of the Executive's termination of employment shall: (a) not commence until the date that is six months and a day following the Termination Date; and (b) upon commencement, include along with the initial payment an amount sufficient to reimburse the Executive for reasonable lost interest at a rate of Prime Plus One per annum, compounded annually, incurred during the period commencing on the date which is sixty (60) days after the Termination Date through the date of payment by Invacare. In the event that Invacare, in the exercise of its reasonable discretion, determines that a delay in payments under this Section 1.5 is required in order to comply with Code Section 409A, Invacare shall, within two business days after the Termination Date, deposit the entire amount due and to become due under Section 1, in the trust established by Invacare with Wells Fargo Bank, National Association, successor in interest to Wachovia Bank of North Carolina, N.A., pursuant to a Benefit Security Trust Agreement dated August 21, 1996, as such agreement may be amended from time to time in accordance with its terms. Payments to the Executive from such trust shall thereafter be made in accordance with this Section 1.5; provided, however, that Invacare shall remain fully obligated to the Executive for the full and complete satisfaction of its liabilities and obligations under this Agreement.

1.6 Release Requirement.

Notwithstanding any provision herein to the contrary, as a condition to the Executive's receipt of any post-termination benefits pursuant to this Agreement, (i) the Executive shall execute a release of all claims in favor of Invacare in the form attached hereto as Exhibit B (the "*Release*") within the sixty (60) day period following the Termination Date and (ii) any applicable revocation period has expired during such sixty (60) day period without the Executive's revocation

of the Release. In the event the Executive does not sign, or signs and revokes the Release, within the sixty (60) day period following the Termination Date, the Executive shall not be entitled to the aforesaid payments and benefits.

1.7 Best Pay Provision. If any payment or benefit the Executive would receive under this Agreement, when combined with any other payment or benefit Executive receives in connection with the termination of Executive's employment with the Company (a "*Payment*"), would, after taking into account any shareholder approval satisfying Section 280G of the Internal Revenue Code of any such payment or benefit, or of any other payment or benefit with respect to the Executive (a) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code, and (b) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code (the "Excise Tax"), then such Payment shall be either (i) the full amount of such Payment or (ii) such lesser amount (with cash payments being reduced before stock option compensation) as would result in no portion of the Payment being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local employment taxes, income taxes, and the Excise Tax, results in the Executive's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax.

All determinations required to be made under this Section 1.7, including whether and to what extent the Payments shall be reduced and the assumptions to be used in arriving at such determination, shall be made by the Accounting Firm in good faith. The Accounting Firm shall provide detailed supporting calculations both to the Executive and the Company at such time as is requested by the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any determination by the Accounting Firm shall be binding upon the Executive and the Company. For purposes of making the calculations required by this Section 1.7, the Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Internal Revenue Code.

2. Other Benefits.

2.1 Reimbursement of Certain Expenses After a Change of Control. Invacare shall pay, as incurred (in no event later than the end of the Executive's taxable year following the year in which such expenses were incurred), all expenses incurred by the Executive at any time during the longer of 20 years or the Executive's lifetime, including the reasonable fees of counsel engaged by the Executive, in respect of enforcing the Executive's rights hereunder and/or defending any action brought to have this Agreement, or any provision hereof, declared invalid or unenforceable.

2.2 Sick Leave Pay for Executive. If, after a Change of Control and prior to the Termination Date, (i) Invacare or the Post-CIC Entity does not maintain a disability plan covering the Executive that is no less favorable than the

disability plan sponsored by Invacare immediately prior to the Change of Control, and (ii) the Executive is unable to perform services for Invacare for any period by reason of accidental bodily injury or sickness, then Invacare will pay and provide to the Executive, as sick leave pay, all compensation and benefits to which the Executive would have been entitled had the Executive continued to be actively employed by Invacare through the earliest of the following dates (the "Sick Leave Period"): (a) the first date on which the Executive is again capable of performing ongoing services for Invacare consistent with past practice, or (b) the date on which the Executive's employment is terminated by Invacare by reason of Disability or otherwise, or (c) the date on which Invacare has paid and provided 29 months of compensation and benefits to the Executive during the period of the Executive's incapacity, or (d) the date of the Executive's death. Notwithstanding the foregoing, the Sick Leave Period may not be greater than 6 months unless the Executive's injury or sickness can be expected to result in death or can be expected to last for a continuous period of not less than 6 months, and such injury or sickness renders the Executive unable to perform the duties of his or her position of employment or any substantially similar position of employment. The foregoing sick leave pay is intended to compensate Executive for compensation and benefits that he otherwise would have earned during the Sick Leave Period, and shall not reduce or otherwise have any effect on Executive's rights to receive any other compensation, benefits or other Payments hereunder for any other reason, including as may be owed arising out of cessation of Executive's employment.

3. No Set-Off; No Obligation to Seek Other Employment or to Otherwise Mitigate Damages; No Effect Upon Other Plans. Invacare's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense, or other claim whatsoever which Invacare may have against the Executive. The Executive shall not be required to mitigate damages, or the amount of any payment provided for under this Agreement by seeking other employment or otherwise. The amount of any payment provided for under this Agreement shall not be reduced by any compensation or benefits earned by the Executive as the result of employment by another employer or otherwise after the termination of the Executive's employment.

4. Taxes; Withholding of Taxes. Without limiting the right of Invacare to withhold taxes pursuant to this Section 4, the Executive shall be responsible (after taking into account all payments to be made by Invacare to or on behalf of the Executive under Section 1 hereof,) for all income, excise, and other taxes (federal, state, city, or other) imposed on or incurred by the Executive as a result of receiving the payments provided in this Agreement, including, without limitation, the payments provided under Section 1 of this Agreement. Invacare may withhold from any amounts payable under this Agreement all federal, state, city, or other taxes as Invacare shall determine to be required pursuant to any law or government regulation or ruling. Without limiting the generality of the foregoing, Invacare may withhold from any amount payable under this Agreement amounts sufficient to satisfy any withholding requirements that

may arise out of any benefit provided to or in respect of the Executive by Invacare under Section 1 of this Agreement.

5. Term of this Agreement. This Agreement shall be effective as of the date first above written and shall thereafter apply to any Change of Control occurring on or before [month *, year +1] or during any succeeding applicable term, and on [month *, year +1] and on [month *] of each succeeding year thereafter (a “Renewal Date”), the term of this Agreement, if not previously terminated, shall be automatically extended for an additional year unless either party has given notice to the other, at least one year in advance of that Renewal Date, that the Agreement shall not apply to any Change of Control occurring after that Renewal Date.

5.1 Termination of Agreement Upon Termination of Employment Before a Change of Control. This Agreement shall automatically terminate on the first date occurring before a Change of Control on which the Executive is no longer employed by Invacare, except that, for purposes of this Agreement, any involuntary termination of employment of the Executive or any termination by the Executive for Good Reason that is effected within 6 months before a Change in Control and primarily in contemplation of a Change of Control that actually occurs after the date of the termination shall be deemed to be a termination of the Executive’s employment as of the date immediately after that Change of Control, and in such case, the Change in Control shall constitute the Termination Date and the date as of which the Executive’s right to payment hereunder shall become vested and this Agreement shall not be deemed to be terminated for such purpose.

5.2 No Termination of Agreement During Two-Year Period Beginning on Date of a Change of Control. After a Change of Control, this Agreement may not be terminated. However, if the Executive’s employment with Invacare continues for more than two years following the occurrence of a Change of Control, then, for all purposes of this Agreement, that particular Change of Control shall thereafter be treated for purposes of this Agreement as if it never occurred; provided, however, that the foregoing shall not deprive Executive of any rights, benefits or payments (or allow Invacare to avoid any obligations) that were or became vested under this or any other agreement, plan or arrangement.

6. Code Section 409A.

6.1 Code Section 409A Compliance. This Agreement is intended to meet the requirements for exemption from (or to the extent not exempt, compliance with) Code Section 409A (including without limitation, the exemptions for short-term deferrals and separation pay arrangements), and this Agreement shall be so construed and administered. Notwithstanding anything in this Agreement to the contrary, at any time prior to a Change in Control, Invacare and the Executive may amend this Agreement, retroactively or prospectively, while maintaining the spirit of this Agreement and after consultation with Executive, to secure exemption from (or, to the extent not

exempt, to ensure compliance with), the requirements of 409A and to avoid adverse tax consequences to Executive thereunder. Furthermore, at any time prior to a Change in Control, the Executive agrees to execute such further instruments and take such further action as may be necessary to comply with 409A or to avoid adverse tax consequences to Executive thereunder.

6.2 Reimbursements. Any reimbursement paid to Executive by Invacare, either pursuant to this Agreement or under any reimbursement arrangement or policy of Invacare shall be made within ninety (90) days following Executive's submitting evidence of the incurrence of expenses, and in all events prior to the last day of the calendar year following the calendar year in which Executive incurred the expense. In no event will the amount of expenses so reimbursed by the Company in one year affect the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year.

7. Miscellaneous.

7.1 Successor to Invacare. In the event that

(a) Invacare transfers all or substantially all of its assets to another corporation or entity; or

(b) (i) Invacare consolidates with or merges with or into any other corporation or entity and

(ii) either (x) Invacare is not the surviving corporation or entity of such consolidation or merger or (y) Invacare is the surviving corporation or entity of such consolidation or merger but the shareholders of Invacare immediately prior to the consummation of such merger or consolidation do not own securities representing a majority of the outstanding voting power of such surviving corporation or entity or its parent after the consummation of the consolidation or merger, then, in any of such events, the entity surviving such consolidation or merger and each Affiliate thereof having an individual net worth of \$5 million or more shall assume joint and several liability for this Agreement in a signed writing and deliver a copy thereof to the Executive. Upon such assumption, the successor corporation or entity and each Affiliate thereof having an individual net worth of \$5 million or more shall become obligated to perform the obligations of Invacare under this Agreement and the term "Invacare" as used in this Agreement shall be deemed to refer to such successor entity and such Affiliates jointly and severally. Any failure

of Invacare to obtain the written agreement of such successor or surviving entity (including a parent successor entity) and the required Affiliates to assume this Agreement before the effectiveness of any such succession shall be deemed to be a material breach of this Agreement.

7.2 Notices. Notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or by confirmed facsimile transmission (to the Senior Vice President and General Counsel of Invacare in the case of notices to Invacare and to the Executive in the case of notices to the Executive) or three business days after being mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Invacare:

Invacare Corporation
One Invacare Way
Elyria, OH 44035
Attention: Senior Vice President & General Counsel

If to the Executive:

or such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

7.3 Employment Rights. Nothing expressed or implied in this Agreement shall create any right or duty on the part of Invacare or the Executive to have the Executive continue as an officer of Invacare or an Affiliate of Invacare or to remain in the employment of Invacare or an Affiliate of Invacare.

7.4 Administration. Invacare shall be responsible for the general administration of this Agreement and for making payments under this Agreement. All fees and expenses billed by the Accounting Firm for services contemplated under this Agreement shall be the responsibility of Invacare.

7.5 Source of Payments. Any payment specified in this Agreement to be made by Invacare may be made directly by Invacare solely from its general assets, and the Executive shall have the rights of an unsecured general creditor of Invacare with respect thereto. In the event that Invacare establishes a rabbi trust and/or purchases an insurance policy insuring the life of the Executive to recover the cost of providing

benefits hereunder, neither the Executive nor his or her Beneficiary shall have any rights whatsoever in the assets of such rabbi trust or such policy or the proceeds therefrom.

7.6 Validity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement which shall remain in full force and effect.

7.7 Modification; Waiver. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in a writing signed by the Executive and Invacare. No waiver by either party hereto at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same time or at any prior or subsequent time.

7.8 Entire Agreement; Supercession. Except as otherwise specifically provided herein, this Agreement, including its attachments, contains the entire agreement between the parties concerning the subject matter hereof and incorporates and supersedes any and all prior discussions or agreements, written or oral, the parties may have had with respect to such subject matter; provided, however, that except as expressly provided otherwise herein, nothing in this Agreement shall affect any rights the Executive or anyone claiming through the Executive may have in respect of either (a) any Employee Benefit Plan which provides benefits to or in respect of the Executive or (b) any other agreements the Executive may have with Invacare or an Affiliate of Invacare, including without limitation any employment or severance protection agreements the Executive may have with Invacare or an Affiliate of Invacare.

7.9 Post-Mortem Payments; Designation of Beneficiary. In the event that, following the termination of the Executive's employment with Invacare, the Executive is entitled to receive any payments pursuant to this Agreement and the Executive dies, such payments shall be made to the Executive's Beneficiary designated hereunder. At any time after the execution of this Agreement, the Executive may prepare, execute, and file with the Secretary or the Senior Vice President, Human Resources, of Invacare a copy of the Designation of Beneficiary form attached to this Agreement as Exhibit A; provided, that if the Executive has already filed a similar beneficiary form with Invacare, then such form shall remain in effect for purposes of this Agreement until the Executive files an amended form. The Executive shall thereafter be free to amend, alter or change such form; provided, however, that any such amendment, alteration or change shall be made by filing a new Designation of Beneficiary form with the Secretary or the head of Human Resources of Invacare. In the event the Executive fails to designate a beneficiary, following the death of the Executive, all payments of the amounts specified by this Agreement which would have been paid to the Executive's designated beneficiary pursuant to this Agreement shall instead be paid to the Executive's spouse, if any, if he or she survives the Executive or, if there is no spouse or he or she does not survive the Executive, to the Executive's estate.

7.10 Service with Affiliates. Any services the Executive performs for an Affiliate of Invacare shall be deemed performed for Invacare. Any transfer of the Executive's employment from Invacare to an Affiliate of Invacare, or from an Affiliate of Invacare to Invacare, or from an Affiliate of Invacare to another Affiliate of Invacare shall be deemed not to constitute a termination of the Executive's employment with Invacare.

7.11 Time Periods. Any action required to be taken under this Agreement within a certain number of days shall be taken within that number of calendar days; provided, however, that if the last day for taking such action falls on a weekend or a holiday, the period during which such action may be taken shall be automatically extended to the next business day. If the day for taking any action under this Agreement falls on a weekend or a holiday, such action may be taken on the next business day. Notwithstanding the foregoing, no such extension shall permit an action to be taken at a time that would cause an exempt payment to become subject to Code Section 409A or to cause a payment that would otherwise be compliant with Code Section 409A to cease to be so compliant.

7.12 Incorporation by Reference. The incorporation herein of any terms by reference to another document shall not be affected by the termination of any agreement set forth in such other document or the invalidity of any provisions thereof.

7.13 Binding Effect; Construction of Agreement. This Agreement shall inure to the benefit of and be enforceable by the Executive's personal representatives, executors, administrators, successors, heirs, and designees (including, without limitation, the Beneficiary). Upon the Executive's death, for purposes of this Agreement, the term "Executive" shall be deemed to include, as applicable, any person (including, without limitation, the Beneficiary) who is entitled to benefits under this Agreement following the Executive's death.

7.14 Governing Law. All questions concerning the construction, validity and interpretation of this Agreement and the exhibits hereto will be governed by and construed in accordance with the internal laws of the State of Ohio, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Ohio.

7.15 Representations and Warranties of Invacare. Invacare represents and warrants to the Executive that (i) Invacare is a corporation duly organized, validly existing, and in good standing under the laws of the State of Ohio; (ii) Invacare has the power and authority to enter into and carry out this Agreement, and there exists no contractual or other restriction upon its so doing; (iii) Invacare has taken such corporate action as is necessary or appropriate to enable it to enter into and perform its obligations under this Agreement; and (iv) this Agreement constitutes the legal, valid and binding obligation of Invacare, enforceable against Invacare in accordance with its terms.

7.16 Gender. The use of the feminine, masculine or neuter pronoun shall not be restrictive as to gender and shall be interpreted in all cases as the context may require.

8. Definitions.

8.1 Accounting Firm. The term “Accounting Firm” means the independent auditors of Invacare for the fiscal year preceding the year in which the Change of Control occurred and such firm’s successor or successors; provided, however, if such firm is unable or unwilling to serve and perform in the capacity contemplated by this Agreement, Invacare shall select another national accounting firm of recognized standing to serve and perform in that capacity under this Agreement, except that such other accounting firm shall not be the then independent auditors for Invacare or any of its Affiliates.

8.2 Affiliate. The term “Affiliate” shall mean, with respect to any person or entity, any other person or entity which controls, is controlled by, or is under common control with such person or entity within the meaning of Section 414(b) or (c) of the Internal Revenue Code.

8.3 Annual Base Salary. “Annual Base Salary” means the highest annual rate of base salary payable by Invacare to the Executive at any time between the Effective Date and the Termination Date.

8.4 Assumed. For purposes of this Agreement, a stock option, share of restricted stock, restricted stock unit or performance share shall be considered “Assumed” if all of the following conditions are met:

(a) stock options are converted into replacement awards in a manner that complies with Code Section 409A;

(b) awards of restricted stock and restricted stock units that are not subject to performance goals are converted into replacement awards covering a number of shares of the Post-CIC Entity, as determined in a manner substantially similar to how the same number of common shares underlying the awards of restricted stock or restricted stock units would be treated in the Change of Control transaction; provided that, to the extent that any portion of the consideration received by holders of Invacare’s common stock in the Change of Control transaction is not in the form of the common stock of the Post-CIC Entity, the number of shares covered by the replacement awards shall be based on the average of the high and low selling prices of the common stock of such Post-CIC Entity on the established stock exchange on the trading day immediately preceding the date of the Change of Control;

(c) awards of restricted stock, restricted stock units and performance shares that are subject to performance goals are converted into replacement awards that preserve the value of such awards at the time of the Change of Control;

(d) the replacement awards contain provisions for scheduled vesting and treatment on termination of employment (including the definitions of Cause and Good Reason, if applicable) that are no less favorable to the Executive than the underlying awards being replaced, and all other terms of the replacement awards (other than the security and number of shares represented by the replacement awards) are substantially similar to, or more favorable to the Executive than, the terms of the underlying awards; and

(e) the security represented by the replacement awards, if any, is of a class that is publicly held and widely traded on an established stock exchange.

8.5 Beneficiary. “Beneficiary” means the person designated by the Executive as his or her beneficiary pursuant to Section 7.9 or such other person as determined pursuant to Section 7.9 hereof.

8.6 Cause. The employment of the Executive by Invacare shall have been terminated for “Cause” if, after a Change of Control and prior to the termination of employment, any of the following has occurred:

(a) the Executive shall have been convicted of a felony,

(b) the Executive commits an act or series of acts of dishonesty in the course of the Executive’s employment which are materially inimical to the best interests of Invacare and which constitutes the commission of a crime, all as determined by the vote of three-fourths of all of the members of the Board of Directors of Invacare (other than the Executive, if the Executive is a Director of Invacare), which determination is confirmed by a panel of three arbitrators appointed and acting in accordance with the rules of the American Arbitration Association for the purpose of reviewing that determination,

(c) any federal or state regulatory agency with jurisdiction over Invacare has issued a final order, with no further right of appeal, that has the effect of suspending, removing, or barring the Executive from continuing his or her service as an officer or director of Invacare, or

(d) the Executive’s breach of any Technical Information Agreement & Non-Competition Agreement entered into by the Executive.

8.7 Change of Control. A “Change of Control” shall be deemed to have occurred at the first time on which, after the Effective Date:

(a) There is a report filed on Schedule 13D or Schedule 14D1 (or any successor schedule, form, or report), each as adopted under the Securities Exchange Act of 1934, as amended, disclosing the acquisition, in a transaction or series of transactions, by any person (as the term “person” is used in Section 13(d) and Section 14(d)(2) of the Securities Exchange Act of 1934, as amended), other than (1) Invacare or

any of its subsidiaries, (2) any employee benefit plan or employee stock ownership plan or related trust of Invacare or any of its subsidiaries, or (3) any person or entity organized, appointed or established by Invacare or any of its subsidiaries for or pursuant to the terms of any such plan or trust, of such number of shares of Invacare as entitles that person to exercise 30% or more of the voting power of Invacare in the election of Directors; or

(b) During any period of twenty-four (24) consecutive calendar months, individuals who at the beginning of such period constitute the Directors of Invacare cease for any reason to constitute at least a majority of the Directors of Invacare unless the election of each new Director of Invacare (over such period) was approved or recommended by the vote of at least two-thirds of the Directors of Invacare then still in office who were Directors of Invacare at the beginning of the period; or

(c) There is a merger, consolidation, combination (as defined in Section 1701.01(Q), Ohio Revised Code), majority share acquisition (as defined in Section 1701.01(R), Ohio Revised Code), or control share acquisition (as defined in Section 1701.01(Z)(1), Ohio Revised Code, or in Invacare's Articles of Incorporation) involving Invacare and, as a result of which, the holders of shares of Invacare prior to the transaction become, by reason of the transaction, the holders of such number of shares of the surviving or acquiring corporation or other entity as entitles them to exercise in the aggregate less than fifty percent (50%) of the voting power of the surviving or acquiring corporation or other entity in the election of Directors; or

(d) There is a sale, lease, exchange, or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of Invacare, but only if the transferee of the assets in such transaction is not a subsidiary of Invacare; or

(e) The shareholders of Invacare approve any plan or proposal for the liquidation or dissolution of Invacare, but only if the transferee of the assets of Invacare in such liquidation or dissolution is not a subsidiary of Invacare.

If an event described in any of Clauses (a), (b), (c), (d), and (e) occurs, a Change of Control shall be deemed to have occurred for all purposes of this Agreement and, except as provided in the last sentence of Section 5.2, that Change of Control shall be irrevocable.

8.8 Code. "Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

8.9 Demotion or Removal. The Executive shall be deemed to have been subjected to "Demotion or Removal" if, during the two-year period commencing on the date of a Change of Control, other than by Voluntary Resignation or with the Executive's written consent, the Executive ceases to hold the highest position held by Executive at any time during the two-year period ending on the date of the

Change of Control with all of the duties, authority, and responsibilities of that office as in effect at any time during the two-year period ending on the date of the Change of Control.

8.10 Disability. For purposes of this Agreement, the Executive's employment will have been terminated by Invacare by reason of "Disability" of the Executive only if (a) as a result of accidental bodily injury or sickness, the Executive has been unable to perform his or her normal duties for Invacare for a period of 180 consecutive days, and (b) the Executive begins to receive payments under the executive long term disability plan or its successor plan(s) sponsored by Invacare not later than 30 days after the Termination Date.

8.11 Employee Benefit Plan. "Employee Benefit Plan" means any plan or arrangement defined as such in 29 U.S.C. §1002 which provides benefits to the employees of Invacare or its Affiliates.

8.12 Good Reason. The Executive shall have "Good Reason" to terminate his or her employment under this Agreement if, at any time after a Change of Control has occurred and before the second anniversary of that Change of Control, one or more of the events listed in (a) through (f) of this Section 8.12 occurs and, based on that event, the Executive gives notice of such event (and of Executive's intention to terminate his or her employment if Invacare does not cure such condition(s)) on a date that is both (i) within 90 days of the occurrence of that event and (ii) not later than the second anniversary of that Change of Control, and Invacare does not cure the condition(s) constituting the event within 30 days after such notice:

(a) The Executive is subjected to a Demotion or Removal involving a material diminution in the Executive's authority, duties, or responsibilities or in those of the individual to whom the Executive is required to report; or

(b) The Executive's Annual Base Salary is materially reduced (which for this purpose shall be deemed to occur if the reduction is five percent (5%) or greater); or

(c) The Executive's opportunity for incentive compensation is materially reduced from the level of his or her opportunity for incentive compensation as in effect immediately before the date of the Change of Control or from time to time thereafter (which for this purpose shall be deemed to occur if the reduction is equivalent to a five percent (5%) or greater reduction in Executive's Annual Base Salary); or

(d) The Executive is excluded (other than by his or her volitional action(s)) from full participation in any benefit plan or arrangement maintained for senior executives of Invacare generally, and such exclusion materially reduces the benefits provided to the Executive; or

(e) The Executive's principal place of employment for Invacare is relocated a material distance (which for this purpose shall be deemed to be more than 35 miles) from Executive's principal place of employment on the date of the Change of Control; or

(f) Any other action or inaction that constitutes a material breach by Invacare of this Agreement or any other agreement under which the Executive provides his or her services to Invacare.

8.13 Post-CIC Entity. "Post-CIC Entity" means any entity (or any successor or parent thereof) that effects a Change of Control pursuant to Section 8.7.

8.14 Prime Plus One. "Prime Plus One" means the prime rate of interest, as reported by the *Wall Street Journal* or its successors, plus 1%.

8.15 Prior Bonus Amount. "Prior Bonus Amount" means an amount equal to the average of the bonuses earned by the Executive under Invacare's annual bonus plan with respect to the three fiscal years immediately preceding the fiscal year in which a Change of Control occurs, provided however, if the Change of Control occurs prior to Executive completing three full years of employment with Invacare, then "Prior Bonus Amount" will mean the average of the bonuses earned for the actual number of fiscal years the Executive was employed.

8.16 Prorated Bonus Amount. "Prorated Bonus Amount" means an amount equal to (a) times (b), in which (a) equals the Executive's Annual Base Salary multiplied by the higher of (i) the target bonus percentage in effect for the Executive under Invacare's bonus plan during the fiscal year immediately preceding the fiscal year in which the Change of Control occurs, or (ii) the target bonus percentage in effect for the Executive under Invacare's bonus plan during the fiscal year in which the Termination Date occurs; and (b) equals a quotient, in which the numerator is the number of days the Executive was employed by Invacare during the year in which the Termination Date occurs and the denominator is 365.

8.17 Termination Date. "Termination Date" means the date on which (and related terms, such as "termination of employment" and "terminate employment" mean a situation in which) the Executive incurs a separation from service with Invacare and all of its Affiliates within the meaning of Code Section 409A. A separation from service under Code Section 409A includes a quit, discharge, or retirement, or a leave of absence (including military leave, sick leave, or other bona fide leave of absence such as temporary employment by the government, at the point that such leave exceeds the greater of: (i) six months; (ii) the period for which the Participant's right to reemployment is provided either by statute or by contract, or (iii) in the case of sick leave, twenty-nine (29) months, if the Executive's injury or sickness can be expected to result in death or can be expected to last for a continuous period of not less than 6 months, and such injury or sickness renders the Executive unable to perform the duties of his or her position of employment or any substantially similar position of employment).

A separation from service under Code Section 409A also occurs upon a permanent decrease in service to a level that is no more than twenty percent (20%) of its prior level. For this purpose, whether a separation from service has occurred is determined based on whether it is reasonably anticipated that no further services will be performed by the Executive after a certain date or that the level of bona fide services the Executive will perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than twenty percent (20%) of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding 36-month period (or the full period of services if the Executive has been providing services less than 36 months).

8.18 Voluntary Resignation. A “Voluntary Resignation” shall have occurred if the Executive terminates his or her employment with Invacare by voluntarily resigning at his or her own instance without having been requested to so resign by Invacare, except that any resignation by the Executive will not be deemed to be a Voluntary Resignation if, at the time of that resignation, the Executive had Good Reason to resign, which had not been waived in writing by the Executive.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

INVACARE CORPORATION
 (“Invacare”)

By:
Name:
Title:

(the “Executive”)

Schedule of Change of Control Agreements

<u>Name</u>	<u>Position</u>	<u>Date of Agreement</u>
Matthew E. Monaghan	President and Chief Executive Officer	April 1, 2015
Kathleen P. Leneghan	Senior Vice President and Chief Financial Officer	February 22, 2018
Geoffrey P. Purtill	Senior Vice President and General Manager, Europe, Middle East & Africa and Asia Pacific	September 1, 2021
Joost Beltman	Senior Vice President and General Manager, North America	August 26, 2020
Angela Goodwin	Senior Vice President and Chief Information Technology Officer	May 21, 2020
Rick A. Cassidy	Senior Vice President and Chief Human Resources Officer	June 7, 2021

INVACARE CORPORATION

FORM OF INDEMNITY AGREEMENT

THIS AGREEMENT is made as of the ___ day of _____, 20___, by and between INVACARE CORPORATION, an Ohio corporation (the "Corporation"), and _____ ("Indemnitee"), an Officer and/or Director of the Corporation.

WHEREAS, it is essential to the Corporation to retain and attract as Directors and/or Officers the most capable persons available, such as Indemnitee; and

WHEREAS, the prevalence of corporate litigation subjects directors and officers to expensive litigation risks, and it is the policy of the Corporation to indemnify its Directors and/or Officers so as to provide them with the maximum possible protection permitted by law; and

WHEREAS, in addition, because the statutory indemnification provisions of the Ohio Revised Code expressly provide that they are non-exclusive, it is the policy of the Corporation to indemnify Directors and Officers who, on behalf of the Corporation, have entered into settlements of derivative suits or have paid judgments, fines or penalties therefor, provided they have not breached the applicable statutory standard of conduct; and

WHEREAS, Indemnitee does not regard the protection available under the Corporation's Code of Regulations and insurance, if any, as adequate in the present circumstances, and considers it necessary and desirable to his or her service as a Director and/or Officer to have maximum protection, and the Corporation desires to provide such protection to induce Indemnitee to serve in such capacity; and

WHEREAS, the Ohio Revised Code Section 1701.13(E) and the Corporation's Code of Regulations Article V(a) provide that indemnification of Directors and Officers of the Corporation may be authorized by agreement, and thereby contemplates that contracts of this nature may be entered into between the Corporation and Indemnitee with respect to indemnification of Indemnitee as a Director or an Officer of the Corporation.

NOW, THEREFORE, for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the Corporation and Indemnitee do hereby agree as follows:

1. Agreement to Serve. Indemnitee agrees to serve or continue to serve as a Director and/or Officer of the Corporation for so long as he or she is duly elected or appointed or until such time as he or she tenders his or her resignation in writing or is otherwise terminated or removed from office.

The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on the Corporation hereby in order to induce Indemnitee to continue to serve as a Director and/or Officer of the Corporation, and acknowledges that Indemnitee is relying upon this Agreement in continuing in such capacity.

2. Definitions. As used in this Agreement:

The term “Proceeding” shall include any threatened, pending, or completed action, suit or proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee may be or may have been involved as a party or otherwise, by reason of the fact that Indemnitee is or was a Director and/or Officer of the Corporation or any subsidiary of the Corporation, by reason of any action taken by Indemnitee or of any inaction on his or her part while acting as such a Director and/or Officer, or by reason of the fact that he or she is or was serving at the request of the Corporation as a director, officer, member or manager, partner, trustee, employee or agent of another corporation, domestic or foreign, non-profit or for-profit, a limited liability company or a partnership, joint venture, trust or other enterprise; in each case whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification or reimbursement can be provided under this Agreement.

The term “Expenses” shall include, without limitation, expenses of investigations, judicial or administrative proceedings or appeals, attorneys' fees and disbursements and any expenses of establishing a right to indemnification under Paragraph 9 of this Agreement, but shall not include the amount of judgments, fines or penalties against or settlements paid by Indemnitee.

References to “other enterprise” shall include, without limitation, employee benefit plans; references to “fines” shall include, without limitation, any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include, without limitation, any service as a Director or Officer of the Corporation which imposes duties on, or involves services by, such Director or Officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

3. Indemnity in Third-Party Proceedings. The Corporation shall indemnify Indemnitee in accordance with the provisions of this Paragraph 3 if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any Proceeding (other than a Proceeding by or in the right of the Corporation to procure a judgment in its favor) by reason of the fact that Indemnitee is or was a Director and/or Officer of the Corporation or a subsidiary of the Corporation, or is or was serving at the request of the Corporation as a director, officer, member or manager, partner, trustee, employee or agent of another corporation, domestic or foreign, non-profit or for-profit, a limited liability company or a partnership, joint venture, trust or other enterprise, against all Expenses, judgments, settlements, fines and penalties, actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such Proceeding, but only if Indemnitee acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation and, in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any such Proceeding by judgment, order of court, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption

that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal proceeding, that such person had reasonable cause to believe that his or her conduct was unlawful.

4. Indemnity for Expenses in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify Indemnitee in accordance with the provisions of this Paragraph 4 if Indemnitee is a party to or threatened to be made a party to any Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was a Director and/or Officer of the Corporation or a subsidiary of the Corporation, or is or was serving at the request of the Corporation as a director, officer, member or manager, partner, trustee, employee or agent of another corporation, domestic or foreign, non-profit or for-profit, a limited liability company or a partnership, joint venture, trust or other enterprise, against all Expenses actually and reasonably incurred by Indemnitee in connection with the defense of such Proceeding, but only if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification for Expenses shall be made under this Paragraph 4 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court order or judgment, by a court of competent jurisdiction, to be liable to the Corporation, unless and only to the extent that any court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses as such court shall deem proper.

5. Indemnity for Amounts Paid in Settlement in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify Indemnitee in accordance with the provisions of this Paragraph 5 if Indemnitee is a party to or threatened to be made a party to any Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was a Director and/or Officer of the Corporation or a subsidiary of the Corporation, or is or was serving at the request of the Corporation as a director, officer, member or manager, partner, trustee, officer, employee, or agent of another corporation, domestic or foreign, non-profit or for-profit, a limited liability company or a partnership, joint venture, trust or other enterprise, against all amounts actually and reasonably paid in settlement by Indemnitee in connection with any such Proceeding, but only if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation.

6. Indemnity for Amounts Paid for in Judgments in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify Indemnitee in accordance with the provisions of this Paragraph 6 if Indemnitee is a party to or threatened to be made a party to any Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was a Director and/or Officer of the Corporation or a subsidiary of the Corporation, or is or was serving at the request of the Corporation as a director, officer, member or manager, partner, trustee, officer, employee, or agent of another corporation, domestic or foreign, non-profit or for-profit, a limited liability company or a partnership, joint venture, trust or

other enterprise, against all judgments, fines and penalties actually and reasonably incurred by Indemnitee in connection with any such Proceeding, but only if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation.

7. Indemnification of Expenses of Successful Party. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding or in defense of any claim, issue or matter therein, including dismissal without prejudice, Indemnitee shall be indemnified against all Expenses incurred in connection therewith.

8. Advances of Expenses. Any Expenses incurred by or on behalf of Indemnitee pursuant to Paragraphs 3 or 4 in any Proceeding shall be paid by the Corporation in advance upon the written request of Indemnitee if Indemnitee shall undertake to (a) repay such amount to the extent that it is ultimately determined by clear and convincing evidence in a court that Indemnitee is not entitled to indemnification hereunder, and (b) reasonably cooperate with the Corporation concerning the action, suit or proceeding giving rise to the Expenses. Any advances to be made under this Paragraph 8 shall be paid by the Corporation to Indemnitee within twenty (20) days following delivery of a written request therefor by Indemnitee to the Corporation.

9. Procedure. Any indemnification and advances provided for in Paragraph 3, 4, 5, 6, 7 and 8 shall be made no later than twenty (20) days after receipt of the written request of Indemnitee. If a claim under this Agreement, under any statute, or under any provision of the Corporation's Code of Regulations or Articles of Incorporation providing for indemnification, is not paid in full by the Corporation within twenty (20) days after a written request for payment thereof has been first received by the Corporation, Indemnitee may, but need not, at any time thereafter bring an action against the Corporation to recover the unpaid amount of the claim and, subject to the other provisions of this Agreement, Indemnitee also shall be entitled to be paid for the Expenses of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for Expenses incurred in connection with any action, suit or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Corporation to indemnify Indemnitee for the amount claimed, but the burden of proving such defense shall be on the Corporation and Indemnitee shall be entitled to receive advance payments of expenses pursuant to Paragraph 8 hereof unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if the Corporation contests Indemnitee's right to indemnification, the question of Indemnitee's right to indemnification shall be for the court to decide. There shall exist in such action a rebuttable presumption that Indemnitee has met the applicable standard(s) of conduct and is therefore entitled to indemnification pursuant to this Agreement. Neither the failure of the Corporation (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel or its shareholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct as may be required by applicable law, nor any actual determination by the Corporation (including its Board of Directors, any committee or subgroup of the

Board of Directors, independent legal counsel, or its shareholders) that Indemnitee has not met such applicable standard of conduct, shall (a) constitute a defense to such action, (b) create a presumption that Indemnitee has or has not met the applicable standard of conduct, or (c) otherwise alter the presumption in favor of Indemnitee referred to in the preceding sentence.

10. Allowance for Compliance with SEC Requirements. Indemnitee acknowledges that the Securities and Exchange Commission (“SEC”) has expressed the opinion that indemnification of directors and officers from liabilities under the Securities Act of 1933, as amended (the “Act”), is against public policy as expressed in the Act and is, therefore, unenforceable. Indemnitee hereby acknowledges and agrees that it will not be a breach of this Agreement for the Corporation to undertake with the SEC in connection with the registration for sale of any capital stock or other securities of the Corporation from time to time that, in the event a claim for indemnification against such liabilities (other than the payment by the Corporation of expenses incurred or paid by a director or officer of the Corporation in the successful defense of any action, suit or proceeding) is asserted in connection with such capital stock or other securities being registered, the Corporation will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of competent jurisdiction on the question of whether or not such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue. Indemnitee further agrees that such submission to a court of competent jurisdiction shall not be a breach of this Agreement.

11. Indemnification Hereunder Not Exclusive. The indemnification provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may be entitled under the Articles of Incorporation or the Code of Regulations of the Corporation, any agreement, any vote of shareholders or disinterested directors, the Ohio General Corporation Laws, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

The indemnification under this Agreement for any action taken or not taken while serving in an indemnified capacity shall continue as to Indemnitee even though he or she may have ceased to be a Director and/or Officer and shall inure to the benefit of the heirs, executors and personal representatives of Indemnitee.

12. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Corporation for some claims, issues or matters, but not as to other claims, issues or matters, or for some or a portion of the Expenses, judgments, fines or penalties actually and reasonably incurred by Indemnitee or amounts actually and reasonably paid in settlement by Indemnitee in the investigation, defense, appeal or settlement of any Proceeding, but not for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such claims, issues or matters or Expenses, judgments, fines, penalties or amounts paid in settlement to which Indemnitee is entitled.

13. No Rights of Continued Employment. Nothing contained in this Agreement is intended to create in Indemnitee any right to continued employment with the Corporation.

14. Reimbursement to Corporation by Indemnitee; Limitation on Amounts Paid by Corporation. To the extent Indemnitee has been indemnified by the Corporation hereunder and later receives payments from any insurance carrier covering the same Expenses, judgments, fines, penalties or amounts paid in settlement so indemnified by the Corporation hereunder, Indemnitee shall immediately reimburse the Corporation hereunder for all such amounts received from the insurer.

Notwithstanding anything contained herein to the contrary, Indemnitee shall not be entitled to recover amounts under this Agreement which, when added to the amount of indemnification payments made to, or on behalf of, Indemnitee, under the Articles of Incorporation or Code of Regulations of the Corporation, in the aggregate exceed the Expenses, judgments, fines, penalties and amounts paid in settlement actually and reasonably incurred by Indemnitee ("Excess Amounts"). To the extent the Corporation has paid Excess Amounts to Indemnitee, Indemnitee shall be obligated to immediately reimburse the Corporation for such Excess Amounts.

Notwithstanding anything contained herein to the contrary, the Corporation shall not be obligated under the terms of this Agreement to indemnify Indemnitee:

(a) or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to Proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or law or otherwise, but such indemnification or advancement of expenses may be provided by the Corporation in specific cases if the Board of Directors finds it appropriate;

(b) if it is proved by final judgment in a court of law or other final adjudication to have been based upon or attributable to the Indemnitee's in fact having gained any personal profit or advantage to which he or she was not legally entitled;

(c) for any expenses incurred by Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous;

(d) for a disgorgement of profits made from the purchase and sale by Indemnitee of securities pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of any state statutory law or common law; or

(e) for any Expenses, judgment, fine or penalty which the Corporation is prohibited by applicable law from paying as indemnity or for any other reason.

15. Scope. Notwithstanding any other provision of this Agreement, except Paragraph 14 hereof, the Corporation hereby agrees to indemnify the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Corporation's Code of Regulations or Articles of Incorporation, or by statute. In the event of any change, after the date of this Agreement, in any applicable law, statute or rule which expands the right of an Ohio corporation to indemnify a member of its board of directors or an officer, such change shall be deemed to be within the purview of the Indemnitee's rights and the Corporation's obligations under this Agreement. In the event of any change in any applicable law, statute or rule which narrows the right of an Ohio corporation to indemnify a member of its board of directors or an officer, such change, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder.

16. Notice to Insurers. If, at the time of the receipt of a written request of Indemnitee pursuant to Paragraph 9 hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action, using commercially reasonable efforts, to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

17. Continuation of Rights and Obligations. All rights and obligations of the Corporation and Indemnitee hereunder shall continue in full force and effect despite the subsequent amendment or modification of the Corporation's Articles of Incorporation or Code of Regulations, as such are in effect on the date hereof, and such rights and obligations shall not be affected by any such amendment or modification, any resolution of directors or shareholders of the Corporation, or by any other corporate action which conflicts with or purports to amend, modify, limit or eliminate any of the rights or obligations of the Corporation and/or Indemnitee hereunder.

18. Amendment and Modification. This Agreement may only be amended, modified or supplemented by the written agreement of the Corporation and Indemnitee.

19. Assignment. This Agreement shall not be assigned by the Corporation or Indemnitee without the prior written consent of the other party thereto, except that the Corporation may freely assign its rights and obligations under this Agreement to any subsidiary for whom Indemnitee is serving as a director and/or officer thereof; provided, however, that no permitted assignment shall release the assignor from its obligations hereunder. Subject to the foregoing, this Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including, without limitation, any successor to the Corporation by way of merger, consolidation and/or sale or disposition of all or substantially all of the capital stock of the Corporation.

20. Saving Clause. If this Agreement or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, the Corporation shall nevertheless indemnify Indemnitee as to Expenses, judgments, fines, penalties and amounts paid in settlement with respect to any Proceeding to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated or by any other applicable law.

21. Counterparts. This Agreement may be executed in two or more fully or partially executed counterparts each of which shall be deemed an original binding the signer thereof against the other signing parties, but all counterparts together shall constitute one and the same instrument. Executed signature pages may be removed from counterpart agreements and attached to one or more fully executed copies of this Agreement. The parties may execute and deliver this Agreement by facsimile signature, which shall have the same binding effect as an original ink signature.

22. Notice. Indemnitee shall, as a condition precedent to his or her right to be indemnified under this Agreement, give to the Corporation notice in writing as soon as practicable of any claim made against him or her for which indemnity will or could be sought under this Agreement. Notice to the Corporation shall be directed to the Corporation at its headquarters located at One Invacare Way, Elyria, Ohio 44035, Attention: Chairman (or such other address as the Corporation shall designate in writing to Indemnitee). Notice shall be deemed received three days after the date postmarked if sent by prepaid mail, properly addressed. In addition, Indemnitee shall give the Corporation such information and cooperation as it may reasonably require within Indemnitee's power.

23. Applicable Law. All matters with respect to this Agreement, including, without limitation, matters of validity, construction, effect and performance, shall be governed by and construed in accordance with the laws of the State of Ohio applicable to contracts made and to be performed therein between the residents thereof (regardless of the laws that might otherwise be applicable under principles of conflict of law).

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

INVACARE CORPORATION
THE "CORPORATION"

"INDEMNITEE"

Name:
Title:

Type Name

Schedule of Indemnity Agreements with Current Directors and Executive Officers

<u>Name</u>	<u>Position</u>	<u>Date of Agreement</u>
C. Martin Harris, MD	Director	January 24, 2003
Clifford D. Nastas	Director	May 14, 2015
Marc M. Gibeley	Director	November 20, 2015
Susan H. Alexander	Director	December 1, 2016
Petra Danielsohn-Weil	Director	May 17, 2018
Julie A. Beck	Director	September 18, 2019
Stephanie L. Fehr	Director	March 25, 2021
Anthony C. LaPlaca	Senior Vice President, General Counsel, Secretary and Chief Administrative Officer	December 29, 2008
Kathleen P. Leneghan	Senior Vice President and Chief Financial Officer	November 1, 2017
Angela Goodwin	Senior Vice President and Chief Information Technology Officer	May 21, 2020
Joost Beltman	Senior Vice President and General Manager – North America	August 26, 2020
Rick A. Cassidy	Senior Vice President and Chief Human Resources Officer	June 7, 2021
Geoffrey P. Purtill	Senior Vice President and General Manager – Europe, Middle East & Africa and Asia Pacific	December 1, 2021

TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT

THIS TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT (this "Amendment") dated as of December 29, 2021, is made by and among the BORROWERS party hereto (the "Borrowers"), the GUARANTORS party hereto (the "Guarantors"), the financial institutions party hereto as LENDERS (collectively, "Lenders" and each individually a "Lender") and PNC BANK, NATIONAL ASSOCIATION ("PNC"), as agent for the Lenders (PNC, in such capacity, "Agent"), J.P. MORGAN AG ("JPM AG"), as European agent for the Lenders (JPM AG, in such capacity, the "European Agent"), and J.P. MORGAN EUROPE LIMITED ("JPM Europe"), as European collateral agent for the Lenders (JPM Europe, in such capacity, the "European Collateral Agent").

WITNESSETH:

WHEREAS, the Borrowers, the Guarantors, the Lenders, the Agent and the European Agent are parties to that certain Amended and Restated Revolving Credit and Security Agreement, dated as of September 30, 2015, as amended by (i) First Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of February 16, 2016, (ii) Waiver and Second Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of May 3, 2016, (iii) Release and Third Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of September 30, 2016, (iv) Fourth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of November 30, 2016, (v) Waiver and Fifth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of June 7, 2017, (vi) Sixth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of November 13, 2019, (vii) Seventh Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of May 29, 2020, (viii) Eighth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of January 15, 2021, and (ix) Ninth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of March 10, 2021 (as so amended or otherwise modified, the "Credit Agreement"); and

WHEREAS, the Borrowers and the Guarantors have requested the Lenders to make certain amendments and other accommodations to the Credit Agreement as more fully set forth herein. The Lenders have agreed to such amendments and accommodations, subject to the terms and conditions set forth in this Amendment.

NOW THEREFORE, the parties hereto, in consideration of their mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, covenant and agree as follows:

1. Recitals. The foregoing recitals are incorporated herein by reference.
2. Defined Terms. Capitalized terms not otherwise defined in this Amendment have the meanings given to them in the Credit Agreement.
3. Amendment to Credit Agreement. The Credit Agreement is hereby 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) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto.

4. Amendment to Exhibit 1.2(e). Exhibit 1.2(e) to the Credit Agreement is hereby amended and restated in its entirety as set forth on Exhibit 1.2(e) attached hereto and made a part hereof.

5. Conditions Precedent. The effectiveness of this Amendment is subject to the receipt by the Applicable Agent of the following items, each in form and content satisfactory to the Applicable Agent:

(a) the Applicable Agent shall have received this Amendment, duly executed by a duly authorized officer of each of the Loan Parties, each of the Lenders, the Agent, the European Agent and the European Collateral Agent;

(b) no Default or Event of Default shall have occurred;

(c) the Borrowers shall have paid to Applicable Agent, all of Applicable Agent's costs and expenses (including Applicable Agent's attorneys' fees) incurred in connection with the preparation of this Amendment; and

(d) Each Applicable Agent shall have received such other documents, agreements, instruments, deliverables and items deemed reasonably necessary by such Applicable Agent.

6. Condition Subsequent. The Borrowers shall deliver to the Applicable Agent no later than January 7, 2022 (or such later date as may be acceptable to the Applicable Agent in its sole discretion), an amended English Law Guaranty, duly executed by a duly authorized officer of each of the European Guarantors, the European Agent, the European Collateral Agent and the Agent (the "Post-Closing Condition"). The failure to satisfy the Post-Closing Condition shall be an Event of Default under the Credit Agreement.

7. Representations and Warranties. Each Borrower and each Guarantor covenants and agrees with and represents and warrants to the Agent, the European Agent, the European Collateral Agent and the Lenders as follows:

(a) each Borrower's and each Guarantor's obligations under the Credit Agreement, as modified hereby, are and shall remain secured by the Collateral pursuant to the terms of the Credit Agreement and the Other Documents;

(b) each Borrower and each Guarantor possesses all of the powers requisite for it to enter into and carry out the transactions referred to herein and to execute, enter into and perform the terms and conditions of this Amendment, the Credit Agreement and the Other Documents and any other documents contemplated herein that are to be performed by such Borrower or such Guarantor; and that any and all actions required or necessary pursuant to such Borrower's or such Guarantor's organizational documents or otherwise have been taken to authorize the due execution, delivery and performance by such Borrower and such Guarantor of the terms and conditions of this Amendment, the Credit Agreement and the Other Documents, and that such execution, delivery and performance will not conflict with, constitute a default under or result in a breach of any applicable law or any agreement, instrument, order, writ, judgment, injunction or decree to which such Borrower or such Guarantor is a party or by which such Borrower or such Guarantor or any of its properties are bound, and that all consents, authorizations and/or approvals required or necessary from any third parties in connection with the entry into, delivery and performance by such Borrower and/or such Guarantor of the terms and conditions of this Amendment, the Credit Agreement, the Other Documents and the transactions contemplated hereby and thereby have been obtained by such Borrower and such Guarantor and are in force and effect;

(c) this Amendment, the Credit Agreement, and the Other Documents constitute the valid and legally binding obligations of each Borrower and each Guarantor, enforceable against such Borrower and such Guarantor in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and by general equitable principles, whether enforcement is sought by proceedings at law or in equity;

(d) all representations and warranties made by each Borrower and each Guarantor in the Credit Agreement and the Other Documents are true and correct in all material respects as of the date hereof, with the same force and effect as if all such representations and warranties were fully set forth herein and made as of the date hereof and each Borrower and each Guarantor has complied with all covenants and undertakings in the Credit Agreement and the Other Documents;

(e) this Amendment is not a substitution, novation, discharge or release of any Borrower's or any Guarantor's obligations under the Credit Agreement or any of the Other Documents, all of which shall and are intended to remain in full force and effect;

(f) no Event of Default or Potential Default has occurred and is continuing under the Credit Agreement or the Other Documents; there exist no defenses, offsets, counterclaims or other claims with respect to any Borrower's or any Guarantor's obligations and liabilities under the Credit Agreement or any of the Other Documents;

(g) each Borrower and each Guarantor hereby ratifies and confirms in full its duties and obligations under the Credit Agreement, the Guaranty Agreement, and the Other Documents applicable to it, each as modified hereby; and

(h) each Borrower and each Guarantor hereby agrees, as an independent obligation to the European Agent (to the extent such Guarantor or Borrower is party to the English Law Guaranty), to be bound by the terms of the English Law Guaranty as if it had been set out in full again here with such changes as are appropriate to fit this context, for the avoidance of doubt with references to the Credit Agreement and Other Documents each as modified hereby.

8. Guarantee and Security Confirmations. Each of the European Loan Parties (i) consents to the amendment of the Credit Agreement effected by this Amendment, (ii) confirms that its obligations as a Guarantor under the English Law Guaranty (the "Guaranteed Obligations") and its obligations under any Liens created pursuant to the European Collateral Documents to which it is a party (the "Secured Obligations") shall, in each case not be discharged or otherwise affected by those amendments and shall accordingly remain and continue in full force and effect, (iii) the Guaranteed Obligations shall, after the date of this Amendment, extend to the obligations of each European Loan Party under the Credit Agreement, as so amended and (iv) the Secured Obligations, including for the purposes of the European Collateral Documents, shall, after the date of this Amendment, extend to the obligations of each European Loan Party under the Credit Agreement, as so amended.

9. Reimbursement of Expenses. The Borrowers, jointly and severally, shall pay or cause to be paid to the Agent all costs and expenses accrued through the date hereof and the costs and expenses of the Agent including, without limitation, fees of the Agent's counsel in connection with this Amendment.

10. Document References. As used in the Credit Agreement and each of the Other Documents, the terms "this Credit Agreement", "herein", "hereinafter", "hereto", "hereof", and words of similar import shall, unless the context otherwise requires, mean the Credit Agreement

as amended and modified by this Amendment. The term "Other Documents" as defined in the Credit Agreement shall include this Amendment.

11. Integration. This Amendment, together with the Credit Agreement and the Other Documents, constitutes the entire agreement and understanding among the parties relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings relating to such subject matter. In entering into this Amendment, each Borrower and each Guarantor acknowledges that it is relying on no statement, representation, warranty, covenant or agreement of any kind made by Agent or any Lender or any employee or agent of Agent or any Lender, except for the agreements of Agent and the Lenders set forth herein. This Amendment shall be construed without regard to any presumption or rule requiring that it be construed against the party causing this Amendment or any part hereof to be drafted.

12. Successors and Assigns. This Amendment shall apply to and be binding upon the Borrowers and the Guarantors in all respects and shall inure to the benefit of each of the other parties hereto and their respective successors and assigns, provided that none of the Borrowers nor the Guarantors may assign, transfer or delegate its duties and obligations hereunder. Nothing expressed or referred to in this Amendment is intended or shall be construed to give any person or entity other than the parties hereto a legal or equitable right, remedy or claim under or with respect to this Amendment, the Credit Agreement or any Other Documents, it being the intention of the parties hereto that this Amendment and all of its provisions and conditions are for the sole and exclusive benefit of the parties hereto.

13. Severability. If any one or more of the provisions contained in this Amendment, the Credit Agreement, or the Other Documents shall be held invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained in this Amendment, the Credit Agreement or the Other Documents shall not in any way be affected or impaired thereby, and this Amendment, the Credit Agreement and the Other Documents shall otherwise remain in full force and effect.

14. Further Assurances. Each Borrower and each Guarantor agrees to execute such other and further documents and instruments as Agent may request to implement the provisions of this Amendment.

15. Governing Law. This Amendment will be governed by the internal laws of the State of New York without reference to its conflicts of law principles.

16. Waiver and Release. Each Borrower and each Guarantor, by signing below, hereby waives and releases Agent, the European Agent, the European Collateral Agent, Issuer and each of the Lenders and their respective directors, officers, employees, attorneys, affiliates and subsidiaries from any and all claims, offsets, defenses and counterclaims of which any Borrower or any Guarantor is aware, such waiver and release being with full knowledge and understanding of the circumstances and effect thereof and after having consulted legal counsel with respect thereto.

17. Counterparts; Electronically Delivered Signatures. This Amendment may be executed in any number of counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. Delivery of executed signature pages hereof by facsimile or other means of electronic transmission from one party to another shall constitute effective and binding execution and delivery thereof by such party. Any party that delivers its original counterpart signature to this amendment by facsimile transmission hereby covenants to deliver its original counterpart signature promptly thereafter to the Agent.

18. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY 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 AMENDMENT, THE CREDIT AGREEMENT OR ANY OTHER 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, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON 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 AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[SIGNATURE PAGES FOLLOW]

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

Each of the parties has signed this Tenth Amendment to Amended and Restated Revolving Credit and Security Agreement as of the day and year first above written.

US BORROWERS:

Invacare Corporation, an Ohio corporation

By: /s/ Kathleen P. Leneghan

Name: Kathleen P. Leneghan

Title: Senior Vice President and Chief Financial Officer

Freedom Designs, Inc., a California corporation

Medbloc, Inc., a Delaware corporation

By: /s/ Kathleen P. Leneghan

Name: Kathleen P. Leneghan

Title: Vice President and Treasurer

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

US GUARANTORS:

Adaptive Switch Laboratories, Inc., a Texas corporation

Invacare Credit Corporation, an Ohio corporation

Invacare Holdings, LLC, an Ohio limited liability company

Invamex Holdings LLC, a Delaware limited liability company

By: /s/ Kathleen P. Leneghan

Name: Kathleen P. Leneghan

Title: Vice President and Treasurer

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

CANADIAN BORROWERS:

Invacare Canada L.P., an Ontario limited partnership, by its general partner, **Invacare Canada General Partner Inc.**
Motion Concepts L.P., an Ontario limited partnership, by its general partner, **Carroll Healthcare Inc.**
Perpetual Motion Enterprises Limited, an Ontario corporation

By: /s/ Kathleen P. Leneghan
Name: Kathleen P. Leneghan
Title: Vice President and Treasurer

CANADIAN GUARANTORS:

Carroll Healthcare General Partner, Inc., an Ontario corporation
Carroll Healthcare Inc., an Ontario corporation
Invacare Canada General Partner Inc., a Canada corporation

By: /s/ Kathleen P. Leneghan
Name: Kathleen P. Leneghan
Title: Vice President and Treasurer

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

ENGLISH BORROWERS:

Invacare Limited, a company incorporated in England and Wales with company number 05178693

By: /s/ Kathleen P. Leneghan

Name: Kathleen P. Leneghan

Title: Director

ENGLISH GUARANTORS:

Invacare Limited, a company incorporated in England and Wales with company number 05178693

By: /s/ Kathleen P. Leneghan

Name: Kathleen P. Leneghan

Title: Director

Invacare UK Operations Limited, a company incorporated in England and Wales with company number 03281202

By: /s/ Kathleen P. Leneghan

Name: Kathleen P. Leneghan

Title: Director

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

FRENCH BORROWERS:

Invacare Poirier SAS

By: Invacare Holdings Two B.V., its sole shareholder

By: /s/ Joost Beltman

Name: Joost Beltman

Title: President Duly Authorised

FRENCH GUARANTORS:

Invacare Poirier SAS

By: Invacare Holdings Two B.V., its sole shareholder

By: /s/ Joost Beltman

Name: Joost Beltman

Title: President Duly Authorised

Invacare France Operations S.A.S.

By: Invacare Holdings Two B.V., its sole shareholder

By: /s/ Joost Beltman

Name: Joost Beltman

Title: President Duly Authorised

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

DUTCH GUARANTORS:

Invacare B.V.

By: /s/ Désirée de la Fuente – van Baal
Name: Désirée de la Fuente – van Baal
Title: Statutory Director

By: /s/ Marco Koole
Name: Marco Koole
Title: Statutory Director

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

PNC BANK, NATIONAL ASSOCIATION, as Lender
and as Agent

By: /s/ Todd Milenius
Name: Todd Milenius
Title: Senior Vice President

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

KEYBANK NATIONAL ASSOCIATION, as Lender

By: /s/ Jonathan Roe
Name: Jonathan Roe
Title: Vice President

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

JPMORGAN CHASE BANK, N.A., as Lender

By: /s/ Erik Barragan
Name: Erik Barragan
Title: Authorized Officer

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

J.P. MORGAN EUROPE LIMITED, as European Collateral Agent

By: /s/ Graeme Syme

Name: Graeme Syme

Title: Authorized Officer

J.P. MORGAN AG, as Lender, European Swing Loan Lender and European Agent

By: /s/ Graeme Syme

Name: Graeme Syme

Title: Authorized Officer

[SIGNATURE PAGE TO TENTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

**CITIZENS BUSINESS CAPITAL, A DIVISION OF
CITIZENS ASSET FINANCE, INC., as Lender**

By: /s/ David Slattery
Name: David Slattery
Title: Vice President

EXHIBIT A

See attached.

EXHIBIT 1.2(e)

See attached.

EXHIBIT A

EXECUTION VERSION

CUSTOMER CUSIP 46122CAC3
NORTH AMERICAN FACILITY CUSIP 46122CAD1

****COMPOSITE** AMENDED AND RESTATED REVOLVING CREDIT
AND SECURITY AGREEMENT**

PNC BANK, NATIONAL ASSOCIATION,
as a Lender and Agent,

and

JPMORGAN CHASE BANK, N.A.,
as a Lender,

and

J.P. MORGAN EUROPE LIMITED,
as European Collateral Agent,

and

J.P. MORGAN AG,

as a Lender, European Swing Loan Lender and European Agent,

and

THE OTHER LENDERS PARTY HERETO

WITH

INVACARE CORPORATION,
as a Borrower,

THE OTHER BORROWERS PARTY HERETO

THE GUARANTORS PARTY HERETO

PNC CAPITAL MARKETS LLC,
as Lead Arranger and Bookrunner

and

JPMORGAN SECURITIES, LLC,
as European Lead Arranger and Bookrunner

September 30, 2015

Includes revisions contained in:

~~*First Amendment to Amended and Restated Revolving Credit and Security Agreement dated February 16, 2016*~~

~~*Waiver and Second Amendment to Amended and Restated Revolving Credit and Security Agreement dated May 3, 2016*~~

~~*Release and Third Amendment to Amended and Restated Credit and Security Agreement dated September 30, 2016*~~

~~*Fourth Amendment to Amended and Restated Revolving Credit and Security Agreement dated November 30, 2016*~~

~~*Waiver and Fifth Amendment to Amended and Restated Revolving Credit and Security Agreement dated June 7, 2017*~~

~~*Sixth Amendment to Amended and Restated Revolving Credit and Security Agreement dated November 13, 2019*~~

~~*Seventh Amendment to Amended and Restated Credit and Security Agreement dated May 29, 2020*~~

~~*Eighth Amendment to Amended and Restated Credit and Security Agreement dated as of January 15, 2021*~~

~~*Ninth Amendment to Amended and Restated Credit and Security Agreement dated as of March 10, 2021*~~

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AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT

Amended and Restated Revolving Credit and Security Agreement (as hereafter amended, this "**Agreement**") dated as of September 30, 2015 among the BORROWERS (as hereinafter defined), the GUARANTORS (as hereinafter defined), the financial institutions which are now or which hereafter become a party hereto as LENDERS (collectively, "**Lenders**" and each individually a "**Lender**"), PNC BANK, NATIONAL ASSOCIATION ("**PNC**"), as agent for Lenders (PNC, in such capacity, "**Agent**"), J.P. MORGAN ~~EUROPE LIMITED~~AG ("**JPM Europe**"), as European agent for the Lenders (JPM Europe, in such capacity, the "**European Agent**").

WHEREAS, the US-Canada Borrowers (as hereinafter defined), the US-Canada Guarantors (as hereinafter defined), various financial institutions (the "**Existing Lenders**"), and PNC as agent for the Existing Lenders, entered into that certain Revolving Credit and Security Agreement, dated January 16, 2015 (the "**Existing Credit Agreement**"); and

WHEREAS, the Loan Parties (as hereinafter defined), the Lenders and the Agents (as hereinafter defined) desire to amend and restate the Existing Credit Agreement pursuant to the terms and conditions set forth herein.

IN CONSIDERATION of the mutual covenants and undertakings herein contained, Borrowers, Guarantors, Lenders, Issuers (as hereinafter defined) and Agents hereby amend and restate the Existing Credit Agreement in its entirety as follows:

1. DEFINITIONS.

1.1 Accounting Terms. As used in this Agreement, the Other Documents or any certificate, report or other document made or delivered pursuant to this Agreement, accounting terms not defined in Section 1.2 or elsewhere in this Agreement and accounting terms partly defined in Section 1.2 to the extent not defined shall have the respective meanings given to them under GAAP; provided, however that, whenever such accounting terms are used for the purposes of determining compliance with financial covenants in this Agreement, such accounting terms shall be defined in accordance with GAAP as applied in preparation of the audited financial statements of Borrowers on a Consolidated Basis for the fiscal year ended December 31, ~~2014~~2020. If there occurs after the Closing Date any change in GAAP that affects in any respect the calculation of any covenant contained in this Agreement or the definition of any term defined under GAAP used in such calculations, Agent, Lenders and Borrowers shall negotiate in good faith to amend the provisions of this Agreement that relate to the calculation of such covenants with the intent of having the respective positions of Agent, Lenders and Borrowers after such change in GAAP conform as nearly as possible to their respective positions as of the Closing Date, provided, that, until any such amendments have been agreed upon, the covenants in this Agreement shall be calculated as if no such change in GAAP had occurred and Borrowers shall provide additional financial statements or supplements thereto, attachments to Officer's Certificates and/or calculations as Agent may reasonably require in order to provide the appropriate financial information required hereunder with respect to Borrowers both reflecting any applicable changes in GAAP and as necessary to demonstrate compliance with the financial covenants before giving effect to the applicable changes in GAAP. Without limiting the foregoing, for purposes of determining compliance with any provision of this Agreement and any related definitions, the determination of whether a lease is to be treated as an operating lease or capital lease shall be made without giving effect to any change in GAAP that becomes

effective on or after the Fourth Amendment Closing Date that would require operating leases to be treated similarly to capital leases.

1.2 General Terms. For purposes of this Agreement the following terms shall have the following meanings:

2021 Convertible Notes Warrant Transaction shall mean any call option on, or any warrant or right to purchase (or substantially equivalent derivative transaction), the Company's common shares (including, for the avoidance of doubt, any net share settled call option or warrant) sold by the Company substantially concurrently with, and in connection with, the purchase by the Company of any 2021 Convertible Notes Hedge Transaction.

2022 Convertible Notes shall mean the Company's 4.50% unsecured senior convertible notes, issued in 2017 and due June 1, 2022, in the aggregate original principal amount not to exceed \$120,000,000.

2022 Convertible Notes Call Spread Transaction shall mean all 2022 Convertible Notes Hedge Transactions and all 2022 Convertible Notes Warrant Transactions.

2022 Convertible Notes Hedge Transaction shall mean any call option (or substantially equivalent derivative transaction) on the Company's common shares (including, for the avoidance of doubt, any call option that may be settled in whole or in part in cash) purchased by the Company substantially concurrently with, and in connection with, any issuance or issuances of the 2022 Convertible Notes; provided that the purchase price for such 2022 Convertible Notes Hedge Transaction, less the proceeds received by the Company from the sale of any related 2022 Convertible Notes Warrant Transaction, does not exceed the net proceeds received by the Company from the sale of the related 2022 Convertible Notes.

2022 Convertible Notes Warrant Transaction shall mean any call option on, or any warrant or right to purchase (or substantially equivalent derivative transaction), the Company's common shares (including, for the avoidance of doubt, any net share settled call option or warrant) sold by the Company substantially concurrently with, and in connection with, the purchase by the Company of any 2022 Convertible Notes Hedge Transaction.

2024 Convertible Notes shall mean the Company's 5.00% unsecured senior convertible notes, issued in 2019 and 2020 and due November 15, 2024, in the aggregate original principal amount not to exceed \$146,784,000.

2026 Convertible Notes shall mean the Company's unsecured senior convertible notes, issued in 2021 and due in 2026, in the aggregate original principal amount not to exceed \$150,000,000.

2026 Convertible Notes Hedge Transaction shall mean any call or capped call option (or substantially equivalent derivative transaction) on the Company's common shares (including, for the avoidance of doubt, any call or capped call option that may be settled in whole or in part in cash) purchased by the Company substantially concurrently with, and in connection with, any issuance or issuances of the 2026 Convertible Notes; provided that the purchase price for such 2026 Convertible Notes Hedge Transaction, does not exceed the net proceeds received by the Company from the sale of the related 2026 Convertible Notes.

Accountants shall have the meaning set forth in Section 9.7 hereof.

Adjusted LIBO Rate Daily Simple RFR means, with respect to any Eurocurrency borrowing for any applicable Interest Period, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate) for European Advance denominated in British Pounds Sterling, Euro or Dollars (as applicable) and for a period an interest rate per annum equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen or, in the event such rate does not appear on a Thomson Reuters page or screen, on any successor or substitute page or screen that displays such rate in place of Thomson Reuters, or if such successor or substitute page or screen ceases to be available, on the appropriate page of such other information service that publishes such rate applicable to the relevant currency as shall be reasonably selected by the European Agent from time to time in its reasonable discretion (the "**LIBO Screen Rate**") at approximately 11:00 a.m., London time, two (2) business days prior (or the same business day ~~the~~ Daily Simple RFR for British Pounds Sterling) to the commencement of such Interest Period; ~~provided that, (x) if the LIBO Screen Rate shall~~ Adjusted Daily Simple RFR as so determined would be less than 0.25% the Floor, such rate shall be deemed to be 0.25% equal to the Floor for the purposes of this Agreement ~~and~~.

Adjusted Daily Simple RFR for Dollars means an interest rate per annum equal to (y) ~~if the LIBO Screen Rate shall not be available at such time for a period equal in length to such~~ Daily Simple SOFR plus (b) 0.10%.

Adjusted EURIBOR Rate means, with respect to any European Advance denominated in Euros for any Interest Period ~~(, an "~~ **LIBO Impacted** ~~interest rate per annum equal to (a) the EURIBOR Rate for such Interest Period")~~, then the LIBO Rate shall be the LIBO Interpolated Rate at such time, unless the European 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) multiplied by (b) the Statutory Reserve Rate; ~~provided, further that, if any LIBO Interpolated~~ the Adjusted EURIBOR Rate shall as so determined would be less than 0.25% the Floor, such rate shall be deemed to be 0.25% equal to the Floor for the purposes of this Agreement.

Advance Currency shall have the meaning set forth in Section 6.20(a).

Advance Rates shall mean collectively the US-Canada Advance Rates and the European Receivables Advance Rate.

Advances shall mean and include the US-Canada Advances and the European Advances.

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

Affected Lender shall have the meaning set forth in Section 3.11 hereof.

Affiliate of any Person shall mean (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director, manager, member, managing member, general partner or officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote 5% or more of the Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for any such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

Agent shall have the meaning set forth in the preamble to this Agreement and shall include its successors and assigns.

Agents shall mean, individually and collectively as the context may require, the Agent ~~and, the~~ European Agent and the European Collateral Agent and "any Agent" shall be interpreted accordingly.

Agreement shall mean this Amended and Restated Revolving Credit and Security Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

Alternate Base Rate shall mean, for any day, a rate per annum equal to the highest of (a) the Base Rate in effect on such day, (b) the sum of the Overnight Bank Funding Rate in effect on such day *plus* one half of one percent (0.5%), and (c) the sum of ~~the~~ Daily ~~Euro-Rate~~ Simple SOFR in effect on such day *plus* one percent (1.0%), so long as ~~a~~ Daily ~~Euro-Rate~~ Simple SOFR is offered, ascertainable and not unlawful; provided, however, if the Alternate Base Rate as determined above would be less than zero, then such rate shall be deemed to be zero. Any change in the Alternate Base Rate (or any component thereof) shall take effect at the opening of business on the day such change occurs.

Alternate Source shall have the meaning set forth in the definition of Overnight Bank Funding Rate.

Amendment and Ratification shall collectively mean those certain Amendment and Ratification of Other Documents, dated the Closing Date, with respect to certain of the Other Documents.

Anti-Corruption Laws shall mean the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and any other similar anti-corruption laws or regulations administered or enforced in any jurisdiction in which the Borrower or any of its Subsidiaries conduct business.

Anti-Terrorism Laws shall mean any Laws relating to terrorism, trade sanctions programs and embargoes (including economic or financial sanction or trade embargoes imposed, administered or enforced by (a) the United States Government, including, without limitation, the Office of Foreign Assets Control, or (b) the United Nations Security Council, Canada, the European Union, any European Union member state or Her Majesty's Treasury of the United Kingdom), import/export licensing, money laundering, corruption or bribery (including Laws comprising or implementing the Canadian Anti-Money Laundering & Anti-Terrorism Legislation), and any regulation, order, or directive promulgated, issued or enforced pursuant to such Laws, all as amended, supplemented or replaced from time to time.

Applicable Agent shall mean (i) with respect to matters relating to the English Facility and French Facility and the funding of the European Advances, the European Agent, (ii) with respect to matters relating to Collateral of the European Loan Parties, the European Collateral Agent and (iii) with respect to all other matters, the Agent.

Applicable Borrowing Agent shall mean (i) with respect to matters relating to the English Facility, the French Facility and European Advances, the European Borrowing Agent, and (ii) with respect to all other matters, the Borrowing Agent.

Applicable Currency shall mean with respect to any Advance or payment of principal, interest, fees or any other amount in respect of the Obligations under (i) the US-Canada Facility, Dollars, and (ii) the English Facility and the French Facility, any Applicable European Currency.

Applicable European Currency shall mean with respect to (i) any Advance requested by the European Borrowing Agent under the English Facility or the French Facility in accordance with the terms hereof, British Pounds Sterling, Euros or Dollars as requested by European Borrowing Agent, (ii) any payment by the European Borrowers of principal or interest (including any payment of interest made pursuant to a deemed Advance in accordance with Section 2.2(h)) under any Advance made under the English Facility or the French Facility, the currency in which such Advance was made, and (iii) any deemed Advance made under the English Facility or the French Facility in accordance with Section 2.2(h) or otherwise to pay fees or charges, the currency in which such fee or charge is payable.

Applicable Law shall mean all laws, rules and regulations applicable to the Person, conduct, transaction, covenant, Other Document or contract in question, including all applicable common or civil law and equitable principles, all provisions of all applicable state, federal, provincial, local and foreign constitutions, statutes, rules, regulations, treaties, directives and orders of any Governmental Body, and all orders, judgments and decrees of all courts and arbitrators.

Applicable Margin shall mean singularly or collectively as context may require the European Applicable Margin and the US-Canada Applicable Margin.

Applicable Required Lenders shall mean (i) with respect to matters specifically relating to the US-Canada Facility, US-Canada Advances and US-Canada Collateral, the US-Canada Required Lenders, (ii) with respect to matters specifically relating to the English Facility, the French Facility, European Advances and European Collateral, the European Required Lenders and (iii) with respect to all other matters, it shall mean both the US-Canada Required Lenders and the European Required Lenders.

Application Date shall have the meaning set forth in Section 2.7(b) hereof.

Approvals shall have the meaning set forth in Section 5.11(b) hereof.

Approved Electronic Communication shall mean each notice, demand, communication, information, document and other material transmitted, posted or otherwise made or communicated by e-mail, E-Fax, ~~SyndTrak~~, the ~~StuckyNet System~~ [Credit Management Module of PNC's PINACLE® system](#), or any other equivalent electronic service agreed to by Applicable Agent, whether owned, operated or hosted by Applicable Agent, any Lender, any of their Affiliates or any other Person, that any party is obligated to, or otherwise chooses to, provide to Applicable Agent pursuant to this Agreement or any Other Document, including any financial statement, financial and other report, notice, request, certificate and other information material; provided that Approved Electronic Communications shall not include any notice, demand, communication, information, document or other material that Applicable Agent specifically instructs a Person to deliver in physical form.

Availability Block shall mean \$3,000,000.00 plus any amount by which it is increased from time to time pursuant to Section 13.1 in the event of a Springing Maturity Date.

Bail-In Action means the exercise of any Write-Down and Conversion Powers by the applicable ~~EEA~~ Resolution Authority in respect of any liability of an ~~EEA~~ [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 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).

Base Rate shall mean the base commercial lending rate of PNC as publicly announced to be in effect from time to time, such rate to be adjusted automatically, without notice, on the effective date of any change in such rate. This rate of interest is determined from time to time by PNC as a means of pricing some loans to its customers and is neither tied to any external rate of interest or index nor does it necessarily reflect the lowest rate of interest actually charged by PNC to any particular class or category of customers of PNC.

Beneficial Owner shall mean, for each Borrower (other than the Company), each of the following: (a) each individual, if any, who, directly or indirectly, owns 25% or more of such Borrower's Equity Interests; and (b) a single individual with significant responsibility to control, manage, or direct such Borrower.

Benefited Lender shall have the meaning set forth in Section 2.5(e) hereof.

Blocked Account Bank shall have the meaning set forth in Section 4.8(h) hereof.

Blocked Accounts shall have the meaning set forth in Section 4.8(h) hereof.

Borrower or Borrowers shall mean the US-Canada Borrowers and the European Borrowers.

Borrowers' Account shall mean the US-Canada Borrowers' Account or the European Borrowers' Account, as applicable.

Borrower DTTP Filing shall mean an HM Revenue & Customs Form DTTP2, duly completed and filed by the relevant Loan Party, which contains the scheme reference number and jurisdiction of tax residence provided by the relevant Lender below its name on the relevant signature page or as otherwise notified to the Applicable Borrowing Agent and the Applicable Agent.

Borrower Joinder shall mean a joinder by a Person as a US-Canada Borrower or a European Borrower, as applicable, under this Agreement and the Other Documents in substantially the form of Exhibit 7.12(a).

Borrowers on a Consolidated Basis shall mean the consolidation in accordance with GAAP of the accounts or other items of Borrowers and their respective Subsidiaries.

Borrowing Agent shall mean the Company.

Borrowing Base Certificates shall mean singularly or collectively as the context may require the European Borrowing Base Certificate and the US-Canada Borrowing Base Certificate.

British Pounds Sterling shall mean lawful currency of the United Kingdom.

Business Day shall mean any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in East Brunswick, New Jersey, and (i) ~~if the applicable Business Day relates to any Euro-Rate Loan or LIBOR Rate Loan, such day must also be a day on which dealings are carried on in~~ (in relation

to ~~any Euro-Rate Loan or LIBOR Rate Loan~~ European Advances denominated in ~~Dollars or British Pounds Sterling~~ the, any day (other than a Saturday or a Sunday) on which banks are open for business in London interbank market or, (ii) in relation to any LIBOR Rate-Loan European Advances denominated in Euros) ~~the European interbank market, and in relation to the calculation or computation of EURIBOR, any day which is a Target Day, (iii) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings in the Applicable Currency of such RFR Loan, any such day that is only an RFR Business Day, and (iv)~~ if the applicable Business Day relates to a European Borrower or a European Guarantor, it shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required to be closed for business in Paris, France or London, England. Notwithstanding the foregoing, when the term “Business Day” is used in connection with an amount that bears interest at a rate based on SOFR or any direct or indirect calculation or determination of SOFR, the “Business Day” means any such day that is also a U.S. Government Securities Business Day.

CAM means the mechanism for the allocation and exchange of interests in the European Advances, participations in European Letters of Credit and collections thereunder established under Section 16.23.

CAM Exchange means the exchange of the European Lenders' interests provided for in Section 16.23.

CAM Exchange Date means the first date after the Closing Date on which there shall occur (a) any event described in Section 10.7, or (b) an acceleration of the Obligations and termination of the European Revolving Commitments pursuant to Article 11.

CAM Percentage means as to each European Lender, a fraction, (a) the numerator of which shall be the aggregate amount of such Lender's European Revolving Commitments immediately prior to the CAM Exchange Date and the termination of the European Revolving Commitments, and (b) the denominator of which shall be the amount of the European Revolving Commitments of all the European Lenders immediately prior to the CAM Exchange Date and the termination of the European Revolving Commitments.

Canadian Advance Rates shall have the meaning specified in the definition of US-Canada Formula Amount.

Canadian Anti-Money Laundering & Anti-Terrorism Legislation shall mean the *Criminal Code*, R.S.C. 1985, c. C 46, *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 and the *United Nations Act*, R.S.C. 1985, c. U 2 or any similar Canadian legislation, together with all rules, regulations and interpretations thereunder or related thereto including, without limitation, the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism and the United Nations Al Qaida and Taliban Regulations* promulgated under the *United Nations Act*.

Canadian Benefit Plan shall mean any plan, fund, program, or policy, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, providing material employee benefits, including medical, hospital care, dental, sickness, accident, disability, life insurance, pension, retirement or savings benefits, under which any Borrower has any liability with respect to any employee or former employee, but excluding any Canadian Pension Plans.

Canadian Borrowers shall mean the Persons from time to time listed on Annex C hereto.

Canadian Collateral shall mean the assets of the Canadian Loan Parties on which Liens are granted pursuant to the Canadian Security Agreement securing the Obligations.

Canadian Guarantors shall mean the Persons from time to time listed on Annex D hereto, and any other Person who may hereafter guarantee payment or performance of the whole or any part of the Obligations.

Canadian Inventory Advance Rate shall have the meaning specified in the definition of US-Canada Formula Amount.

Canadian Inventory NOLV Advance Rate shall have the meaning specified in the definition of US-Canada Formula Amount.

Canadian Loan Parties shall mean the Canadian Borrowers and the Canadian Guarantors.

Canadian Pension Plan shall mean each pension plan required to be registered under Canadian federal or provincial law that is maintained or contributed to by a Borrower for its employees or former employees, but does not include the Canada Pension Plan as maintained by the Government of Canada.

Canadian Pension Termination Event shall mean (a) the voluntary full or partial wind up of a Canadian Pension Plan that is a registered pension plan by a Borrower; (b) the institution of proceedings by any Governmental Body to terminate in whole or in part or have a trustee appointed to administer such a plan; or (c) any other event or condition which might constitute grounds for the termination of, winding up or partial termination of, winding up or the appointment of trustee to administer, any such plan.

Canadian Receivables Advance Rate shall have the meaning specified in the definition of US-Canada Formula Amount.

Canadian Reorganization shall mean the reorganization described on Schedule 1.2(c).

Canadian Security Agreement shall mean any security agreement (including, for certainty, any deed of hypothec or bond pledge agreement governed by the laws of Quebec) executed by any Canadian Loan Party in favour of Agent securing the Obligations or the Guaranty of such Canadian Loan Party, in form and substance satisfactory to Agent.

Capital Expenditures shall mean expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements (or of any replacements or substitutions thereof or additions thereto) which have a useful life of more than one year and which, in accordance with GAAP, would be classified as capital expenditures.

Capitalized Lease Obligation shall mean any Indebtedness of any Loan Party represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Management Liabilities shall have the meaning provided in the definition of "Cash Management Products and Services."

Cash Management Products and Services shall mean agreements or other arrangements under which any Agent or any Lender or any Affiliate of any Agent or a Lender provides or arranges for the provision of any of the following products or services to any Loan Party or any Subsidiary of any Loan Party: (a) credit cards; (b) credit card processing services; (c) debit cards and stored value cards; (d) commercial cards; (e) ACH transactions; and (f) cash management and treasury management services and products, including without limitation controlled disbursement accounts or services, lockboxes, automated clearinghouse transactions, overdrafts, interstate depository network services. The indebtedness, obligations and liabilities of any Loan

Party to the provider of any Cash Management Products and Services (including all obligations and liabilities owing to such provider in respect of any returned items deposited with such provider) (the "**Cash Management Liabilities**") shall be "Obligations" hereunder, guaranteed obligations under the Guaranty and secured obligations under any Guarantor Security Agreement or European Collateral Document, as applicable, and otherwise treated as Obligations for purposes of each of the Other Documents. The Liens securing the Cash Management Products and Services shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5.

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

CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq.

Certificate of Beneficial Ownership shall mean, for each Borrower (other than the Company), a certificate in form and substance acceptable to Agent (as amended or modified by Agent from time to time in its sole discretion), certifying, among other things, the Beneficial Owner of such Borrower.

CFTC shall mean the Commodity Futures Trading Commission.

Change in Law shall mean the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Applicable Law; (b) any change in any Applicable Law or in the administration, implementation, interpretation or application thereof by any Governmental Body; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Body; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Applicable Law) and (y) all requests, rules, regulations, guidelines, interpretations 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 (whether or not having the force of law), 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, promulgated or implemented.

Change of Control shall mean any of the following occurrences:

(a) any person or group of persons (within the meaning of Sections 13(d) or 14(a) of the Securities Exchange Act of 1934, as amended) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under said Act) 35% or more of the voting power of the Equity Interests of the Company;

(b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were neither (i) nominated, appointed or approved by shareholders for election to the board of directors of the Company, or (ii) appointed by the board comprised of directors a majority of whom were so nominated, appointed or approved;

(c) any Person (or Persons acting in concert) shall have acquired by contract or otherwise the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Company, or control of the Equity Interests of the Company entitled to vote for members of the board of directors or equivalent governing body of the

Company on a fully-diluted basis (and taking into account all such Equity Interests that such Person or Persons have the right to acquire pursuant to any option right) representing 35% or more of the combined voting power of such Equity Interests;

(d) a "change of control" or any comparable term under, and as defined in the documents governing the 2022 Convertible Notes, the 2024 Convertible Notes, the 2026 Convertible Notes or any other material Indebtedness of the Company shall occur prior to the date such Indebtedness is repaid or redeemed in accordance with, or to the extent not prohibited by, the provisions of this Agreement; or

(e) the Company shall fail to own and ~~Control~~control, directly or indirectly, 100% of the outstanding Equity Interests of each Borrower.

Charges shall mean all taxes, charges, fees, imposts, levies or other assessments, including all net income, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation and property taxes, custom duties, fees, assessments, liens, claims and charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts, imposed by any taxing or other authority, domestic or foreign (including the Pension Benefit Guaranty Corporation or any environmental agency or superfund or any other applicable Governmental Body), upon the Collateral, any Loan Party or any of its Affiliates.

CIP Regulations shall have the meaning set forth in Section 14.12 hereof.

Claims shall have the meaning set forth in Section 16.5.

Closing Date shall mean September 30, 2015.

Closing Projections shall have the meaning set forth in Section 5.9(a) hereof.

CMS shall mean the Centers for Medicare and Medicaid Services of HHS, any successor thereof and any predecessor thereof, including the Health Care Financing Administration.

Code shall mean the Internal Revenue Code of 1986 and, regarding the Canadian Loan Parties, the Income Tax Act (Canada), as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

Collateral shall mean, collectively, the US-Canada Collateral, the English Collateral, the French Collateral and the Dutch Collateral.

Commitment Transfer Supplement shall mean a document in the form of Exhibit 16.3 hereto, properly completed and otherwise in form and substance satisfactory to Agent by which the Purchasing Lender purchases and assumes a portion of the obligation of Lenders to make Advances under this Agreement.

Company shall mean Invacare Corporation, an Ohio corporation.

Computation Date shall have the meaning specified in Section 2.26 herein.

Conforming Changes means, with respect to the Term SOFR Rate or 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, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of the Term SOFR Rate or such Benchmark Replacement and to permit the administration thereof by the Applicable Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Applicable Agent determines that no market practice for the administration of the Term SOFR Rate or the Benchmark Replacement exists, in such other manner of administration as the Applicable Agent decides is reasonably necessary in connection with the administration of this Agreement and the Other Documents).

Consent Decree shall mean that certain Consent Decree and Permanent Injunction dated as of December 21, 2012 with the United States of America.

Consent Decree Event shall mean the Company's agreement, pursuant to the Consent Decree, to not design, manufacture, process, pack, repack, label or hold for distribution certain products from or at its locations at One Invacare Way, Elyria, OH 44035 and 1200 Taylor Street, Elyria, OH 44035, subject to satisfaction by the Company of certain requirements more particularly set forth therein and the receipt of related governmental approvals.

Consents shall mean all filings and all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Bodies and other third parties, domestic or foreign, necessary to carry on any Loan Party's business or necessary (including to avoid a conflict or breach under any agreement, instrument, other document, license, permit or other authorization) for the execution, delivery or performance of this Agreement or the Other Documents, including any Consents required under all applicable federal, provincial, state or other Applicable Law.

Consigned Inventory shall mean Inventory of any applicable Loan Party that is in the possession of such Loan Party or another Person on a consignment, sale or return, or other basis that does not constitute a final sale and acceptance of such Inventory.

Contract Rate shall have the meaning set forth in Section 3.1 hereof.

Contribution Notice means a contribution notice issued by the Pensions Regulator under s38 or s47 of the United Kingdom's Pensions Act 2004.

Controlled Group shall mean, at any time, each Loan Party and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Loan Party, are treated as a single employer under Section 414 of the Code.

Convertible Notes Prepayment Test shall mean US-Canada Undrawn Availability is the greater of (1) \$18,000,000 and (2) thirty percent (30%) of the Maximum US-Canada Revolving Advance Amount. US-Canada Undrawn Availability in the foregoing calculations shall be measured both (i) as the average during the thirty (30) day period immediately preceding any applicable transaction and (ii) on the date of such transaction (after giving effect to such transaction).

Corresponding Obligations means all Obligations as they may exist from time to time, other than the Parallel Debt.

Covered Entity shall mean (a) each Loan Party, each of Loan Party's Subsidiaries, all Guarantors and all pledgors of Collateral and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

Customer shall mean and include the account debtor with respect to any Receivable and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party who enters into or proposes to enter into any contract or other arrangement with any applicable Loan Party, pursuant to which such Loan Party is to deliver any personal property or perform any services.

Daily Euro-Rate shall mean Simple ESTR means, for any Business Day, an interest rate per annum equal to the greater of (a) ESTR based on the published rate of ESTR as of the relevant Business Day and (b) 0.00%. Any change in Daily Simple ESTR due to a change in the applicable ESTR shall be effective from and including the effective date of such change in the ESTR without notice to the Borrowers.

Daily Simple RFR means, for any day (an “RFR Interest Day”), an interest rate per annum equal to, for any RFR Loan denominated in British Pounds Sterling, the greater of (a) SONIA for the day that is five (5) RFR Business Days prior to (A) if such RFR Interest Day is an RFR Business Day, such RFR Interest Day or (B) if such RFR Interest Day is not an RFR Business Day, the RFR Business Day immediately preceding such RFR Interest Day (provided that for any Overnight Rate Loans denominated in British Pounds Sterling, SONIA shall be based on the published rate for SONIA as of the Business Day such Overnight Rate Loan is advanced) and (b) 0.00%.

Daily Simple SOFR means, for any day (a “SOFR Rate Day”), the interest rate per annum determined by the Agent by dividing (x) the Published Rate the resulting quotient rounded upwards, at the Agent's discretion, to the nearest 1/100th of 1%) (A) SOFR for the day (the “SOFR Determination Date”) that is five (5) Business Days prior to (i) such SOFR Rate Day if such SOFR Rate Day is a Business Day or (ii) the Business Day immediately preceding such SOFR Rate Day if such SOFR Rate Day is not a Business Day, by (y) B a number equal to 1.00 minus the SOFR Reserve Percentage. ~~Notwithstanding the foregoing, if the~~ If Daily Euro-Rate Simple SOFR as determined above would be less than 0.25%, such rate the SOFR Floor, then Daily Simple SOFR shall be deemed to be the SOFR Floor. If SOFR for any SOFR Determination Date has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (Pittsburgh, Pennsylvania time) on the second Business Day immediately following such SOFR Determination Date, then SOFR for such SOFR Determination Date will be SOFR for the first Business Day preceding such SOFR Determination Date for which SOFR was published in accordance with the definition of “SOFR”; provided that SOFR determined pursuant to this sentence shall be 0.25% used for all purposes of this Agreement calculating Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. If and when Daily Simple SOFR as determined above changes, any applicable rate of interest based on Daily Simple SOFR will change automatically without notice to the Borrowers, effective on the date of any such change.

Default shall mean an event, circumstance or condition which, with the giving of notice or passage of time or both, would constitute an Event of Default.

Default Rate shall have the meaning set forth in Section 3.1 hereof.

Defaulting Lender shall mean any Lender that: (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Revolving Commitment Percentage of Advances, (ii) if applicable, fund any portion of its Participation Commitment in Letters of Credit or Swing Loans or (iii) pay over to any Agent, Issuer, Swing Loan Lender or any Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies 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 a particular Default or Event of Default, if any) has not been satisfied; (b) has notified Loan Parties or Agent 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 a particular Default or Event of 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 two (2) Business Days after request by Agent, 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 Advances and, if applicable, participations in then outstanding Letters of Credit and Swing Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon Applicable Agent's receipt of such certification in form and substance satisfactory to Applicable Agent; (d) has become the subject of an Insolvency Event; (e) has failed at any time to comply with the provisions of Section 2.5(e) with respect to purchasing participations from the other Lenders, whereby such Lender's share of any payment received, whether by setoff or otherwise, is in excess of its pro rata share of such payments due and payable to all of Lenders; or (f) becomes the subject of a Bail-in Action.

Depository Accounts shall have the meaning set forth in Section 4.8(h) hereof.

Designated Lender shall have the meaning set forth in Section 16.2(d) hereof.

Designated Obligations shall mean all Obligations of the European Borrowers with respect to (a) principal and interest under the European Advances, (b) unreimbursed drawings under European Letters of Credit and interest thereon and (c) fees under Sections 3.2 and 3.3 hereof.

Document shall have the meaning given to the term "document" in the Uniform Commercial Code.

Dollar and the sign \$ shall mean lawful money of the United States of America.

Dollar Equivalent shall mean, with respect to any amount of any currency, as of any Computation Date, the Equivalent Amount of such currency expressed in Dollars.

Domestic Rate Loan shall mean any US-Canada Advance that bears interest based upon the Alternate Base Rate.

Dominion Period shall mean the period from the occurrence of a Dominion Triggering Event until the date of a subsequent Dominion Rescission Triggering Event during which Agent has Full Dominion.

Dominion Rescission Triggering Event shall mean the occurrence of both of the following:

- (a) no Event of Default or Default exists; and
- (b) US-Canada Undrawn Availability is equal to or greater than 12.5% of the Maximum US-Canada Revolving Advance Amount for thirty (30) consecutive days.

Dominion Triggering Event shall mean the occurrence of either of the following:

- (a) an Event of Default or Default, which is continuing; or
- (b) US-Canada Undrawn Availability is less than the US-Canada Undrawn Availability Required Amount.

Drawing Date shall have the meaning set forth in Section 2.13(b) hereof.

Dutch Collateral shall mean the assets subject to Liens in any Dutch Collateral Document.

Dutch Collateral Documents means the Dutch Security Agreement and any other Dutch law security agreements delivered pursuant to this Agreement and granted by any Loan Party and all confirmations and acknowledgements thereof, in each case relating to the grant to an Agent of a security interest by such Loan Party.

Dutch Commissionaire Agreement means the commissionaire agreement dated December 1, 2004 between Invacare International S.à r.l. and Invacare B.V. (as amended).

Dutch Guarantors shall mean the Persons from time to time listed on Annex I hereto.

In this Credit Agreement, where it relates to a Dutch Guarantor, a reference to:

- (i) an "**administrator**" includes a *bewindvoerder*;
- (ii) an "**attachment**" includes a *beslag*;
- (iii) to "**co-operate (with)**" includes *medewerking verlenen bij*;
- (iv) a "**counterparty**" includes a *wederpartij*;
- (v) the "**Dutch Civil Code**" means *Burgerlijk Wetboek*;
- (vi) the "**General Banking Conditions of the Dutch Bankers' Association**" means the *Algemene bankvoorwaarden van de Nederlandse Vereniging voor Banken*;
- (vii) "**insolvency**" includes a bankruptcy and moratorium;
- (viii) a "**moratorium**" includes a *surseance van betaling*;
- (ix) "**negligence**" includes *schuld* and "**gross negligence**" includes *grove schuld*;
- (x) a "**security interest**" includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*), and, in general, any right *in rem* (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*);
- (xi) a "**Subsidiary**" includes a *dochtermaatschappij* as defined in section 2:24a of the Dutch Civil Code;
- (xii) a "**trustee**" includes a *curator*;
- (xiii) "**willful misconduct**" includes *opzet*; and
- (xiv) a "**winding up**" includes a Dutch Guarantor being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*).

~~Dutch Collateral shall mean the assets subject to Liens in any Dutch Collateral Document.~~

~~Dutch Collateral Documents means the Dutch Security Agreement and any other Dutch law security agreements delivered pursuant to this Agreement and granted by any Loan Party and all confirmations and acknowledgements thereof, in each case relating to the grant to an Agent of a security interest by such Loan Party.~~

~~Dutch Commissionaire Agreement means the commissionaire agreement dated December 1, 2004 between Invacare International S.à r.l. and Invacare B.V. (as amended).~~

Dutch Security Agreement means the Dutch security agreement dated on or about the Eighth Amendment Effective Date entered into between each Dutch Guarantor and the European Collateral Agent in relation to the European Blocked Accounts and the Receivables of the Dutch Guarantor.

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 shall mean the date indicated in a document or agreement to be the date on which such document or agreement becomes effective, or, if there is no such indication, the date of execution of such document or agreement.

Eighth Amendment shall mean that certain Eighth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of the Eighth Amendment Effective Date, by and among the Loan Parties, the Lenders party thereto, and the Agents.

Eighth Amendment Effective Date shall mean January 15, 2021.

Eligibility Date shall mean, with respect to each Borrower and Guarantor and each Swap, the date on which this Agreement or any Other Document becomes effective with respect to such Swap (for the avoidance of doubt, the Eligibility Date shall be the Effective Date of such Swap if this Agreement or any Other Document is then in effect with respect to such Borrower or Guarantor, and otherwise it shall be the Effective Date of this Agreement and/or such Other Document(s) to which such Borrower or Guarantor is a party).

Eligible Canadian Inventory shall mean Eligible Inventory of a Canadian Borrower that (i) is located in a province of Canada that has adopted the PPSA and the Agent has registered under the PPSA in such jurisdiction and (ii) has not been included as Eligible Domestic Inventory under the US-Canada Formula Amount.

Eligible Canadian Receivables shall mean Eligible Receivables of a Canadian Borrower that (i) arise in a province of Canada that has adopted the PPSA and the Agent has registered

under the PPSA in such jurisdiction and (ii) has not been included as Eligible Domestic Receivables under the US-Canada Formula Amount.

Eligible Contract Participant shall mean an "eligible contract participant" as defined in the CEA and regulations thereunder.

Eligible Customs Broker shall mean a customs broker that has its principal assets and principal place of business in the United States and which is reasonably acceptable to Agent and with which Agent has entered into a freight forwarder agreement, in form and substance acceptable to Agent.

Eligible Domestic Inventory shall mean Eligible Inventory of a US Borrower that has not been included as Eligible Canadian Inventory.

Eligible Domestic Receivables shall mean Eligible Receivables of a US Borrower that has not been included as Eligible Canadian Receivables.

Eligible European Jurisdiction shall mean each of Austria, Belgium, Denmark, Finland, France, Germany, Italy, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom, provided that the European Agent may, in its sole discretion, remove one or more of the countries comprising an Eligible European Jurisdiction and subsequently add one or more of such countries back as an Eligible European Jurisdiction.

Eligible Fixed Assets shall mean and include working machinery and equipment of a US Borrower located in the United States, which is not, in Agent's opinion, obsolete or unmerchantable and which Agent, in its Permitted Discretion, shall not deem ineligible, based on such considerations as Agent may from time to time deem appropriate, including whether the machinery and equipment is subject to a perfected, first priority security interest in favor of Agent and no other Lien (other than a Permitted Encumbrance other than a Purchase Money Security Interest). Eligible Fixed Assets will amortize quarterly based on a five (5) year straight-line schedule.

Eligible Foreign In-Transit Inventory shall mean finished goods Inventory of a US Borrower that would be Eligible Inventory but for the fact that it is Foreign In-Transit Inventory, but only if: (a) such Foreign In-Transit Inventory is the subject of a Negotiable Document that designates Agent as the consignee; (b) such Foreign In-Transit Inventory has been paid for by US Borrowers or Agent has otherwise satisfied itself that a final sale of such Inventory to such US Borrower has occurred and title has passed to such US Borrower; (c) Agent has received assurances satisfactory to it that all of the original Documents evidencing such Foreign In-Transit Inventory (all of which Documents shall be Negotiable Documents) have been issued by the applicable carrier, which carrier shall not be an Affiliate of any Loan Party, and have been forwarded to an Eligible Customs Broker (and, if such Documents are not actually received by an Eligible Customs Broker within ten (10) days after the sending thereof, such Foreign In-Transit Inventory shall thereupon cease to be Eligible Foreign In-Transit Inventory), or, if required by Agent in the exercise of its sole discretion, all of such original Documents are in the possession, in the United States, of Agent or an Eligible Customs Broker (as specified by Agent); (d) no default exists under any agreement in effect between the vendor of such Inventory and such US Borrower that would permit such vendor under any Applicable Law (including the Uniform Commercial Code) to divert, reclaim, reroute, or stop shipment of such Inventory; (e) such Foreign In-Transit Inventory is fully insured by marine cargo or other similar insurance, in such amounts, with such insurance companies and subject to such deductibles as are satisfactory to Agent and in respect of which Agent has been named as lender loss payee; and (f) Agent has received an executed freight forwarder agreement with respect to such Inventory from an Eligible Customs Broker.

Eligible Inventory shall mean and include Inventory, excluding work in process, which is not, in the Applicable Agent's opinion, obsolete, slow moving or unmerchantable and which the Applicable Agent, in its Permitted Discretion, shall not deem ineligible Inventory, based on such considerations as such Applicable Agent may from time to time deem appropriate including whether the Inventory is subject to a perfected, first priority security interest in favor of Applicable Agent and no other Lien (other than a Permitted Encumbrance, other than a Purchase Money Security Interest). In addition, Inventory shall not be Eligible Inventory if it: (a) does not conform to all standards imposed by any Governmental Body which has regulatory authority over such goods or the use or sale thereof; (b) is Foreign In-Transit Inventory or in-transit within the United States; (c) is located outside the United States or Canada, or at a location that is not otherwise in compliance with this Agreement; (d) constitutes Consigned Inventory; (e) is the subject of an Intellectual Property Claim; (f) is subject to a License Agreement that limits, conditions or restricts the applicable Loan Party's or Applicable Agent's right to sell or otherwise dispose of such Inventory, unless Applicable Agent is a party to a Licensor/Agent Agreement with the Licensor under such License Agreement (or Applicable Agent shall agree otherwise in its Permitted Discretion after establishing reserves against the US-Canada Formula Amount with respect thereto as Agent shall deem appropriate in its Permitted Discretion); (g) is situated at a location not owned by a Loan Party unless the owner or occupier of such location has executed in favor of Agent a Lien Waiver Agreement (or Agent shall agree otherwise in its Permitted Discretion after establishing reserves against the US-Canada Formula Amount with respect thereto as Agent shall deem appropriate in its Permitted Discretion); or (h) or if the sale of such Inventory would result in an ineligible Receivable.

Eligible Receivables shall mean and include, each Receivable of a US-Canada Loan Party, European Borrower or Dutch Guarantor arising in the Ordinary Course of Business and which Applicable Agent, in its Permitted Discretion, shall deem to be an Eligible Receivable, based on such considerations as Applicable Agent may from time to time deem appropriate. A Receivable shall not be deemed eligible unless such Receivable is subject to Applicable Agent's first priority perfected security interest (which, in the case of Receivables of the English Borrowers, shall mean a first priority assignment by way of security or a first priority fixed charge (and shall not mean a first priority floating charge)) and no other Lien (other than Permitted Encumbrances), and is evidenced by an invoice or other documentary evidence satisfactory to Applicable Agent. In addition, no Receivable shall be an Eligible Receivable if:

(a) it arises out of a sale made by any Loan Party to an Affiliate of any Loan Party or to a Person controlled by an Affiliate of any Loan Party;

(b) (A) with respect to Receivables of the US-Canada Loan Parties: (i) it is due or unpaid more than 60 days after the original due date or, for terms ranging from net 0 to 60 days, more than 120 days after the original invoice date or, for terms ranging from net 61 to 120 days, more than 150 days after the original invoice date; (ii) to the extent that, for terms ranging from net 61 to 90 days aged 60 days or less past due, not to exceed 150 days from original invoice date, such Eligible Receivables included in the US-Canada Formula Amount exceed \$30,000,000 in the aggregate at any time; and (iii) to the extent that, for terms ranging from net 91 days to 120 days aged 30 days or less past due, not to exceed 150 days from original invoice date, such Eligible Receivables included in the US-Canada Formula Amount exceed \$20,000,000 in the aggregate at any time or (B) with respect to Receivables of the European Borrowers or the Dutch Guarantor it is due or unpaid more than 90 days after the original invoice date;

(c) fifty percent (50%) or more of the Receivables from such Customer are not deemed Eligible Receivables hereunder (as Agent, in its Permitted Discretion, may decrease such percentage from time to time);

(d) any covenant, representation or warranty contained in this Agreement with respect to such Receivable has been breached;

(e) an Insolvency Event shall have occurred with respect to such Customer;

(f) with respect to Receivables of US-Canada Loan Parties, the sale is to a Customer outside the United States of America or a province of Canada that has not adopted the PPSA, unless the sale is on letter of credit, guaranty or acceptance terms, in each case acceptable to Agent in its Permitted Discretion;

(g) the sale to the Customer is on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis or is evidenced by chattel paper;

(h) Applicable Agent believes, in its Permitted Discretion, that collection of such Receivable is insecure or that such Receivable may not be paid by reason of the Customer's financial inability to pay;

(i) with respect to Receivables of US-Canada Loan Parties, the Customer is the United States of America, any state or any department, agency or instrumentality of any of them, unless the applicable Loan Party assigns its right to payment of such Receivable to Applicable Agent pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. Sub-Section 3727 et seq. and 41 U.S.C. Sub-Section 15 et seq.) or has otherwise complied with other applicable statutes or ordinances, or if the Customer is any province in or the federal government of (or any department, agency or instrumentality thereof) Canada, unless the applicable Loan Party assigns its rights to payment of such Receivable to Applicable Agent pursuant to the Financial Administration Act, the general laws of Canada and of the applicable province, and such assignment has been acknowledged by such Governmental Body and is enforceable against it;

(j) the goods giving rise to such Receivable have not been delivered to and accepted by the Customer or the services giving rise to such Receivable have not been performed by the applicable Loan Party and accepted by the Customer or the Receivable otherwise does not represent a final sale;

(k) the Receivables of the Customer exceed a credit limit determined by Applicable Agent, in its Permitted Discretion, to the extent such Receivable exceeds such limit;

(l) the Receivable is subject to any offset, deduction, defense, dispute, credits or counterclaim (but such Receivable shall only be ineligible to the extent of such offset, deduction, defense or counterclaim), the Receivable includes any finance charge (but such Receivable shall only be ineligible to the extent of such finance charge), the Customer is also a creditor or supplier of a Loan Party or the Receivable is contingent in any respect or for any reason;

(m) the applicable Loan Party has made any agreement with any Customer for any deduction therefrom, except for discounts or allowances made in the Ordinary Course of Business for prompt payment, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto;

(n) any return, rejection or repossession of the merchandise has occurred or the rendition of services has been disputed;

- (o) such Receivable is not payable to a Loan Party or Subsidiary of a Loan Party;
- (p) such Receivable is not otherwise satisfactory to Applicable Agent in its Permitted Discretion;
- (q) in respect of any Receivables due to any European Borrower or Dutch Guarantor, it is subject to any limitation on assignment or other restriction (whether arising by operation of law, by agreement or otherwise) which would under the local governing law of the contract have the effect of restricting the assignment for or by way of security or the creation of security, in each case unless the European Agent has determined that such limitation is not enforceable;
- (r) in respect of any Receivables due to any European Borrower or Dutch Guarantor, the contract or agreement underlying such Receivable is governed by (or, if no governing law is expressed therein, is deemed to be governed by) the laws of any jurisdiction other than any Eligible European Jurisdiction;
- (s) in respect of any Receivables due to any European Borrower or Dutch Guarantor, the relevant Customer is not incorporated in an Eligible European Jurisdiction, unless, in any such case, such receivable is backed by a letter of **Creditcredit** acceptable to the European Agent, which is in the possession of, has been assigned to and is directly drawable by the European Agent;
- (t) with respect to any Receivable governed by French law, the Customer is a Consumer (*consommateur*) within the meaning of the French Consumer Code;
- (u) during a European Dominion Period such Receivable (governed by French law) is evidenced by a promissory note, bill of exchange or other instrument (such as a billet à ordre or lettre de change) (other than any such instrument which is only recorded electronically and which was never originated in paper format) and the European Agent does not have a first priority security over such instrument and/or such instrument has not been endorsed in favour of the European Agent;
- (v) with respect to any Receivable governed by French law, the Receivable is not a professional receivable (*créance professionnelle*) within the meaning of article L. 313-23 of the French Monetary and Financial Code;
- (w) with respect to any Receivables due to the English Borrower, if the English Distributor Agreement is terminated or repudiated, unless the European Agent (in its absolute discretion) notifies the Borrowing Agent otherwise;
- (x) with respect to any Receivables due to the French Borrower, if the French Commissionaire Agreement is terminated or repudiated, unless the European Agent (in its absolute discretion) notifies the Borrowing Agent otherwise;
- (y) with respect to any Receivables due to the Dutch Guarantor, if the Dutch Commissionaire Agreement is terminated or repudiated, unless the European Agent (in its absolute discretion) notifies the Borrowing Agent otherwise;
- (z) with respect to any Receivable governed by Dutch law, the Customer is a consumer (*consument*); or

(aa) with respect to any Receivable governed by Dutch law, is evidenced by an invoice which complies with all VAT regulations and which shows the amount and the percentage of VAT applied, if any.

Embargoed Property means any property (a) beneficially owned, directly or indirectly, by a Sanctioned Person; (b) that is due to or from a Sanctioned Person; (c) in which a Sanctioned Person otherwise holds any interest; (d) that is located in a Sanctioned Country; or (e) that otherwise would cause any actual or possible violation by the Lenders or Agent of any applicable Anti-Terrorism Law if the Lenders were to obtain an encumbrance on, lien on, pledge of, or security interest in such property or provide services in consideration of such property.

English Advances shall collectively mean and include the English Revolving Advances, English Letters of Credit and the English Swing Loans.

English Borrowers shall mean the Persons from time to time listed on Annex E hereto.

English Collateral shall mean the assets subject to Liens in any English Collateral Document.

English Collateral Documents means a debenture dated on or about the date of this Agreement made between the English Borrower and the European Collateral Agent as security trustee and any other English law security agreements delivered pursuant to this Agreement and granted by any Loan Party and all confirmations and acknowledgements thereof, in each case relating to the grant to an Agent of a security interest by such Loan Party.

English Distributor Agreement means the distributor agreement dated December 1, 2004 between (1) Invacare Limited and (2) Invacare International Sàrl (as amended).

English Facility means, collectively, the English Revolving Commitment and the extensions of credit made thereunder.

English Formula Amount shall mean an amount equal to the Dollar Equivalent amount of the sum of:

(A) up to eighty-five percent (85%) (the "**European Receivables Advance Rate**") of Eligible Receivables of the English Borrowers and the Dutch Guarantors; provided, however that that portion of the English Formula Amount based upon Eligible Receivables of the Dutch Guarantors shall at no time exceed \$5,000,000, *minus*

(B) the aggregate amount of any outstanding English Swing Loans, *minus*

(C) the aggregate Maximum Undrawn Amount of all outstanding English Letters of Credit, *minus*

(D) 50% of the European Availability Reserve, *minus*

(E) such reserves as European Agent may reasonably deem proper and necessary from time to time (including any European Reserves, without double counting with respect to any European Reserves already applied, relating to the English Loan Parties and the Dutch Guarantors and/or their assets).

English Guarantors shall mean the Persons from time to time listed on Annex F hereto.

English Law Guaranty shall mean the guarantee and indemnity governed by English law dated September 30, 2015, made between the European Guarantors (at such time) and the European Collateral Agent in its capacity as European Collateral Agent and security trustee, and the guaranty and indemnity governed by English law dated on or about the Eighth Amendment Effective Date, made between the European Guarantors (at such time), the Agent and the European Collateral Agent in its capacity as European Collateral Agent and security trustee.

English Lender shall mean each Lender with an English Revolving Commitment.

English Letter of Credit Sublimit shall mean Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00).

English Letters of Credit shall have the meaning set forth in Section 2.10(a) hereof.

English New Lender shall have the meaning set forth in Section 2.25(a) hereof.

English Obligations shall mean that portion of the Obligations arising from, related to or connected with the English Advances.

English Participation Commitment shall mean the obligation hereunder of each English Lender holding an English Revolving Commitment to buy a participation equal to its English Revolving Commitment Percentage (subject to any reallocation pursuant to Section 2.21(b)(iv) hereof) in the English Swing Loans made by European Swing Loan Lender hereunder as provided for in Section 2.3(d) hereof and in the English Letters of Credit issued hereunder as provided for in Section 2.13(a) hereof.

English Revolving Advances shall mean the advances made under Section 2.1(b) by English Lenders to English Borrowers.

English Revolving Commitment shall mean, as to any English Lender, the obligation of such English Lender, to make English Revolving Advances and participate in English Swing Loans and English Letters of Credit, in an aggregate principal and/or face amount not to exceed the English Revolving Commitment Amount (if any) of such English Lender.

English Revolving Commitment Amount shall mean, (i) as to any English Lender other than an English New Lender, the English Revolving Commitment amount (if any) set forth below such English Lender's name on the signature page hereto (or, in the case of any Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or 16.3(d) hereof, the English Revolving Commitment amount (if any) of such English Lender as set forth in the applicable Commitment Transfer Supplement), and (ii) as to any Lender that is an English New Lender, the English Revolving Commitment amount provided for in the joinder signed by such English New Lender under Section 2.25(a)(x), in each case as the same may be adjusted upon any increase by such English Lender pursuant to Section 2.25 hereof, or any assignment by or to such English Lender pursuant to Section 16.3(c) or 16.3(d) hereof.

English Revolving Commitment Percentage shall mean, (i) as to any English Lender other than an English New Lender, the English Revolving Commitment Percentage (if any) set forth below such English Lender's name on the signature page hereof (or, in the case of any English Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or 16.3(d) hereof, the English Revolving Commitment Percentage (if any) of such English Lender as set forth in the applicable Commitment Transfer Supplement), and (ii) as to any Lender that is an English New Lender, the English Revolving Commitment Percentage provided for in the joinder signed by such English New Lender under Section 2.25(a)(x), in each case as the same may be adjusted upon any increase in the Maximum English Revolving

Advance Amount pursuant to Section 2.25 hereof, or any assignment by or to such English Lender pursuant to Section 16.3(c) or 16.3(d) hereof.

English Revolving Facility Usage shall mean at any time, the sum of (i) the outstanding English Revolving Advances (for purposes of this computation, English Swing Loans shall be deemed to be English Revolving Advances) *plus* (ii) the Maximum Undrawn Amount of all outstanding English Letters of Credit.

English Swing Loans shall have the meaning set forth in Section 2.3(d) hereof.

Environmental Complaint shall have the meaning set forth in Section 9.3(b) hereof.

Environmental Laws shall mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes as well as common laws, relating to the protection of the environment, human health and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state, provincial, international and local governmental agencies and authorities with respect thereto.

Equity Interests shall mean, with respect to any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act), including in each case all of the following rights relating to such Equity Interests, whether arising under the Organizational Documents of the Person issuing such Equity Interests (the "**issuer**") or under the applicable laws of such issuer's jurisdiction of organization relating to the formation, existence and governance of corporations, limited liability companies or partnerships or business trusts or other legal entities, as the case may be: (i) all economic rights (including all rights to receive dividends and distributions) relating to such Equity Interests; (ii) all voting rights and rights to consent to any particular action(s) by the applicable issuer; (iii) all management rights with respect to such issuer; (iv) in the case of any Equity Interests consisting of a general partner interest in a partnership, all powers and rights as a general partner with respect to the management, operations and control of the business and affairs of the applicable issuer; (v) in the case of any Equity Interests consisting of the membership/limited liability company interests of a managing member in a limited liability company, all powers and rights as a managing member with respect to the management, operations and control of the business and affairs of the applicable issuer; (vi) all rights to designate or appoint or vote for or remove any officers, directors, manager(s), general partner(s) or managing member(s) of such issuer and/or any members of any board of members/managers/partners/directors that may at any time have any rights to manage and direct the business and affairs of the applicable issuer under its Organizational Documents as in effect from time to time or under Applicable Law; (vii) all rights to amend the Organizational Documents of such issuer, (viii) in the case of any Equity Interests in a partnership or limited liability company, the status of the holder of such Equity Interests as a "partner", general or limited, or "member" (as applicable) under the applicable Organizational Documents and/or Applicable Law; and (ix) all certificates evidencing such Equity Interests.

Equivalent Amount shall mean, at any time, as determined by Agent (which determination shall be conclusive absent manifest error), with respect to an amount of any currency (the "**Reference Currency**") which is to be computed as an equivalent amount of another currency (the "**Equivalent Currency**"), the amount of such Equivalent Currency converted from such Reference Currency at Agent's rate (based on the market rates then

prevailing and available to Agent) for such Equivalent Currency for such Reference Currency at a time determined by Agent on the second Business Day immediately preceding the event for which such calculation is made.

Equivalent Currency shall have the meaning specified in the definition of Equivalent Amount.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time and the rules and regulations promulgated thereunder.

Erroneous Payment has the meaning assigned to it in Section 14.18(a).

Erroneous Payment Deficiency Assignment has the meaning assigned to it in Section 14.18(d).

Erroneous Payment Impacted Class has the meaning assigned to it in Section 14.18(d).

Erroneous Payment Return Deficiency has the meaning assigned to it in Section 14.18(d).

Erroneous Payment Subrogation Rights has the meaning assigned to it in Section 14.18(d).

ESTR means, with respect to any Business Day, a rate per annum equal to the Euro Short Term Rate on such Business Day published by the ESTR Administrator on the ESTR Administrator's Website.

ESTR Administrator means the European Central Bank (or any successor administrator of the Euro Short Term Rate).

ESTR Administrator's Website means the European Central Bank's website, currently at <http://www.ecb.europa.eu>, or any successor source for the Euro Short Term Rate identified as such by the ESTR Administrator from time to time.

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.

EURIBOR Rate means, with respect to any Advance denominated in Euros and for any Interest Period, the EURIBOR Screen Rate, two (2) Target Days prior to the commencement of such Interest Period.

EURIBOR Screen Rate means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters as published at approximately 11:00 a.m. Brussels time two (2) Target Days prior to the commencement of such Interest Period. If such page or service ceases to be available, the European Agent may specify another page or service displaying the relevant rate after consultation with the Company.

Euro shall refer to the lawful currency of the Participating Member States.

Euro-Rate shall mean the following:

(a) — with respect to any Advance to which the Euro-Rate applies for any Interest Period, the interest rate per annum determined by Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1%) (i) the rate which appears on the Bloomberg Page BBAMI (or on such other substitute Bloomberg page that displays rates at which U.S. Dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by Agent as an authorized information vendor for the purpose of displaying rates at which U.S. Dollar deposits are offered by leading banks in the London interbank deposit market (a "**Euro-Rate Alternate Source**"), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such Advance and having a borrowing date and a maturity comparable to such Interest Period (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAMI (or any substitute page) or any Euro-Rate Alternate Source, a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error)), by (ii) a number equal to 1.00 *minus* the Reserve Percentage; provided, however, that if the Euro-Rate determined as provided above would be less than 0.25%, such rate shall be deemed to be 0.25% for purposes of this Agreement.

(b) — The Euro-Rate shall be adjusted with respect to any Euro-Rate Loan that is outstanding on the effective date of any change in the Reserve Percentage as of such effective date. Agent shall give reasonably prompt notice to the Borrowing Agent of the Euro-Rate as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

Euro-Rate Alternate Source shall have the meaning set forth in the definition of Euro-Rate.

Euro-Rate Loan shall mean any US-Canada Advance that bears interest based on the Euro-Rate.

European Advances shall collectively mean and include the European Revolving Advances, European Letters of Credit and the European Swing Loans.

European Agent shall mean J.P. Morgan Europe Limited AG, in its capacity as administrative agent, security trustee and collateral agent hereunder and under the Other Documents, or such branches or affiliates of J.P. Morgan Europe Limited AG as it shall from time to time designate for the purpose of performing its obligations hereunder and under the Other Documents in one or more of such capacities, together with any successors and assigns.

European Applicable Margin shall mean for European Revolving Advances, European Swing Loans and European Letter of Credit Fees as of the Closing Date and through and including the date immediately prior to the first Adjustment Date (as defined below), the applicable percentage specified below:

European Applicable Margin For Overnight Rate Loans (European Swing Loans)	European Applicable Margin For <u>LIBOR Rate Term Benchmark Loans and RFR Loans</u> (European Revolving Advances)	Applicable European Letter Of Credit Fee Rate
2.50%	2.50%	2.50%

The European Applicable Margin for European Revolving Advances, European Swing Loans and European Letter of Credit Fees shall be (i) adjusted as of the 1st day of each fiscal quarter of the Company, commencing January 1, 2016 and as of the first day of each fiscal quarter thereafter (i.e., the 1st day of each April, July, October and January), based upon the European Borrowing Base Certificates (and related information) delivered to the European Agent, in accordance with Section 9.2, with respect to the months or weeks, as applicable, comprising the immediately preceding fiscal quarter (in this definition, each, an "**Adjustment Date**"), commencing with the delivery by the Company of the European Borrowing Base Certificate in each of the months or weeks, as the case may be, comprising the fiscal quarter of the Company ending December 31, 2015, (ii) based upon the calculation by the European Agent of the European Quarterly Average Undrawn Availability for such fiscal quarter and (iii) equal to the percent per annum set forth in the pricing table below corresponding to such European Quarterly Average Undrawn Availability. In the event that any European Borrowing Base Certificate (and related information) is not provided to the European Agent in accordance with Section 9.2, the European Applicable Margin for European Revolving Advances, European Swing Loans and European Letter of Credit Fees shall be set at the percent per annum corresponding to Tier III below as of the 1st day of the fiscal quarter of the Company following the month or week, as the case may be, in respect of which any such European Borrowing Base Certificate was required to be so delivered and shall continue at Tier III until the earlier of (A) the delivery to the European Agent of the required European Borrowing Base Certificate (from and after which time the European Applicable Margin shall be calculated based on the respective European Quarterly Average Undrawn Availability until the European Applicable Margin is recalculated in accordance with this definition) and (B) the next Adjustment Date, if any (at which time the European Applicable Margin shall be calculated in accordance with the terms of this definition).

Tier	European Quarterly Average Undrawn Availability	European Applicable Margins For Overnight Rate Loans (European Swing Loans)	European Applicable Margins For LIBOR Rate Term Benchmark Loans and RFR Loans (European Revolving Advances)	Applicable European Letter of Credit Fee Rates
I	Greater than or equal to 66 $\frac{2}{3}$ % of the Maximum European Revolving Advance Amount	2.50%	2.50%	2.50%
II	Greater than or equal to 33 $\frac{1}{3}$ % of the Maximum European Revolving Advance Amount, but less than 66 $\frac{2}{3}$ % of the Maximum European Revolving Advance Amount	2.75%	2.75%	2.75%
III	Less than 33 $\frac{1}{3}$ % of the Maximum European Revolving Advance Amount	3.00%	3.00%	3.00%

Notwithstanding anything to the contrary contained herein, no downward adjustment in any European Applicable Margin shall be made on any Adjustment Date on which any Event of

Default shall have occurred and be continuing. Any increase in interest rates and/or other fees payable by Loan Parties under this Agreement and the Other Documents pursuant to the provisions of the foregoing sentence shall be in addition to and independent of any increase in such interest rates and/or other fees resulting from the occurrence of any Event of Default (including, if applicable, any Event of Default arising from a breach of Sections 9.7 or 9.8 hereof) and/or the effectiveness of the Default Rate provisions of Section 3.1 hereof or the default fee rate provisions of Section 3.2 hereof.

If, as a result of any restatement of, or other adjustment to, any European Borrowing Base Certificate, or the financial statements of Borrowers on a Consolidated Basis, or for any other reason, European Agent determines that (a) the European Quarterly Average Undrawn Availability as previously calculated as of any applicable date for any applicable period was inaccurate, and (b) a proper calculation of the European Quarterly Average Undrawn Availability for any such period would have resulted in different pricing for such period, then (i) if the proper calculation of the European Quarterly Average Undrawn Availability would have resulted in a higher interest rate and/or fees (as applicable) for such period, automatically and immediately without the necessity of any demand or notice by European Agent or any other affirmative act of any party, the interest accrued on the applicable outstanding European Advances and/or the amount of the fees accruing for such period under the provisions of this Agreement and the Other Documents shall be deemed to be retroactively increased by, and European Borrowers shall be obligated to immediately pay to European Agent for the ratable benefit of the applicable Lenders an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the European Quarterly Average Undrawn Availability would have resulted in a lower interest rate and/or fees (as applicable) for such period, then the interest accrued on the applicable outstanding European Advances and the amount of the fees accruing for such period under the provisions of this Agreement and the Other Documents shall be deemed to remain unchanged, and European Agent and applicable Lenders shall have no obligation to repay interest or fees to European Borrowers; provided, that, if as a result of any restatement or other event or other determination by European Agent a proper calculation of the European Quarterly Average Undrawn Availability would have resulted in a higher interest rate and/or fees (as applicable) for one or more periods and a lower interest rate and/or fees (as applicable) for one or more other periods (due to the shifting of income or expenses from one period to another period or any other reason), then the amount payable by European Borrowers pursuant to clause (i) above shall be based upon the excess, if any, of the amount of interest and fees that should have been paid for all applicable periods over the amounts of interest and fees actually paid for such periods.

European Availability Reserve shall mean Three Million and 00/100 Dollars (\$3,000,000.00).

European Blocked Accounts shall have the meaning set forth in Section 6.20(a).

European Borrowers shall mean the French Borrowers and the English Borrowers.

European Borrowers' Account shall have the meaning set forth in Section 2.9(b) hereof.

European Borrowing Agent shall mean the Company.

European Borrowing Base Certificate shall mean a certificate in substantially the form of Exhibit 1.2(d) hereto duly executed by the President, Chief Financial Officer, Assistant Treasurer, European Finance Director or Controller of the European Borrowing Agent and delivered to the European Agent, appropriately completed, by which such officer shall certify to European Agent the English Formula Amount and the French Formula Amount and calculation

thereof as of the date of such certificate, with separate sections showing the calculations for each English Borrower, for each French Borrower and for each Dutch Guarantor.

European Borrowing Request means a request in the form of Exhibit 1.2(e).

European Collateral shall mean the Collateral of any European Loan Party.

European Collateral Agent shall mean [J.P. Morgan Europe Limited, in its capacity as security trustee and collateral agent hereunder and under the Other Documents, or such branches or affiliates of J.P. Morgan Europe Limited as it shall from time to time designate for the purpose of performing its obligations hereunder and under the Other Documents in one or more of such capacities, together with any successors and assigns.](#)

European Collateral Documents shall mean the English Collateral Documents, the French Collateral Documents and the Dutch Collateral Documents.

European Distribution Agreements means the English Distributor Agreement, the French Commissionaire Agreement and the Dutch Commissionaire Agreement.

European Dominion Period shall mean the period from the occurrence of a European Dominion Triggering Event until the date of a subsequent European Dominion Rescission Triggering Event during which European Agent has Full Dominion.

European Dominion Rescission Triggering Event shall mean the occurrence of both of the following:

- (a) no Event of Default or Default exists; and
- (b) European Undrawn Availability is equal to or greater than 12.5% of the Maximum European Revolving Advance Amount for thirty (30) consecutive days.

European Dominion Triggering Event shall mean the occurrence of either of the following:

- (a) an Event of Default or Default, which is continuing; or
- (b) European Undrawn Availability is less than the European Undrawn Availability Required Amount.

European Formula Amount shall mean the aggregate of the English Formula Amount and the French Formula Amount.

European Guarantors means, collectively, the English Guarantors, the French Guarantors and the Dutch Guarantors.

European Guaranty Agreement shall mean the guaranty of the French Facility and the English Facility by the US Borrowers other than Medbloc, Inc., a Delaware corporation.

European Increasing Lender shall have the meaning set forth in Section 2.5(a) hereof.

European Lender shall mean each English Lender and each French Lender.

European Letter of Credit Fees shall have the meaning set forth in Section 3.2 hereof.

European Letter of Credit Sublimit shall mean Five Million and 00/100 Dollars (\$5,000,000.00).

~~European Letter of Credit Fees shall have the meaning set forth in Section 3.2 hereof.~~

European Letters of Credit shall have the meaning set forth in Section 2.10 hereof.

European Loan Party shall mean the European Borrowers and European Guarantors

European New Lender shall have the meaning set forth in Section 2.25(a) hereof.

European Obligations means, collectively, the English Obligations and the French Obligations.

European Payment Office shall initially mean 25 Bank Street, Canary Wharf, London E14 5JP; 6th Floor, Loans Agency, thereafter, such other office of European Agent, if any, which it may designate by notice to European Borrowing Agent and to each European Lender to be the European Payment Office, provided that the European Payment Office shall not be located in a Non-Cooperative Jurisdiction.

European Quarterly Average Undrawn Availability shall mean for any fiscal quarter of the Company, an amount equal to the average daily European Undrawn Availability during such fiscal quarter.

European Receivables Advance Rate shall have the meaning provided in the definition of "English Formula Amount".

European Required Lenders shall mean, at any time, determined as if the entire English Facility and French Facility were in Dollars based on the then current Dollar Equivalent Amount, European Lenders (not including any European Swing Loan Lender (in its capacity as such European Swing Loan Lender) or any Defaulting Lender) holding at least sixty-six and two thirds of one percent (66-2/3%) of either (a) the aggregate of the European Revolving Commitment Amounts of all European Lenders (excluding any Defaulting Lender), or (b) after the termination of all commitments of the European Lenders hereunder, the sum of (x) the outstanding European Revolving Advances and European Swing Loans, *plus* (y) (i) the aggregate of the Maximum Undrawn Amount of all outstanding European Letters of Credit multiplied by (ii) the European Revolving Commitment Percentage of all European Lenders as most recently in effect excluding any Defaulting Lender; provided, however, if there are fewer than three (3) European Lenders, European Required Lenders shall mean all European Lenders (excluding any Defaulting Lender).

European Reserves shall mean reserves which the European Agent in the exercise of its Permitted Discretion (in a customary manner for an asset based lending facility in Europe) deems necessary to maintain with respect to the Collateral or any European Loan Party.

European Revolving Advances shall mean English Revolving Advances and the French Revolving Advances.

European Revolving Commitment shall mean the English Revolving Commitment and the French Revolving Commitment.

European Revolving Commitment Amount shall mean the aggregate of the English Revolving Commitment Amount and the French Revolving Commitment Amount (or each individually, as the context may require).

European Revolving Commitment Percentage the proportion that such Lender's European Revolving Commitment bears to the European Revolving Commitments of all of the Lenders.

European Facility means, collectively, the European Revolving Commitment and the extensions of credit made thereunder.

European Revolving Facility Usage shall mean at any time, the aggregate of the English Revolving Facility Usage and the French Revolving Facility Usage.

European Revolving Interest Rate shall mean (a) with respect to European Swing Loans, an interest rate per annum equal to the sum of the European Applicable Margin for Overnight Rate Loans *plus* the Overnight ~~LIBO~~ Rate, and (b) with respect to European Revolving Advances which are Term Benchmark Loans, the sum of the European Applicable Margin for ~~LIBOR Rate~~ Term Benchmark Loans *plus* the Term SOFR Rate or Adjusted EURIBOR Rate (as applicable), and (c) with respect to European Revolving Advances which are RFR Loans, the sum of the European Applicable Margin for RFR Loans *plus* the Adjusted ~~LIBO Rate~~ Daily Simple RFR.

European Swing Loan Lender shall mean ~~JPM Europe~~ J.P. Morgan AG, in its capacity as lender of the European Swing Loans.

European Swing Loans shall have the meaning set forth in Section 2.3(d) hereof.

European Undrawn Availability at a particular date shall mean an amount equal to (a) the lesser of (i) the European Formula Amount or (ii) the Maximum European Revolving Advance Amount *minus* the sum of (x) the Maximum Undrawn Amount of all outstanding European Letters of Credit, *plus* (y) the aggregate amount of any outstanding European Swing Loans, *plus* (z) reserves; and in the case of both (a)(i) and (a)(ii) *minus* (b) the sum of (i) the outstanding amount of European Advances (other than European Letters of Credit and European Swing Loans), *plus* (ii) fees and expenses that are accrued and unpaid under this Agreement, the Other Documents and/or each Fee Letter.

European Undrawn Availability Required Amount shall mean (a) 12.5% of the Maximum European Revolving Advance Amount for five (5) consecutive Business Days, or (b) 11.25% of the Maximum European Revolving Advance Amount on any given Business Day. The absolute dollar amount in the preceding clause (b) shall be deemed proportionately increased at the time of any increase in the Maximum European Revolving Advance Amount.

Event of Default shall have the meaning set forth in Article 10 hereof.

Exchange Act shall mean the Securities Exchange Act of 1934, and any other applicable statute in any other applicable jurisdiction, as amended.

Excluded Hedge Liability or Liabilities shall mean, with respect to each Borrower and Guarantor, each of its Swap Obligations if, and only to the extent that, all or any portion of this Agreement or any Other Document that relates to such Swap Obligation is or becomes illegal under the CEA, or any rule, regulation or order of the CFTC, solely by virtue of such Borrower's and/or Guarantor's failure to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap. Notwithstanding anything to the contrary contained in the foregoing or in any other provision of this Agreement or any Other Document, the foregoing is subject to the following provisos: (a) if a Swap Obligation arises under a master agreement governing more than one Swap, this definition shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guaranty or security interest is or becomes illegal under the CEA, or any rule, regulations or order of the CFTC, solely as a result of the failure by such Borrower or

Guarantor for any reason to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap; (b) if a guarantee of a Swap Obligation would cause such obligation to be an Excluded Hedge Liability but the grant of a security interest would not cause such obligation to be an Excluded Hedge Liability, such Swap Obligation shall constitute an Excluded Hedge Liability for purposes of the guaranty but not for purposes of the grant of the security interest; and (c) if there is more than one Borrower or Guarantor executing this Agreement or the Other Documents and a Swap Obligation would be an Excluded Hedge Liability with respect to one or more of such Persons, but not all of them, the definition of Excluded Hedge Liability or Liabilities with respect to each such Person shall only be deemed applicable to (i) the particular Swap Obligations that constitute Excluded Hedge Liabilities with respect to such Person, and (ii) the particular Person with respect to which such Swap Obligations constitute Excluded Hedge Liabilities.

Excluded Pledge Entity shall have the meaning set forth in Section 5.32 hereof.

Excluded Property shall mean (a) any non-material lease, license, contract or agreement to which any Loan Party is a party, and any of its rights or interests thereunder, if and to the extent that a security interest therein is prohibited by or in violation of (x) any Applicable Law, or (y) a term, provision or condition of any such lease, license, contract or agreement (unless in each case, such Applicable Law, term, provision or condition would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), provided, however, that the foregoing shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, such security interest shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in (x) or (y) above, provided, further that Excluded Property shall not include any proceeds of any such lease, license, contract or agreement or any goodwill of Loan Parties' business associated therewith or attributable thereto, (b) Subsidiary Stock of any Excluded Pledge Entity; provided, however, that the Subsidiary Stock of such Excluded Pledge Entity shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately at such time as the total assets of such Subsidiary cease to be less than the Threshold Assets, and (c) assets located in Quebec to the extent that the value of such assets does not equal or exceed \$10,000; provided, however, that the assets located in Quebec shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately at such time as the value of such assets cease to be less than \$10,000.

Excluded Subsidiaries shall mean the US Excluded Subsidiaries and the Foreign Excluded Subsidiaries. The Excluded Subsidiaries are not required to join this Agreement as Guarantors. None of the US Excluded Subsidiaries is a Material Subsidiary except the Insurance Subsidiary.

Excluded Taxes shall mean, with respect to Agent, any Lender, Participant, Swing Loan Lender, Issuer or any other recipient of any payment to be made by or on account of any Obligations, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office or applicable lending office is located or, in the case of any Lender, Participant, Swing Loan Lender or Issuer, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which any Loan Party is located (in each case imposed or measured by overall gross receipts), (c) in the case of a Foreign Lender, any United States or Canadian withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign

Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.10(e), except to the extent that such Foreign Lender or Participant (or its assignor or seller of a participation, if any) was entitled, at the time of designation of a new lending office (or assignment or sale of a participation), to receive additional amounts from Loan Parties with respect to such withholding tax pursuant to Section 3.10(a), (d) any Tax Deduction on account of Tax imposed by the United Kingdom if, on the date on which the payment falls due, the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration or application of) any law or Treaty or any published practice or published concession of any Tax Authority, or (e) any Taxes imposed on any "withholding payment" payable to such recipient as a result of the failure of such recipient to satisfy the requirements set forth in the FATCA after December 31, 2012 and (f) with respect to the French Borrowers, any deduction on account of Tax imposed by France solely because a payment is made to a bank account opened in the name of, or for the benefit of, that recipient in a financial institution located in a Non-Cooperative Jurisdiction.

Existing Blocked Account shall have the meaning set forth in Section 6.19(a).

Existing Credit Agreement shall have the meaning set forth in the recitals to this Agreement.

Existing Lenders shall have the meaning set forth in the recitals to this Agreement.

Facility shall mean the US-Canada Facility, the English Facility and the French Facility.

Facility Fee shall have the meaning set forth in Section 3.3 hereof.

FATCA shall mean:

~~(a)~~ (a) Sections 1471 through 1474 of the Code as in effect on the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations thereunder or official interpretations thereof;

~~(b)~~ (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

~~(c)~~ (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the United States Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Application Date shall mean:

~~(a)~~ (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the United States), July 1, 2014;

~~(b)~~ (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the United States), January 1, 2017; or

~~(d)~~(c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, January 1, 2017,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

FATCA Deduction shall mean a deduction or withholding from a payment under this Agreement or an Other Document required by FATCA.

FATCA Exempt Party shall mean a ~~Party~~party that is entitled to receive payments free from any FATCA Deduction.

FDA shall have the meaning set forth in Section 5.31 hereof.

Federal Funds Effective Rate shall mean for any day the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

Fee Letter shall mean the fee letter dated as of October 28, 2014 between the Company and PNC and any other fee letter between an Agent and any Loan Party.

Financial Support Direction means a financial support direction issued by the Pensions Regulator under s43 of the United Kingdom's Pensions Act 2004.

First Amendment Closing Date shall mean February 16, 2016.

Fixed Asset Cap shall mean, as of the Eighth Amendment Effective Date, \$1,900,000, which amount shall be reduced in equal quarterly increments of \$95,000 on the first day of each January, April, July, and October commencing on January 1, 2021 and continuing for a total of twenty (20) quarterly payments.

Fixed Assets shall mean and include as to each Borrower, all of such Borrower's machinery and equipment, wherever located.

Flood Laws shall mean all Applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and other Applicable Laws related thereto.

Floor means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted EURIBOR Rate, Daily Simple ESTR, each Adjusted Daily Simple RFR or the Overnight Rate, as applicable. For the avoidance of doubt the initial Floor for each of Adjusted EURIBOR Rate, Daily Simple ESTR or each Adjusted Daily Simple RFR shall be zero (0.00%) and the initial Floor for the Overnight Rate shall be zero (0.00%).

Foreign Currency Hedge shall mean any foreign exchange transaction, including spot and forward foreign currency purchases and sales, listed or over-the-counter options on foreign currencies, non-deliverable forwards and options, foreign currency swap agreements, currency exchange rate price hedging arrangements, and any other similar transaction providing for the purchase of one currency in exchange for the sale of another currency entered into by any Borrower, Guarantor and/or any of their respective Subsidiaries.

Foreign Currency Hedge Liabilities shall have the meaning assigned in the definition of Lender-Provided Foreign Currency Hedge.

Foreign Excluded Subsidiaries shall mean all Subsidiaries organized under the laws of a jurisdiction outside the United States of America, any State thereof, the District of Columbia, Canada (or any province thereof), England, France or the Netherlands.

Foreign In-Transit Inventory shall mean Inventory of a US Borrower that is in transit from a location outside the United States to any location within the United States of such US Borrower or a Customer of such US Borrower.

Foreign Lender shall mean (a) with respect to a Loan Party that is a "United States Person" as defined in section 7701(a)(30) of the Code (a "U.S. Person"), a Lender that is not a U.S. Person, and (b) with respect to a Loan Party that is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

Foreign Subsidiary shall mean any Subsidiary which is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia.

Formula Amount shall mean, singularly or collectively as the context may require, the US-Canada Formula Amount and the European Formula Amount.

Fourth Amendment Closing Date shall mean November 30, 2016.

Freight and Duty Reserve shall mean on any date, a reserve equal to Agent's estimate of the costs and expenses associated with the importation of Foreign In-Transit Inventory as of such date, including an estimate for all customs broker fees then due or to become due with respect to Foreign In-Transit Inventory.

French Advances shall collectively mean and include the French Revolving Advances, French Letters of Credit and the French Swing Loans.

French Bank Account Pledge Agreement means each bank account pledge agreement to be entered into between each French Borrower and the European Collateral Agent in relation to the European Blocked Accounts of each French Borrower on or about the date of this Agreement.

French Borrowers shall mean the Persons from time to time listed on Annex G hereto.

French Collateral shall mean the assets subject to Liens in any French Collateral Document.

French Collateral Documents means the French Master Receivables Assignment Agreements and the French Bank Account Pledge Agreements and any other French law security agreements delivered pursuant to this Agreement and granted by any Loan Party and all

confirmations and acknowledgements thereof, in each case relating to the grant to an Agent of a security interest by such Loan Party.

French Commissionaire Agreement means the commissionaire agreement dated November 30, 2004 between Invacare Poirier S.A.S. and Invacare International Sàrl (as amended).

French Facility means, collectively, the French Revolving Commitment and the extensions of credit made thereunder.

French Formula Amount shall mean an amount equal to the Dollar Equivalent amount of the sum of:

(A) up to the European Receivables Advance Rate of Eligible Receivables of the French Borrowers, *minus*

(B) the aggregate amount of any outstanding French Swing Loans, *minus*

(C) the aggregate Maximum Undrawn Amount of all outstanding French Letters of Credit, *minus*

(D) 50% of the European Availability Reserve, *minus*

(E) such reserves as European Agent may reasonably deem proper and necessary from time to time (including any European Reserves, without double counting with respect to any European Reserves already applied, relating to the French Loan Parties and/or their assets).

French Guarantors shall mean the Persons from time to time listed on Annex H hereto.

French Lender shall mean each Lender with a French Revolving Commitment provided that any French Lender shall qualify as a French Qualifying Lender.

French Letter of Credit Sublimit shall mean Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00).

French Letters of Credit shall have the meaning set forth in Section 2.10(a) hereof.

French Master Receivables Assignment Agreement means each master assignment agreement to be entered into between each French Borrower, the European Collateral Agent and the French Lenders on or about the date of this Agreement in relation to the Receivables of each French Borrower (including any assignment schedules relating thereto executed by each French Borrower).

French New Lender shall have the meaning set forth in Section 2.25(a) hereof.

French Obligations shall mean that portion of the Obligations arising from, related to or connected with the French Advances.

French Participation Commitment shall mean the obligation hereunder of each French Lender holding a French Revolving Commitment to buy a participation equal to its French Revolving Commitment Percentage (subject to any reallocation pursuant to Section 2.21(b)(iv) hereof) in the French Swing Loans made by European Swing Loan Lender hereunder as provided

for in Section 2.3(d) hereof and in the French Letters of Credit issued hereunder as provided for in Section 2.13(a) hereof.

French Qualifying Lender means (i) a credit institution (*établissement de crédit*) or a financing company (*société de financement*) licensed for the purpose of carrying out credit transactions (*opérations de crédit*) by the relevant Governmental Bodies of France; (ii) a credit institution (*établissement de crédit*) having its registered office in a member state of the European Union or in a state which is a party to the Treaty on the European Economic Area, so long as the relevant Governmental Bodies of France have been notified in advance by the relevant Governmental Body of such state; provided, that such credit institution carries out in France only those credit transactions which it is authorized to carry out in the state in which its registered office is located; or (iii) a financial institution (*établissement financier*) having its registered office in a member state of the European Union or in a state which is a party to the Treaty on the European Economic Area, which has obtained a certificate from the relevant Governmental Body of such state certifying that it meets the conditions required for that purpose by such Governmental Body, so long as the relevant French authorities have been notified in advance by the relevant Governmental Body of such state; provided, that such financial institution carries out in France only those credit transactions which it is authorized to carry out in the state in which its registered office is located. For purposes of this definition, "notified in advance" refers to the satisfaction of the formalities required to benefit from applicable European passporting provisions (including the transmission by a local regulator to the French banking authority of a notice received from a financial institution to the effect that such institution intends to trade in France on a remote basis pursuant to the European passporting regulations).

French Qualifying Letter of Credit Issuer means (i) a credit institution (*établissement de crédit*) or a financing company (*société de financement*) licensed by the relevant Governmental Bodies of France for the purpose of providing to customers or administering means of payment (*mise à la disposition ou gestion de moyens de paiement*) and for the purpose of carrying out credit transactions (*opérations de crédit*) by the relevant Governmental Bodies of France; (ii) a credit institution (*établissement de crédit*) having its registered office in a member state of the European Union or in a state which is a party to the Treaty on the European Economic Area, so long as the relevant Governmental Bodies of France have been notified in advance by the relevant Governmental Body of such state; provided, that such credit institution provides to customers in France or administers only those means of payment or carries out only those credit transactions which it is authorized to provide or administer in the state in which its registered office is located; or (iii) a financial institution (*établissement financier*) having its registered office in a member state of the European Union or in a state which is a party to the Treaty on the European Economic Area, which has obtained a certificate from the relevant Governmental Bodies of such state certifying that it meets the conditions required for that purpose by such Governmental Body, so long as the relevant Governmental Bodies of France have been notified in advance by the relevant Governmental Body of such state; provided, that such financial institution provides to customers in France or administers only those means of payment or carries out only those credit transactions which it is authorized to provide or administer in the state in which its registered office is located. For purposes of this definition, "notified in advance" refers to the satisfaction of the formalities required to benefit from applicable European passporting provisions (including the transmission by a local regulator to the French banking authority of a notice received from a financial institution to the effect that such institution intends to trade in France on a remote basis pursuant to the European passporting regulations).

French Revolving Advances shall mean advances made under Section 2.1(c) by French Lenders to French Borrowers.

French Revolving Commitment shall mean, as to any French Lender, the obligation of such French Lender, to make French Revolving Advances and participate in French Swing Loans

and French Letters of Credit, in an aggregate principal and/or face amount not to exceed the French Revolving Commitment Amount (if any) of such French Lender.

French Revolving Commitment Amount shall mean, (i) as to any French Lender other than a French New Lender, the French Revolving Commitment amount (if any) set forth below such French Lender's name on the signature page hereto (or, in the case of any Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or 16.3(d) hereof, the French Revolving Commitment amount (if any) of such French Lender as set forth in the applicable Commitment Transfer Supplement), and (ii) as to any Lender that is a French New Lender, the French Revolving Commitment amount provided for in the joinder signed by such French New Lender under Section 2.25(a)(x), in each case as the same may be adjusted upon any increase by such French Lender pursuant to Section 2.25 hereof, or any assignment by or to such French Lender pursuant to Section 16.3(c) or 16.3(d) hereof.

French Revolving Commitment Percentage shall mean, (i) as to any French Lender other than a French New Lender, the French Revolving Commitment Percentage (if any) set forth below such French Lender's name on the signature page hereof (or, in the case of any French Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or 16.3(d) hereof, the French Revolving Commitment Percentage (if any) of such French Lender as set forth in the applicable Commitment Transfer Supplement), and (ii) as to any Lender that is a French New Lender, the French Revolving Commitment Percentage provided for in the joinder signed by such French New Lender under Section 2.25(a)(x), in each case as the same may be adjusted upon any increase in the Maximum English Revolving Advance Amount pursuant to Section 2.25 hereof, or any assignment by or to such French Lender pursuant to Section 16.3(c) or 16.3(d) hereof.

French Revolving Facility Usage shall mean at any time, the sum of (i) the outstanding French Revolving Advances (for purposes of this computation, French Swing Loans shall be deemed to be French Revolving Advances) *plus* (ii) the Maximum Undrawn Amount of all outstanding French Letters of Credit.

French Swing Loans shall have the meaning set forth in Section 2.3(d) hereof.

FSCO shall mean The Financial Services Commission of Ontario or like body in Canada or in any other province or territory or jurisdiction of Canada with whom a Canadian Pension Plan is required to be registered in accordance with Applicable Law and any other Governmental Body succeeding to the functions thereof.

FTC shall have the meaning set forth in Section 5.31 hereof.

Full Dominion shall mean full control by the Applicable Agent of the applicable Borrowers' and Guarantors' cash receipts for application to Obligations and the cash collateralization of Letters of Credit as and when determined by Applicable Agent in accordance with the terms hereof.

GAAP shall mean generally accepted accounting principles in the United States of America and, with respect to the Canadian Loan Parties, in Canada, in effect from time to time.

GCM shall mean Garden City Medical Inc.

GCM Disposed Assets shall mean all of the issued and outstanding shares of capital stock of GCM, as more fully described in the GCM Purchase Agreement.

GCM Disposition shall mean the sale of the GCM Disposed Assets in accordance with the terms of the GCM Purchase Agreement.

GCM Disposition Effective Date shall mean the date of the consummation of the GCM Disposition.

~~GCM Disposed Assets shall mean all of the issued and outstanding shares of capital stock of GCM, as more fully described in the GCM Purchase Agreement.~~

GCM Inventory shall mean certain ProBasics™ brand products inventory held by Invacare Corporation, as more fully described in the GCM Purchase Agreement.

GCM Inventory Sale shall mean the sale of the GCM Inventory in accordance with the terms of the GCM Purchase Agreement.

GCM Purchase Agreement shall mean the Stock Purchase Agreement, dated September 30, 2016, by and among Compass Health Brands Corp., a Delaware corporation, as buyer, the Company and GCM.

Governmental Acts shall mean any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Body.

Governmental Body shall mean any nation or government, any state, province or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to a government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

Guarantor shall collectively mean the US Guarantors, the Canadian Guarantors and the European Guarantors.

Guarantor Joinder shall mean a joinder by a Person as a Guarantor under this Agreement and the Other Documents in substantially the form of Exhibit 7.12(b).

Guarantor Security Agreement shall mean any security agreement executed by any Guarantor in favor of Agent securing the Obligations or the Guaranty of such Guarantor, in form and substance satisfactory to Agent.

Guaranty shall mean any guaranty of the Obligations executed by a Guarantor in favor of Applicable Agent for its benefit and for the ratable benefit of Lenders, in form and substance satisfactory to Applicable Agent and shall include any European Guaranty Agreement and the English Law Guaranty.

Hazardous Discharge shall have the meaning set forth in Section 9.3(b) hereof.

Hazardous Materials shall mean, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, Hazardous Wastes, hazardous or Toxic Substances or related materials as defined in or subject to regulation under Environmental Laws.

Hazardous Wastes shall mean all waste materials subject to regulation under CERCLA, RCRA or applicable state law, and any other applicable Federal and state laws now in force or hereafter enacted relating to hazardous waste disposal.

Hedge Liabilities shall mean collectively, the Foreign Currency Hedge Liabilities and the Interest Rate Hedge Liabilities.

HHS shall mean the United States Department of Health and Human Services, or any other applicable Governmental Body in any other applicable jurisdiction, or any successor thereof and any predecessor thereof.

HMRC DT Treaty Passport Scheme shall mean HM Revenue & Customs' double taxation treaty passport scheme.

Increasing Lender shall have the meaning set forth in Section 2.23(a) hereof.

Indebtedness shall mean, as to any Person at any time, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (a) borrowed money; (b) amounts received under or liabilities in respect of any note purchase or acceptance credit facility, and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all Capitalized Lease Obligations; (d) reimbursement obligations (contingent or otherwise) under any letter of credit agreement, banker's acceptance agreement or similar arrangement; (e) net obligations under any Interest Rate Hedge, Foreign Currency Hedge, or other interest rate management device, foreign currency exchange agreement, currency swap agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement; provided for purposes of calculating Indebtedness hereunder, the foregoing net obligations shall not be included unless any such agreement or device has been closed out or any amount is due and payable thereunder; (f) any other advances of credit made to or on behalf of such Person or other transaction (including forward sale or purchase agreements, capitalized leases and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements including to finance the purchase price of property or services and all obligations of such Person to pay the deferred purchase price of property or services (but not including trade payables and accrued expenses incurred in the Ordinary Course of Business which are not represented by a promissory note or other evidence of indebtedness and which are not more than sixty (60) days past due); (g) all Equity Interests of such Person subject to repurchase or redemption/retraction rights or obligations (excluding repurchases or redemptions at the sole option of such Person); (h) all indebtedness, obligations or liabilities secured by a Lien on any asset of such Person, whether or not such indebtedness, obligations or liabilities are otherwise an obligation of such Person; (i) all obligations of such Person for "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts; (j) off-balance sheet liabilities and/or pension plan liabilities of such Person; (k) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business; and (l) any guaranty of any indebtedness, obligations or liabilities of a type described in the foregoing clauses (a) through (k). For the avoidance of doubt, the 2021 Convertible Notes Warrant Transaction and the 2022 Convertible Notes Warrant Transaction shall not constitute Indebtedness. For avoidance of doubt, obligations under operating leases are not considered Indebtedness.

Indemnified Party shall have the meaning set forth in Section 16.5.

Indemnified Taxes shall mean Taxes (including Other Taxes) other than Excluded Taxes.

Ineligible Purchaser shall mean any Loan Party or any of the Loan Parties' Affiliates or Subsidiaries or any natural person.

Ineligible Security shall mean any security which may not be underwritten or dealt in by member banks of the Federal Reserve System under Section 16 of the Banking Act of 1933 (12 U.S.C. Section 24, Seventh), as amended.

Insolvency Event shall mean, with respect to any Person, including without limitation any Lender, such Person or such Person's direct or indirect parent company (a) becomes the subject of a bankruptcy or insolvency proceeding (including any proceeding under Title 11 of the United States Code, the Bankruptcy and Insolvency Act (Canada), the Companies Creditors Arrangement Act, the Winding Up Act, any bankruptcy or insolvency proceeding set out in articles L.610-1 and following of the French Commercial Code, the Insolvency Act 1986 (United Kingdom), the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (European Union), the Companies Act 2006 (United Kingdom), the Dutch Bankruptcy Act (*Faillissementswet*) or any applicable corporate statute providing for such arrangements or similar proceedings, in each case as amended from time to time), (b) has had a receiver, receiver and manager, conservator, trustee, administrator, monitor, liquidator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization, arrangement or liquidation of its business appointed for it or has called a meeting of its creditors generally or any substantial portion thereof, (c) admits in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business or undertake any sale of assets in bulk, (d) with respect to a Lender, such Lender is unable to perform hereunder due to the application of Applicable Law, or (e) in the good faith determination of Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment of a type described in clauses (a) or (b), provided that an Insolvency Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person's direct or indirect parent company by a Governmental Body or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Body or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

Insurance Subsidiary shall mean Invatection Insurance Company, a Vermont corporation.

Intellectual Property shall mean property constituting a patent, copyright, trademark (or any application in respect of the foregoing), service mark, copyright, copyright application, trade name, mask work, trade secrets, design right, assumed name or license or other right to use any of the foregoing under Applicable Law.

Intellectual Property Claim shall mean the assertion, by any means, by any Person of a claim that any Borrower's ownership, use, marketing, sale or distribution of any Inventory, equipment, Intellectual Property or other property or asset is violative of any ownership of or right to use any Intellectual Property of such Person.

Interest Payment Date shall have the meaning set forth in Section 3.1.

Interest Period shall mean the period provided for any ~~Euro-Term~~ SOFR Rate Loan or ~~LIBOR-Rate~~ Term Benchmark Loan pursuant to Section 2.2(b) hereof.

Interest Rate Hedge shall mean an interest rate exchange, collar, cap, swap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or similar agreements entered into by any Borrower, Guarantor and/or their respective Subsidiaries in order to provide protection to, or minimize the impact upon, such Borrower, any Guarantor and/or their respective Subsidiaries of increasing floating rates of interest applicable to Indebtedness.

Interest Rate Hedge Liabilities shall have the meaning assigned in the definition of Lender-Provided Interest Rate Hedge.

InternalInternet Posting shall have the meaning set forth in Section 16.6.

Invacare BV shall mean Invacare Holdings Two B.V., a Dutch private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), which is a wholly-owned Subsidiary of LUX 2.

Invacare CV shall mean Invacare Holdings C.V., a limited partnership (*commanditaire vennootschap*) established under the laws of the Netherlands, which will be liquidated as part of the Proposed Reorganization.

Invacare Holdings shall mean Invacare Holdings, LLC, an Ohio limited liability company.

Invacare International shall mean Invacare International Corporation, an Ohio corporation.

Inventory shall mean and include as to each Loan Party all of such Loan Party's inventory (as defined in Article 9 of the Uniform Commercial Code) and all of such Loan Party's goods, merchandise and other personal property, wherever located, to be furnished under any consignment arrangement, contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in such Loan Party's business or used in selling or furnishing such goods, merchandise and other personal property, and all Documents.

Issuer shall mean (i) with respect to any US-Canada Letter of Credit, the issuer of such US-Canada Letter of Credit shall be PNC, JPMorgan or each other US-Canada Lender (or Affiliate of a US-Canada Lender) that is requested by the Agent to act as an Issuer, and which US-Canada Lender (or such Affiliate) accepts such appointment, and each of their successors and assigns (and which may be replaced, with the concurrence of such replacement, at the sole discretion of the Agent), and (ii) with respect to any European Letter of Credit, the issuer of such European Letter of Credit shall be ~~JPM Europe~~ J.P. Morgan AG together with any English Lender (or Affiliate of an English Lender) with respect to English Letters of Credit and any French Lender (or Affiliate of a French Lender provided that such Affiliate shall qualify as a French Qualifying Letter of Credit Issuer) with respect to French Letters of Credit that is requested by the European Agent to act as an Issuer, and which European Lender (or such Affiliate) accepts such appointment, and each of their successors and assigns (and which may be replaced, with the concurrence of such replacement, at the sole discretion of the European Agent). Each Issuer providing Letters of Credit to a French Borrower shall at all times be a French Qualifying Letter of Credit Issuer.

Joint Venture shall mean a corporation, partnership, limited liability company or other entity in which any Person other than Loan Parties and their Subsidiaries holds, directly or indirectly, an Equity Interest.

JPM Europe shall have the meaning set forth in the preamble to this Agreement.

JPMorgan shall mean JPMorgan Chase Bank, National Association.

Law(s) shall mean any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond judgment authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Body, foreign or domestic.

Leasehold Interests shall mean all of each Borrower's right, title and interest in and to, and as lessee of, any premises, including without limitation as identified as leased Real Property on Schedule 4.4 hereto.

Lender and Lenders shall have the meaning given to such term in the preamble to this Agreement and shall include each Person which becomes a transferee, successor or assign of any Lender. For the purpose of provision of this Agreement or any Other Document which provides for the granting of a security interest or other Lien to Agent for the benefit of Lenders as security for the Obligations, "Lenders" shall include any Affiliate of a Lender to which such Obligation (specifically including any Hedge Liabilities and any Cash Management Liabilities) is owed.

Lender-Provided Foreign Currency Hedge shall mean a Foreign Currency Hedge which is provided by any Lender and for which such Lender confirms to Agent in writing that it: (a) is documented in a standard International Swap Dealers Association, Inc. Master Agreement or another reasonable and customary manner; (b) provides for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner; and (c) is entered into for hedging (rather than speculative) purposes. The liabilities owing to the provider of any Lender-Provided Foreign Currency Hedge (the "**Foreign Currency Hedge Liabilities**") by any Borrower or Guarantor that is party to or guaranties such Lender-Provided Foreign Currency Hedge shall, for purposes of this Agreement and all Other Documents be "Obligations" of such Person and of each other Borrower and Guarantor, be guaranteed obligations under any Guaranty and secured obligations under any Guarantor Security Agreement or European Collateral Document, as applicable, and otherwise treated as Obligations for purposes of the Other Documents, except to the extent constituting Excluded Hedge Liabilities of such Person. The Liens securing the Foreign Currency Hedge Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5 hereof.

Lender-Provided Interest Rate Hedge shall mean an Interest Rate Hedge which is provided by any Lender and with respect to which such Lender confirms to Agent in writing that it: (a) is documented in a standard International Swap Dealers Association, Inc. Master Agreement or another reasonable and customary manner; (b) provides for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner; and (c) is entered into for hedging (rather than speculative) purposes. The liabilities owing to the provider of any Lender-Provided Interest Rate Hedge (the "**Interest Rate Hedge Liabilities**") by any Borrower or Guarantor that is party to or guaranties such Lender-Provided Interest Rate Hedge shall, for purposes of this Agreement and all Other Documents be "Obligations" of such Person and of each other Borrower and Guarantor, be guaranteed obligations under any Guaranty and secured obligations under any Guarantor Security Agreement or European Collateral Document, as applicable, and otherwise treated as Obligations for purposes of the Other Documents, except to the extent constituting Excluded Hedge Liabilities of such Person. The Liens securing the Hedge Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5 hereof.

Letter of Credit Application shall have the meaning set forth in Section 2.11(a) hereof.

Letter of Credit Borrowing shall have the meaning set forth in Section 2.13(d) hereof.

~~LIBO Impacted Interest Period shall have the meaning given to that term in the definition of Adjusted LIBO Rate.~~

~~LIBO Screen Rate shall have the meaning given to that term in the definition of Adjusted LIBO Rate.~~

LIBOR Rate Loan

Letters of Credit shall mean any ~~of the US-Canada Letters of Credit or European Advance that bears interest based on the Adjusted LIBO Rate~~ Letters of Credit, as applicable.

License Agreement shall mean any agreement between any Borrower and a Licensor pursuant to which such Borrower is authorized to use any Intellectual Property in connection with the manufacturing, marketing, sale or other distribution of any Inventory of such Borrower or otherwise in connection with such Borrower's business operations.

Licensor shall mean any Person from whom any Borrower obtains the right to use (whether on an exclusive or non-exclusive basis) any Intellectual Property in connection with such Borrower's manufacture, marketing, sale or other distribution of any Inventory or otherwise in connection with such Borrower's business operations.

Licensor/Agent Agreement shall mean an agreement between Agent and a Licensor, in form and substance satisfactory to Agent, by which Agent is given the unqualified right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to and to dispose of any Borrower's Inventory with the benefit of any Intellectual Property applicable thereto, irrespective of such Borrower's default under any License Agreement with such Licensor.

Lien shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, assignment by way of security, security interest, charge (with respect to the English Loan Parties), mortgage or lien (whether statutory or otherwise), or encumbrance, or other security agreement or preferential arrangement held or asserted in respect of any asset of any kind or nature whatsoever including any conditional sale or other title retention agreement, any lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction. The term "Lien" shall not include reference to any public record filings for notice purposes only which do not have, and would not have, the effect of a true lien or encumbrance.

Lien Waiver Agreement shall mean an agreement which is executed in favor of Agent by a Person who owns or occupies premises at which any Collateral may be located from time to time in form and substance satisfactory to Agent.

LLC Division shall mean, in the event a Borrower or Guarantor is a limited liability company, (a) the division of any such Borrower or Guarantor into two or more newly formed limited liability companies (whether or not such Borrower or Guarantor is a surviving entity following any such division) pursuant to Section 18-217 of the Delaware Limited Liability Company Act or any similar provision under any similar act governing limited liability companies organized under the laws of any other State or Commonwealth or of the District of Columbia, or (b) the adoption of a plan contemplating, or the filing of any certificate with any applicable Governmental Body that results or may result in, any such division.

Loan means any of the Term Benchmark Loans, RFR Loans, Overnight Rate Loans, Term SOFR Rate Loans or Domestic Rate Loans, as the context requires.

Loan Parties shall collectively mean the US-Canada Loan Parties and the European Loan Parties.

Local Time shall mean (a) local time in London, England with respect to (i) the receipt and sending of notices by and to, and the disbursement by or payment to, the European Agent, any European Lender or the Issuer under the English Facility or the French Facility and (ii) the times for the determination of ~~LIBOR~~the Term SOFR Rate, Adjusted EURIBOR Rate or the RFR Rate by the European Agent under the English Facility or the French Facility and the determination of the Overnight ~~LIBO~~ Rate, and (b) in all other circumstances, New York, New York time.

LUX 1 shall mean a Luxembourg private limited liability company (société à responsabilité limitée) named "Invacare Holdings S.à r.l.", which has its registered office at 6 Rue Eugene Ruppert, L-2453 Luxembourg as of the Closing Date, has a share capital of EUR 12,501 as of the Closing Date, is registered with the Luxembourg Register of Commerce and Companies under number B169,438, and is a wholly-owned Subsidiary of Invacare CV.

LUX 2 shall mean a Luxembourg private limited liability company (société à responsabilité limitée) named "Invacare Holdings Two S.à r.l.", which has its registered office at 6 Rue Eugene Ruppert, L-2453 Luxembourg as of the Closing Date, has a share capital of EUR 12,501 as of the Closing Date, is registered with the Luxembourg Register of Commerce and Companies under number B169,458, and is a wholly-owned Subsidiary of LUX 1.

Material Adverse Effect shall mean a material adverse effect on (a) the condition (financial or otherwise), results of operations, assets, business, or properties of Loan Parties taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to duly and punctually pay or perform the Obligations in accordance with the terms thereof, (c) the value of the Collateral, Agent's Liens on the Collateral or the priority of any such Lien or (d) the practical realization of the benefits of Agent's and each Lender's rights and remedies under this Agreement and the Other Documents.

Material Contract shall mean any contract, agreement, instrument, permit, lease or license, written or oral, of any Loan Party, which is material to any Loan Party's business or which the failure to comply with would reasonably be expected to result in a Material Adverse Effect.

Material Subsidiary shall mean each Subsidiary of the Company which is identified on Schedule 5.2(b) as a "Material Subsidiary," and each other Subsidiary of the Company (other than any Foreign Excluded Subsidiaries) that has assets at such time, or revenues during the most recently ended fiscal year, comprising 5% or more of the consolidated assets of the Company and its Subsidiaries at such time, or of the consolidated revenues of the Company and its Subsidiaries during such fiscal year, as the case may be.

Maximum Canadian Revolving Advance Amount shall mean \$10,000,000.

Maximum English Revolving Advance Amount shall mean Fifteen Million and 00/100 Dollars (\$15,000,000), plus any increases in accordance with Section 2.25.

Maximum English Swing Loan Advance Amount shall mean, as of the date of this Agreement, Zero and 00/100 Dollars (\$0,000,000.00); provided that, upon the effective date of each increase in the Maximum English Revolving Advance Amount in accordance with Section

2.25, the Maximum English Swing Loan Advance Amount shall increase by an amount equal to ten percent (10%) of the amount of such increase in the Maximum English Revolving Advance Amount.

Maximum European Revolving Advance Amount shall mean Thirty Million and 00/100 Dollars (\$30,000,000.00), *plus* any increases in accordance with Section 2.25.

Maximum French Revolving Advance Amount shall mean Fifteen Million and 00/100 Dollars (\$15,000,000), *plus* any increases in accordance with Section 2.25.

Maximum French Swing Loan Advance Amount shall mean Two Million and 00/100 Dollars (\$2,000,000.00); provided that, upon the effective date of each increase in the Maximum French Revolving Advance Amount in accordance with Section 2.25, the Maximum French Swing Loan Advance Amount shall increase by an amount equal to ten percent (10%) of the amount of such increase in the Maximum French Revolving Advance Amount.

Maximum Undrawn Amount shall mean, with respect to any outstanding Letter of Credit as of any date, the amount of such Letter of Credit (and, if the Letter of Credit was denominated in another currency, in the Dollar Equivalent amount of such Letter of Credit) that is or may become available to be drawn, including all automatic increases provided for in such Letter of Credit, whether or not any such automatic increase has become effective.

Maximum US-Canada Revolving Advance Amount shall mean \$60,000,000 *plus* any increases in accordance with Section 2.23.

Maximum US-Canada Swing Loan Advance Amount shall mean \$10,000,000; provided that, upon the effective date of each increase in the Maximum US-Canada Revolving Advance Amount in accordance with Section 2.23, the Maximum US-Canada Swing Loan Advance Amount shall increase by an amount equal to ten percent (10%) of the amount of such increase in the Maximum US-Canada Revolving Advance Amount.

MCLP shall mean Motion Concepts L.P., an Ontario limited partnership.

Medicaid shall mean that entitlement program under Title XIX of the Social Security Act that provides federal grants to states for medical assistance programs based on specific eligibility criteria.

Medicaid Provider Agreement shall mean an agreement entered into between a state agency or other such entity administering the Medicaid program and a health care provider or supplier under which the health care provider or supplier agrees to provide services for Medicaid patients in accordance with the terms of the agreement and Medicaid Regulations.

Medicaid Regulations shall mean, collectively, (a) all federal statutes (whether set forth in Title XIX of the Social Security Act or elsewhere) with respect to Medicaid and any statutes succeeding thereto, (b) all applicable provisions of all federal rules, regulations, manuals and orders and administrative, reimbursement and other guidelines having the force of Law of any Governmental Body promulgated pursuant to or in connection with the statutes described in clause (a), (c) all state statutes and plans for medical assistance enacted in connection with such statutes and provisions described in clauses (a) and (b), and (d) all applicable provisions of all other guidelines having the force of Law of all Governmental Bodies promulgated pursuant to or in connection with the statutes described in clause (c) and all state administrative, reimbursement and other guidelines of all Governmental Bodies having the force of Law promulgated pursuant to or in connection with the statutes described in clause (b), in each case as may be amended, supplemented or otherwise modified from time to time.

Medical Reimbursement Programs shall mean the Medicare, Medicaid and TRICARE programs and any other healthcare program operated by or financed in whole or in part by any foreign, domestic, federal, state, local or provincial government and any other non-government funded third party payor programs.

Medicare shall mean that government-sponsored entitlement program under Title XVIII of the Social Security Act that provides for a health insurance system for eligible elderly and disabled individuals.

Medicare Provider Agreement shall mean an agreement entered into between CMS or other such entity administering the Medicare program on behalf of CMS, and a health care provider or supplier under which the health care provider or supplier agreed to provide services for Medicare patients in accordance with the terms of the agreement and Medicare Regulations.

Medicare Regulations shall mean, collectively, all federal statutes (whether set forth in Title XVIII of the Social Security Act or elsewhere) with respect to the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act and any statutes succeeding thereto, together with all applicable provisions of all rules, regulations, manuals and orders and administrative, reimbursement and other guidelines having the force of Law of all Governmental Bodies (including, without limitation, HHS, CMS, the OIG or any person succeeding to the functions of any of the foregoing) promulgated pursuant to or in connection with any of the foregoing having the force of Law, as each may be amended, supplemented or otherwise modified from time to time.

MI shall mean Medbloc, Inc., a Delaware corporation.

Modified Commitment Transfer Supplement shall have the meaning set forth in Section 16.3(d) hereof.

Mortgage-Eligible Properties shall mean those parcels of real property identified on Schedule 1.2(m).

Multiemployer Plan shall mean a "multiemployer plan" as defined in Sections 3(37) or 4001(a)(3) of ERISA to which contributions are required or, within the preceding five plan years, were required by any Borrower or any member of the Controlled Group.

Multiple Employer Plan shall mean a Plan which has two or more contributing sponsors (including any Borrower or any member of the Controlled Group) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

Negotiable Document shall mean a Document that is "negotiable" within the meaning of Article 7 of the Uniform Commercial Code.

New Blocked Account shall have the meaning set forth in Section 6.19(a).

New Lender shall have the meaning set forth in Section 2.23(a) hereof.

Non-Cooperative Jurisdiction shall mean a "non-cooperative state or territory" (*Etat ou territoire non coopératif*) as set out in the list referred to in Article 238-0 A of the French Code *Général des Impôts*, as such list may be amended from time to time.

Non-Defaulting Lender shall mean, at any time, any Lender holding a Revolving Commitment that is not a Defaulting Lender at such time.

Non-Qualifying Party shall mean any Borrower or any Guarantor that on the Eligibility Date fails for any reason to qualify as an Eligible Contract Participant.

Note shall mean collectively, the Revolving Credit Note and the Swing Loan Note.

Notice shall have the meaning set forth in Section 16.6.

Obligations shall mean and include any and all loans (including without limitation, all Advances and Swing Loans), advances, debts, liabilities, obligations (including without limitation all reimbursement obligations and cash collateralization obligations with respect to Letters of Credit issued hereunder), covenants and duties owing by any Borrower or Guarantor or, with respect to Cash Management Products and Services only, any Subsidiary of any Borrower or any Guarantor, in all cases, to Issuer, Swing Loan Lender, Lenders or Agents (or to any other direct or indirect subsidiary or affiliate of Issuer, Swing Loan Lender, any Lender or any Agent) of any kind or nature, present or future (including any interest or other amounts accruing thereon, any fees accruing under or in connection therewith, any costs and expenses of any Person payable by any Borrower or Guarantor and any indemnification obligations payable by any Borrower arising or payable after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or Insolvency Event or like proceeding relating to any Borrower or Guarantor, whether or not a claim for post-filing or post-petition interest, fees or other amounts is allowable or allowed in such proceeding), whether or not for the payment of money, whether arising by reason of an extension of credit, opening or issuance of a letter of credit, loan, equipment lease, establishment of any commercial card or similar facility or guarantee, under any interest or currency swap, future, option or other similar agreement, or in any other manner, whether arising out of overdrafts or deposit or other accounts or electronic funds transfers (whether through automated clearing houses or otherwise) or out of any Agent's or any Lender's non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository transfer check or other similar arrangements, whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, regardless of how such indebtedness or liabilities arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument, including but not limited to, (i) this Agreement, the Other Documents and any amendments, extensions, renewals or increases thereto, including all costs and expenses of any Agent, Issuer, Swing Loan Lender and any Lender incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing, including but not limited to reasonable attorneys' fees and expenses and all obligations of any Borrower or Guarantor to any Agent, Issuer, Swing Loan Lender or Lenders to perform acts or refrain from taking any action, (ii) all Hedge Liabilities, and (iii) all Cash Management Liabilities. Notwithstanding anything to the contrary contained in the foregoing, the Obligations shall not include any Excluded Hedge Liabilities.

Officer's Certificate shall mean an officer's certificate substantially in the form of Exhibit 1.2(b) hereto to be signed by the Chief Executive Officer, Chief Financial Officer, Treasurer or Corporate Controller of Borrowing Agent.

OIG shall mean the Office of Inspector General of HHS and any successor thereof.

OIG Investigation shall mean the investigation initiated pursuant to a subpoena received by the Company in 2006 from the U.S. Department of Justice seeking documents relating to three (3) long-standing and well-known promotional and rebate programs maintained by the Company and its Subsidiaries.

Optional Currency shall mean the following lawful currencies: British Pounds Sterling, Euro and any other currency approved by Agent and all of the Lenders pursuant to Section 2.27(c). Subject to Section 2.27 each Optional Currency must be the lawful currency of the specified country.

Order shall have the meaning specified in Section 2.18 hereof.

Ordinary Course of Business shall mean, with respect to any Borrower or any Subsidiary of any Borrower, the ordinary course of such Borrower or Subsidiary's business as conducted on the Closing Date.

Organizational Documents shall mean, with respect to any Person, any charter, articles or certificate of incorporation, certificate of organization, registration or formation, certificate of partnership or limited partnership, bylaws, articles or memorandum of association, operating agreement, limited liability company agreement, or partnership agreement of such Person and any and all other applicable documents relating to such Person's formation, organization or entity governance matters (including any shareholders' or equity holders' agreement or voting trust agreement) and specifically includes, without limitation, any certificates of designation for preferred stock or other forms of preferred equity.

Original Currency shall have the meaning specified in Section 3.12 hereof.

Other Currency shall have the meaning specified in Section 3.12 hereof.

Other Documents shall mean the Note, the Perfection Certificates, each Fee Letter, each Guaranty, each Guarantor Security Agreement, each Pledge Agreement, the Amendment and Ratification, the Canadian Security Agreement, the European Collateral Documents and any and all other agreements, instruments and documents, including intercreditor agreements, guaranties, pledges, powers of attorney, consents, waivers, interest or currency swap agreements, estoppels, acknowledgements, undertakings, certificates or other similar agreements and all other writings heretofore, now or hereafter executed by any Borrower or any Guarantor and/or delivered to Agent or any Lender in respect of the transactions contemplated by this Agreement, in each case together with all extensions, renewals, amendments, supplements, modifications, substitutions and replacements thereto and thereof.

Other Taxes shall mean all present or future stamp, documentary, registration, filing or other similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any Other Document or from the execution, delivery, enforcement or registration of, or otherwise with respect to, this Agreement or any Other Document.

Out-of-Formula Loans shall have the meaning set forth in Section 16.2(e) hereof.

Overnight Bank Funding Rate shall mean, for any, day the rate per annum (based on a year of 360 days and actual days elapsed) comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by such Federal Reserve Bank (or by such other recognized electronic source (such as Bloomberg) selected by the Agent for the purpose of displaying such rate) (an "**Alternate Source**"); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Agent at such time (which determination

shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Borrower.

Overnight LIBO Rate means ~~a rate per annum equal to the London interbank offered rate as administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate) for overnight deposits, for any day, (i) with respect to Swing Loans denominated in Dollars, the Adjusted Daily Simple RFR for Dollars, (ii) with respect to Swing Loans denominated in Euros, the Daily Simple ESTR; and (iii) with respect to Swing Loans denominated~~ in British Pounds Sterling, ~~Euro or Dollars (as applicable) as displayed on the applicable Thomson Reuters screen page (currently pages LIBOR01 or LIBOR02) (or, in the event such rate does not appear on a page of the Thomson Reuters screen, on the appropriate page of such other information service that publishes such rate as shall be reasonably selected by the European Agent from time to time in its reasonable discretion) at approximately 11:00 a.m., London time, on such day~~ the Adjusted Daily Simple RFR for British Pounds Sterling; provided that if an Overnight LIBO Rate shall be less than zero, such rate shall be deemed to be zero for all purposes of this Agreement.

Overnight Rate Loan shall mean any European Advance that bears interest based upon the Overnight ~~LIBO~~ Rate.

Parallel Debt shall have the meaning set forth in Section 14.17 hereof.

Participant shall mean each Person who shall be granted the right by any Lender to participate in any of the Advances and who shall have entered into a participation agreement in form and substance satisfactory to such Lender.

Participating Member States shall mean any member State of the European Communities that has the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

Participation Advance shall have the meaning set forth in Section 2.13(d) hereof.

Participation Commitment shall mean singularly or collectively as the context may require the US-Canada Participation Commitment, the English Participation Commitment and the French Participation Commitment.

Payment Office shall mean singularly or collectively as the context may require, the European Payment Office and the US-Canada Payment Office.

PBGC shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

Pension Benefit Plan shall mean at any time any "employee pension benefit plan" as defined in Section 3(2) of ERISA (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Sections 412, 430 or 436 of the Code and either (i) is maintained or to which contributions are required by Loan Party or any member of the Controlled Group or (ii) has at any time within the preceding five years been maintained or to which contributions have been required by a Loan Party or any entity which was at such time a member of the Controlled Group.

Pensions Regulator means the body corporate called the Pensions Regulator established under Part I of the United Kingdom's Pensions Act 2004, as amended.

Perfection Certificates shall mean, collectively, the information questionnaires and the responses thereto provided by each Loan Party and delivered to Agent.

Permitted Acquisition shall mean a purchase or other acquisition by the Company or one of its wholly-owned Subsidiaries of all of the Equity Interests in, or all or substantially all of the property of, or any division of, any Person that, upon the consummation thereof, will be wholly-owned directly by the Company or one or more of its wholly-owned Subsidiaries (including as a result of a merger or consolidation) where such purchase or purchases or other acquisition shall meet the following requirements:

(i) the board of directors or other equivalent governing body of the target of such purchase or acquisition shall have approved the Permitted Acquisition (to the extent such approval is required) and in any event such purchase or acquisition is duly authorized;

(ii) the target of such purchase or other acquisition is in the same lines of business as, or lines of business substantially related or incidental to the principal business of, the Company;

(iii) any Subsidiary created or acquired in connection with such Permitted Acquisition complies with the requirements of Section 7.12;

(iv) the total cash and non-cash consideration (including the fair market value of all indemnities, earnouts and other contingent payment obligations to, and the aggregate amounts paid or to be paid under non-compete, consulting and other affiliated agreements with the sellers thereof, all write-downs of property and reserves for liabilities with respect thereto and all assumptions of debt, liabilities and other obligations in connection therewith) paid by or on behalf of the Company and its Subsidiaries for any such purchase or other acquisition, when aggregated with the total cash and non-cash consideration paid by or on behalf of the Company and its Subsidiaries for all other purchases and other acquisitions made by the Company and its Subsidiaries pursuant to Section 7.1(a), shall not exceed \$30,000,000 in the aggregate during the Term;

(v) immediately before and after giving effect to such purchase or acquisition, (a) no Default or Event of Default shall have occurred and be continuing, and (b) US-Canada Undrawn Availability shall not be less than US-Canada Undrawn Availability Test Amount; and

(vi) the Company shall have delivered to the Agent at least five (5) Business Days prior to the date on which any such proposed purchase or other acquisition is to be consummated, a certificate of an authorized officer, in form and substance satisfactory to the Agent, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied prior to the consummation of such purchase or other acquisition.

Permitted Assignee shall mean (a) an Agent, any Lender or any of their direct or indirect Affiliates; (b) a federal or state chartered bank, a United States branch of a foreign bank, an insurance company, or any finance company generally engaged in the business of making commercial loans; (c) any fund that is administered or managed by an Agent or any Lender, an Affiliate of an Agent or any Lender or a related entity; and (d) any Person to whom an Agent or any Lender assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Agent's or Lender's rights in and to a material portion of such Agent's or Lender's portfolio of asset-based credit facilities.

Permitted Discretion shall mean a determination made in good faith and in the exercise (from the perspective of a secured asset-based lender) of commercially reasonable business judgment.

Permitted Dispositions shall mean any of the following:

- (A) transactions involving the sale of inventory or intellectual property in the Ordinary Course of Business;
- (B) any sale, transfer or lease of assets in the Ordinary Course of Business which are no longer necessary or required in the conduct of such Loan Party's or such Subsidiary's business, in an aggregate amount not to exceed \$5,000,000 in any fiscal year; provided that the assets that are the subject of such disposition are not included in the US-Canada Formula Amount, the English Formula Amount or the French Formula Amount;
- (C) any sale, transfer or lease of assets in the Ordinary Course of Business which are replaced by substitute assets to the extent that the proceeds of any such disposition are used to acquire replacement assets which is subject to Agent's first priority security interest;
- (D) Sale and Leaseback Transactions in an aggregate amount not to exceed \$30,000,000;
- (E) dispositions of customer accounts receivable in connection with Vendor Financing Program;
- (F) asset transfers (i) between Loan Parties and their Subsidiaries contemplated by Section 7.1(a)(vi) and (ii) in which an Excluded Subsidiary (other than the Insurance Subsidiary) is the transferor and a Loan Party or Foreign Excluded Subsidiary is the transferee;
- (G) dispositions constituting conversion of cash equivalents into other cash equivalents;
- (H) dispositions constituting casualty events;
- (I) grants of Permitted Encumbrances;
- (J) waivers of contract rights in the Ordinary Course of Business;
- (K) dispositions, other than those specifically excepted pursuant to clauses (A) through (J) above, made on or after the Fourth Amendment Closing Date in an aggregate amount not to exceed \$40,000,000; provided that prior to and after giving effect to any such disposition (i) no Default or Event of Default exists or is continuing including, without limitation, after giving pro-forma effect to the exclusion of the assets that are the subject of such disposition from the US-Canada Formula Amount, the English Formula Amount or the French Formula Amount, as applicable and (ii) US-Canada Undrawn Availability shall not be less than the US-Canada Undrawn Availability Test Amount for the thirty (30) consecutive days ending as of the date of the most recently delivered US-Canada Borrowing Base Certificate;
- (L) the GCM Inventory Sale and the GCM Disposition; and
- (M) asset transfers between US-Canada Loan Parties.

Permitted Encumbrances shall mean any of the following:

- (A) Liens in favor of Agents for the benefit of Agent and Lenders, including without limitation, Liens securing Hedge Liabilities and Cash Management Products and Services;

(B) Liens for taxes, assessments or other governmental charges not delinquent or being Properly Contested;

(C) deposits or pledges (and, with respect to the French Borrowers and the French Guarantors, Liens) to secure obligations under worker's compensation, social security or similar laws, or under unemployment insurance;

(D) deposits or pledges to secure bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(E) Liens arising by virtue of the rendition, entry or issuance against any Borrower or any Subsidiary, or any property of any Borrower or any Subsidiary, of any judgment, writ, order, or decree to the extent the rendition, entry, issuance or continued existence of such judgment, writ, order or decree (or any event or circumstance relating thereto) has not resulted in the occurrence of an Event of Default under Section 10.6 hereof;

(F) carriers', repairmen's, mechanics', workers', materialmen's or other like Liens arising in the Ordinary Course of Business with respect to obligations which are not due or which are being Properly Contested;

(G) Liens placed upon fixed assets securing Indebtedness permitted under clause (C) of the definition of Permitted Indebtedness, provided that any such lien shall not encumber any property of any Loan Party other than the assets so acquired or leased;

(H) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other charges or encumbrances, in each case, which do not interfere in any material respect with the Ordinary Course of Business of Borrowers and their Subsidiaries;

(I) Liens disclosed on Schedule 1.2; provided that such Liens shall secure only those obligations which they secure on the Closing Date (and any extensions, renewals and refinancing of such obligations permitted by Section 7.8 hereof) and shall not subsequently apply to any other property or assets of any Borrower other than the property and assets to which they apply as of the Closing Date;

(J) Liens on (i) assets of Foreign Excluded Subsidiaries; (ii) to the extent consented to by the Applicable Required Lenders, Equity Interests owned by Loan Parties in first tier Foreign- Excluded Subsidiaries, in either case securing Indebtedness of Foreign Excluded Subsidiaries permitted under clauses L and M of the definition of Permitted Indebtedness and (iii) bank accounts arising under clause 24 or clause 25 of the General Banking Conditions of the Dutch Bankers' Association (Nederlandse Vereniging van Banken); and (iv) bank accounts arising under any general term or condition of any bank or financial institution in the Netherlands equivalent to those referred to in paragraph (iii) above; and

(K) Liens on Mortgage-Eligible Properties securing Indebtedness permitted under clause K of the definition of Permitted Indebtedness.

Permitted Indebtedness shall mean:

(A) Indebtedness under the Other Documents;

(B) Existing Indebtedness as set forth on Schedule 7.8 and any refinancing, refunding, extension or renewal thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount

equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed as a result of or in connection with such refinancing, refunding, renewal or extension; provided further, that the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to Loan Parties or Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(C) Indebtedness secured by Purchase Money Security Interests and Synthetic Lease Obligations, which when added with all Capitalized Lease Obligations, does not exceed \$20,000,000 in the aggregate;

(D) Intercompany Indebtedness between or among the Company and its Subsidiaries and between or among the Subsidiaries in the Ordinary Course of Business and consistent with past practice, provided that such intercompany Indebtedness shall be unsecured and the intercompany Indebtedness owed to one or more of the Loan Parties by a non-Loan Party Subsidiary shall be evidenced by a promissory note and pledged as Collateral hereunder; provided further, that the amount of intercompany Indebtedness extended by Loan Parties to non-Loan Party Subsidiaries after the Closing Date shall not exceed \$15,000,000 in the aggregate at any time outstanding;

(E) Any (a) Lender-Provided Interest Rate Hedge or Lender-Provided Foreign Currency Hedge, (b) other Interest Rate Hedge or Foreign Currency Hedge or (c) Indebtedness under any Cash Management Products and Services; provided, however, that Loan Parties and their Subsidiaries shall enter into a Lender-Provided Interest Rate Hedge or Lender-Provided Foreign Currency Hedge or another Interest Rate Hedge or Foreign Currency Hedge only for hedging (rather than speculative) purposes.

(F) Indebtedness under the 2022 Convertible Notes, the 2024 Convertible Notes and the 2026 Convertible Notes (in each case, including any guaranties thereof and subject to compliance with Section 7.19);

(G) Indebtedness under performance, surety, statutory or appeal bonds or with respect to workers' compensation claims or other bonds permitted hereunder and incurred in the Ordinary Course of Business;

(H) Indebtedness constituting customary indemnification obligations under purchase agreements;

(I) Performance guaranties by the Company or any Subsidiary with respect to the performance of any obligation of any other Subsidiary entered into in the Ordinary Course of Business consistent with past practice;

(J) Indebtedness owed to third party financing companies in the form of limited recourse obligations that finance receivables of customers of Loan Parties and their Subsidiaries in the ordinary Course of Business; provided such Indebtedness shall not exceed at any time outstanding the lesser of (i) 75% of the total owed by the customers of the Loan Parties or their Subsidiaries to such financing company and (ii) \$30,000,000;

(K) Other Indebtedness of Loan Parties, US Excluded Subsidiaries and Foreign Excluded Subsidiaries in an aggregate amount at any time outstanding not to exceed \$30,000,000;

(L) Indebtedness of Foreign Excluded Subsidiaries and the European Loan Parties consisting of ordinary course international pooling, cash management and overdraft facilities in an aggregate amount at any time outstanding not to exceed \$10,000,000; and

(M) Indebtedness owed to third party financing companies in the form of factoring of public and government receivables by Foreign Excluded Subsidiaries incorporated in Denmark, Sweden and/or Norway in the Ordinary Course of Business; provided that such Indebtedness shall not exceed at any time outstanding \$9,000,000.

Permitted Investments shall mean investments in:

(A) obligations issued or guaranteed by the United States of America or any agency thereof;

(B) commercial paper with maturities of not more than 180 days and a published rating of not less than A-1 or P-1 (or the equivalent rating);

(C) certificates of time deposit and bankers' acceptances having maturities of not more than 180 days and repurchase agreements backed by United States government securities of a commercial bank if (i) such bank has a combined capital and surplus of at least \$500,000,000, or (ii) its debt obligations, or those of a holding company of which it is a Subsidiary, are rated not less than A (or the equivalent rating) by a nationally recognized investment rating agency;

(D) obligations issued or guaranteed by Canada or any agency thereof;

(E) certificates of time deposit and bankers' acceptances having maturities of not more than one hundred eighty (180) days and repurchase agreements backed by Canada of a commercial bank if (i) such bank has a combined capital and surplus of at least Five Hundred Million Dollars (\$500,000,000), or (ii) its debt obligations, or those of a holding company of which it is a Subsidiary, are rated not less than A (or the equivalent rating) by a nationally recognized investment rating agency;

(F) investments under the 2022 Convertible Notes Hedge Transaction, in an amount not to exceed \$20,000,000 (net of the proceeds payable to the Company in respect of any related 2022 Convertible Notes Warrant Transaction), and investments under the 2026 Convertible Notes Hedge Transaction;

(G) U.S. money market funds that invest solely in obligations issued or guaranteed by the United States of America or an agency thereof;

(H) ~~Investments~~investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(I) advances to officers, directors and employees in the Ordinary Course of Business consistent with past practice, for travel, entertainment, relocation and analogous ordinary business purposes;

(J) ~~Investments~~investments listed on Schedule 7.4;

(K) ~~Investments~~investments by the Company and its Subsidiaries in the Company and its Subsidiaries and ~~Investments~~investments by non-Loan Party Subsidiaries in Loan Parties, in each case in the Ordinary Course of Business and consistent with past practice; provided further, that the amount of investments by Loan Parties in non-Loan Party Subsidiaries made after the Closing Date (including in the form of intercompany Indebtedness (y) owed to one or more of the Loan Parties by a non-Loan Party Subsidiary and (z) owed to one or more non-Loan Party Subsidiaries by a Loan Party pursuant to clause (D) of the definition of Permitted Indebtedness) shall not exceed \$15,000,000 in the aggregate at any time outstanding;

(L) Guaranties permitted by Section 7.3;

(M) ~~Investments~~investments consisting of key man life insurance;

(N) ~~Investments~~investments made under Cash Management Products and Services;

(O) ~~Investments~~investments with respect to Indebtedness permitted under clause (L) of the definition of Permitted Indebtedness; and

(P) investments consisting of Permitted Acquisitions.

Person shall mean any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, limited liability partnership, institution, public benefit corporation, joint venture, entity or Governmental Body (whether federal, state, provincial, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

Plan shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Benefit Plan and a Multiemployer Plan, as defined herein) maintained by any Borrower or any member of the Controlled Group or to which any Borrower or any member of the Controlled Group is required to contribute.

Pledge Agreement shall mean that certain Pledge Agreement executed by each of the US-Canada Loan Parties in favor of Agent dated as of the Closing Date and any other pledge agreements executed subsequent to the Closing Date by any other Person to secure the Obligations.

PNC shall have the meaning set forth in the preamble to this Agreement and shall extend to all of its successors and assigns.

PPSA shall mean the Personal Property Security Act (Ontario), or any other applicable Canadian federal or provincial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens or hypothecs on movable property, and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time. References to sections of the PPSA shall be construed to also refer to any successor sections.

Priority Payables shall mean (a) the full amount of the liabilities of any applicable Person which (i) have a trust imposed to provide for payment including any trust, Lien or claim in favour of any subcontractors, or a security interest, pledge, Lien, hypothec or charge, in each case ranking or capable of ranking senior to or pari passu with security interests, Liens, hypothecs or charges securing the Obligations on any Collateral, in each case under any federal, provincial, state, county, district, municipal, local or foreign Applicable Law, or (ii) have a right

imposed to provide for payment secured by a Lien ranking or capable of ranking senior to or pari passu with the Obligations under local or national law, regulation or directive, including, but not limited to, claims for unremitted and/or accelerated rents, taxes, wages (including, without limitation, under the Bankruptcy and Insolvency Act (Canada)), withholding taxes, value added taxes and other amounts payable to an insolvency administrator, employee withholdings or deductions and vacation pay (including, without limitation, under the Bankruptcy and Insolvency Act (Canada)), severance and termination pay, workers' compensation obligations, government royalties or pension obligations in each case to the extent such trust, or security interest, Lien, hypothec or charge, ranking or capable of ranking senior or pari passu with security interests, Liens, hypothecs or charges securing Obligations on any Collateral has been or may be imposed, or (iii) rank or are capable of ranking in priority to the Liens granted to the Applicable Agent to secure the Obligations, by statute or otherwise and (b) the amount equal to the aggregate value of the Inventory which the Agent, in good faith, and on a reasonable basis, considers is or may be subject to retention of title by a supplier or a right of a supplier to recover possession thereof, where such supplier's right has priority over the security interests, Liens, hypothecs or charges securing the Obligations, including, without limitation, Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the Bankruptcy and Insolvency Act (Canada) or any Applicable Laws granting revendication or similar rights to unpaid suppliers or any similar laws of Canada or any other applicable jurisdiction.

Projections shall have the meaning set forth in Section 5.9(a) hereof.

Properly Contested shall mean, in the case of any Indebtedness, Lien or Taxes, as applicable, of any Person that are not paid as and when due or payable by reason of such Person's bona fide dispute concerning its liability to pay the same or concerning the amount thereof: (a) such Indebtedness, Lien or Taxes, as applicable, are being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (b) such Person has established appropriate reserves as shall be required in conformity with GAAP; (c) Agent has established reserves in respect of Priority Payables regarding the Canadian Loan Parties, as applicable; (d) the non-payment of such Indebtedness or Taxes will not have a Material Adverse Effect or will not result in the forfeiture of any assets of such Person; (e) no Lien is imposed upon any of such Person's assets with respect to such Indebtedness or taxes unless such Lien (i) does not attach to any Receivables or Inventory or Fixed Assets, (ii) is at all times junior and subordinate in priority to the Liens in favor of Agent (except only with respect to property Taxes that have priority as a matter of applicable state law) and (iii) enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute; and (f) if such Indebtedness or Lien, as applicable, results from, or is determined by the entry, rendition or issuance against a Person or any of its assets of a judgment, writ, order or decree, enforcement of such judgment, writ, order or decree is stayed pending a timely appeal or other judicial review.

Proposed Reorganization shall mean the proposed reorganization of the Company's European holding company structure which will result in a change from the current structure to the proposed structure as shown on Exhibit 1.2(c), in accordance with Sections 6.17 and 7.1(a).

Protective Advances shall have the meaning set forth in Section 16.2(f) hereof.

~~Published Rate shall mean the rate of interest published each Business Day in the Wall Street Journal "Money Rates" listing under the caption "London Interbank Offered Rates" for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the Euro-Rate for a one month period as published in another publication selected by Agent).~~

Purchase Money Security Interest shall mean Liens upon tangible personal property securing loans to any Loan Party or Subsidiary of a Loan Party or deferred payments by such

Loan Party or Subsidiary for the purchase of such tangible personal property other than Eligible Inventory or Eligible Fixed Assets.

Purchasing CLO shall have the meaning set forth in Section 16.3(d) hereof.

Purchasing Lender shall have the meaning set forth in Section 16.3(c) hereof.

Qualified ECP Loan Party shall mean each Borrower or Guarantor that on the Eligibility Date is (a) a corporation, partnership, proprietorship, organization, trust, or other entity other than a "commodity pool" as defined in Section 1a(10) of the CEA and CFTC regulations thereunder that has total assets exceeding \$10,000,000 or (b) an Eligible Contract Participant that can cause another person to qualify as an Eligible Contract Participant on the Eligibility Date under Section 1a(18)(A)(v)(II) of the CEA by entering into or otherwise providing a "letter of credit or keepwell, support, or other agreement" for purposes of Section 1a(18)(A)(v)(II) of the CEA.

Qualifying Lender shall mean, in relation to a payment by a Loan Party under this Agreement or an Other Document, a Lender which is beneficially entitled to interest payable to that Lender under this Agreement or that Other Document and which;

~~(a)~~ (a) fulfills the conditions applicable to that Lender imposed by the domestic law of the United Kingdom in order for a payment of interest not to be subject to (or, as the case may be, to be exempt from) any Tax Deduction; or

~~(b)~~ (b) is a Treaty Lender.

RCRA shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as same may be amended from time to time.

Real Property shall mean all of the now or hereafter owned and leased real property of any Borrower, including without limitation as identified on Schedule 4.4 hereto.

Receivables shall mean and include, as to each Loan Party, all of such Loan Party's accounts (as defined in Article 9 of the Uniform Commercial Code) and all of such Loan Party's contract rights, instruments (including those evidencing indebtedness owed to such Loan Party by its Affiliates), documents, chattel paper (including electronic chattel paper), general intangibles relating to accounts, contract rights, instruments, documents and chattel paper, and drafts and acceptances, credit card receivables and all other forms of obligations owing to such Loan Party arising out of or in connection with the sale or lease of Inventory or the rendition of services, all supporting obligations, guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to Agent hereunder.

Reference Currency shall have the meaning specified in the definition of Equivalent Amount.

Register shall have the meaning set forth in Section 16.3(e) hereof.

Reimbursement Obligation shall have the meaning set forth in Section 2.13(b) hereof.

Release or Releases shall have the meaning set forth in Section 5.11(c) hereof.

Relevant Interbank Market shall mean in relation to Euro, British Pounds Sterling, Japanese Yen or Swiss Francs, the London Interbank Market, and in relation to any other

currencies, the applicable offshore interbank market. Notwithstanding the foregoing, the references to the currencies listed in this definition shall only apply if such currencies are or become available as Optional Currencies in accordance with the terms hereof.

Replacement Lender shall have the meaning set forth in Section 3.11 hereof.

Reportable Compliance Event shall mean that (1) any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, ~~or~~ ~~custodially~~ detained, penalized or the subject of an assessment for a penalty or enters into a settlement with an Governmental Body in connection with any economic sanctions or other Anti-Terrorism Law or Anti-Corruption law, or any predicate crime to any Anti-Terrorism Law or Anti-Corruption Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations ~~is in actual or probable~~ represents a violation of any Anti-Terrorism Law or Anti-Corruption Law; (2) any Covered Entity engages in a transaction that has caused or may cause the Lenders or Agent to be in violation of any Anti-Terrorism Law, including a Covered Entity's use of any proceeds of the credit facility to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Country or Sanctioned Person; (3) any Collateral becomes Embargoed Property; or (4) any Covered Entity otherwise violates, or reasonably believes that it will violate, any of the representations in Section 5.37 or Section 5.38 or covenants and representations in Section 16.18.

Reportable ERISA Event shall mean a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder.

Required Lenders for Eligibility shall mean (a) with respect to the US-Canada Facility, US-Canada Lenders (not including US-Canada Swing Loan Lender (in its capacity as such US-Canada Swing Loan Lender) or any Defaulting Lender) holding at least sixty-six and two-thirds percent (66 2/3%) of the US-Canada Advances and, if no US-Canada Advances are outstanding, shall mean US-Canada Lenders holding sixty-six and two thirds-percent (66 2/3%) of the US-Canada Revolving Commitment Percentages, (b) with respect to the English Facility, English Lenders (not including European Swing Loan Lender (in its capacity as such European Swing Loan Lender) or any Defaulting Lender) holding at least sixty-six and two-thirds percent (66 2/3%) of the English Advances and, if no English Advances are outstanding, shall mean English Lenders holding sixty-six and two thirds-percent (66 2/3%) of the English Revolving Commitment Percentages and (c) with respect to the French Facility, French Lenders (not including European Swing Loan Lender (in its capacity as such European Swing Loan Lender) or any Defaulting Lender) holding at least sixty-six and two-thirds percent (66 2/3%) of the French Advances and, if no French Advances are outstanding, shall mean French Lenders holding sixty-six and two thirds-percent (66 2/3%) of the French Revolving Commitment Percentages.

Reserve Percentage shall mean as of any day the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "**Eurocurrency Liabilities**").

Resolution Authority means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

Revolving Advances shall mean collectively, the US-Canada Revolving Advances and the European Advances other than Letters of Credit and the Swing Loans.

Revolving Commitment shall mean, as to any Lender, the aggregate of its US-Canada Revolving Commitment, English Revolving Commitment or French Revolving Commitment.

Revolving Commitment Amount shall mean, as to any Lender, the aggregate of such Lender's US-Canada Revolving Commitment Amount, English Revolving Commitment Amount and French Revolving Commitment Amount.

Revolving Commitment Percentage shall mean, singularly or collectively as the context may require, any Lender's US-Canada Revolving Commitment Percentage and/or English Revolving Commitment Percentage and/or French Revolving Commitment Percentage.

Revolving Credit Note shall mean, collectively, the US-Canada Revolving Credit Notes.

Revolving Interest Rate shall mean, singularly or collectively as the context may require, the US-Canada Revolving Interest Rate and the European Revolving Interest Rate.

RFR means, for any RFR Loan denominated in British Pounds Sterling, SONIA.

RFR Administrator means the SONIA Administrator.

RFR Business Day means, for any European Advance denominated in British Pounds Sterling, any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which banks are closed for general business in London.

RFR Interest Day has the meaning specified in the definition of Daily Simple RFR.

RFR Interest Payment Date means with respect to any RFR Loan, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the final day of the Term.

RFR Loan means an Advance that bears interest at a rate based on the Adjusted Daily Simple RFR.

RoT Supplier means any supplier of goods to a French Borrower, the terms in relation to whom contain retention of title (*réserve de propriété*) or extended retention of title provisions.

Sale and Leaseback Transaction shall mean, with respect to the Company and its Subsidiaries, any arrangement, directly or indirectly, with any Person whereby the Company or such Subsidiary shall sell or transfer any property used in its business 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 being sold or transferred.

Sanctioned Country shall mean a country subject to a sanctions program maintained under any Anti-Terrorism Law.

Sanctioned Person shall mean ~~any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity, or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law~~ (a) a Person that is the subject of sanctions administered by OFAC or the U.S. Department of State ("State"), including by virtue of being (i) named on OFAC's list of "Specially

Designated Nationals and Blocked Persons"; (ii) organized under the laws of, ordinarily resident in, or physically located in a Sanctioned Country; (iii) owned or controlled 50% or more in the aggregate, by one or more Persons that are the subject of sanctions administered by OFAC; (b) a Person that is the subject of sanctions maintained by the European Union ("E.U."), including by virtue of being named on the E.U.'s "Consolidated list of persons, groups and entities subject to E.U. financial sanctions" or other, similar lists; (c) a Person that is the subject of sanctions maintained by the United Kingdom ("U.K."), including by virtue of being named on the "Consolidated List Of Financial Sanctions Targets in the U.K." or other, similar lists; or (d) a Person that is the subject of sanctions imposed by any Governmental Body of a jurisdiction whose laws apply to this Agreement.

SEC shall mean the Securities and Exchange Commission and any other similar applicable authority or Governmental Body in any applicable jurisdiction or any successor thereto.

Secured Parties shall mean, collectively, each Agent, Issuer, Swing Loan Lender and Lenders, together with any Affiliates of any Agent or any Lender to whom any Hedge Liabilities or Cash Management Liabilities are owed and with each other holder of any of the Obligations, and the respective successors and assigns of each of them and Secured Party shall mean any of them.

Securities Act shall mean the Securities Act of 1933, or any similar applicable statute or Laws in any applicable jurisdiction, as amended.

Settlement shall have the meaning set forth in Section 2.5(d) hereof.

Settlement Date shall have the meaning set forth in Section 2.5(d) hereof.

SONIA means, with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA Administrator on the SONIA Administrator's Website on the immediately succeeding Business Day (provided that for any Overnight Rate Loans denominated in British Pounds Sterling, SONIA shall be based on the published rate for SONIA as of the Business Day such Overnight Rate Loan is advanced).

SONIA Administrator means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

SONIA Administrator's Website means the Bank of England's website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

SOFR shall mean, for any day, a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

SOFR Determination Date shall have the meaning set forth in the definition of Daily Simple SOFR.

SOFR Floor means a rate of interest per annum equal to zero basis points (0.00%).

SOFR Rate Day shall have the meaning set forth in the definition of Daily Simple SOFR.

SOFR Reserve Percentage shall mean, for any day, the maximum effective percentage in effect on such day, if any, as prescribed by the Board of Governors of the Federal Reserve

System (or any successor) for determining the reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to SOFR funding.

Specified Canadian Pension Plan means any Canadian Pension Plan which contains a "defined benefit provision", as defined in subsection 147.1(1) of the Income Tax Act (Canada).

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 European Agent is subject with respect to the Adjusted EURIBOR Rate 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 Revolving Commitments or the funding of the Advances. Such reserve 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.

Subsidiary shall mean of any Person a corporation or other entity of whose Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the directors of such corporation, or other Persons performing similar functions for such entity, are owned, directly or indirectly, by such Person.

Subsidiary Stock shall mean (a) with respect to the Equity Interests issued to a Borrower or Guarantor by any Subsidiary (other than a Foreign Excluded Subsidiary), 100% of such issued and outstanding Equity Interests, and (b) with respect to any Equity Interests issued to a Borrower or Guarantor by any Foreign Excluded Subsidiary (i) 100% of such issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956(c)(2)) and (ii) 66% (or such greater percentage that, due to a change in an Applicable Law after the date hereof, (x) could not reasonably be expected to cause the undistributed earnings of such Foreign Excluded Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Borrower and (y) could not reasonably be expected to cause any material adverse tax consequences) of such issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956 2(c)(2)).

Swap shall mean any "swap" as defined in Section 1a(47) of the CEA and regulations thereunder, other than (a) a swap entered into, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA, or (b) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

Swap Obligation shall mean any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap which is also a Lender-Provided Interest Rate Hedge, or a Lender-Provided Foreign Currency Hedge.

Swing Loan Lender shall mean, singularly or collectively as the context may require, the US-Canada Swing Loan Lender and the European Swing Loan Lender.

Swing Loan Notes shall mean the US-Canada Swing Loan Note.

Swing Loans shall mean, singularly or collectively as the context may require, the US-Canada Swing Loans and the European Swing Loans.

Synthetic Lease Obligation shall mean the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale and Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any insolvency proceeding to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

Target Day means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the European Agent to be a suitable replacement) is open for the settlement of payments in Euros.

TARGET2 means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on 19 November 2007.

Tax Authority means any nation, sovereign or government, any state, province, territory or other political subdivision thereof (whether state, provincial or local) and any entity or authority (including any European supranational body) anywhere in the world exercising a fiscal, revenue, customs or excise function (including without limitation, HM Revenue and Customs).

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under this Agreement or an Other Document.

Taxes shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Body, including any interest, fines, additions to tax or penalties applicable thereto, and references to "Tax" shall be construed accordingly.

Term shall have the meaning set forth in Section 13.1 hereof.

Term Benchmark Loan refers to Advances bearing interest at a rate determined by reference to the Term SOFR Rate or the Adjusted EURIBOR Rate (as applicable).

Term SOFR Administrator means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Applicable Agent in its reasonable discretion).

Term SOFR Rate shall mean, with respect to any Term SOFR Rate Loan for any Interest Period, the interest rate per annum determined by the Applicable Agent by dividing (the resulting quotient rounded upwards, at the Applicable Agent's discretion, to the nearest 1/100th of 1%) (A) the Term SOFR Reference Rate for a tenor comparable to such Interest Period on the day (the "Term SOFR Determination Date") that is two (2) Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator, by (B) a number equal to 1.00 minus the SOFR Reserve Percentage. If the Term SOFR Reference Rate for the applicable tenor has not been published or replaced with a Benchmark Replacement by 5:00 p.m. Local Time on the Term SOFR Determination Date, then the Term SOFR Reference Rate, for purposes of clause (A) in the preceding sentence, shall be the Term SOFR Reference Rate for such tenor on the first Business Day preceding such Term SOFR Determination Date for which such Term SOFR Reference Rate for such tenor was published in accordance herewith, so long as such first preceding Business Day is not more than three (3) Business Days prior to such Term

SOFR Determination Date. If the Term SOFR Rate, determined as provided above, would be less than the SOFR Floor, then the Term SOFR Rate shall be deemed to be the SOFR Floor.

Term SOFR Rate Loan means an Advance that bears interest based on Term SOFR Rate. Term SOFR Reference Rate shall mean the forward-looking term rate based on SOFR.

Termination Event shall mean: (a) a Reportable ERISA Event with respect to any Plan; (b) the withdrawal of any Borrower or any member of the Controlled Group from a Plan during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the providing of notice of intent to terminate a Plan in a distress termination described in Section 4041(c) of ERISA; (d) the commencement of proceedings by the PBGC to terminate a Plan; (e) any event or condition (i) which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or (ii) that may result in termination of a Multiemployer Plan pursuant to Section 4041A of ERISA; (f) the partial or complete withdrawal within the meaning of Section 4203 or 4205 of ERISA, of any Borrower or any member of the Controlled Group from a Multiemployer Plan; (g) notice that a Multiemployer Plan is subject to Section 4245 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not diligent, upon any Borrower or any member of the Controlled Group.

Threshold Assets shall have the meaning set forth in Section 5.32 hereof.

Toxic Substance shall mean and include any material present on the Real Property (including the Leasehold Interests) which has been shown to have significant adverse effect on human health or which is subject to regulation under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., applicable state law, or any other applicable Federal or state laws now in force or hereafter enacted relating to toxic substances. "Toxic Substance" includes but is not limited to asbestos, polychlorinated biphenyls (PCBs) and lead-based paints.

Transfer Date shall have the meaning set forth in Section 3.10(g)(v)(B) hereof.

Transferee shall have the meaning set forth in Section 16.3(d) hereof.

Treaty Lender means, in relation to a payment made by a Loan Party under this Agreement or an Other Document, a Lender which:

(a) ~~(a)~~ is treated as resident of a Treaty State for the purposes of the relevant Treaty;

~~(b)~~ ~~(b)~~ does not carry on business in the relevant Loan Party's jurisdiction of tax residence through a permanent establishment with which that Lender's participation in the relevant Advance is effectively connected, or in the case of the double taxation convention between the United Kingdom and the United States of America signed 24 July 2001 (as amended), through a permanent establishment to which interest arising from that Lender's participation in the relevant Advance is attributable; and

~~(e)~~ ~~(c)~~ fulfills any other conditions applicable to that Lender which must be fulfilled under the Treaty in order to obtain exemption from Tax imposed on interest payments due by that Loan Party under this Agreement or an Other Document, subject to completing the applicable procedural formalities.

Treaty State means a jurisdiction having a double taxation agreement with the United Kingdom (a "Treaty") which makes provision for full exemption from Tax imposed by the United Kingdom on payments of interest.

~~2024 Convertible Notes shall mean any notes issued in the Private Exchange.~~

~~Unexchanged 2021 Convertible Notes shall mean any 2021 Convertible Notes which remain outstanding after giving effect to the Phase 1 Private Exchange.~~

~~Unexchanged 2022 Convertible Notes shall mean any 2022 Convertible Notes which remain outstanding after giving effect to the Phase 2 Private Exchange~~

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.

Uniform Commercial Code shall have the meaning set forth in Section 1.3 hereof.

US Borrowers shall mean the Persons from time to time listed on Annex A hereto, and shall include any Person who may hereafter join this Agreement as a US Borrower.

US Collateral shall mean and include all right, title and interest of each US Loan Party in all of the following property and assets of such US Loan Party, in each case whether now existing or hereafter arising or created and whether now owned or hereafter acquired and wherever located:

- (A) all Receivables and all supporting obligations relating thereto;
- (B) all equipment and fixtures;
- (C) all general intangibles (including all payment intangibles and all software) and all supporting obligations related thereto;
- (D) all Inventory;
- (E) all Subsidiary Stock, securities, investment property, and financial assets;
- (F) all contract rights, rights of payment which have been earned under a contract rights, chattel paper (including electronic chattel paper and tangible chattel paper), commercial tort claims (whether now existing or hereafter arising); documents (including all warehouse receipts and bills of lading), deposit accounts, goods, instruments (including promissory notes), letters of credit (whether or not the respective letter of credit is evidenced by a writing) and letter-of-credit rights, cash, certificates of deposit, insurance proceeds (including hazard, flood and credit insurance), security agreements, eminent domain proceeds, condemnation proceeds, tort claim proceeds and all supporting obligations;
- (G) all ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computers, computer software (owned by any such Loan Party or in

which it has an interest), computer programs, tapes, disks and documents, including all of such property relating to the property described in clauses (A) through (F) of this definition; and

(H) all proceeds and products of the property described in clauses (A) through (G) of this definition, in whatever form. It is the intention of the parties that if Agent shall fail to have a perfected Lien in any particular property or assets of any such Loan Party for any reason whatsoever, but the provisions of this Agreement and/or of the Other Documents, together with all financing statements and other public filings relating to Liens filed or recorded by Agent against the applicable US Loan Parties, would be sufficient to create a perfected Lien in any property or assets that such US Loan Party may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such "proceeds" of such particular property or assets shall be included in the US Collateral as original collateral that is the subject of a direct and original grant of a security interest as provided for herein and in the Other Documents (and not merely as proceeds (as defined in Article 9 of the Uniform Commercial Code) in which a security interest is created or arises solely pursuant to Section 9-315 of the Uniform Commercial Code).

Notwithstanding the forgoing, US Collateral shall not include any Excluded Property.

US Excluded Subsidiaries shall mean the Subsidiaries listed on Schedule 5.2(b) and which are organized under the laws of the United States of America, any State thereof or the District of Columbia.

US Guarantors shall mean the Persons from time to time listed on Annex B hereto, and any other Person who may hereafter guarantee payment or performance of the whole or any part of the Obligations.

US Inventory Advance Rate shall have the meaning specified in the definition of US-Canada Formula Amount.

US Inventory NOLV Advance Rate shall have the meaning specified in the definition of US-Canada Formula Amount.

US Loan Parties shall mean the US Borrowers and US Guarantors.

US Receivables Advance Rate shall have the meaning specified in the definition of US-Canada Formula Amount.

US-Canada Advance Rates shall have the meaning specified in the definition of US-Canada Formula Amount.

US-Canada Advances shall mean and include the US-Canada Revolving Advances, the US-Canada Letters of Credit and the US-Canada Swing Loans.

US-Canada Applicable Margin shall mean for US-Canada Revolving Advances, US-Canada Swing Loans and US-Canada Letter of Credit Fees as of the Closing Date and through

and including the date immediately prior to the first Adjustment Date (as defined below), the applicable percentage specified below:

US-Canada Applicable Margin For Domestic Rate Loans (US-Canada Revolving Advances and US-Canada Swing Loans)	US-Canada Applicable Margin For Euro-Term SOFR Rate Loans (US-Canada Revolving Advances)	Applicable US- Canada Letter Of Credit Fee Rate
1.50%	2.50%	2.50%

The US-Canada Applicable Margin for US-Canada Revolving Advances, US-Canada Swing Loans and US-Canada Letter of Credit Fees shall be (i) adjusted as of the 1st day of each fiscal quarter of the Company, commencing October 1, 2015 and as of the first day of each fiscal quarter thereafter (i.e., the 1st day of each April, July, October and January), based upon the Borrowing Base Certificates (and related information) delivered to the Agent, in accordance with Section 9.2, with respect to the months or weeks, as applicable, comprising the immediately preceding fiscal quarter (each, an "**Adjustment Date**"), commencing with the delivery by the Company of the Borrowing Base Certificate in each of the months or weeks, as the case may be, comprising the fiscal quarter of the Company ending September 30, 2015, (ii) based upon the calculation by the Agent of the US-Canada Quarterly Average Undrawn Availability for such fiscal quarter and (iii) equal to the percent per annum set forth in the pricing table below corresponding to such US-Canada Quarterly Average Undrawn Availability. In the event that any Borrowing Base Certificate (and related information) is not provided to the Agent in accordance with Section 9.2, the US-Canada Applicable Margin for US-Canada Revolving Advances, US-Canada Swing Loans and US-Canada Letter of Credit Fees shall be set at the percent per annum corresponding to Tier III below as of the 1st day of the fiscal quarter of the Company following the month or week, as the case may be, in respect of which any such Borrowing Base Certificate was required to be so delivered and shall continue at Tier III until the earlier of (A) the delivery to the Agent of the required Borrowing Base Certificate (from and after which time the US-Canada Applicable Margin shall be calculated based on the respective US-Canada Quarterly Average Undrawn Availability until the US-Canada Applicable Margin is recalculated in accordance with this definition) and (B) the next Adjustment Date, if any (at which time the US-Canada Applicable Margin shall be calculated in accordance with the terms of this definition).

Tier	US-Canada Quarterly Average Undrawn Availability	US-Canada Applicable Margins For Domestic Rate Loans (US-Canada Revolving Advances and Swing Loans)	US-Canada Applicable Margins For Euro-Term SOFR Rate Loans (US-Canada Revolving Advances)	Applicable US-Canada Letter of Credit Fee Rates
I	Greater than or equal to 66 $\frac{2}{3}$ % of the Maximum US-Canada Revolving Advance Amount	1.25%	2.25%	2.25%
II	Greater than or equal to 33 $\frac{1}{3}$ % of the Maximum US-Canada Revolving Advance Amount, but less than 66 $\frac{2}{3}$ % of the Maximum US-Canada Revolving Advance Amount	1.50%	2.50%	2.50%
III	Less than 33 $\frac{1}{3}$ % of the Maximum US-Canada Revolving Advance Amount	1.75%	2.75%	2.75%

Notwithstanding anything to the contrary contained herein, no downward adjustment in any US-Canada Applicable Margin shall be made on any Adjustment Date on which any Event of Default shall have occurred and be continuing. Any increase in interest rates and/or other fees payable by Loan Parties under this Agreement and the Other Documents pursuant to the provisions of the foregoing sentence shall be in addition to and independent of any increase in such interest rates and/or other fees resulting from the occurrence of any Event of Default (including, if applicable, any Event of Default arising from a breach of Sections 9.7 or 9.8 hereof) and/or the effectiveness of the Default Rate provisions of Section 3.1 hereof or the default fee rate provisions of Section 3.2 hereof.

If, as a result of any restatement of, or other adjustment to, any Borrowing Base Certificate, or the financial statements of Borrowers on a Consolidated Basis, or for any other reason, Agent determines that (a) the US-Canada Quarterly Average Undrawn Availability as previously calculated as of any applicable date for any applicable period was inaccurate, and (b) a proper calculation of the US-Canada Quarterly Average Undrawn Availability for any such period would have resulted in different pricing for such period, then (i) if the proper calculation of the US-Canada Quarterly Average Undrawn Availability would have resulted in a higher interest rate and/or fees (as applicable) for such period, automatically and immediately without the necessity of any demand or notice by Agent or any other affirmative act of any party, the interest accrued on the applicable outstanding US-Canada Advances and/or the amount of the fees accruing for such period under the provisions of this Agreement and the Other Documents shall be deemed to be retroactively increased by, and Borrowers shall be obligated to immediately pay to Agent for the ratable benefit of the applicable Lenders an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the US-Canada Quarterly Average Undrawn Availability would have resulted in a lower interest rate and/or fees (as applicable) for such period, then the interest accrued on the applicable outstanding US-Canada Advances and the amount of the fees accruing for such period under the provisions of this Agreement and the Other Documents shall be deemed to remain unchanged, and Agent and applicable Lenders shall have no obligation to repay interest or fees to Borrowers;

provided, that, if as a result of any restatement or other event or other determination by Agent a proper calculation of the US-Canada Quarterly Average Undrawn Availability would have resulted in a higher interest rate and/or fees (as applicable) for one or more periods and a lower interest rate and/or fees (as applicable) for one or more other periods (due to the shifting of income or expenses from one period to another period or any other reason), then the amount payable by US-Canada Borrowers pursuant to clause (i) above shall be based upon the excess, if any, of the amount of interest and fees that should have been paid for all applicable periods over the amounts of interest and fees actually paid for such periods.

US-Canada Borrowers shall mean the US Borrowers and the Canadian Borrowers.

US-Canada Borrowers' Account shall have the meaning set forth in Section 2.9 hereof.

US-Canada Borrowing Agent shall mean the Company.

US-Canada Borrowing Base Certificate shall mean a certificate in substantially the form of Exhibit 1.2(a) hereto duly executed by the Chief Executive Officer, Chief Financial Officer, Assistant Treasurer or Corporate Controller of the Borrowing Agent and delivered to Agent, appropriately completed, by which such officer shall certify to Agent the US-Canada Formula Amount and calculation thereof as of the date of such certificate.

US-Canada Collateral shall mean US Collateral and Canadian Collateral.

US-Canada Facility means, collectively, the US-Canada Revolving Commitment and the extensions of credit made thereunder.

US-Canada Formula Amount shall mean an amount equal to the sum of an amount equal to the sum of:

(A) up to 85% (the "**US Receivables Advance Rate**") of Eligible Domestic Receivables (subject to specific caps on terms ranging from 0 to 120 days as set forth in the definition of Eligible Receivables), *plus*

(B) the lesser of (i) 70% of the value of the Eligible Domestic Inventory and Eligible Foreign In-Transit Inventory valued at the lower of cost or market, on a first-in, first-out basis (the "**US Inventory Advance Rate**"), or (ii) 85% of the appraised net orderly liquidation value of Eligible Domestic Inventory and Eligible Foreign In-Transit Inventory (as evidenced by an Inventory appraisal satisfactory to Agent in its Permitted Discretion) (the "**US Inventory NOLV Advance Rate**", together with the US Inventory Advance Rate and the US Receivables Advance Rate, collectively, the "**Advance Rates**"), provided that the aggregate amount included in the US-Canada Formula Amount pursuant to this clause (B) and the below clause (E) may not exceed \$30,000,000 in the aggregate at any time, provided further that the aggregate amount of Eligible Foreign In-Transit Inventory included in the US-Canada Formula Amount may not exceed \$2,400,000 in the aggregate at any time, *plus*

(C) the lesser of (i) 80% of the appraised orderly liquidation value of domestic Eligible Fixed Assets (as evidenced by a Fixed Asset appraisal satisfactory to Agent in its Permitted Discretion, which was completed on or about the Eighth Amendment Effective Date) and (ii) the Fixed Asset Cap amount, *plus*

(D) up to 85% (the "**Canadian Receivables Advance Rate**") of the Dollar Equivalent Amount of Eligible Canadian Receivables (subject to specific caps on terms ranging from 0 to 120 days as set forth in the definition of Eligible Receivables), *plus*

(E) the lesser of (i) 70% of the Dollar Equivalent Amount of the value of the Eligible Canadian Inventory valued at the lower of cost or market, on a first-in, first-out basis (the "**Canadian Inventory Advance Rate**"), or (ii) 85% of the Dollar Equivalent Amount of the appraised net orderly liquidation value of Eligible Canadian Inventory (as evidenced by an Inventory appraisal satisfactory to Agent in its Permitted Discretion) (the "**Canadian Inventory NOLV Advance Rate**", together with the Canadian Inventory Advance Rate and the Canadian Receivables Advance Rate, collectively, the "**Canadian Advance Rates**"); provided that the aggregate amount included in the US-Canada Formula Amount pursuant to this clause (E) and the above clause (B) may not exceed \$30,000,000 in the aggregate at any time; provided further, that the aggregate amount included in the US-Canada Formula Amount pursuant to this clause (E) and the above clause (D) may not exceed the Maximum Canadian Revolving Advance Amount, *minus*

(F) the aggregate amount of any outstanding US-Canada Swing Loans, *minus*

(G) the aggregate Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit, *minus*

(H) the Availability Block, *minus*

(I) such reserves, including without limitation, Freight and Duty Reserve and reserves in respect of Priority Payables, established by Agent from time to time in its Permitted Discretion.

US-Canada Guarantors shall mean the US Guarantors and the Canadian Guarantors.

US-Canada Increasing Lender shall have the meaning as set forth in Section 2.23(a) hereof.

US-Canada Lender shall mean each Lender with an US-Canada Revolving Commitment.

US-Canada Letter of Credit Fees shall have the meaning set forth in Section 3.2 hereof.

US-Canada Letter of Credit Sublimit shall mean \$20,000,000.

US-Canada Letters of Credit shall have the meaning set forth in Section 2.10 hereof.

US-Canada Loan Parties shall mean collectively the US-Canada Borrowers and the US-Canada Guarantors.

US-Canada New Lender shall have the meaning set forth in Section 2.23(a) hereof.

US-Canada Obligations shall mean that portion of the Obligations arising from, related to or connected with the US-Canada Advances.

US-Canada Participation Commitment shall mean the obligation hereunder of each US-Canada Lender holding a US-Canada Revolving Commitment to buy a participation equal to its US-Canada Revolving Commitment Percentage (subject to any reallocation pursuant to Section 2.21(b)(iv) hereof) in the US-Canada Swing Loans made by US-Canada Swing Loan Lender hereunder as provided for in Section 2.3(c) hereof and in the US-Canada Letters of Credit issued hereunder as provided for in Section 2.13(a) hereof.

US-Canada Payment Office shall mean initially Two Tower Center Boulevard, East Brunswick, New Jersey 08816; thereafter, such other office of Agent, if any, which it may designate by notice to Borrowing Agent and to each Lender to be the Payment Office.

US-Canada Quarterly Average Undrawn Availability shall mean, for any fiscal quarter, the daily average of the aggregate amount of US-Canada Undrawn Availability for such fiscal quarter.

US-Canada Required Lenders shall mean, at any time, US-Canada Lenders (not including any US-Canada Swing Loan Lender (in its capacity as such US-Canada Swing Loan Lender) or any Defaulting Lender) holding greater than fifty percent (50%) of either (a) the aggregate of the US-Canada Revolving Commitment Amounts of all US-Canada Lenders (excluding any Defaulting Lender), or (b) after the termination of all commitments of the US-Canada Lenders hereunder, the sum of (x) the outstanding US-Canada Revolving Advances and US-Canada Swing Loans, *plus* (y) (i) the aggregate of the ~~US-Canada~~ Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit multiplied by (ii) the US-Canada Revolving Commitment Percentage of all US-Canada Lenders as most recently in effect excluding any Defaulting Lender; provided, however, if there are fewer than three (3) US-Canada Lenders, US-Canada Required Lenders shall mean all US-Canada Lenders (excluding any Defaulting Lender).

US-Canada Revolving Advances shall mean the advances made under Section 2.1(a) by the US-Canada Lenders to the US-Canada Borrowers.

US-Canada Revolving Commitment shall mean, as to any US-Canada Lender, the obligation of such US-Canada Lender (if applicable), to make US-Canada Revolving Advances and participate in US-Canada Swing Loans and US-Canada Letters of Credit, in an aggregate principal and/or face amount not to exceed the US-Canada Revolving Commitment Amount (if any) of such Lender.

US-Canada Revolving Commitment Amount shall mean, (i) as to any US-Canada Lender other than a New Lender, the US-Canada Revolving Commitment amount (if any) set forth below such Lender's name on the signature page hereto (or, in the case of any Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or 16.3(d) hereof, the US-Canada Revolving Commitment amount (if any) of such Lender as set forth in the applicable Commitment Transfer Supplement), and (ii) as to any Lender that is a New Lender, the US-Canada Revolving Commitment amount provided for in the joinder signed by such New Lender under Section 2.23(a)(x), in each case as the same may be adjusted upon any increase by such Lender pursuant to Section 2.23 hereof, or any assignment by or to such Lender pursuant to Section 16.3(c) or 16.3(d) hereof.

US-Canada Revolving Commitment Percentage shall mean, (i) as to any Lender other than a New Lender, the US-Canada Revolving Commitment Percentage (if any) set forth below such Lender's name on the signature page hereof (or, in the case of any Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or 16.3(d) hereof, the US-Canada Revolving Commitment Percentage (if any) of such Lender as set forth in the applicable Commitment Transfer Supplement), and (ii) as to any Lender that is a New Lender, the US-Canada Revolving Commitment Percentage provided for in the joinder signed by such New Lender under Section 2.23(a)(x), in each case as the same may be adjusted upon any increase in the Maximum US-Canada Revolving Advance Amount pursuant to Section 2.23 hereof, or any assignment by or to such Lender pursuant to Section 16.3(c) or 16.3(d) hereof.

US-Canada Revolving Credit Notes shall have the meaning set forth in Section 2.1(a) hereof.

US-Canada Revolving Facility Usage shall mean at any time, the sum of (i) the outstanding US-Canada Revolving Advances (for purposes of this computation, US-Canada Swing Loans shall be deemed to be US-Canada Revolving Advances) *plus* (ii) the Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit.

US-Canada Revolving Interest Rate shall mean (a) with respect to US-Canada Revolving Advances that are Domestic Rate Loans and US-Canada Swing Loans, an interest rate per annum equal to the sum of the US-Canada Applicable Margin *plus* the Alternate Base Rate and (b) with respect to ~~Euro~~-Term SOFR Rate Loans, the sum of the US-Canada Applicable Margin *plus* the ~~Euro~~-Term SOFR Rate.

US-Canada Swing Loan Lender shall mean PNC Bank, National Association.

US-Canada Swing Loan Note shall have the meaning set forth in Section 2.3(a) hereof.

US-Canada Swing Loans shall have the meaning set forth in Section 2.3(a) hereof.

US-Canada Undrawn Availability at a particular date shall mean an amount equal to (a) the lesser of (i) the US-Canada Formula Amount or (ii) the Maximum US-Canada Revolving Advance Amount *minus* the sum of (x) the Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit, *plus* (y) the aggregate amount of any outstanding US-Canada Swing Loans, *plus* (z) reserves; and in the case of both (a)(i) and (a)(ii) *minus* (b) the sum of (i) the outstanding amount of US-Canada Advances (other than US-Canada Letters of Credit and US-Canada Swing Loans), *plus* (ii) fees and expenses that are accrued and unpaid under this Agreement, the Other Documents and/or each Fee Letter, *plus* (iii) all amounts due and owing to any Borrower's trade creditors which are outstanding sixty (60) days or more past their due date that are not otherwise on formal extended terms.

US-Canada Undrawn Availability Required Amount shall mean (a) 12.5% of the Maximum US-Canada Revolving Advance Amount for five (5) consecutive Business Days, or (b) 11.25% of the Maximum US-Canada Revolving Advance Amount on any given Business Day. The absolute dollar amount in the preceding clause (b) shall be deemed proportionately increased at the time of any increase in the Maximum US-Canada Revolving Advance Amount.

US-Canada Undrawn Availability Test Amount shall mean a dollar amount equal to 20% of the Maximum US-Canada Revolving Advance Amount.

US Tax Obligor means a Loan Party:

~~(e)~~ (a) which is a "United States Person" within the meaning of section 7701(a)(30) of the Code; or

~~(d)~~ (b) some or all of whose payments under this Agreement or an Other Document are from sources within the United States for United States federal income tax purposes.

USA PATRIOT Act shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107 56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

U.S. Government Securities Business Day means any day except for (a) a Saturday or Sunday or (b) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

VAT means:

(a) [any value added tax imposed by the United Kingdom's Value Added Tax Act 1994;](#)

(b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

(bc) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (ab) above, or imposed elsewhere.

Vendor Financing shall mean the sale in the Ordinary Course of Business by the Company or any of its Subsidiaries to De Lage Landen Financial Services, Inc. or any other Person that is not an Affiliate of the Company or any of its Subsidiaries of Customer Leases.

Vendor Financing Program shall mean the sale of customer accounts receivables in the Ordinary Course of Business by (i) the Company or any of its Subsidiaries to De Lage Landen Financial Services Inc. under the program in existence at the Eighth Amendment Effective Date and (ii) any Foreign Excluded Subsidiary to De Lage Landen Financial Services Inc. or any other Person that is not an Affiliate of the Company or any of its subsidiaries.

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.](#)

1.3 Uniform Commercial Code Terms. All terms used herein and defined in the Uniform Commercial Code as adopted in the State of New York from time to time (which together with the PPSA shall be referred to herein as the "**Uniform Commercial Code**") shall have the meaning given therein unless otherwise defined herein. Without limiting the foregoing, the terms "accounts", "chattel paper" (and "electronic chattel paper" and "tangible chattel paper"), "commercial tort claims", "deposit accounts", "documents", "equipment", "financial asset", "fixtures", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter-of-credit rights", "payment intangibles", "proceeds", "promissory note" "securities", "software" and "supporting obligations" as and when used in the description of Collateral shall have the meanings given to such terms in Articles 8 or 9 of the Uniform Commercial Code. In addition, without limiting the foregoing, the terms "accounts", "chattel paper", "goods", "instruments", "intangibles", "proceeds", "securities", "investment property", "document of title", "inventory" and "equipment", as and when used in the description of Collateral located in Canada shall have the meanings given to such terms in the PPSA. To the extent the definition of any category or type of collateral is expanded by any amendment, modification or revision to the Uniform Commercial Code, such expanded definition will apply automatically as of the date of such amendment, modification or revision.

1.4 Certain Matters of Construction. The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. 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. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Unless otherwise provided, all references to any instruments or agreements to which Agent is a party, including references to any of the Other Documents, shall include any and all modifications, supplements or amendments thereto, any and all restatements or replacements thereof and any and all extensions or renewals thereof. Unless otherwise provided, all financial calculations shall be performed with Inventory valued on a first-in, first-out basis. Whenever the words "including" or "include" shall be used, such words shall be understood to mean "including, without limitation" or "include, without limitation". A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Applicable Required Lenders. Any Lien referred to in this Agreement or any of the Other Documents as having been created in favor of Agent or European Collateral Agent, as applicable, any agreement entered into by Agent, European Agent or European Collateral Agent, as applicable, pursuant to this Agreement or any of the Other Documents, any payment made by or to or funds received by Agent, European Agent or European Collateral Agent, as applicable, pursuant to or as contemplated by this Agreement or any of the Other Documents, or any act taken or omitted to be taken by Agent, European Agent or European Collateral Agent, as applicable, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of Agent, European Agent or European Collateral Agent, as applicable, and Lenders. Wherever the phrase "to the best of Borrowers' knowledge" or words of similar import relating to the knowledge or the awareness of any Borrower are used in this Agreement or Other Documents, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Borrower or (ii) the knowledge that a senior officer would have obtained if he/she had engaged in a good faith and diligent performance of his/her duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Borrower and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder. The inclusion of Permitted Encumbrances in this Agreement is not intended to subordinate and shall not subordinate any Lien created by any of the security contemplated by this Agreement and the Other Documents to any Permitted Encumbrances. All of the property and assets of each of the Canadian Loan Parties, including, without limitation, its Receivables, Fixed Assets and Inventory, shall be valued in, and converted into, the Equivalent Amount in Dollars in accordance with the Agent's customary banking and conversion practices and procedures. References in this

Agreement, in respect of any Loan Party incorporated in France, to (a) "control" includes such term as defined in articles L.233-3 I and II of the French Commercial Code, as amended, and (b) a "Subsidiary" includes any entity of which a relevant Person has direct or indirect control (as defined in article L.233-3 I and II of the French Commercial Code), as amended.

1.5 Currency Calculations. All financial statements and Officer's Certificates shall be set forth in Dollars. For purposes of preparing the financial statements, calculating financial covenants and determining compliance with covenants expressed in Dollars, Optional Currencies shall be converted to Dollars in accordance with GAAP.

1.6 Term SOFR Notification. Section 3.8.2 of this Agreement provides a mechanism for determining an alternate rate of interest in the event that the Term SOFR Rate is no longer available or in certain other circumstances. The Agent does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the Term SOFR Rate or with respect to any alternative or successor rate thereto, or replacement rate therefor.

1.7 Conforming Changes Relating to Term SOFR Rate. With respect to the Term SOFR Rate, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any Other Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any Other Document; provided that, with respect to any such amendment effected, the Agent shall provide notice to the Borrowers and the Lenders of each such amendment implementing such Conforming Changes reasonably promptly after such amendment becomes effective.

2. ADVANCES, PAYMENTS.

1.1 Revolving Advances.

(a) Amount of US-Canada Revolving Advances. Subject to the terms and conditions set forth in this Agreement specifically including Section 2.1(d), each US-Canada Lender, severally and not jointly, will make US-Canada Revolving Advances to the US-Canada Borrowers in Dollars (provided, that after giving effect to such US-Canada Revolving Advances the US-Canada Revolving Facility Usage shall not exceed the lesser of the Maximum US-Canada Revolving Advance Amount and the US-Canada Formula Amount (without deduction of US-Canada Swing Loans and the Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit)) in aggregate amounts outstanding at any time equal to such Lender's US-Canada Revolving Commitment Percentage of the lesser of (x) the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount, *less* the outstanding amount of US-Canada Swing Loans, *less* the aggregate Maximum Undrawn Amount of all issued and outstanding US-Canada Letters of Credit and (y) the US-Canada Formula Amount. The US-Canada Revolving Advances shall be evidenced by one or more secured promissory notes (collectively, the "**US-Canada Revolving Credit Note**") substantially in the form attached hereto as Exhibit 2.1(a). Notwithstanding anything to the contrary contained in the foregoing or otherwise in this Agreement, the outstanding aggregate principal amount of US-Canada Swing Loans and US-Canada Revolving Advances at any one time outstanding shall not exceed an amount equal to the lesser of (i) the Maximum US-Canada Revolving Advance Amount less the Maximum Undrawn Amount of all issued and outstanding US-Canada Letters of Credit or (ii) the US-Canada Formula Amount (without deduction of US-Canada Swing Loans).

(b) Amount of English Revolving Advances. Subject to the terms and conditions set forth in this Agreement specifically including Section 2.1(d), each English Lender, severally and not jointly, will make English Revolving Advances to the English Borrowers in British Pounds Sterling, Euros or Dollars, provided, that after giving effect to such English Revolving Advances:

(i) the European Revolving Facility Usage shall not exceed the lesser of (A) the Maximum European Revolving Advance Amount and (B) the European Formula Amount (without deduction of European Swing Loans and the Maximum Undrawn Amount of all outstanding European Letters of Credit); and

(ii) the English Revolving Facility Usage shall not exceed the lesser of (A) the Maximum English Revolving Advance Amount and (B) the English Formula Amount (without deduction of English Swing Loans and the Maximum Undrawn Amount of all outstanding English Letters of Credit),

in aggregate amounts outstanding at any time equal to such Lender's English Revolving Commitment Percentage of the lesser of (x) the Maximum English Revolving Advance Amount, less the outstanding amount of English Swing Loans, less the aggregate Maximum Undrawn Amount of all issued and outstanding English Letters of Credit and (y) the English Formula Amount. Notwithstanding anything to the contrary contained in the foregoing or otherwise in this Agreement, the outstanding aggregate principal amount of English Swing Loans and English Revolving Advances at any one time outstanding shall not exceed:

(i) an amount equal to the lesser of (A) the Maximum European Revolving Advance Amount *less* the Maximum Undrawn Amount of all issued and outstanding European Letters of Credit and (B) the European Formula Amount (without deduction of European Swing Loans);

(ii) an amount equal to the lesser of (A) the Maximum English Revolving Advance Amount *less* the Maximum Undrawn Amount of all issued and outstanding English Letters of Credit and (B) the English Formula Amount (without deduction of English Swing Loans),

(c) Amount of French Revolving Advances. Subject to the terms and conditions set forth in this Agreement specifically including Section 2.1(d), each French Lender, severally and not jointly, will make French Revolving Advances to the French Borrowers in British Pounds Sterling, Euros or Dollars, provided, that after giving effect to such French Revolving Advances:

(i) the European Revolving Facility Usage shall not exceed the lesser of (A) the Maximum European Revolving Advance Amount and (B) the European Formula Amount (without deduction of European Swing Loans and the Maximum Undrawn Amount of all outstanding European Letters of Credit); and

(ii) the French Revolving Facility Usage shall not exceed the lesser of (A) the Maximum French Revolving Advance Amount and (B) the French Formula Amount (without deduction of French Swing Loans and the Maximum Undrawn Amount of all outstanding French Letters of Credit),

in aggregate amounts outstanding at any time equal to such Lender's French Revolving Commitment Percentage of the lesser of (x) the Maximum French Revolving Advance Amount, less the outstanding amount of French Swing Loans, less the aggregate Maximum Undrawn Amount of all issued and outstanding French Letters of Credit and (y) the

French Formula Amount. Notwithstanding anything to the contrary contained in the foregoing or otherwise in this Agreement, the outstanding aggregate principal amount of French Swing Loans and French Revolving Advances at any one time outstanding shall not exceed:

(i) an amount equal to the lesser of (A) the Maximum European Revolving Advance Amount *less* the Maximum Undrawn Amount of all issued and outstanding European Letters of Credit and (B) the European Formula Amount (without deduction of European Swing Loans); and

(ii) an amount equal to the lesser of (A) the Maximum French Revolving Advance Amount *less* the Maximum Undrawn Amount of all issued and outstanding French Letters of Credit and (B) the French Formula Amount (without deduction of French Swing Loans).

(d) Discretionary Rights. The Advance Rates may be increased or decreased by the Applicable Agent at any time and from time to time in the exercise of its Permitted Discretion. Each Borrower consents to any such increases or decreases and acknowledges that decreasing the Advance Rates or increasing or imposing reserves may limit or restrict Advances requested by the Applicable Borrowing Agent. The rights of the Agents under this subsection are subject to the provisions of Section 16.2(b).

(e) Use of Affiliates. Each European Lender and the European Swing Loan Lender at its option may make any European Revolving Advance or European Swing Loan by causing any domestic or foreign branch or Affiliate of such European Lender to make such European Revolving Advance or European Swing Loan (and, in the case of an Affiliate, the provisions of Sections 3.7, 3.8, 3.10 and 3.15 shall apply to such domestic or foreign branch or Affiliate to the same extent as to such European Lender and/or European Swing Loan Lender); provided that any exercise of such option shall not affect the obligation of the European Borrowers to repay such European Revolving Advance or European Swing Loan in accordance with the terms of this Agreement and provided further that any such domestic or foreign branch or Affiliate which is making a French Revolving Advance or French Swing Loan shall be a French Qualifying Lender.

1.2 Procedures for Requesting Revolving Advances; Procedures for Selection of Applicable Interest Rates for All Advances.

(a) Requests for Domestic Rate US-Canada Revolving Advances. Borrowing Agent on behalf of any US-Canada Borrower may notify Agent prior to 1:00 p.m. on a Business Day of a US-Canada Borrower's request to incur, on that day, a US-Canada Revolving Advance hereunder.

(b) Requests for ~~Euro-Term SOFR~~ Rate Loans under the US-Canada Facility or for European Revolving Advances under the European Facilities. Notwithstanding the provisions of subsection (a) above, (x) with respect to the US-Canada Facility, in the event any US-Canada Borrower desires to obtain a ~~Euro-Term SOFR~~ Rate Loan for any US-Canada Advance (other than a US-Canada Swing Loan), and (by) with respect to the English Facility or the French Facility, in the event that any European Borrower desires to obtain a European Revolving Advance, the Applicable Borrowing Agent shall give the Applicable Agent written notice by no later than 12:00 p.m. Local Time on the day which is (A) in the case of a Term SOFR Rate Loan, three (3) Business Days prior to the date such ~~Euro-Term SOFR~~ Rate Loan or European Revolving Advance is to be borrowed, (B) in the case of a Term Benchmark Loan, three (3) Business Days prior to the date such Term Benchmark Loan is borrowed or (C) in the case of an RFR Loan, five (5) RFR Business Days prior to the date such RFR Loan is borrowed, in each case in substantially

the form of the European Borrowing Request specifying (i) the date of the proposed borrowing (which shall be a Business Day), (ii) the type of borrowing (which, in the case of a European Revolving Advance, shall be ~~LIBOR-Rate~~Term Benchmark Loans or RFR Loans only), the amount of such Advance to be borrowed (in the case of the English Facility or the French Facility, expressed in the currency in which such European Revolving Advance shall be funded), which amount shall be in a minimum amount of \$1,000,000 (or in the case of any currency other than Dollars, an approximate equivalent thereof as determined by the Applicable Agent in its sole discretion) and in integral multiples of \$500,000 (or in the case of any currency other than Dollars, an approximate equivalent thereof as determined by the Applicable Agent in its sole discretion) thereafter, and (iii) (where applicable) the duration of the first Interest Period therefor. Interest Periods for ~~Euro-Term~~SOFR Rate Loans or LIBOR-RateTerm Benchmark Loans shall be for one, ~~two~~ or three months; provided that, if an Interest Period would end on a day that is not a Business Day, it shall end on the next succeeding Business Day unless such day falls in the next succeeding calendar month in which case the Interest Period shall end on the next preceding Business Day. No ~~Euro-Term~~SOFR Rate Loan, Term Benchmark Loan or ~~LIBOR-Rate~~RFR Loan shall be made available to any Borrower during the continuance of an Event of Default. (A) With respect to the US-Canada Facility, after giving effect to each requested ~~Euro-Term~~SOFR Rate Loan, including those which are converted from a Domestic Rate Loan under Section 2.2(e), there shall not be outstanding more than six (6) ~~Euro-Term~~SOFR Rate Loans, in the aggregate, and (B) with respect to the English Facility and the French Facility, after giving effect to each requested ~~LIBOR-Rate~~Term Benchmark Loan or RFR Loan, there shall not be outstanding more than six (6) ~~LIBOR-Rate~~Term Benchmark Loans and RFR Loans, in the aggregate.

(c) Initial Interest Periods. Each Interest Period of a ~~Euro-Term~~SOFR Rate Loan or a ~~LIBOR-Rate~~Term Benchmark Loan shall commence on the date such ~~Euro-Term~~SOFR Rate Loan or ~~LIBOR-Rate~~Term Benchmark Loan is made and shall end on such date as the Applicable Borrowing Agent may elect as set forth in subsection (b)(y)(iii) above, provided that the exact length of each Interest Period shall be determined in accordance with the practice of the interbank market for deposits in the relevant currency and no Interest Period shall end after the last day of the Term.

(d) Subsequent Interest Periods. The Applicable Borrowing Agent shall elect the initial Interest Period applicable to a ~~Euro-Term~~SOFR Rate Loan or a ~~LIBOR-Rate~~Term Benchmark Loan by its notice of borrowing given to Applicable Agent pursuant to Section 2.2(b) or, in the case of the Borrowing Agent under the US-Canada Facility, by its notice of conversion given to Agent pursuant to Section 2.2(e), as the case may be. Applicable Borrowing Agent shall elect the duration of each succeeding Interest Period by giving irrevocable written notice to Applicable Agent of such duration not later than 1:00 p.m. Local Time on the day which is three (3) Business Days prior to the last day of the then current Interest Period applicable to such ~~Euro-Term~~SOFR Rate Loan or ~~LIBOR-Rate~~Term Benchmark Loan. If Applicable Agent does not receive timely notice of the Interest Period elected by Applicable Borrowing Agent, (i) under the US-Canada Facility, Borrowing Agent shall be deemed to have elected to convert such ~~Euro-Term~~SOFR Rate Loan to a Domestic Rate Loan subject to Section 2.2(e) below, and (ii) under the English Facility and the French Facility, European Borrowing Agent shall be deemed to have elected to convert such ~~LIBOR-Rate~~Term Benchmark Loan on the last day of the applicable Interest Period to a ~~LIBOR-Rate~~Term Benchmark Loan with an interest period of one (1) month.

(e) Conversion under US-Canada Facility. With respect to the US-Canada Facility only, provided that no Default or Event of Default shall have occurred and be

continuing, Borrowing Agent may, on the last Business Day of the then current Interest Period applicable to any outstanding ~~Euro-Term SOFR~~ Rate Loan, or on any Business Day with respect to Domestic Rate Loans, convert any such loan into a loan of another type in the same aggregate principal amount provided that any conversion of a ~~Euro-Term SOFR~~ Rate Loan shall be made only on the last Business Day of the then current Interest Period applicable to such ~~Euro-Term SOFR~~ Rate Loan. If under the US-Canada Facility, Borrowing Agent desires to convert a loan, Borrowing Agent shall give Agent written notice by no later than 1:00 p.m. Local Time (i) on the day which is three (3) Business Days prior to the date on which such conversion is to occur with respect to a conversion from a Domestic Rate Loan to a ~~Euro-Term SOFR~~ Rate Loan, or (ii) on the day which is one (1) Business Day prior to the date on which such conversion is to occur (which date shall be the last Business Day of the Interest Period for the applicable ~~Euro-Term SOFR~~ Rate Loan) with respect to a conversion from a ~~Euro-Term SOFR~~ Rate Loan to a Domestic Rate Loan, specifying, in each case, the date of such conversion, the loans to be converted and if the conversion is to a ~~Euro-Term SOFR~~ Rate Loan, the duration of the first Interest Period therefor.

(f) Prepayment of ~~Euro-Term SOFR~~ Rate Loans and ~~LIBOR-Rate~~Term Benchmark Loans and RFR Loans. At its option and upon written notice given prior to 11:00 a.m. Local Time on the date of such prepayment (or, in the case of RFR Loans, prior to 11:00 a.m. Local Time, five (5) Business Days prior to the date of such prepayment), any Borrower may, subject to Section 2.2(g) hereof, prepay the ~~Euro-Term SOFR~~ Rate Loans, Term Benchmark Loans or ~~LIBOR-Rate~~RFR Loans in whole at any time or in part from time to time with accrued interest on the principal being prepaid to the date of such repayment. Such Borrower shall specify the date of prepayment of Advances which are ~~Euro-Term SOFR~~ Rate Loans, Term Benchmark Loans or ~~LIBOR-Rate~~RFR Loans and the amount of such prepayment. In the event that any prepayment of a ~~Euro-Term SOFR~~ Rate Loan or a ~~LIBOR-Rate~~Term Benchmark Loan is required or permitted on a date other than the last Business Day of the then current Interest Period (or other than on an RFR Interest Payment Date with respect to the prepayment of an RFR Loan) with respect thereto, the applicable Borrowers shall indemnify the Agents and Lenders therefor in accordance with Section 2.2(g) hereof.

(g) Indemnification. Each Borrower shall indemnify Agents and Lenders and hold Agents and Lenders harmless from and against any and all losses or expenses that Agents and Lenders may sustain or incur as a consequence of any prepayment, conversion of or any default by any Borrower in the payment of the principal of or interest on any ~~Euro-Term SOFR~~ Rate Loan, Term Benchmark Loan or ~~LIBOR-Rate~~RFR Loan or failure by any Borrower to complete a borrowing of, a prepayment of or conversion of or to a ~~Euro-Term SOFR~~ Rate Loan, a Term Benchmark Loan or a ~~LIBOR-Rate~~an RFR Loan after notice thereof has been given, including, but not limited to, any interest payable by any of the Agents or Lenders to lenders of funds obtained by it in order to make or maintain its ~~Euro-Term SOFR~~ Rate Loans, Term Benchmark Loans or ~~LIBOR-Rate~~RFR Loans hereunder. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by any of the Agents or any Lender to Applicable Borrowing Agent shall be conclusive absent manifest error.

(h) Deemed Requests. Should any amount required to be paid as interest hereunder, or as fees or other charges under this Agreement or any other agreement with any Agent or any Lenders, or with respect to any other Obligation under this Agreement, become due, same shall be deemed a request under the applicable Facility for a Revolving Advance, in the case of the US-Canada Facility, maintained as a Domestic Rate Loan or, in the case of the English Facility or the French Facility, a ~~LIBOR-Rate~~Term Benchmark Loan or an RFR Loan in the Applicable European Currency with,

in the case of a Term Benchmark Loan, an Interest Period of one (1) month, in each case as of the date such payment is due, in the amount required to pay in full such interest, fee, charge or Obligation, and such request shall be irrevocable.

(i) Illegality. Notwithstanding any other provision hereof, if any Applicable Law, treaty, regulation or directive, or any change therein or in the interpretation or application thereof, including without limitation any Change in Law, shall make it unlawful for Lenders or any Lender (for purposes of this subsection (i), the term "**Lender**" shall include any Lender and the office or branch where any Lender or any Person controlling such Lender makes or maintains any ~~Euro-Term SOFR Rate Loans, Term Benchmark Loans or LIBOR-RateRFR Loans~~) to make or maintain its ~~Euro-Term SOFR Rate Loans, Term Benchmark Loans or LIBOR-RateRFR Loans~~, the obligation of Lenders (or such affected Lender) to make ~~Euro-Term SOFR Rate Loans, Term Benchmark Loans or LIBOR-RateRFR Loans~~ hereunder shall forthwith be cancelled and the applicable Borrowers shall, if any affected ~~Euro-Term SOFR Rate Loans, Term Benchmark Loans or LIBOR-RateRFR Loans~~ are then outstanding, promptly upon request from Applicable Agent, either pay all such affected ~~Euro-Term SOFR Rate Loans, Term Benchmark Loans or LIBOR-RateRFR Loans~~ or, in the case of loans under the US-Canada Facility, convert such affected ~~Euro-Term SOFR Rate Loans~~ into loans of another type. If any such payment or conversion of any ~~Euro-Term SOFR Rate Loan, Term Benchmark Loan or LIBOR-RateRFR Loan~~ is made on a day that is not the last day of the Interest Period applicable to such ~~Euro-Term SOFR Rate Loan or LIBOR-RateRFR Loan~~, or is not an RFR Interest Payment Date in relation to an RFR Loan, the applicable Borrowers shall pay Applicable Agent, upon Applicable Agent's request, such amount or amounts set forth in clause (g) above. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by Lenders to Applicable Borrowing Agent shall be conclusive absent manifest error.

1.3 Swing Loans.

(a) US-Canada Swing Loans. Subject to the terms and conditions set forth in this Agreement, and in order to minimize the transfer of funds between US-Canada Lenders and Agent for administrative convenience, Agent, US-Canada Lenders holding US-Canada Revolving Commitments and US-Canada Swing Loan Lender agree that in order to facilitate the administration of this Agreement, US-Canada Swing Loan Lender may, at its election and option made in its sole discretion cancelable at any time for any reason whatsoever, make swing loan advances in Dollars ("**US-Canada Swing Loans**") available to US-Canada Borrowers as provided for in this Section 2.3(a) at any time or from time to time after the date hereof to, but not including, the expiration of the Term, in an aggregate principal amount up to but not in excess of the Maximum US-Canada Swing Loan Advance Amount, provided that the outstanding aggregate principal amount of US-Canada Swing Loans and the US-Canada Revolving Advances at any one time outstanding shall not exceed an amount equal to the lesser of (i) the Maximum US-Canada Revolving Advance Amount less the Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit or (ii) the US-Canada Formula Amount (without deduction of US-Canada Swing Loans). All US-Canada Swing Loans shall be Domestic Rate Loans only. US-Canada Borrowers may borrow (at the option and election of US-Canada Swing Loan Lender), repay and reborrow (at the option and election of US-Canada Swing Loan Lender) US-Canada Swing Loans and US-Canada Swing Loan Lender may make US-Canada Swing Loans as provided in this Section 2.3(a) during the period between Settlement Dates. All US-Canada Swing Loans shall be evidenced by a secured promissory note (the "**US-Canada Swing Loan Note**") substantially in the form attached hereto as Exhibit 2.3(a). US-Canada Swing Loan Lender's agreement to make US-Canada Swing Loans under this Agreement is cancelable

at any time for any reason whatsoever and the making of US-Canada Swing Loans by US-Canada Swing Loan Lender from time to time shall not create any duty or obligation, or establish any course of conduct, pursuant to which US-Canada Swing Loan Lender shall thereafter be obligated to make US-Canada Swing Loans in the future.

(b) Election of US-Canada Swing Loan Lender. Upon either (i) any request by Borrowing Agent for a US-Canada Revolving Advance made pursuant to Section 2.2(a) hereof or (ii) the occurrence of any deemed request by US-Canada Borrowers for a US-Canada Revolving Advance pursuant to the provisions of Section 2.2(h) hereof, US-Canada Swing Loan Lender may elect, in its sole discretion, to have such request or deemed request treated as a request for a US-Canada Swing Loan, and may advance same day funds to US-Canada Borrowers as a US-Canada Swing Loan; provided that notwithstanding anything to the contrary provided for herein, US-Canada Swing Loan Lender may not make US-Canada Swing ~~Loan Advances~~Loans if US-Canada Swing Loan Lender has been notified by Agent or by US-Canada Required Lenders that one or more of the applicable conditions set forth in Section 8.3 of this Agreement have not been satisfied or the US-Canada Revolving Commitments have been terminated for any reason.

(c) Participation by US-Canada Lenders in US-Canada Swing Loans. Upon the making of a US-Canada Swing Loan (whether before or after the occurrence of a Default or Event of Default and regardless of whether a Settlement has been requested with respect to such US-Canada Swing Loan), each US-Canada Lender holding a US-Canada Revolving Commitment shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from US-Canada Swing Loan Lender, without recourse or warranty, an undivided interest and participation in such US-Canada Swing Loan in proportion to its US-Canada Revolving Commitment Percentage. US-Canada Swing Loan Lender or Agent may, at any time, require US-Canada Lenders holding US-Canada Revolving Commitments to fund such participations by means of a Settlement as provided for in Section 2.5(d) below. From and after the date, if any, on which any US-Canada Lender holding a US-Canada Revolving Commitment is required to fund, and funds, its participation in any US-Canada Swing Loans purchased hereunder, Agent shall promptly distribute to such US-Canada Lender its US-Canada Revolving Commitment Percentage of all payments of principal and interest and all proceeds of US-Canada Collateral received by Agent in respect of such US-Canada Swing Loan; provided that no Lender holding a US-Canada Revolving Commitment shall be obligated in any event to make US-Canada Revolving Advances in an amount in excess of its US-Canada Revolving Commitment Amount *minus* its US-Canada Participation Commitment (taking into account any reallocations under Section 2.21) of the Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit.

(d) European Swing Loans. Subject to the terms and conditions set forth in this Agreement, and in order to minimize the transfer of funds between European Lenders and European Agent for administrative convenience, European Agent, European Lenders holding European Revolving Commitments and European Swing Loan Lender agree that in order to facilitate the administration of this Agreement, European Swing Loan Lender may, at its election and option made in its sole discretion cancelable at any time for any reason whatsoever, make swing loan advances in British Pounds Sterling, Euros or Dollars ("**European Swing Loans**", European Swing Loans made to the English Borrowers being "**English Swing Loans**" and European Swing Loans made to the French Borrowers being "**French Swing Loans**") available to European Borrowers as provided for in this Section 2.3(d) at any time or from time to time after the date hereof to, but not including, the expiration of the Term, in an aggregate principal amount up to but not in excess of the Maximum English Swing Loan Advance Amount and/or the Maximum

French Swing Loan Advance Amount, provided that the outstanding aggregate principal amount of:

(i) European Swing Loans and the European Revolving Advances at any one time outstanding shall not exceed an amount equal to the lesser of (i) the Maximum European Revolving Advance Amount less the Maximum Undrawn Amount of all outstanding European Letters of Credit and (ii) the European Formula Amount (without deduction of European Swing Loans);

(ii) English Swing Loans and the English Revolving Advances at any one time outstanding shall not exceed an amount equal to the lesser of (i) the Maximum English Revolving Advance Amount less the Maximum Undrawn Amount of all outstanding English Letters of Credit and (ii) the English Formula Amount (without deduction of English Swing Loans); and

(iii) French Swing Loans and the French Revolving Advances at any one time outstanding shall not exceed an amount equal to the lesser of (i) the Maximum French Revolving Advance Amount less the Maximum Undrawn Amount of all outstanding French Letters of Credit and (ii) the French Formula Amount (without deduction of French Swing Loans).

All European Swing Loans shall be Overnight ~~LIBO~~ Rate Loans only. European Borrowers may borrow (at the option and election of European Swing Loan Lender), repay and reborrow (at the option and election of European Swing Loan Lender) European Swing Loans and European Swing Loan Lender may make European Swing Loans as provided in this Section 2.3(d) during the period between Settlement Dates. European Swing Loan Lender's agreement to make English Swing Loans and/or French Swing Loans under this Agreement is cancelable at any time for any reason whatsoever and the making of European Swing Loans by European Swing Loan Lender from time to time shall not create any duty or obligation, or establish any course of conduct, pursuant to which European Swing Loan Lender shall thereafter be obligated to make European Swing Loans in the future.

(e) Election of European Swing Loan Lender. Upon either (i) any request by European Borrowing Agent for a European Revolving Advance under the English Facility or the French Facility, which request shall include the currency in which such European Revolving Advance shall be denominated or (ii) the occurrence of any deemed request by European Borrowers for a European Revolving Advance pursuant to the provisions of Section 2.2(h) hereof, European Swing Loan Lender may elect, in its sole discretion, to have such request or deemed request treated as a request for a European Swing Loan, and may advance same day funds to European Borrowers as an English Swing Loan or French Swing Loan (as applicable); provided that notwithstanding anything to the contrary provided for herein, European Swing Loan Lender may not make European Swing Loans if European Swing Loan Lender has been notified by any Agent or by European Required Lenders that one or more of the applicable conditions set forth in Section 8.3 of this Agreement have not been satisfied and may not make (i) English Swing Loans if the English Revolving Commitments have been terminated for any reason or (ii) French Swing Loans if the French Revolving Commitments have been terminated for any reason.

(f) Participation by European Lenders in European Swing Loans. Upon the making of an English Swing Loan or a French Swing Loan (whether before or after the occurrence of a Default or Event of Default and regardless of whether a Settlement has been requested with respect to such European Swing Loan), each European Lender holding a European Revolving Commitment in the relevant Facility shall be deemed,

without further action by any party hereto, to have unconditionally and irrevocably purchased from European Swing Loan Lender, without recourse or warranty, an undivided interest and participation in such English Swing Loan or French Swing Loan in proportion to its English Revolving Commitment Percentage or French Revolving Commitment Percentage (as applicable). European Swing Loan Lender or European Agent may, at any time, require European Lenders holding European Revolving Commitments in the relevant Facility to fund such participations by means of a Settlement as provided for in Section 2.5(d) below. From and after the date, if any, on which any European Lender holding a European Revolving Commitment in the relevant Facility is required to fund, and funds, its participation in any European Swing Loans purchased hereunder, European Agent shall promptly distribute to such European Lender its English Revolving Commitment Percentage or French Revolving Commitment Percentage (as applicable) of all payments of principal and interest and all proceeds of English Collateral, French Collateral or Dutch Collateral (as applicable) received by European Agent in respect of such European Swing Loan; provided that no Lender holding an English Revolving Commitment or French Revolving Commitment shall be obligated in any event to make (where applicable) (i) English Revolving Advances in an amount in excess of its English Revolving Commitment Amount *minus* its English Participation Commitment (taking into account any reallocations under Section 2.21) of the Maximum Undrawn Amount of all outstanding English Letters of Credit or (ii) French Revolving Advances in an amount in excess of its French Revolving Commitment Amount *minus* its French Participation Commitment (taking into account any reallocations under Section 2.21) of the Maximum Undrawn Amount of all outstanding French Letters of Credit.

1.4 Disbursement of Advance Proceeds.

(a) US-Canada Advances. All US-Canada Advances shall be disbursed from whichever office or other place Agent may designate from time to time and, together with any and all other Obligations of US-Canada Borrowers to any Agent or US-Canada Lenders, shall be charged to US-Canada Borrowers' Account on Agent's books. The proceeds of each US-Canada Revolving Advance or US-Canada Swing Loan requested by US-Canada Borrowing Agent on behalf of any US-Canada Borrower or deemed to have been requested by any US-Canada Borrower under Sections 2.2(h), 2.5(b) or 2.13 hereof shall, (i) with respect to requested US-Canada Revolving Advances, to the extent US-Canada Lenders make such US-Canada Revolving Advances in accordance with Sections 2.2(h), 2.5(b) or 2.13 hereof, and with respect to US-Canada Swing Loans made upon any request by US-Canada Borrowing Agent for a US-Canada Revolving Advance to the extent US-Canada Swing Loan Lender makes such US-Canada Swing Loan in accordance with Section 2.3(b) hereof, be made available to the applicable US-Canada Borrower on the day so requested by way of credit to such US-Canada Borrower's operating account at PNC, or such other bank as US-Canada Borrowing Agent may designate following notification to Agent, in immediately available federal funds or other immediately available funds or, (ii) with respect to US-Canada Revolving Advances deemed to have been requested by any US-Canada Borrower or US-Canada Swing Loans made upon any deemed request for a US-Canada Revolving Advance by any US-Canada Borrower, be disbursed to Agent to be applied to the outstanding US-Canada Obligations giving rise to such deemed request. During the Term, US-Canada Borrowers may use the US-Canada Revolving Advances and US-Canada Swing Loans by borrowing, prepaying and reborrowing, all in accordance with the terms and conditions hereof.

(b) European Advances. All European Advances shall be disbursed from whichever office or other place European Agent may designate from time to time and, together with any and all other Obligations of European Borrowers to European Agent or

European Lenders, shall be charged to European Borrowers' Account on European Agent's books. The proceeds of each European Revolving Advance or European Swing Loan requested by European Borrowing Agent on behalf of any European Borrower or deemed to have been requested by any European Borrower under Sections 2.2(h), 2.5(b) or 2.13 hereof shall, (i) with respect to requested European Revolving Advances, to the extent European Lenders make such European Revolving Advances in accordance with Sections 2.2(h), 2.5(b) or 2.13 hereof, and with respect to European Swing Loans made upon any request by European Borrowing Agent for a European Revolving Advance to the extent European Swing Loan Lender makes such European Swing Loan in accordance with Section 2.3(e) hereof, be made available to the applicable European Borrower on the date of requested utilization by way of credit to such European Borrower's operating account at JPMorgan, or such other bank as European Borrowing Agent may designate following notification to European Agent, in immediately available federal funds or other immediately available funds or, (ii) with respect to European Revolving Advances deemed to have been requested by any European Borrower or European Swing Loans made upon any deemed request for a European Revolving Advance by any European Borrower, be disbursed to European Agent to be applied to the outstanding English Obligations or French Obligations giving rise to such deemed request. During the Term, European Borrowers may use the European Revolving Advances and European Swing Loans by borrowing, prepaying and reborrowing, all in accordance with the terms and conditions hereof.

1.5 Making and Settlement of Advances.

(a) Each borrowing of Revolving Advances under each Facility shall be advanced according to the applicable Revolving Commitment Percentages of the Lenders holding the Revolving Commitments under such Facility (subject to any contrary terms of Section 2.21). Each borrowing of Swing Loans under any Facility shall be advanced by the applicable Swing Loan Lender alone.

(b) Promptly after receipt by Applicable Agent of a request or a deemed request for a Revolving Advance pursuant to Section 2.2(a) or 2.2(b) and, with respect to Revolving Advances, to the extent Applicable Agent elects not to provide a Swing Loan or the making of a Swing Loan would result in the aggregate amount of all outstanding Swing Loans under the applicable Facility exceeding the maximum amount permitted in Section 2.3 for such Facility, Applicable Agent shall notify the applicable Lenders holding the Revolving Commitments with respect to the applicable Facility of its receipt of such request specifying the information provided by the Applicable Borrowing Agent and the apportionment among such Lenders of the requested Revolving Advance as determined by Applicable Agent in accordance with the terms hereof. Each applicable Lender under such Facility shall remit the principal amount of each such Revolving Advance to the Applicable Agent (in the case of the English Facility or the French Facility, in the currency in which such European Revolving Advance was denominated) such that the Applicable Agent is able to, and the Applicable Agent shall, to the extent the applicable Lenders have made funds available to it for such purpose and subject to Section 8.3, fund such Revolving Advance to the Applicable Borrowing Agent in the Applicable Currency and immediately available funds at the applicable Payment Office prior to the close of business, on the applicable borrowing date; provided that if any applicable Lender fails to remit such funds to the Applicable Agent in a timely manner, the Applicable Agent may elect in its sole discretion to fund with its own funds the Revolving Advance of such Lender on such borrowing date, and such Lender shall be subject to the repayment obligation in Section 2.5(c) hereof.

(c) Unless Applicable Agent shall have been notified by telephone, confirmed in writing, by any Lender holding a Revolving Commitment under the applicable Facility that such Lender will not make the amount which would constitute its applicable Revolving Commitment Percentage of the requested Revolving Advance available to Applicable Agent, Applicable Agent may (but shall not be obligated to) assume that such Lender has made such amount available to Applicable Agent on such date in accordance with Section 2.5(b) and may, in reliance upon such assumption, make available to the Applicable Borrowing Agent a corresponding amount. Applicable Agent will promptly notify the Applicable Borrowing Agent of its receipt of any such notice from a Lender. In such event, if a Lender has not in fact made its applicable Revolving Commitment Percentage of the requested Revolving Advance available to Applicable Agent, then the applicable Lender and applicable Borrowers severally agree to pay to Applicable Agent on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to applicable Borrowers through but excluding the date of payment to Applicable Agent, at (i) in the case of a payment to be made by such Lender under (1) the US-Canada Facility, the greater of (A) (x) the daily average Federal Funds Effective Rate (computed on the basis of a year of 360 days) during such period as quoted by Agent, times (y) such amount or (B) a rate determined by Agent in accordance with banking industry rules on interbank compensation and (2) the English Facility or the French Facility, the greater of (A) (x) the daily average Overnight ~~LIBO~~ Rate (computed on the basis of a year of 360 days) (365/366 days with respect to amounts denominated in British Pounds Sterling) during such period as quoted by European Agent, times (y) such amount or (B) a rate determined by Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the applicable Borrowers, the Revolving Interest Rate for (x) Revolving Advances that are Domestic Rate Loans under the US-Canada Facility or (y) ~~LIBOR-Rate~~ Rate Term Benchmark Loans with an Interest Period one (1) month in the case of the English Facility or the French Facility. If such Lender pays its share of the applicable Revolving Advance to Applicable Agent, then the amount so paid shall constitute such Lender's Revolving Advance. Any payment by any Borrower shall be without prejudice to any claim any Borrower may have against a Lender that shall have failed to make such payment to Applicable Agent. A certificate of Applicable Agent submitted to any Lender or Applicable Borrowing Agent with respect to any amounts owing under this paragraph (c) shall be conclusive, in the absence of manifest error.

(d) Applicable Agent, on behalf of the applicable Swing Loan Lender under each applicable Facility, shall (or may, in the case of the European Agent on behalf of the European Swing Loan Lender) demand settlement (a "**Settlement**") of all or any applicable Swing Loans with the Lenders holding the Revolving Commitments under such Facility on at least a weekly basis, or on any more frequent date that Applicable Agent elects or that the applicable Swing Loan Lender at its option exercisable for any reason whatsoever may request, by notifying the Lenders holding the Revolving Commitments under the applicable Facility of such requested Settlement (which, in the case of Settlement under the English Facility or the French Facility, shall include the currency in which such Settlement is to be made) by facsimile, telephonic or electronic transmission no later than 3:00 p.m., Local Time, on the date of such requested Settlement or, in the case of the English Facility or the French Facility, three (3) Business Days prior to the date of such requested Settlement (in each case, the "**Settlement Date**"). Subject to any contrary provisions of Section 2.21, each Lender holding a Revolving Commitment under the applicable Facility shall transfer the amount of such Lender's applicable Revolving Commitment Percentage of the outstanding principal amount (*plus* interest accrued thereon to the extent requested by Applicable Agent) of the applicable Swing Loan with respect to which Settlement is requested by the Applicable Agent, to such account of Applicable Agent as Applicable Agent may designate not later than 5:00

p.m., Local Time, on such Settlement Date if requested by Applicable Agent by 3:00 p.m., Local Time, otherwise not later than 5:00 p.m., Local Time, on the next Business Day. Settlements may occur at any time notwithstanding that the conditions precedent to making Revolving Advances set forth in Section 8.3 have not been satisfied or the applicable Revolving Commitments shall have otherwise been terminated at such time. All amounts so transferred to Applicable Agent shall be applied against the amount of outstanding applicable Swing Loans and, when so applied, shall constitute Revolving Advances of such Lenders under the US-Canada Facility accruing interest as Domestic Rate Loans or, in the case of the English Facility or the French Facility, ~~LIBOR~~ Rate Term Benchmark Loans with an Interest Period of one (1) week or RFR Loans (as applicable). If any such amount is not transferred to Applicable Agent by any Lender holding a Revolving Commitment under the ~~Applicable~~ applicable Facility on such Settlement Date, Applicable Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon as specified in Section 2.5(c).

(e) If any Lender or Participant (a "**Benefited Lender**") shall at any time receive any payment of all or part of its Advances under any Facility, or interest thereon, or receive any Collateral in respect thereof (whether voluntarily or involuntarily or by set-off) in a greater proportion than any such payment to, and Collateral received by, any other Lender under such Facility, if any, in respect of such other Lender's Advances under such Facility, or interest thereon, and such greater proportionate payment or receipt of Collateral is not expressly permitted hereunder, such Benefited Lender shall purchase for cash from the other Lenders under such Facility a participation in such portion of each such other Lender's Advances under such Facility, or shall provide such other Lenders with the benefits of any such Collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such Collateral or proceeds ratably with each of such other Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that each Lender so purchasing a portion of another Lender's Advances may exercise all rights of payment (including rights of set-off) with respect to such portion as fully as if such Lender were the direct holder of such portion, and the obligations owing to each such purchasing Lender in respect of such participation and such purchased portion of any other Lender's Advances shall be part of the Obligations secured by the Collateral, and the obligations owing to each such purchasing Lender in respect of such participation and such purchased portion of any other Lender's Advances shall be part of the Obligations secured by the Collateral.

1.6 Maximum Advances. The aggregate principal amount of:

(w) US-Canada Revolving Advances *plus* US-Canada Swing Loans outstanding at any time shall not exceed the lesser of (a) the Maximum US-Canada Revolving Advance Amount *less* the aggregate Maximum Undrawn Amount of all issued and outstanding US-Canada Letters of Credit or (b) the US-Canada Formula Amount (without deduction of US-Canada Swing Loans);

(x) European Revolving Advances *plus* European Swing Loans outstanding at any time shall not exceed an amount equal to the lesser of (i) the Maximum European Revolving Advance Amount *less* the Maximum Undrawn Amount of all issued and outstanding European Letters of Credit and (ii) the European Formula Amount (without deduction of European Swing Loans);

(y) English Revolving Advances *plus* English Swing Loans outstanding at any time shall not exceed an amount equal to the lesser of (i) the Maximum English Revolving Advance Amount *less* the Maximum Undrawn Amount of all issued and outstanding English Letters of Credit and (ii) the English Formula Amount (without deduction of English Swing Loans); and

(z) French Revolving Advances *plus* French Swing Loans outstanding at any time shall not exceed an amount equal to the lesser of (i) the Maximum French Revolving Advance Amount *less* the Maximum Undrawn Amount of all issued and outstanding French Letters of Credit and (ii) the French Formula Amount (without deduction of French Swing Loans).

The aggregate Advances (a) to the English Borrowers shall not exceed at any time the Maximum English Revolving Advance Amount and (b) to the French Borrowers shall not exceed the Maximum French Revolving Advance Amount.

1.7 Manner and Repayment of Advances.

(a) The Revolving Advances and Swing Loans shall be due and payable in full in the Applicable Currency on the last day of the Term subject to earlier prepayment as herein provided. Notwithstanding the foregoing, all Advances shall be subject to earlier repayment upon (x) acceleration upon the occurrence of an Event of Default under this Agreement or (y) termination of this Agreement. Each payment (including each prepayment) by any Borrower on account of the principal of and interest on the Advances shall be applied, first to the outstanding Swing Loans under the ~~Applicable~~applicable Facility and next, pro rata according to the applicable Revolving Commitment Percentages of the Lenders under such Facility, to the outstanding Revolving Advances under such Facility (subject to any contrary provisions of Section 2.21).

(b) Each Borrower recognizes that the amounts evidenced by checks, notes, drafts or any other items of payment relating to and/or proceeds of Collateral may not be collectible by Applicable Agent on the date received by Applicable Agent. Applicable Agent shall conditionally credit the applicable Borrowers' Account for each item of payment on the next Business Day after the Business Day on which such item of payment is received by Applicable Agent or, in the case of amounts received by the European Agent, the Business Day upon which such items clear in accordance with the European Agent's standard practice (and the Business Day on which each such item of payment is so credited shall be referred to, with respect to such item, as the "**Application Date**"). Applicable Agent is not, however, required to credit the applicable Borrowers' Account for the amount of any item of payment which is unsatisfactory to Applicable Agent and Applicable Agent may charge the applicable Borrowers' Account for the amount of any item of payment which is returned, for any reason whatsoever, to Applicable Agent unpaid. Subject to the foregoing, the Loan Parties agree that for purposes of computing the interest charges under this Agreement, each item of payment received by Applicable Agent shall be deemed applied by Agent on account of the Obligations on its respective Application Date. Borrowers further agree that during a Dominion Period there is a monthly float charge payable to Agent for Agent's sole benefit, in an amount equal to (y) the face amount of all items of payment received during the prior month (including items of payment received by Agent as a wire transfer or electronic depository check) multiplied by (z) the Revolving Interest Rate with respect to Domestic Rate Loans for one (1) Business Day under the US-Canada Facility. All proceeds received by Agents shall be applied to the Obligations in accordance with Section 4.8(h).

(c) All payments of principal, interest and other amounts payable hereunder, or under any of the Other Documents shall be made to Applicable Agent in the Applicable Currency at the applicable Payment Office not later than 1:00 P.M. Local Time, on the due date therefor in the Applicable Currency immediately available to Applicable Agent. Applicable Agent shall have the right to effectuate payment of any and all Obligations due and owing hereunder by charging the applicable Borrowers' Account or by making Advances as provided in Section 2.2 hereof.

(d) Except as expressly provided herein, all payments (including prepayments) to be made by any Borrower on account of principal, interest, fees and other amounts payable hereunder shall be made without deduction, setoff or counterclaim and shall be made to Applicable Agent on behalf of the applicable Lenders under the applicable Facility to the applicable Payment Office, in each case on or prior to 1:00 P.M., Local Time, in the Applicable Currency and in immediately available funds.

1.8 Repayment of Excess Advances. If at any time, including, without limitation on any Computation Date, the aggregate balance of outstanding Revolving Advances, US-Canada Swing Loans and/or US-Canada Advances taken as a whole, European Revolving Advances, European Swing Loans, English Revolving Advances, French Revolving Advances, English Swing Loans or French Swing Loans, exceeds the maximum amount of such type of Advances and/or Advances individually or taken as a whole (as applicable) permitted hereunder, such excess Advances shall be immediately due and payable without the necessity of any demand, at the applicable Payment Office, whether or not a Default or an Event of Default has occurred.

1.9 Statement of Account.

(a) US-Canada Borrowers' Account. Agent shall maintain, in accordance with its customary procedures, a loan account ("**US-Canada Borrowers' Account**") in the name of the US-Canada Borrowers in which shall be recorded the date and amount of each US-Canada Advance made by Agent or US-Canada Lenders and the date and amount of each payment in respect thereof; provided, however, the failure by Agent to record the date and amount of any US-Canada Advance shall not adversely affect Agent or any US-Canada Lender. Each month, Agent shall send to Borrowing Agent a statement showing the accounting for the US-Canada Advances made, payments made or credited in respect thereof, and other transactions between Agent, US-Canada Lenders and US-Canada Borrowers during such month. The monthly statements shall be deemed correct and binding upon US-Canada Loan Parties in the absence of manifest error and shall constitute an account stated between US-Canada Lenders and US-Canada Borrowers unless Agent receives a written statement of US-Canada Borrowers' specific exceptions thereto within thirty (30) days after such statement is received by Borrowing Agent. The records of Agent with respect to US-Canada Borrowers' Account shall be conclusive evidence absent manifest error of the amounts of US-Canada Advances and other charges thereto and of payments applicable thereto.

(b) European Borrowers' Account. European Agent shall maintain, in accordance with its customary procedures, a loan account ("**European Borrowers' Account**") in the name of the European Borrowers in which shall be recorded the date and amount of each European Advance made by European Agent or European Lenders, the Facility under which such European Advance was made and the date and amount of each payment in respect thereof; provided, however, the failure by European Agent to record the date and amount of any European Advance shall not adversely affect European Agent or any European Lender. The records of European Agent with respect to European

Borrowers' Account shall be conclusive evidence absent manifest error of the amounts of European Advances and other charges thereto and of payments applicable thereto.

1.10 Letters of Credit.

(a) Subject to the terms and conditions hereof, (a) applicable Issuer shall issue or cause the issuance of standby letters of credit denominated in the Applicable Currency for the account of any US-Canada Borrower (the "**U.S.-Canada Letters of Credit**") except to the extent that the issuance thereof would then cause the sum of (i) the outstanding principal amount of US-Canada Revolving Advances *plus* (ii) the outstanding US-Canada Swing Loans, *plus* (iii) the ~~US-Canada~~ Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit, *plus* (iv) the Maximum Undrawn Amount of the US-Canada Letter of Credit to be issued to exceed the lesser of (x) the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount or (y) the US-Canada Formula Amount (calculated without giving effect to the deductions provided for in clauses (F) and (G) of the definition of US-Canada Formula Amount) and (b) applicable Issuer shall issue or cause the issuance of standby letters of credit and/or bank guarantees denominated in the Applicable Currency for the account of any European Borrower (the "**European Letters of Credit**") (European Letters of Credit made to the English Borrowers being "**English Letters of Credit**" and European Letters of Credit made to the French Borrowers being "**French Letters of Credit**") except to the extent that the issuance thereof would then cause the sum of:

(i) the outstanding European Revolving Advances *plus* (ii) the outstanding European Swing Loans, *plus* (iii) the Maximum Undrawn Amount of all outstanding European Letter of Credit *plus* (iv) the Maximum Undrawn Amount of the European Letters of Credit to be issued to exceed the lesser of (x) the Maximum European Revolving Advance Amount and (y) the European Formula Amount (calculated without giving effect to the deductions provided for in clauses (B) and (C) of the definitions of English Formula Amount and French Formula Amount);

(ii) the outstanding English Revolving Advances *plus* (ii) the outstanding English Swing Loans, *plus* (iii) the Maximum Undrawn Amount of all outstanding English Letters of Credit *plus* (iv) the Maximum Undrawn Amount of the English Letter of Credit to be issued to exceed the lesser of (x) the Maximum English Revolving Advance Amount and (y) the English Formula Amount (calculated without giving effect to the deductions provided for in clauses (B) and (C) of such definition); and

(iii) the outstanding French Revolving Advances *plus* (ii) the outstanding French Swing Loans, *plus* (iii) the Maximum Undrawn Amount of all outstanding French Letters of Credit *plus* (iv) the Maximum Undrawn Amount of the French Letters of Credit to be issued to exceed the lesser of (x) the Maximum French Revolving Advance Amount and (y) the French Formula Amount (calculated without giving effect to the deductions provided for in clauses (B) and (C) of such definition).

The (a) Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit shall not exceed in the aggregate at any time the US-Canada Letter of Credit Sublimit, (b) Maximum Undrawn Amount of all outstanding European Letters of Credit shall not exceed in the aggregate at any time the European Letter of Credit Sublimit, (c) Maximum Undrawn Amount of all outstanding English Letters of Credit shall not exceed in the aggregate at any time the English Letter of Credit Sublimit and (d) Maximum Undrawn Amount of all outstanding

French Letters of Credit shall not exceed in the aggregate at any time the French Letter of Credit Sublimit. All disbursements or payments related to Letters of Credit under any Facility shall be deemed to be, in the case of the US-Canada Facility, Domestic Rate Loans consisting of Revolving Advances under such Facility or, in the case of the English Facility or the French Facility, ~~LIBOR-Rate~~ Term Benchmark Loans with an Interest Period of one month or RFR Loans (as applicable), and shall bear interest at the Revolving Interest Rate for Domestic Rate Loans ~~or LIBOR-Rate~~ Term Benchmark Loans or RFR Loans (as applicable) under such Facility. Letters of Credit that have not been drawn upon shall not bear interest (but fees shall accrue in respect of outstanding Letters of Credit as provided in Section 3.2 hereof). As of the Closing Date, those letters of credit set forth on Schedule 2.10 attached hereto and made a part hereof, which were issued pursuant to the Existing Credit Agreement and are outstanding on the Closing Date are hereby deemed to be US-Canada Letters of Credit issued and outstanding hereunder.

(b) Notwithstanding any provision of this Agreement, no Issuer shall be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Body or arbitrator shall by its terms purport to enjoin or restrain such Issuer from issuing any Letter of Credit, or any Law applicable to such Issuer or any request or directive (whether or not having the force of law) from any Governmental Body with jurisdiction over such Issuer shall prohibit, or request that such Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuer is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon such Issuer any unreimbursed loss, cost or expense which was not applicable on the date of this Agreement, and which such Issuer in good faith deems material to it, or (ii) the issuance of the Letter of Credit would violate one or more policies of such Issuer applicable to letters of credit generally.

1.11 Issuance of Letters of Credit.

(a) Applicable Borrowing Agent, on behalf of any applicable Borrower, may request the applicable Issuer to issue or cause the issuance of a Letter of Credit by delivering to such Issuer, with a copy to Applicable Agent at the applicable Payment Office, prior to 1:00 p.m., Local Time, at least five (5) Business Days prior to the proposed date of issuance, such Issuer's form of Letter of Credit Application (the "**Letter of Credit Application**") completed to the satisfaction of Agent and Applicable Agent (which, in the case of a Letter of Credit issued for a European Borrower, (i) must include the form of Letter of Credit to be issued, which must be in an agreed form and (ii) at the direction of the European Borrowing Agent, be denominated in either Euros, British Pounds Sterling or Dollars and identify the applicable Issuer) and, such other certificates, documents and other papers and information as Applicable Agent or applicable Issuer may reasonably request. The applicable Issuer shall not issue any requested Letter of Credit if such Issuer has received notice from Applicable Agent or any Lender under the applicable Facility that one or more of the applicable conditions set forth in Section 8.3 of this Agreement have not been satisfied or the commitments of Lenders to make Revolving Advances hereunder under such Facility have been terminated for any reason.

(b) Each Letter of Credit shall, among other things, (i) provide for the payment of sight drafts, or other written demands for payment, or acceptances of usance drafts when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein and (ii) have an expiry date not later than twelve (12) months after such Letter of Credit's date of issuance and in no event later than the last day of the Term. Each standby Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits as most recently published

by the International Chamber of Commerce at the time a Letter of Credit is issued (the "UCP") or the International Standby Practices (International Chamber of Commerce Publication Number 590) (the "ISP98 Rules"), or any subsequent revision thereof at the time a standby Letter of Credit is issued, as determined by the applicable Issuer and each trade Letter of Credit shall be subject to the UCP. In addition, no trade Letter of Credit may permit the presentation of an ocean bill of lading that includes a condition that the original bill of lading is not required to claim the goods shipped thereunder.

(c) Applicable Agent shall use its reasonable efforts to notify Lenders under the applicable Facility of the request by Applicable Borrowing Agent for a Letter of Credit hereunder.

1.12 Requirements For Issuance of Letters of Credit.

(a) Applicable Borrowing Agent shall authorize and direct any Issuer to name the applicable Borrower as the "Applicant" or "Account Party" of each Letter of Credit. If Applicable Agent is not the Issuer of any Letter of Credit, Applicable Borrowing Agent shall authorize and direct the applicable Issuer to deliver to Applicable Agent all instruments, documents, and other writings and property received by Issuer pursuant to the Letter of Credit and to accept and rely upon Applicable Agent's instructions and agreements with respect to all matters arising in connection with the Letter of Credit, the application therefor.

(b) In connection with all trade Letters of Credit issued or caused to be issued by any Issuer under this Agreement, each Borrower under the applicable Facility hereby appoints such Issuer, or its designee, as its attorney, with full power and authority if an Event of Default shall have occurred: (i) to sign and/or endorse any such Borrower's name upon any warehouse or other receipts, and acceptances; (ii) to sign any such Borrower's name on bills of lading; (iii) to clear Inventory through the United States of America Customs Department or Canada Border Services Agency or any equivalent agency in any relevant jurisdiction (collectively, "**Customs**") in the name of such Borrower or such Issuer or such Issuer's designee, and to sign and deliver to Customs officials powers of attorney in the name of such Borrower for such purpose; and (iv) to complete in any such Borrower's name or such Issuer's, or in the name of such Issuer's designee, any order, sale or transaction, obtain the necessary documents in connection therewith, and collect the proceeds thereof. No Agent, Issuer nor any of their attorneys will be liable for any acts or omissions nor for any error of judgment or mistakes of fact or law, except for any Agent's, any Issuer's or their respective attorney's willful misconduct. This power, being coupled with an interest, is irrevocable as long as any Letters of Credit remain outstanding.

1.13 Disbursements, Reimbursement.

(a) Immediately upon the issuance of each Letter of Credit under any Facility, each Lender holding a Revolving Commitment under such Facility shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable Issuer a participation in such Letter of Credit and each drawing thereunder in an amount equal to such Lender's applicable Revolving Commitment Percentage of the Maximum Undrawn Amount of such Letter of Credit (as in effect from time to time) under such Facility and the amount of such drawing, respectively, and, in each case if the Letter of Credit was denominated in another currency, in the currency in which such Letter of Credit is issued.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the applicable Issuer will promptly notify Applicable Agent and Applicable Borrowing Agent. Regardless of whether Applicable Borrowing Agent shall have received such notice, the applicable Borrowers under the applicable Facility shall reimburse (such obligation to reimburse such Issuer shall sometimes be referred to as a "**Reimbursement Obligation**") such Issuer in the Applicable Currency prior to 1:00 p.m. Local Time, on each date that an amount is paid by any Issuer under any Letter of Credit (each such date, a "**Drawing Date**") in an amount equal to the amount so paid by such Issuer. In the event the applicable Borrowers fail to reimburse any Issuer for the full amount of any drawing under any Letter of Credit by 12:00 Noon Local Time, on the Drawing Date, such Issuer will promptly notify Applicable Agent and each Lender holding a Revolving Commitment under the applicable Facility thereof, and the applicable Borrowers under such Facility shall be automatically deemed to have requested that a Revolving Advance maintained as under the US-Canada Facility, a Domestic Rate Loan in Dollars (and, if such US-Canada Letter of Credit was denominated in another currency, in the Dollar Equivalent amount equal to the amount so paid by the applicable Issuer in such other currency on the Drawing Date thereof) be made by Lenders under such Facility, or under the English Facility or the French Facility a **LIBOR-RateTerm Benchmark** Loan with an Interest Period of one (1) month or an RFR Loan (as applicable), to be disbursed on the Drawing Date under such Letter of Credit, and the Lenders holding the Revolving Commitments under such Facility shall be unconditionally obligated to fund (in the case of the English Facility or the French Facility in the currency in which such applicable draw was denominated) such Revolving Advance (all whether or not the conditions specified in Section 8.3 are then satisfied or the commitments of Lenders to make Revolving Advances under such Facility hereunder have been terminated for any reason) as provided for in Section 2.13(c) immediately below. Any notice given by any Issuer pursuant to this Section 2.13(b) may be oral if promptly confirmed in writing; provided that the lack of such a confirmation shall not affect the conclusiveness or binding effect of such notice.

(c) Each Lender holding a Revolving Commitment under the applicable Facility shall upon any notice pursuant to Section 2.13(b) make available to the applicable Issuer through Applicable Agent at the applicable Payment Office an amount in immediately available funds equal to its applicable Revolving Commitment Percentage (subject to any contrary provisions of Section 2.21) under such Facility of the amount of the drawing (and, if in the case of the US-Canada Facility such US-Canada Letter of Credit was denominated in another currency, in the Dollar Equivalent amount equal to the amount paid by the applicable Issuer in such other currency on the Drawing Date thereof, and in the case of the English Facility or the French Facility, in the currency in which such applicable draw was denominated), whereupon the participating Lenders under such Facility shall (subject to Section 2.13(d)) each be deemed to have made a Revolving Advance maintained as a Domestic Rate Loan under the US-Canada Facility, or a **LIBOR-RateTerm Benchmark** Loan with an Interest Period of one month or an RFR Loan (as applicable) in the case of the English Facility or the French Facility, as applicable, to the applicable Borrowers in that amount. If any Lender holding a Revolving Commitment so notified fails to make available to Applicable Agent, for the benefit of the applicable Issuer, the amount of such Lender's applicable Revolving Commitment Percentage under such Facility of such amount by 2:00 p.m. Local time, on the Drawing Date, then interest shall accrue on such Lender's obligation to make such payment, from the Drawing Date to the date on which such Lender makes such payment (i) at a rate per annum equal to (x) under the US-Canada Facility the Federal Funds Effective Rate, and (y) under the English Facility or the French Facility, the Overnight **LIBO** Rate, in each case during the first three (3) days following the Drawing Date, and (ii) at a rate per annum equal to the rate applicable to Revolving Advances maintained as

Domestic Rate Loans under the US-Canada Facility, or the Overnight ~~LIBO~~ Rate in the case of the English Facility or the French Facility, on and after the fourth (4th) day following the Drawing Date. Applicable Agent and the applicable Issuer will promptly give notice to the Lenders under the applicable Facility of the occurrence of the Drawing Date, but failure of any Agent or any Issuer to give any such notice on the Drawing Date or in sufficient time to enable any Lender holding a Revolving Commitment under such Facility to effect such payment on such date shall not relieve such Lender from its obligations under this Section 2.13(c), provided that such Lender shall not be obligated to pay interest as provided in Section 2.13(c)(i) and Section 2.13(c)(ii) until and commencing from the date of receipt of notice from Applicable Agent or the applicable Issuer of a drawing.

(d) With respect to any unreimbursed drawing under the Facility that is not converted into a Revolving Advance maintained as a Domestic Rate Loan under the US-Canada Facility or a ~~LIBOR Rate~~ Term Benchmark Loan in the case of the English Facility or the French Facility with an Interest Period of one (1) month or an RFR Loan (as applicable), to the applicable Borrowers under such Facility in whole or in part as contemplated by Section 2.13(b), because of the Loan Parties' failure to satisfy the conditions set forth in Section 8.3 hereof (other than any notice requirements) or for any other reason, such Borrowers shall be deemed to have incurred from Applicable Agent a borrowing (each a "**Letter of Credit Borrowing**") in the amount of such drawing. Such Letter of Credit Borrowing shall be due and payable in the Applicable Currency on demand (together with interest) and shall bear interest at the relevant Revolving Interest Rate (which, with respect to a Letter of Credit Borrowing under this Section 2.13(d) by the European Borrowers, shall ~~have~~ be a Term Benchmark Loan with an Interest Period of one (1) month or an RFR Loan (as applicable)). Each applicable Lender's payment to Applicable Agent pursuant to Section 2.13(c) shall be deemed to be a payment in respect of its participation in such Letter of Credit Borrowing and shall constitute a "**Participation Advance**" from such Lender in satisfaction of its Participation Commitment in respect of the applicable Letter of Credit under this Section 2.13.

(e) Each applicable Lender's Participation Commitment in respect of the Letters of Credit shall continue until the last to occur of any of the following events: (x) the applicable Issuer ceases to be obligated to issue or cause to be issued Letters of Credit hereunder; (y) no Letter of Credit issued or created hereunder remains outstanding and uncanceled; and (z) all Persons (other than Borrowers) have been fully reimbursed for all payments made under or relating to Letters of Credit.

1.14 Repayment of Participation Advances.

(a) Upon (and only upon) receipt by Applicable Agent for the account of the applicable Issuer of immediately available funds from the applicable Borrowers under any Facility (i) in reimbursement of any payment made by such Issuer or such Agent under any Letter of Credit with respect to which any Lender has made a Participation Advance to such Agent, or (ii) in payment of interest on such a payment made by such Issuer or such Agent under such a Letter of Credit, Applicable Agent will pay to each Lender holding a Revolving Commitment under such Facility, in the same funds as those received by Applicable Agent, the amount of such Lender's applicable Revolving Commitment Percentage under such Facility of such funds, except Applicable Agent shall retain the amount of the Revolving Commitment Percentage under such Facility of such funds of any Lender holding a Revolving Commitment under such Facility that did not make a Participation Advance in respect of such payment by Applicable Agent (and, to the extent that any of the other Lender(s) holding a Revolving Commitment under such Facility have funded any portion of any Defaulting Lender's Participation Advance in

accordance with the provisions of Section 2.21, Applicable Agent will pay over to such Non-Defaulting Lenders under such Facility a pro rata portion of the funds so withheld from such Defaulting Lender).

(b) If any Issuer or any Agent is required at any time to return to any Borrower, or to a trustee, receiver, liquidator, custodian, or any official in any insolvency proceeding, any portion of the payments made by any Borrower to such Issuer or such Agent pursuant to Section 2.14(a) in reimbursement of a payment made under any Letter of Credit or interest or fee thereon, each applicable Lender under the applicable Facility shall, on demand of Applicable Agent, forthwith return to such Issuer or such Agent the amount of its applicable Revolving Commitment Percentage under the Facility of any amounts so returned by such Issuer or such Agent *plus* interest at (x) under the US-Canada Facility, the Federal Funds Effective Rate, and (y) under the English Facility or the French Facility, the Overnight ~~LIBO~~ Rate.

1.15 Documentation. Each applicable Borrower under any Facility agrees to be bound by the terms of any applicable Letter of Credit Application and by the applicable Issuer's interpretations of any Letter of Credit issued on behalf of such Borrower and by such Issuer's written regulations and customary practices relating to letters of credit, though such Issuer's interpretations may be different from such Borrower's own. In the event of a conflict between any Letter of Credit Application and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), no Issuer shall be liable for any error, negligence and/or mistakes, whether of omission or commission, in following Applicable Borrowing Agent's or any Borrower's instructions or those contained in any Letters of Credit or any modifications, amendments or supplements thereto.

1.16 Determination to Honor Drawing Request. In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, the applicable Issuer shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

1.17 Nature of Participation and Reimbursement Obligations. The obligation of each Lender holding a Revolving Commitment in accordance with this Agreement to make the Revolving Advances or Participation Advances as a result of a drawing under a Letter of Credit, and the obligations of the applicable Borrowers under any Facility to reimburse any Issuer upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Section 2.17 under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such Lender or any Borrower, as the case may be, may have against any Issuer, any Agent, any Borrower or Lender, as the case may be, or any other Person for any reason whatsoever;

(ii) the failure of any Borrower or any other Person to comply, in connection with a Letter of Credit Borrowing, with the conditions set forth in this Agreement for the making of a Revolving Advance, it being acknowledged that such conditions are not required for the making of a Letter of Credit Borrowing

and the obligation of the Lenders to make Participation Advances under Section 2.13;

(iii) any lack of validity or enforceability of any Letter of Credit;

(iv) any claim of breach of warranty that might be made by any Borrower, any Agent, any Issuer or any Lender against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, recoupment, counterclaim, cross-claim, defense or other right which any Borrower, any Agent, any Issuer or any Lender may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or assignee of the proceeds thereof (or any Persons for whom any such transferee or assignee may be acting), any Issuer, any Agent or any Lender or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between any Borrower or any Subsidiaries of such Borrower and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of (or any defect in or forgery of any signature or endorsement on) or the form of or lack of validity, sufficiency, accuracy, enforceability or genuineness of any draft, demand, instrument, certificate or other document presented under or in connection with any Letter of Credit, or any fraud or alleged fraud in connection with any Letter of Credit, or the transport of any property or provision of services relating to a Letter of Credit, in each case even if any Issuer or any of such Issuer's Affiliates has been notified thereof;

(vi) payment by any Issuer under any Letter of Credit against presentation of a demand, draft or certificate or other document which is forged or does not fully comply with the terms of such Letter of Credit (provided that the foregoing shall not excuse such Issuer from any obligation under the terms of any applicable Letter of Credit to require the presentation of documents that on their face appear to satisfy any applicable requirements for drawing under such Letter of Credit prior to honoring or paying any such draw);

(vii) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(viii) any failure by any Issuer or any of such Issuer's Affiliates to issue any Letter of Credit in the form requested by Applicable Borrowing Agent, unless the Applicable Agent and such Issuer have each received written notice from Applicable Borrowing Agent of such failure within three (3) Business Days after such Issuer shall have furnished Applicable Agent and Applicable Borrowing Agent a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

(ix) the occurrence of any Material Adverse Effect;

(x) any breach of this Agreement or any Other Document by any party thereto;

(xi) the occurrence or continuance of an insolvency proceeding or Insolvency Event with respect to any Loan Party;

(xii) the fact that a Default or an Event of Default shall have occurred and be continuing;

(xiii) the fact that the Term shall have expired or this Agreement or the obligations of the Lenders to make Advances have been terminated; and

(xiv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

1.18 Liability for Acts and Omissions.

(a) As between Borrowers and Issuers, Swing Loan Lenders, Agents and Lenders, each Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, no Issuer shall be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if such Issuer or any of its Affiliates shall have been notified thereof); (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of any Borrower against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among any Borrower and any beneficiary of any Letter of Credit or any such transferee; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, facsimile, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of such Issuer, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of such Issuer's rights or powers hereunder. Nothing in the preceding sentence shall relieve any Issuer from liability for such Issuer's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment) in connection with actions or omissions described in such clauses (i) through (viii) of such sentence. In no event shall any Issuer or any Issuer's Affiliates be liable to any Borrower for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

(b) Without limiting the generality of the foregoing, each Issuer and each of its Affiliates: (i) may rely on any oral or other communication believed in good faith by such Issuer or such Affiliate to have been authorized or given by or on behalf of the applicant for a Letter of Credit; (ii) may honor any presentation if the documents presented appear on their face substantially to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a

Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by such Issuer or its Affiliates; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on such Issuer or its Affiliate in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a steamship agent or carrier or any document or instrument of like import (each an "**Order**") and honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

(c) In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by any Issuer under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment), shall not put such Issuer under any resulting liability to any Borrower, any Agent or any Lender.

1.19 Mandatory Prepayments.

(a) Subject to Section 7.1 hereof, when any Loan Party sells or otherwise disposes of (i) any Collateral other than Inventory in the Ordinary Course of Business or (ii) any other property in connection with a Sale and Leaseback Transaction, in either case with a value in excess of \$1,000,000, such Loan Party shall repay the Advances under the relevant Facility in an amount equal to the net proceeds of such sale (i.e., gross proceeds less the reasonable direct costs of such sales or other dispositions), such repayments to be made promptly but in no event more than one (1) Business Day following receipt of such net proceeds, and until the date of payment, such proceeds shall be held in trust for the Applicable Agent. The foregoing shall not be deemed to be implied consent to any such sale otherwise prohibited by the terms and conditions hereof. Such repayments shall be applied to outstanding Advances under the relevant Facility (including cash collateralization of all Obligations relating to any outstanding Letters of Credit in accordance with the provisions of Section 3.2(b); provided, however that if no Default or Event of Default has occurred and is continuing, such repayments shall be applied to cash collateralize any Obligations related to outstanding Letters of Credit last) in such order as the Applicable Agent may determine, subject to the relevant Borrowers' ability to reborrow Revolving Advances in accordance with the terms hereof.

(b) In the event of the issuance of any Equity Interests by or capital contributions to any Loan Party (other than any Equity Interests issued in connection with the issuance of the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes, any conversion of any of the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes, and/or entry into, exercise, settlement, early termination or other performance of obligations under (including by netting or set-off) the 2021 Convertible Notes Warrant Transactions, the 2022 Convertible Notes Call Spread Transaction or the 2026 Convertible Notes Hedge Transaction or issuances under

either of the foregoing), such Loan Party shall, no later than ten (10) Business Days after the receipt by such Loan Party of the net cash proceeds of any issuance of Equity Interests, repay the Advances under the relevant Facility, in an amount equal to fifty percent (50%) of such net cash proceeds in the case of an issuance of Equity Interests by or capital contribution to any Loan Party. Such repayments will be applied in the same manner as set forth in Section 11.5.

(c) All proceeds received by any Loan Party or any Agent (i) under any insurance policy on account of damage or destruction of any assets or property of any Loan Party, or (ii) as a result of any taking or condemnation of any assets or property, not permitted to be retained by Loan Parties pursuant to Section 6.7, shall be applied in accordance with Section 6.7 hereof.

(d) If on any Computation Date the aggregate principal amount of:

(i) US-Canada Revolving Advances *plus* US-Canada Swing Loans outstanding at any time exceeds the lesser of (a) the Maximum US-Canada Revolving Advance Amount less the aggregate Maximum Undrawn Amount of all issued and outstanding US-Canada Letters of Credit or (b) the US-Canada Formula Amount (without deduction of US-Canada Swing Loans);

(ii) European Revolving Advances *plus* European Swing Loans outstanding at any time exceeds the lesser of (a) the Maximum European Revolving Advance Amount *less* the aggregate Maximum Undrawn Amount of all issued and outstanding European Letters of Credit and (b) the European Formula Amount (without deduction of European Swing Loans);

(iii) English Revolving Advances *plus* English Swing Loans outstanding at any time exceeds the lesser of (a) the Maximum English Revolving Advance Amount *less* the aggregate Maximum Undrawn Amount of all issued and outstanding English Letters of Credit and (b) the English Formula Amount (without deduction of English Swing Loans); or

(iv) French Revolving Advances *plus* French Swing Loans outstanding at any time exceeds the lesser of (a) the Maximum French Revolving Advance Amount *less* the aggregate Maximum Undrawn Amount of all issued and outstanding French Letters of Credit and (b) the French Formula Amount (without deduction of French Swing Loans),

in each case as a result of a change in exchange rates between one (1) or more Optional currencies and Dollars, then the Agent shall notify the Borrowing Agent of the same. The Borrowers shall pay or prepay (subject to Borrowers' indemnity obligations under Section 2.2(g)) within one (1) Business Day after receiving such notice such that the aggregate principal amount of:

(w) US-Canada Revolving Advances *plus* US-Canada Swing Loans outstanding shall not exceed the lesser of (a) the Maximum US-Canada Revolving Advance Amount *less* the aggregate Maximum Undrawn Amount of all issued and outstanding US-Canada Letters of Credit or (b) the US-Canada Formula Amount (without deduction of US-Canada Swing Loans); or

(x) European Revolving Advances *plus* European Swing Loans outstanding shall not exceed the lesser of (a) the Maximum European Revolving Advance Amount *less* the

aggregate Maximum Undrawn Amount of all issued and outstanding European Letters of Credit and (b) the European Formula Amount (without deduction of European Swing Loans);

(y) English Revolving Advances *plus* English Swing Loans outstanding shall not exceed the lesser of (a) the Maximum English Revolving Advance Amount less the aggregate Maximum Undrawn Amount of all issued and outstanding English Letters of Credit and (b) the English Formula Amount (without deduction of English Swing Loans); or

(z) French Revolving Advances *plus* French Swing Loans outstanding shall not exceed the lesser of (a) the Maximum French Revolving Advance Amount less the aggregate Maximum Undrawn Amount of all issued and outstanding French Letters of Credit and (b) the French Formula Amount (without deduction of French Swing Loans),

in each case after giving effect to such payments or prepayments.

1.20 Use of Proceeds.

(a) Borrowers shall apply the proceeds of Advances to (i) pay fees and expenses relating to this transaction, (ii) to repay indebtedness of the European Loan Parties, (iii) provide for Borrowers' working capital needs and reimburse drawings under Letters of Credit and (iv) in the European Agent's discretion during a European Dominion Period or at any time at which it considers (acting reasonably) that the Collateral of a French Borrower may be at risk, the European Agent may request that the proceeds of the French Revolving Advances shall be used by the relevant French Borrower to pay all outstanding amounts (if any) payable at that time to all RoT Suppliers. Following such payment, the relevant French Borrower will use the remaining proceeds of French Revolving Advances in accordance with (i) to (iii) above.

(b) Without limiting the generality of Section 2.20(a) above, none of Borrowers, Guarantors or any other Person which may in the future become party to this Agreement or the Other Documents as a Borrower or Guarantor, intends to use nor shall use any portion of the proceeds of the Advances, directly or indirectly, for any purpose in violation of Applicable Law.

1.21 Defaulting Lender.

(a) Notwithstanding anything to the contrary contained herein, in the event any Lender is a Defaulting Lender, all rights and obligations hereunder of such Defaulting Lender and of the other parties hereto shall be modified to the extent of the express provisions of this Section 2.21 so long as such Lender is a Defaulting Lender.

(b) except as otherwise expressly provided for in this Section 2.21, Revolving Advances under each Facility shall be made pro rata from Lenders holding Revolving Commitments under such Facility which are not Defaulting Lenders based on their respective Revolving Commitment Percentages under such Facility, and no Revolving Commitment Percentage of any Lender or any pro rata share of any Revolving Advances required to be advanced by any Lender shall be increased as a result of any Lender being a Defaulting Lender. Amounts received in respect of principal of any type of Revolving Advances under any Facility shall be applied to reduce such type of Revolving Advances of each Lender (other than any Defaulting Lender) holding a Revolving Commitment under such Facility in accordance with their Revolving Commitment Percentages under such Facility; provided, that, Applicable Agent shall not be obligated to transfer to a Defaulting Lender any payments received by such Applicable Agent for such Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments

hereunder (including any principal, interest or fees). Amounts payable to a Defaulting Lender shall instead be paid to or retained by Applicable Agent. Applicable Agent may hold and, in its discretion, re-lend to the applicable Borrowers under the applicable Facility the amount of such payments received or retained by it for the account of such Defaulting Lender.

(ii) Fees pursuant to Section 3.3 hereof shall cease to accrue in favor of such Defaulting Lender.

(iii) if under any Facility any Swing Loans are outstanding or any Letter of Credit Obligations (or drawings under any Letter of Credit for which the applicable Issuer has not been reimbursed) are outstanding or exist at the time any such Lender holding a Revolving Commitment becomes a Defaulting Lender under such Facility, then:

(A) the Defaulting Lender's Participation Commitment in such outstanding Swing Loans and of the Maximum Undrawn Amount of all outstanding Letters of Credit under such Facility shall be reallocated among the Non-Defaulting Lenders holding Revolving Commitments under such Facility in proportion to the respective Revolving Commitment Percentages of such Non-Defaulting Lenders to the extent (but only to the extent) that (x) such reallocation does not cause the aggregate sum of outstanding Revolving Advances under such Facility made by any such Non-Defaulting Lender holding a Revolving Commitment under such Facility *plus* such Lender's reallocated Participation Commitment in outstanding Swing Loans under such Facility *plus* such Lender's reallocated Participation Commitment in the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit under such Facility to exceed the applicable Revolving Commitment Amount under such Facility of any such Non-Defaulting Lender, and (y) no Default or Event of Default has occurred and is continuing at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, the applicable Borrowers shall within one Business Day following notice by the Applicable Agent (x) first, prepay any outstanding Swing Loans under such Facility that cannot be reallocated, and (y) second, cash collateralize for the benefit of the applicable Issuer, such Borrowers' obligations corresponding to such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit (after giving effect to any partial reallocation pursuant to clause (A) above) under such Facility in accordance with Section 3.2(b) for so long as such Obligations are outstanding;

(C) if the applicable Borrowers cash collateralize any portion of such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit under such Facility pursuant to clause (B) above, such Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 3.2(a) with respect to such Defaulting Lender's Revolving Commitment Percentage of Maximum Undrawn Amount of all Letters of Credit under such Facility during the period such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit under such Facility are cash collateralized;

(D) if the Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit under such Facility is reallocated pursuant to clause (A) above, then the fees payable to the Lenders holding Revolving Commitments under such Facility pursuant to Section 3.2(a) shall be adjusted and reallocated to the Non-Defaulting Lenders holding Revolving Commitments under such Facility in accordance with such reallocation; and

(E) if all or any portion of such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit under such Facility is neither reallocated nor cash collateralized pursuant to clauses (A) or (B) above, then, without prejudice to any rights or remedies of the applicable Issuer or any other Lender under such Facility hereunder, all Letter of Credit Fees payable under Section 3.2(a) with respect to such Defaulting Lender's Revolving Commitment Percentage of the Maximum Undrawn Amount of all Letters of Credit under such Facility shall be payable to the applicable Issuer (and not to such Defaulting Lender) until (and then only to the extent that) such applicable Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit under such Facility is reallocated and/or cash collateralized; and

(iv) so long as any Lender holding a Revolving Commitment is a Defaulting Lender under any Facility, applicable Swing Loan Lender shall not be required to fund any Swing Loans under such Facility and the applicable Issuer shall not be required to issue, amend or increase any Letter of Credit under such Facility, unless such Issuer is satisfied that the related exposure and the Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit under such Facility and all Swing Loans under such Facility (after giving effect to any such issuance, amendment, increase or funding) will be fully allocated to Non-Defaulting Lenders holding Revolving Commitments under such Facility and/or cash collateral for such Letters of Credit under such Facility will be provided by the applicable Borrowers in accordance with clause (A) and (B) above, and participating interests in any newly made Swing Loan under such Facility or any newly issued or increased Letter of Credit under such Facility shall be allocated among Non-Defaulting Lenders under such Facility in a manner consistent with Section 2.21(b)(iii)(A) above (and such Defaulting Lender shall not participate therein).

(c) A Defaulting Lender shall not be entitled to give instructions to any Agent or to approve, disapprove, consent to or vote on any matters relating to this Agreement and the Other Documents, and all amendments, waivers and other modifications of this Agreement and the Other Documents may be made without regard to a Defaulting Lender and, for purposes of the definition of "European Required Lenders" and "US-Canada Required Lenders", a Defaulting Lender shall not be deemed to be a Lender, to have any outstanding Advances or a Revolving Commitment Percentage.

(d) Other than as expressly set forth in this Section 2.21, the rights and obligations of a Defaulting Lender (including the obligation to indemnify any Agent) and the other parties hereto shall remain unchanged. Nothing in this Section 2.21 shall be deemed to release any Defaulting Lender from its obligations under this Agreement and the Other Documents, shall alter such obligations, shall operate as a waiver of any default by such Defaulting Lender hereunder, or shall prejudice any rights which any Borrower,

any Agent or any Lender may have against any Defaulting Lender as a result of any default by such Defaulting Lender hereunder.

(e) In the event that the Agents, the Borrowers, Swing Loan Lenders and each Issuer agree in writing that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Applicable Agent will so notify the parties hereto, and, if such cured Defaulting Lender is a Lender holding a Revolving Commitment under any Facility, then Participation Commitments of the Lenders holding Revolving Commitments (including such cured Defaulting Lender) under such Facility of the Swing Loans and Maximum Undrawn Amount of all outstanding Letters of Credit under such Facility shall be reallocated to reflect the inclusion of such Lender's Revolving Commitment under such Facility, and on such date such Lender shall purchase at par such of the Revolving Advances of the other Lenders under such Facility as the Applicable Agent shall determine may be necessary in order for such Lender to hold such Revolving Advances under such Facility in accordance with its Revolving Commitment Percentage under such Facility.

(f) If any Swing Loan Lender or any Issuer has a good faith belief that any Lender holding a Revolving Commitment under any applicable Facility has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, such Swing Loan Lender shall not be required to fund any Swing Loans and such Issuer shall not be required to issue, amend or increase any Letter of Credit, unless such Swing Loan Lender or such Issuer, as the case may be, shall have entered into arrangements with Borrowers or such Lender, satisfactory to such Swing Loan Lender or such Issuer, as the case may be, to defease any risk to it in respect of such Lender hereunder.

1.22 Payment of Obligations. Applicable Agent may charge to the applicable Borrowers' Account as a Revolving Advance under the applicable Facility or, at the discretion of the applicable Swing Loan Lender, as a Swing Loan under such Facility (i) all payments with respect to any of the Obligations required hereunder (including without limitation principal payments, payments of interest, payments of Letter of Credit Fees and all other fees provided for hereunder and payments under Sections 16.5 and 16.9) as and when each such payment shall become due and payable (whether as regularly scheduled, upon or after acceleration, upon maturity or otherwise), (ii) without limiting the generality of the foregoing clause (i), (a) all amounts expended by Applicable Agent or any Lender under such Facility pursuant to Sections 4.2 or 4.3 hereof or any corresponding provision in any Other Document and (b) all expenses which Applicable Agent incurs in connection with the forwarding of Advance proceeds and the establishment and maintenance of any Blocked Accounts or Depository Accounts as provided for in Section 4.8(h), and (iii) any sums expended by Applicable Agent or any Lender under such Facility due to any Borrower's failure to perform or comply with its obligations under this Agreement or any Other Document including any Borrower's obligations under Sections 3.3, 3.4, 4.4, 4.7, 6.4, 6.7, 6.8 and 6.9 hereof, any corresponding provision in any Other Document, and all amounts so charged shall be added to the Obligations and shall be secured by the Collateral. To the extent Revolving Advances under any Facility are not actually funded by the other Lenders under such Facility in respect of any such amounts so charged, all such amounts so charged shall be deemed to be Revolving Advances made by and owing to Applicable Agent and Applicable Agent shall be entitled to all rights (including accrual of interest) and remedies of a Lender under this Agreement and the Other Documents with respect to such Revolving Advances.

1.23 Increase in US-Canada Maximum Revolving Advance Amount.

(a) The US-Canada Borrowers may, at any time prior to the second (2nd) anniversary of the Closing Date, request that the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount be increased by (1) one or more of the current US-Canada Lenders increasing their US-Canada Revolving Commitment Amount (any current US-Canada Lender which elects to increase its US-Canada Revolving Commitment Amount shall be referred to as a "US-Canada Increasing Lender") or (2) one or more new lenders (each a "US-Canada New Lender") joining this Agreement and providing a US-Canada Revolving Commitment Amount hereunder, subject to the following terms and conditions:

(i) No current US-Canada Lender shall be obligated to increase its US-Canada Revolving Commitment Amount and any increase in the US-Canada Revolving Commitment Amount by any current US-Canada Lender shall be in the sole discretion of such current US-Canada Lender;

(ii) US-Canada Borrowers may not request the addition of a US-Canada New Lender unless (and then only to the extent that) there is insufficient participation on behalf of the existing US-Canada Lenders in the increased US-Canada Revolving Commitments being requested by US-Canada Borrowers;

(iii) There shall exist no Event of Default or Default on the effective date of such increase after giving effect to such increase;

(iv) After giving effect to such increase, the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount shall not exceed \$125,000,000;

(v) US-Canada Borrowers may not request an increase in the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount under this Section 2.23 more than three (3) times during the Term, and no single such increase in the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount shall be for an amount less than \$10,000,000;

(vi) The US-Canada Borrowers shall deliver to Agent on or before the effective date of such increase the following documents in form and substance satisfactory to Agent: (1) certifications of their corporate secretaries with attached resolutions certifying that the increase in the US-Canada Revolving Commitment Amounts has been approved by such US-Canada Borrowers, (2) certificate dated as of the effective date of such increase certifying that no Default or Event of Default shall have occurred and be continuing and certifying that the representations and warranties made by each US-Canada Borrower herein and in the Other Documents are true and complete in all respects with the same force and effect as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date), (3) such other agreements, instruments and information (including supplements or modifications to this Agreement and/or the Other Documents executed by US-Canada Borrowers) as Agent reasonably deems necessary in order to document the increase to the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount and to protect, preserve and continue the perfection and priority of the liens, security interests, rights and remedies of Agents and Lenders hereunder and under the Other Documents in light of such increase, and (4) an opinion of counsel in form and substance satisfactory to Agent which shall cover such matters related to such increase as Agent may reasonably require and each

US-Canada Borrower hereby authorizes and directs such counsel to deliver such opinions to Agents and Lenders;

(vii) The US-Canada Borrowers shall execute and deliver (1) to each US-Canada Increasing Lender a replacement Note reflecting the new amount of such US-Canada Increasing Lender's US-Canada Revolving Commitment Amount after giving effect to the increase (and the prior Note issued to such Increasing Lender shall be deemed to be cancelled) and (2) to each US-Canada New Lender a Note reflecting the amount of such US-Canada New Lender's Revolving Commitment Amount;

(viii) Any US-Canada New Lender shall be subject to the approval of Borrower, Agent and Issuer under the US-Canada Facility;

(ix) Each US-Canada Increasing Lender shall confirm its agreement to increase its US-Canada Revolving Commitment Amount pursuant to an acknowledgement in a form acceptable to Agent, signed by it and each US-Canada Borrower and delivered to Agent at least five (5) days before the effective date of such increase; and

(x) Each US-Canada New Lender shall execute a lender joinder in substantially the form of Exhibit 2.22 pursuant to which such US-Canada New Lender shall join and become a party to this Agreement and the Other Documents with a US-Canada Revolving Commitment Amount as set forth in such lender joinder.

(b) On the effective date of such increase, (i) the US-Canada Borrowers shall repay all US-Canada Revolving Advances then outstanding, subject to Borrowers' obligations under Sections 3.7, 3.9, or 3.10; provided that subject to the other conditions of this Agreement, the Borrowing Agent may request new US-Canada Revolving Advances on such date and (ii) the US-Canada Revolving Commitment Percentages of all of the US-Canada Lenders holding a US-Canada Revolving Commitment (including each US-Canada Increasing Lender and/or US-Canada New Lender) shall be recalculated such that each such US-Canada Lender's Revolving Commitment Percentage is equal to (x) the US-Canada Revolving Commitment Amount of such US-Canada Lender divided by (y) the aggregate of the Revolving Commitment Amounts of all US-Canada Lenders. Each of the US-Canada Lenders shall participate in any new US-Canada Revolving Advances made on or after such date in accordance with their respective US-Canada Revolving Commitment Percentages after giving effect to the increase in the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount and recalculation of the US-Canada Revolving Commitment Percentages contemplated by this Section 2.23.

(c) On the effective date of such increase, each Increasing Lender shall be deemed to have purchased an additional/increased participation in, and each US-Canada New Lender will be deemed to have purchased a new participation in, each then outstanding US-Canada Letter of Credit and each drawing thereunder and each then outstanding US-Canada Swing Loan in an amount equal to such US-Canada Lender's Revolving Commitment Percentage (as calculated pursuant to Section 2.23(b) above) of the ~~US-Canada~~ Maximum Undrawn Amount of each such US-Canada Letter of Credit (as in effect from time to time) and the amount of each drawing and of each such US-Canada Swing Loan, respectively. As necessary to effectuate the foregoing, each existing US-Canada Lender holding a US-Canada Revolving Commitment Percentage that is not a US-Canada Increasing Lender shall be deemed to have sold to each applicable US-Canada Increasing Lender and/or US-Canada New Lender, as necessary, a portion of

such existing US-Canada Lender's participations in such outstanding US-Canada Letters of Credit and drawings and such outstanding US-Canada Swing Loans such that, after giving effect to all such purchases and sales, each US-Canada Lender holding a US-Canada Revolving Commitment (including each US-Canada Increasing Lender and/or US-Canada New Lender) shall hold a participation in all US-Canada Letters of Credit (and drawings thereunder) and all US-Canada Swing Loans in accordance with their respective US-Canada Revolving Commitment Percentages (as calculated pursuant to Section 2.23(b) above).

(d) On the effective date of such increase, US-Canada Borrowers shall pay all costs and expenses incurred by Agent and by each US-Canada Increasing Lender and US-Canada New Lender in connection with the negotiations regarding, and the preparation, negotiation, execution and delivery of all agreements and instruments executed and delivered by any of Agent, US-Canada Borrowers and/or US-Canada Increasing Lenders and US-Canada New Lenders in connection with, such increase (including all fees for any supplemental or additional public filings of any Other Documents necessary to protect, preserve and continue the perfection and priority of the liens, security interests, rights and remedies of Agents and Lenders hereunder and under the Other Documents in light of such increase).

1.24 **Maximum US-Canada Revolving Advance Amount.** The US-Canada Borrowers shall have the right at any time and from time to time upon five (5) Business Days' prior written notice to the Agent to permanently reduce the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount, in whole multiples of \$1,000,000 of principal, or terminate the Lenders' commitments to make US-Canada Advances without penalty or premium, except as hereinafter set forth, provided that any such reduction or termination shall be accompanied by (a) the payment in full of any commitment fee described in Section 3.3, then accrued on the amount of such reduction or termination, (b) the payment in full of any amounts owing pursuant to Section 2.2(g) hereof, and (c) prepayment of the US-Canada Revolving Credit Notes, together with the full amount of interest accrued on the principal sum to be prepaid (and all amounts referred to in Article 3 hereof), to the extent that the aggregate amount thereof then outstanding exceeds the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount as so reduced or terminated. From the effective date of any such reduction or termination the obligations of US-Canada Borrowers to pay the commitment fee pursuant to Section 3.3 shall correspondingly be reduced or cease.

1.25 **Increase in Maximum European Revolving Advance Amount.**

(a) The European Borrowers may, at any time prior to the second (2nd) anniversary of the Closing Date, request that the Maximum English Revolving Advance Amount and/or Maximum French Revolving Advance Amount, be increased by (1) one or more of the current European Lenders increasing their English Revolving Commitment Amount and/or French Revolving Commitment Amount (as applicable) (any current European Lender which elects to increase its English Revolving Commitment Amount and/or French Revolving Commitment Amount shall be referred to as a "**European Increasing Lender**") or (2) one or more new lenders (each a "**European New Lender**", with a European New Lender with respect to the English Facility being an "**English New Lender**" and a European New Lender with respect to the French Facility being a "**French New Lender**") joining this Agreement and providing a English Revolving Commitment Amount and/or French Revolving Commitment Amount hereunder, subject to the following terms and conditions:

(i) No current European Lender shall be obligated to increase its English Revolving Commitment Amount and/or French Revolving Commitment

Amount and any increase in the English Revolving Commitment Amount and/or French Revolving Commitment Amount by any current European Lender shall be in the sole discretion of such current European Lender;

(ii) European Borrowers may not request the addition of a European New Lender unless (and then only to the extent that) there is insufficient participation on behalf of the existing European Lenders in the increased English Revolving Commitments and/or French Revolving Commitments being requested by European Borrowers;

(iii) There shall exist no Event of Default or Default on the effective date of such increase after giving effect to such increase;

(iv) After giving effect to such increase, the Maximum European Revolving Advance Amount shall not exceed Forty Million and 00/100 Dollars (\$40,000,000.00), the Maximum English Revolving Advance Amount shall not exceed Twenty Million and 00/100 Dollars (\$20,000,000) and the Maximum English Revolving Advance Amount shall not exceed Twenty Million and 00/100 Dollars (\$20,000,000);

(v) European Borrowers may not request an increase in the Maximum English Revolving Advance Amount or Maximum French Revolving Advance Amount under this Section 2.25 more than three (3) times during the Term, and no single such increase in the Maximum English Revolving Advance Amount or Maximum French Revolving Advance Amount shall be for an amount less than Three Million and 00/100 Dollars (\$3,000,000.00)

(vi) The European Borrowers shall deliver to the European Agent on or before the effective date of such increase the following documents in form and substance satisfactory to the European Agent: (1) certifications of their corporate secretaries with attached resolutions certifying that the increase in the English Revolving Commitment Amounts and/or French Revolving Commitment Amounts has been approved by such European Borrowers, (2) certificate dated as of the effective date of such increase certifying that no Default or Event of Default shall have occurred and be continuing and certifying that the representations and warranties made by each European Borrower herein and in the Other Documents are true and complete in all respects with the same force and effect as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date), (3) such other agreements, instruments and information (including supplements or modifications to this Agreement and/or the Other Documents executed by European Borrowers) as European Agent reasonably deems necessary in order to document the increase to the Maximum English Revolving Advance Amount or the Maximum French Revolving Advance Amount (as applicable) and to protect, preserve and continue the perfection and priority of the liens, security interests, rights and remedies of Agents and Lenders hereunder and under the Other Documents in light of such increase, and (4) an opinion of counsel in form and substance satisfactory to the European Agent which shall cover such matters related to such increase as European Agent may reasonably require and each European Borrower hereby authorizes and directs such counsel to deliver such opinions to Agents and Lenders;

(vii) The European Borrowers shall execute and deliver (1) to each European Increasing Lender a replacement Note reflecting the new amount of

such European Increasing Lender's English Revolving Commitment Amount and/or French Revolving Commitment Amount after giving effect to the increase (and the prior Note issued to such Increasing Lender shall be deemed to be cancelled) and (2) to each European New Lender a Note reflecting the amount of such European New Lender's English Revolving Commitment Amount and/or French Revolving Commitment Amount (as applicable);

(viii) Any European New Lender shall be subject to the approval of the Agent, European Agent and Issuer under the English Facility and/or the French Facility (as applicable), provided further that any French New Lender must be a French Qualifying Lender;

(ix) Each European Increasing Lender shall confirm its agreement to increase its English Revolving Commitment Amount and/or French Revolving Commitment Amount pursuant to an acknowledgement in a form acceptable to the Agent, signed by it and each European Borrower and delivered to the European Agent at least five (5) days before the effective date of such increase; and

(x) Each European New Lender shall execute a lender joinder in form and substance satisfactory to Agent and European Agent pursuant to which such European New Lender shall join and become a party to this Agreement and the Other Documents with an English Revolving Commitment Amount and/or French Revolving Commitment Amount (as applicable) as set forth in such lender joinder.

(b) On the effective date of such increase, (i) the European Borrowers shall repay all European Revolving Advances then outstanding, subject to the European Borrowers' obligations under Section 3.7, 3.9, or 3.10; provided that subject to the other conditions of this Agreement, the European Borrowing Agent may request new European Revolving Advances on such date and (ii):

(A) the English Revolving Commitment Percentages of all of the English Lenders holding an English Revolving Commitment (including each English Increasing Lender and/or English New Lender) shall be recalculated such that each such English Lender's Revolving Commitment Percentage is equal to (x) the English Revolving Commitment Amount of such English Lender divided by (y) the aggregate of the English Revolving Commitment Amounts of all English Lenders; and

(B) the French Revolving Commitment Percentages of all of the French Lenders holding a French Revolving Commitment (including each French Increasing Lender and/or French New Lender) shall be recalculated such that each such French Lender's Revolving Commitment Percentage is equal to (x) the French Revolving Commitment Amount of such French Lender divided by (y) the aggregate of the French Revolving Commitment Amounts of all French Lenders.

Each of the European Lenders shall participate in any new European Revolving Advances made on or after such date in accordance with their respective European Revolving Commitment Percentages after giving effect to the increase in the Maximum English Revolving Advance Amount and/or Maximum French Revolving Advance Amount and recalculation of the European Revolving Commitment Percentages contemplated by this Section 2.25.

(c) On the effective date of such increase:

(i) each English Increasing Lender shall be deemed to have purchased an additional/increased participation in, and each English New Lender will be deemed to have purchased a new participation in, each then outstanding English Letter of Credit and each drawing thereunder and each then outstanding English Swing Loan in an amount equal to such English Lender's English Revolving Commitment Percentage (as calculated pursuant to Section 2.25(b) above) of the Maximum Undrawn Amount of each such English Letter of Credit (as in effect from time to time) and the amount of each drawing and of each such English Swing Loan, respectively; and

(ii) each French Increasing Lender shall be deemed to have purchased an additional/increased participation in, and each French New Lender will be deemed to have purchased a new participation in, each then outstanding French Letter of Credit and each drawing thereunder and each then outstanding French Swing Loan in an amount equal to such French Lender's French Revolving Commitment Percentage (as calculated pursuant to Section 2.25(b) above) of the Maximum Undrawn Amount of each such French Letter of Credit (as in effect from time to time) and the amount of each drawing and of each such French Swing Loan, respectively.

As necessary to effectuate the foregoing, each existing European Lender holding a European Revolving Commitment Percentage that is not an European Increasing Lender shall be deemed to have sold to each applicable European Increasing Lender and/or European New Lender, as necessary, a portion of such existing European Lender's participations in such outstanding European Letters of Credit and drawings and such outstanding European Swing Loans such that, after giving effect to all such purchases and sales, each European Lender holding a European Revolving Commitment (including each European Increasing Lender and/or European New Lender) shall hold a participation in all European Letters of Credit (and drawings thereunder) and all European Swing LinesLoans in accordance with their respective English Revolving Commitment Percentage and/or French Revolving Commitment Percentages (as calculated pursuant to Section 2.25(b) above).

(d) On the effective date of such increase, European Borrowers shall pay all costs and expenses incurred by European Agent and by each European Increasing Lender and each European New Lender in connection with the negotiations regarding, and the preparation, negotiation, execution and delivery of all agreements and instruments executed and delivered by any of the European Agent, European Borrowers and/or the European Increasing Lenders and European New Lenders in connection with, such increase (including all fees for any supplemental or additional public filings of any Other Documents necessary to protect, preserve and continue the perfection and priority of the liens, security interests, rights and remedies of Agents and Lenders hereunder and under the Other Documents in light of such increase).

1.26 Periodic Computations of Dollar Equivalent Amounts of Letters of Credit Outstanding; Reimbursement Currency. For purposes of determining US-Canada Revolving Facility Usage, US-Canada Undrawn Availability, European Revolving Facility Usage, English Revolving Facility Usage, French Revolving Facility Usage and European Undrawn Availability the Applicable Agent will determine the Dollar Equivalent amount of (i) the outstanding and proposed Revolving CreditLoansAdvances and Letters of Credit to be denominated in an Optional Currency as of the as of the requested borrowing date or the requested date of issuance, as the case may be, (ii) the outstanding LetterLetters of Credit-Obligations denominated in an Optional Currency as of the last Business Day of each month, and (iii) the outstanding Revolving CreditLoansAdvances denominated in an Optional Currency as of the end of each Interest

Period and on each Interest Payment Date (as applicable) (each such date under clauses (i) through (iii), and any other date on which the Applicable Agent determines it is necessary or advisable to make such computation, in its sole discretion, is referred to as a "**Computation Date**"). Unless otherwise provided in this Agreement or agreed to by the Applicable Agent and the applicable Borrowing Agent, each Revolving ~~Credit~~ Loan Advances and Reimbursement Obligation shall be repaid or prepaid the same currency in which the Revolving ~~Credit~~ Loan Advances or Reimbursement Obligation was made.

1.27 European Monetary Union.

(a) Determination In Euros Under Certain Circumstances. If (i) any Optional Currency ceases to be lawful currency of the nation issuing the same and is replaced by the Euro or (ii) any Optional Currency and the Euro are at the same time recognized by any governmental authority of the nation issuing such currency as lawful currency of such nation and the Agents or the European Required Lenders shall so request in a notice delivered to the applicable Borrowing Agent, then the amount of any Letter of Credit denominated in such Optional Currency shall be determined by translating the amount payable in such Optional Currency to the Euro at the exchange rate established by that nation for the purpose of implementing the replacement of the relevant Optional Currency by the Euro.

(b) Additional Compensation Under Certain Circumstances. The Borrowers agree, at the request of any Lender, to compensate such Lender for any loss, cost, expense or reduction in return that such Lender shall reasonably determine under Section 2.27(a) shall be incurred or sustained by such Lender as a result of the replacement of any Optional Currency by the Euro and that would not have been incurred or sustained but for the transactions provided for herein. A certificate of any Lender setting forth such Lender's determination of the amount or amounts necessary to compensate such Lender shall be delivered to the applicable Borrowing Agent and shall be conclusive absent manifest error so long as such determination is made on a reasonable basis. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(c) Requests for Additional Optional Currencies. A Borrowing Agent may deliver to the Applicable Agent a written request that Letters of Credit hereunder also be permitted to be issued in any other lawful currency (other than Dollars), in addition to the currencies specified in the definition of "Optional Currency" herein, provided that such currency must be freely traded in the offshore interbank foreign exchange markets, freely transferable, freely convertible into Dollars and available to the Issuers in the Relevant Interbank Market. The Applicable Agent will promptly notify the Lenders under the relevant Facility of any such request promptly after the Applicable Agent receives such request. The Applicable Agent will promptly notify the relevant Borrowing Agent of the acceptance or rejection by the Applicable Agent and each of the Issuers under the relevant Facility of the relevant Borrowing Agent's request. The requested currency shall be approved as an Optional Currency hereunder only if the Applicable Agent and all of the Issuers under the relevant Facility approve of the relevant Borrowing Agent's request.

1.28 Indemnity. Without limitation of the obligations of the Loan Parties under Section 16.5 hereof, the Borrowers hereby agree to protect, indemnify, pay and save harmless each Issuer and any of its Affiliates from and against any and all claims, demands, liabilities, damages, taxes, penalties, interest, judgments, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of counsel) which such Issuer or any of its Affiliates may incur or be subject to as a consequence, direct or

indirect, of the issuance of any Letter of Credit denominated in an Optional Currency or the reimbursement in Dollars of any drawing under any Letter of Credit denominated in an Optional Currency (including, without limitation, any loss arising from any foreign currency exchange transaction entered into in connection with the payment or reimbursement of such drawing), other than as a result of the gross negligence or willful misconduct of the Issuer as determined by a final non-appealable judgment of a court of competent jurisdiction.

3. INTEREST AND FEES.

1.1 Interest. Interest on Advances shall be payable (i) in arrears on the first day of each month with respect to Domestic Rate Loans and European Swing Loans ~~and~~, (ii) in arrears on each RFR Interest Payment Date with respect to ~~Euro-RFR Loans, and~~ (iii) with respect to Term SOFR Rate Loans and LIBOR-Rate Term Benchmark Loans, at the end of each Interest Period (and, in the case of ~~LIBOR~~ Term SOFR Rate Loans and Term Benchmark Loans with an Interest Period of more than three months, at the end of each three month period beginning with the first day of such Interest Period), provided further that all accrued and unpaid interest shall be due and payable at the end of the Term (each of the foregoing payment dates, an "Interest Payment Date"). Interest charges shall be computed on the actual principal amount of Advances outstanding during the month at a rate per annum equal to (i) with respect to Revolving Advances under each Facility, the applicable Revolving Interest Rate and (ii) with respect to Swing Loans under each Facility, the applicable Revolving Interest Rate for Domestic Rate Loans (in the case of the US-Canada Facility) or Overnight ~~LIBO~~ Rate Loans (in the case of the English Facility and the French Facility) (as applicable, the "**Contract Rate**"). Except as expressly provided otherwise in this Agreement, any Obligations other than the Advances that are not paid when due shall accrue interest ~~at~~ in the case of the US-Canada Facility, the applicable Revolving Interest Rate for Domestic Rate Loans, and in the case of the English Facility and the French Facility, the Revolving Interest Rate for European Revolving Advances which are Term Benchmark Loans for an Interest Period of one (1) month, subject to the provision of the final sentence of this Section 3.1 regarding the Default Rate. Whenever, subsequent to the date of this Agreement, the Alternate Base Rate is increased or decreased, the applicable Contract Rate for Domestic Rate Loans shall be similarly changed without notice or demand of any kind by an amount equal to the amount of such change in the Alternate Base Rate during the time such change or changes remain in effect. The ~~Euro-Term SOFR~~ Rate, the ~~LIBOR~~ Adjusted EURIBOR Rate, the Adjusted Daily Simple RFR and ~~the~~ Overnight-LIBO Rate shall be adjusted with respect to ~~Euro-Term SOFR~~ Rate Loans, ~~LIBOR-Rate~~ Term Benchmark Loans, RFR Loans and Overnight ~~LIBO~~ Rate Loans (as applicable) without notice or demand of any kind on the effective date of any change in the Reserve Percentage as of such effective date. Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Applicable Agent or at the direction of Applicable Required Lenders (or, in the case of any Event of Default under Section 10.7, immediately and automatically upon the occurrence of any such Event of Default without the requirement of any affirmative action by any party), the Obligations shall bear interest with respect to the US-Canada Facility at the Revolving Interest Rate for Domestic Rate Loans under Tier III of the pricing grid set forth in the definition of US-Canada Applicable Margin *plus* two percent (2%) per annum and with respect to the English Facility and the French Facility shall bear interest at the applicable Contract Rate *plus* two (2%) percent per annum (as applicable, the "**Default Rate**"). For the purpose of articles L. 313-1, L. 313-2, R 313-1 and R.313-2 of the French Consumer Code (*Code de la Consommation*), each party to this Agreement acknowledges that by virtue of certain characteristics of this Agreement (including the variable interest rate applicable to the Loans), the effective global rate (*taux effectif global*) of the French Revolving Advances and French Swing

Loans cannot be calculated on the date of this Agreement. An indicative calculation of the *taux effectif* global will be set out in a letter from the European Agent to each French Borrower on or before the execution of this Agreement.

1.2 Letter of Credit Fees.

(a) Letter of Credit Fees. (i) The US-Canada Borrowers shall pay (x) to Agent, for the ratable benefit of US-Canada Lenders holding US-Canada Revolving Commitments, fees in Dollars for each US-Canada Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, equal to the average daily amount available to be drawn on each outstanding US-Canada Letter of Credit (and, with respect to outstanding US-Canada Letters of Credit denominated in another currency, in the Dollar Equivalent amount equal to the average daily amount available to be drawn in such other currency) multiplied by the US-Canada Applicable Margin for US-Canada Revolving Advances consisting of Euro-Term SOFR Rate Loans, such fees to be calculated on the basis of a 360-day year for the actual number of days elapsed and to be payable quarterly in arrears on the first day of each calendar quarter and on the last day of the Term, and (y) to the applicable Issuer, a fronting fee (in Dollars) of one quarter of one percent (0.25%) per annum times the average daily amount available to be drawn of each outstanding Letter of Credit (and, with respect to outstanding Letters of Credit denominated in another currency, in the Dollar Equivalent amount equal to the average daily amount available to be drawn of such Letters of Credit in such other currency) US-Canada Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, to be payable quarterly in arrears on the first day of each calendar quarter and on the last day of the Term (the "**US-Canada Letter of Credit Fees**"), and (ii) the relevant European Borrowers shall pay (x) to European Agent, for the ratable benefit of the relevant European Lenders holding European Revolving Commitments in the applicable Facility, fees for each European Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, equal to the average daily amount available to be drawn of each outstanding European Letter of Credit multiplied by the European Applicable Margin for European Revolving Advances consisting of LIBOR-RateTerm Benchmark Loans, such fees to be calculated on the basis of a 360-day year (365/366 days with respect to amounts denominated in British Pounds Sterling) for the actual number of days elapsed and to be payable quarterly in arrears on the first day of each calendar quarter and on the last day of the Term, and (y) to the applicable Issuer, a fronting fee of 0.125% per annum times the average daily amount available to be drawn of each outstanding European Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, to be payable quarterly in arrears on the first day of each calendar quarter and on the last day of the Term (the "**European Letter of Credit Fees**" and, together with the US-Canada Letter of Credit Fees, the "**Letter of Credit Fees**"). In addition, (i) US-Canada Borrowers shall pay to Agent, for the benefit of the applicable Issuer, any and all administrative, issuance, amendment, payment and negotiation charges with respect to US-Canada Letters of Credit and all fees and expenses as agreed upon by such Issuer and the Borrowing Agent in connection with any US-Canada Letter of Credit, including in connection with the opening, amendment or renewal of any such US-Canada Letter of Credit and any acceptances created thereunder, all such charges, fees and expenses, if any, to be payable on demand, and (ii) European Borrowers shall pay to European Agent, for the benefit of the applicable Issuer, any and all administrative, issuance, amendment, payment and negotiation charges with respect to European Letters of Credit and all fees and expenses as agreed upon by such Issuer, and the European Borrowing Agent in connection with any European Letter of Credit, including in connection with the opening, amendment or renewal of any such European

Letter of Credit and any acceptances created thereunder, all such charges, fees and expenses, if any, to be payable on demand. The European Letter of Credit Fees shall be calculated and payable in the same currencies as the underlying European Letters of Credit are denominated. All such charges shall be deemed earned in full on the date when the same are due and payable hereunder and shall not be subject to rebate or proration upon the termination of this Agreement for any reason. Any such charge in effect at the time of a particular transaction shall be the charge for that transaction, notwithstanding any subsequent change in the applicable Issuer's prevailing charges for that type of transaction. Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Applicable Agent or at the direction of Applicable Required Lenders (or, in the case of any Event of Default under Section 10.7, immediately and automatically upon the occurrence of any such Event of Default without the requirement of any affirmative action by any party), the Letter of Credit Fees described in clause (i)(x) and (ii)(x) of the first sentence of this Section 3.2(a) shall be increased by an additional two percent (2.0%) per annum.

(b) At any time following the occurrence of an Event of Default, at the option of Applicable Agent or at the direction of Applicable Required Lenders (or, in the case of any Event of Default under Section 10.7, immediately and automatically upon the occurrence of such Event of Default, without the requirement of any affirmative action by any party), or upon the expiration of the Term or any other termination of this Agreement (and also, if applicable, in connection with any mandatory prepayment under Section 2.19), (i) US-Canada Borrowers will cause cash to be deposited and maintained in an account with Agent, as cash collateral, in an amount equal to one hundred and five percent (105%) of the Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit, and each US-Canada Borrower hereby irrevocably authorizes Agent, in its discretion, on such US-Canada Borrower's behalf and in such US-Canada Borrower's name, to open such an account and to make and maintain deposits therein, or in an account opened by such US-Canada Borrower, in the amounts required to be made by such US-Canada Borrower, out of the proceeds of Receivables or other Collateral or out of any other funds of such US-Canada Borrower coming into any Lender's possession at any time, (ii) European Borrowers will cause cash to be deposited and maintained in an account with European Agent, as cash collateral, in an amount equal to one hundred and five percent (105%) of the Maximum Undrawn Amount of all outstanding European Letters of Credit under the Facility in relation to which they are a borrower, and each such European Borrower hereby irrevocably authorizes European Agent, in its discretion, on such European Borrower's behalf and in such European Borrower's name, to open such an account and to make and maintain deposits therein, or in an account opened by such European Borrower, in the amounts required to be made by such European Borrower, out of the proceeds of Receivables or other Collateral or out of any other funds of such European Borrower coming into any Lender's possession at any time. Applicable Agent may, in its discretion, invest such cash collateral (less applicable reserves) in such short-term money-market items as to which Applicable Agent and Applicable Borrowing Agent mutually agree (or, in the absence of such agreement, as Applicable Agent may reasonably select) and the net return on such investments shall be credited to such account and constitute additional cash collateral, or Applicable Agent may (notwithstanding the foregoing) establish the account provided for under this Section 3.2(b) as a non-interest bearing account and in such case Applicable Agent shall have no obligation (and Borrowers hereby waive any claim) under Article 9 of the Uniform Commercial Code or under any other Applicable Law to pay interest on such cash collateral being held by Applicable Agent. No Borrower may withdraw amounts credited to any such account except upon the occurrence of all of the following: (x) payment and performance in full of all Obligations; (y) expiration of all Letters of Credit; and (z) termination of this Agreement. Borrowers hereby assign, pledge and grant to Agent and

European Borrowers hereby assign, pledge and grant to European Collateral Agent, in each case, for its benefit and the ratable benefit of the applicable Issuer, Lenders and each other Secured Party, a continuing security interest in and to and Lien on any such cash collateral and any right, title and interest of Borrowers in any deposit account, securities account or investment account into which such cash collateral may be deposited from time to time to secure the Obligations, specifically including all Obligations with respect to any Letters of Credit. Borrowers agree that upon the coming due of any Reimbursement Obligations (or any other Obligations, including Obligations for Letter of Credit Fees) with respect to the Letters of Credit, Applicable Agent may use such cash collateral to pay and satisfy such Obligations.

1.3 Facility Fee. If, for any calendar quarter during the Term, the average daily balance of (y) the sum of US-Canada Revolving Advances (for purposes of this computation, US-Canada Swing Loans shall be deemed to be US-Canada Revolving Advances made by PNC as a US-Canada Lender) *plus* the Maximum Undrawn Amount of all outstanding US-Canada Letters of Credit for each day of such calendar quarter (a) equals or is greater than 50% of the Maximum US-Canada Revolving Advance Amount, then US-Canada Borrowers shall pay to Agent, for the ratable benefit of US-Canada Lenders holding the US-Canada Revolving Commitments based on their US-Canada Revolving Commitment Percentages, a fee at a rate equal to one quarter of one percent (.25%) per annum on the amount by which the Maximum US-Canada Revolving Advance Amount exceeds such average daily unpaid balance, or (b) equals 50% or less of the Maximum US-Canada Revolving Advance Amount, US-Canada Borrowers shall pay a Facility Fee at a rate equal to .375% of the amount by which the Maximum US-Canada Revolving Advance Amount exceeds such average daily unpaid balance and (z) the sum of the European Revolving Advances (for purposes of this computation, European Swing Loans shall be deemed to be European Revolving Advances made by JPM Europe J.P. Morgan AG as a European Lender) *plus* the Maximum Undrawn Amount of all outstanding European Letters of Credit for each day of such calendar quarter (a) equals or is greater than 50% of the Maximum European Revolving Advance Amount, then European Borrowers shall pay to European Agent, for the ratable benefit of European Lenders holding the European Revolving Commitments based on their European Revolving Commitment Percentages, a fee at a rate equal to one quarter of one percent (.25%) per annum on the amount by which the Maximum European Revolving Advance Amount exceeds such average daily unpaid balance, or (b) is less than 50% of the Maximum European Revolving Advance Amount, European Borrowers shall pay a Facility Fee at a rate equal to .375% of the amount by which the Maximum European Revolving Advance Amount exceeds such average daily unpaid balance (collectively, the "**Facility Fee**"). Such applicable Facility Fee shall be payable to Applicable Agent in arrears on the first day of each calendar month with respect to the previous calendar month with respect to the English Facility and the French Facility and on the first day of each calendar quarter with respect to the previous calendar quarter with respect to the US-Canada Facility.

1.4 Collateral Monitoring Fee and Collateral Evaluation Fee and Fee Letters.

(a) Borrowers shall pay each Agent such collateral monitoring and evaluation fees and costs, in the manner and at the times required, as may be required pursuant to each Fee Letter, any other fee letter among either Agent and Borrowers or otherwise notified by either Agent to Borrower in writing from time to time.

(b) Borrowers shall pay the other amounts required to be paid in each Fee Letter in the manner and at the times required by each Fee Letter.

(c) All of the fees and out-of-pocket costs and expenses of any appraisals conducted pursuant to Section 4.7 hereof shall be paid for when due, in full and without deduction, off-set or counterclaim by Borrowers.

1.5 Computation of Interest and Fees; Criminal Code (Canada). Interest and fees hereunder shall be computed on the basis of a year of 360 days (or 365/366 days in the case of interest or fees denominated in British Pounds Sterling) and for the actual number of days elapsed. If any payment to be made hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day and interest thereon shall be payable at the applicable Contract Rate during such extension. For purposes of the Interest Act (Canada): (i) whenever any interest or fee under this Agreement is calculated on the basis of a period of time other than a calendar year, such rate used in such calculation, when expressed as an annual rate, is equivalent to (x) such rate, multiplied by (y) the actual number of days in the calendar year in which the period for which such interest or fee is calculated ends, and divided by (z) the number of days in such period of time; (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement; and (iii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields. If any provision of this Agreement or Other Documents would oblige any Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by Applicable Law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows: first, by reducing the amount or rate of interest, and, thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

1.6 Maximum Charges. In no event whatsoever shall interest and other charges charged hereunder exceed the highest rate permissible under Applicable Law. In the event interest and other charges as computed hereunder would otherwise exceed the highest rate permitted under Applicable Law: (i) the interest rates hereunder will be reduced to the maximum rate permitted under Applicable Law; (ii) such excess amount shall be first applied to any unpaid principal balance owed by Borrowers; and (iii) if the then remaining excess amount is greater than the previously unpaid principal balance, Lenders shall promptly refund such excess amount to Borrowers and the provisions hereof shall be deemed amended to provide for such permissible rate.

1.7 Increased Costs. In the event that any Applicable Law or any Change in Law or compliance by any Lender (for purposes of this Section 3.7, the term "Lender" shall include any Agent, any Swing Loan Lender, any Issuer or any Lender and any corporation or bank controlling any Agent, any Swing Loan Lender, any Lender or any Issuer and the office or branch where Agent, Swing Loan Lender, any Lender or Issuer (as so defined) makes or maintains any Euro-Term SOFR Rate Loans, LIBOR-RateTerm Benchmark Loans, RFR Loans or Overnight Rate Loans) with any request or directive (whether or not having the force of law) from any central bank or other financial, monetary or other authority, shall:

(a) subject such Agent, such Swing Loan Lender, such Lender or such Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit,

any participation in a Letter of Credit or any ~~LIBOR Rate~~Term Benchmark Loan, RFR Loan or ~~Euro-Term SOFR~~ Rate Loan, or change the basis of taxation of payments to such Agent, such Swing Loan Lender, such Lender or such Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.10 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Agent, such Swing Loan Lender, such Lender or such Issuer);

(b) impose, modify or deem applicable any reserve, special deposit, assessment, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits in or for the account of, advances or loans by, or other credit extended by, any office of such Agent, such Swing Loan Lender, such Issuer or such Lender, including pursuant to Regulation D of the Board of Governors of the Federal Reserve System; or

(c) impose on such Agent, such Swing Loan Lender, such Lender or such Issuer or the London interbank market any other condition, loss or expense (other than Taxes) affecting this Agreement or any Other Document or any Advance made by any Lender, or any Letter of Credit or participation therein;

and the result of any of the foregoing is to increase the cost to such Agent, such Swing Loan Lender, such Lender or such Issuer of making, converting to, continuing, renewing or maintaining its Advances hereunder by an amount that such Agent, such Swing Loan Lender, such Lender or such Issuer deems to be material or to reduce the amount of any payment (whether of principal, interest or otherwise) in respect of any of the Advances by an amount that such Agent, such Swing Loan Lender or such Lender or such Issuer deems to be material, then, in any case the applicable Borrowers shall promptly pay such Agent, such Swing Loan Lender, such Lender or such Issuer, upon its demand, such additional amount as will compensate such Agent, such Swing Loan Lender or such Lender or such Issuer for such additional cost or such reduction, as the case may be, provided that the foregoing shall not apply to increased costs which are reflected in the ~~LIBOR~~Adjusted EURIBOR Rate, Adjusted Daily Simple RFR, Daily Simple RFR or the ~~Euro-Term SOFR~~ Rate, as the case may be. Such Agent, such Swing Loan Lender, such Lender or such Issuer shall certify the amount of such additional cost or reduced amount to the applicable Borrowing Agent, and such certification shall be conclusive absent manifest error.

1.8 Alternate Rate of Interest..

3.8.1 Basis For Determining Interest Rate Inadequate or Unfair. In the event that any Agent or any Lender shall have determined that:

(a) reasonable means do not exist for ascertaining the Adjusted ~~LIBO~~EURIBOR Rate, Overnight ~~LIBO~~ Rate or ~~Euro-Term SOFR~~ Rate for any Interest Period or at any time, reasonable means do not exist for ascertaining the Adjusted Daily Simple RFR; or

(b) deposits in the relevant amount, the applicable currency and for the relevant maturity are not available ~~in the relevant interbank LIBOR market~~, with respect to an outstanding ~~Euro-Term SOFR~~ Rate Loan, Overnight Rate Loan or ~~LIBOR-Rate~~Term Benchmark Loan, a proposed ~~Euro-Term SOFR~~ Rate Loan, Overnight Rate Loan or ~~LIBOR-Rate~~Term Benchmark Loan, or a proposed conversion of a Domestic Rate Loan into a ~~Euro-Term SOFR~~ Rate Loan; or

(c) the making, maintenance or funding of any ~~Euro-Term SOFR~~ Rate Loan, Overnight Rate Loan, Term Benchmark Loan or ~~LIBOR-Rate~~RFR Loan has been made

impracticable or unlawful by compliance by such Agent or such Lender in good faith with any Applicable Law or any interpretation or application thereof by any Governmental Body or with any request or directive of any such Governmental Body (whether or not having the force of law), or

(d) the ~~Euro-Term SOFR~~ Rate, Overnight ~~LIBOR~~Rate, ~~Adjusted EURIBOR~~ Rate or ~~Adjusted LIBOR-Rate~~Daily Simple RFR will not adequately and fairly reflect the cost to such Lender of the establishment or maintenance of any such ~~Euro-Term SOFR~~ Rate Loan, Overnight Rate Loan, Term Benchmark Loan or ~~LIBOR-Rate~~RFR Loan,

then Applicable Agent shall give Applicable Borrowing Agent prompt written or telephonic notice of such determination. If ~~Section 3.8.2 does not apply~~such notice is given prior to a Benchmark Replacement Date (as defined below), (i) any such requested ~~Euro-Term SOFR~~ Rate Loan on behalf of the US-Canada Borrowers shall be made as a Domestic Rate Loan, and any such requested ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan or Overnight Rate Loan on behalf of the European Borrowers shall be made as a European Revolving Advance at a rate determined by the European Agent which expresses a percentage rate per annum equal to the European Lenders or applicable European Lender (as applicable) cost of funding its or their participation in such European Revolving Advance, unless Applicable Borrowing Agent shall notify Applicable Agent no later than 1:00 p.m. Local Time, two (2) Business Days prior to the date of such proposed borrowing, that its request for such borrowing shall be cancelled or made as an unaffected type of ~~Euro-Term SOFR~~ Rate Loan, Overnight Rate Loan, Term Benchmark Loan or ~~LIBOR-Rate~~RFR Loan, as applicable, (ii) any Domestic Rate Loan or ~~Euro-Term SOFR~~ Rate Loan which was to have been converted to an affected type of ~~Euro-Term SOFR~~ Rate Loan shall be continued as or converted into a Domestic Rate Loan, or, if Applicable Borrowing Agent shall notify Applicable Agent, no later than 1:00 p.m. Local Time, two (2) Business Days prior to the proposed conversion, shall be maintained as an unaffected type of ~~Euro-Term SOFR~~ Rate Loan, and (iii) any outstanding affected ~~Euro-Term SOFR~~ Rate Loans under the US-Canada Facility shall be converted into a Domestic Rate Loan, and any outstanding affected ~~LIBOR-Rate~~Term Benchmark Loans, RFR Loans or Overnight Rate Loans under the English Facility and the French Facility shall be converted to a European Revolving Advance at a rate determined by the European Agent which expresses a percentage rate per annum equal to the European Lenders or applicable European Lender (as applicable) cost of funding its or their participation in such European Revolving Advance, or, if Applicable Borrowing Agent shall notify Applicable Agent, no later than 1:00 p.m. Local Time, two (2) Business Days prior to the last Business Day of the then current Interest Period or the then current Interest Payment Date applicable to such affected ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan, Overnight Rate Loan or ~~Euro-Term SOFR~~ Rate Loan, shall be converted into an unaffected type of ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan, Overnight Rate Loan or ~~Euro-Term SOFR~~ Rate Loan, as applicable, on the last Business Day of the then current Interest Period or the then current Interest Payment Date for such affected ~~LIBOR-Rate~~Term Benchmark Loans, RFR Loans, Overnight Rate Loans or ~~Euro-Term SOFR~~ Rate Loans (or sooner, if any Lender cannot continue to lawfully maintain such affected ~~LIBOR-Rate~~Term Benchmark Loans, RFR Loans, Overnight Rate Loans or ~~Euro-Term SOFR~~ Rate Loan). Until such notice has been withdrawn, Lenders shall have no obligation to make an affected type of ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan, Overnight Rate Loan or ~~Euro-Term SOFR~~ Rate Loan or maintain outstanding affected ~~LIBOR-Rate~~Term Benchmark Loans, RFR Loans, Overnight Rate Loans or ~~Euro-Term SOFR~~ Rate Loans and no Borrower shall have the right to convert a Domestic Rate Loan or an unaffected type of ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan, Overnight Rate Loan or ~~Euro-Term SOFR~~ Rate Loan into an affected type of ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan, Overnight Rate Loan or ~~Euro-Term SOFR~~ Rate Loan.

3.8.2. ~~Successor Adjusted LIBO Rate, Overnight LIBO Rate, or Euro-Rate-Index~~Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in the Other Documents (and any agreement executed in connection with an Interest Rate Hedge shall be deemed not to be an “Other Document” for the purposes of this Section 3.8.2), if the Applicable Agent determines that a Benchmark Transition Event ~~or an Early Opt-in Event~~ has occurred, the Applicable Agent may amend this Agreement to replace the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate and/or the ~~Euro-Term~~SOFR Rate with a Benchmark Replacement in accordance with this Section 3.8.2; and any such amendment shall be in writing, shall specify the date that the Benchmark Replacement is effective and will not require any further action or consent of any other party to this Agreement, including the Borrowers. Until the Benchmark Replacement is effective, each advance, conversion and renewal of a ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan, Overnight Rate Loan or a ~~Euro-Term~~SOFR Rate Loan will continue to bear interest with reference to the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or ~~Euro-Term~~SOFR Rate, respectively; provided, however, during a Benchmark Unavailability Period (i) any pending selection of, conversion to or renewal of a (A) ~~Euro-Term~~SOFR Rate Loan that has not yet gone into effect shall be deemed to be a selection of, conversion to or renewal of a Domestic Rate Loan or (B) ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan or Overnight Rate Loan that has not yet gone into effect shall be converted to a Loan in Dollars in the Dollar Equivalent amount of such Loan and be deemed to be a selection of, conversion to or renewal of a Domestic Rate Loan, (ii) all outstanding ~~LIBOR-Rate~~Term Benchmark Loans, RFR Loans, Overnight Rate Loans or ~~Euro-Term~~SOFR Rate Loans shall automatically be (A) if in Dollars, converted to Domestic Rate Loans at the expiration of the existing Interest Period (or sooner, if Applicable Agent cannot continue to lawfully maintain such affected ~~Euro-Term~~SOFR Rate Loan) or (B) if in an Optional Currency, converted to a Loan in Dollars as Domestic Rate Loan in the Dollar Equivalent amount of such Loan at the expiration of the existing Interest Period or on the next Interest Payment Date (or sooner, if the Applicable Agent cannot continue to lawfully maintain such affected ~~LIBOR-Rate~~Term Benchmark Loan, RFR Loan or Overnight Rate Loan in such Optional Currency) and (iii) the component of the Alternate Base Rate based upon the ~~Euro-Term~~SOFR Rate will not be used in any determination of the Alternate Base Rate.

(b) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Applicable Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in the Other Documents, 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 Document.

(c) Notices; Standards for Decisions and Determinations. The Applicable Agent will promptly notify the Borrowers of (i) any occurrence of a Benchmark

Transition Event 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 paragraph (d) below, and (v) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Applicable Agent pursuant to this Section 3.8.2 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, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.8.2.

- (d) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any of the Other Documents, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term 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 Applicable 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 of such Benchmark is or will be no longer representative, then the Applicable Agent may modify the definition of “Interest Period” (or any similar or analogous definition) 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 Applicable Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.
- (e) *Benchmark Unavailability Period.* Upon the Borrowers’ receipt of notice of the commencement of a Benchmark Unavailability Period, the applicable Borrowers may revoke any request for an Advance bearing interest based on the Term SOFR Rate, Adjusted EURIBOR Rate, Overnight Rate or Adjusted Daily Simple RFR, conversion to or continuation of Advances bearing interest based on the Term SOFR Rate, Adjusted EURIBOR Rate, Overnight Rate or Adjusted Daily Simple RFR to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for a Domestic Rate Loan. 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 the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.
- (f) ~~(d)~~ Certain Defined Terms. As used in this Section 3.8.2:

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable (x) if the then current Benchmark is a term rate or is

based on a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“**Benchmark**” means, initially, the Term SOFR Rate; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Term SOFR Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to this Section. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“**Benchmark Replacement**” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Agent for the applicable Benchmark Replacement Date:

- (1) for Domestic Rate Loans only, the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) ~~“**Benchmark Replacement**” means~~ the sum of: (a) the alternate benchmark rate that has been selected by the Applicable Agent giving due consideration to (i) any selection or recommendation of a replacement 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 rate of interest as a replacement to the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~Rate or the ~~Euro~~-Term SOFR Rate for (A) with respect to Dollar Loans under the ~~Euro~~-Term SOFR Rate, U.S. dollar-denominated credit facilities or (B) with respect to Optional Currency Loans, U.S. credit facilities providing for loans in such Optional Currency and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than 0.25%, the Benchmark Replacement will be deemed to be 0.25% for the purposes of this Agreement.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the ~~Adjusted LIBO Rate, Overnight LIBO Rate or the Euro Rate with an alternate benchmark rate~~ then current Benchmark with an Unadjusted Benchmark Replacement for each applicable Interest Period (where applicable):

- (1) for purposes of clause (1) of the definition of “Benchmark Replacement,” the applicable amount(s) set forth below:

<u>Available Tenor</u>	<u>Benchmark Replacement Adjustment*</u>
<u>One-Week</u>	<u>0.03839% (3.839 basis points)</u>
<u>One-Month</u>	<u>0.11448% (11.448 basis points)</u>
<u>Two-Months</u>	<u>0.18456% (18.456 basis points)</u>
<u>Three-Months</u>	<u>0.26161% (26.161 basis points)</u>
<u>Six-Months</u>	<u>0.42826% (42.826 basis points)</u>
<u>* These values represent the ARRC/ISDA recommended spread adjustment values available here: https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf</u>	

(2) for purposes of clause (2) 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 Applicable Agent (a) 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 the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or the ~~Euro~~-Term SOFR Rate with the applicable Benchmark Replacement (excluding such spread adjustment) by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for such replacement of the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or the ~~Euro~~-Term SOFR Rate for (A) with respect to Dollar Loans under the ~~Euro~~-Term SOFR Rate, U.S. dollar denominated credit facilities at such time or (B) with respect to Optional Currency Loans, U.S. credit facilities providing for loans in such Optional Currency and (b) which may also reflect adjustments to account for (i) the effects of the transition from the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or the ~~Euro~~-Term SOFR Rate to the Benchmark Replacement and (ii) yield- or risk-based differences between the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or the ~~Euro~~-Term SOFR Rate and the Benchmark Replacement.

“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 “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Applicable Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Applicable Agent in a manner substantially consistent with market practice (or, if the Applicable Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Applicable Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Applicable Agent decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or the ~~Euro~~-Term SOFR Rate:

(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 the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or the ~~Euro~~-Term SOFR Rate permanently or indefinitely ceases to provide the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or the ~~Euro~~-Term SOFR Rate; or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~-Rate or the ~~Euro~~-Term SOFR Rate:

(1) a public statement or publication of information by or on behalf of the administrator of the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate announcing that such administrator has ceased or will cease to provide the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate;

(2) a public statement or publication of information by a Governmental Body having jurisdiction over the Applicable Agent, the regulatory supervisor for the administrator of the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate, a resolution authority with jurisdiction over the administrator for the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate, which states that the administrator of the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate has ceased or will cease to provide the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate or a Governmental Body having jurisdiction over the Applicable Agent announcing that the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate is no longer representative.

"Benchmark Unavailability Period" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate and solely to the extent that the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate for all purposes hereunder in accordance with Section 3.8.2 and (y) ending at the time that a Benchmark Replacement has replaced the Adjusted ~~LIBO~~EURIBOR Rate, Adjusted Daily Simple RFR, Overnight ~~LIBO~~ Rate or the ~~Euro-Term~~ SOFR Rate for all purposes hereunder pursuant to Section 3.8.2.

"Early Opt-in Event" means a determination by the Applicable Agent that (a) with respect to Dollar Loans under the Euro-Rate, U.S. dollar-denominated credit facilities being executed at such time, or that include language similar to that contained in this Section 3.8.2, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Euro-Rate for loans in Dollars or (b) with respect to Optional Currency Loans, U.S. credit facilities providing for loans in such Optional Currency being executed at such time, or that include language similar to that contained in Section 3.8.2, are being executed or

~~amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Adjusted LIBO Rate or Overnight LIBO Rate for loans in such Optional Currency.~~

"Relevant Governmental Body" means (a) the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto and (b) with respect to Optional Currency Loans, in addition to the Persons named in clause (a) of this definition, the comparable Governmental Body or other applicable Person for loans in such Optional Currency as determined by the Applicable Agent in its sole discretion.

1.9 Capital Adequacy.

(a) In the event that any Agent, any Swing Loan Lender or any Lender shall have determined that any Applicable Law or guideline regarding capital adequacy, or any Change in Law or any change in the interpretation or administration thereof by any Governmental Body, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by such Agent, such Swing Loan Lender, such Issuer or any Lender (for purposes of this Section 3.9, the term "Lender" shall include any Agent, any Swing Loan Lender, any Issuer or any Lender and any corporation or bank controlling any Agent, any Swing Loan Lender or any Lender and the office or branch where any Agent, any Swing Loan Lender or any Lender (as so defined) makes or maintains any ~~LIBOR Rate~~ Term Benchmark Loans, RFR Loans or ~~Euro-Term SOFR~~ Rate Loans) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Agent, such Swing Loan Lender or such Lender's capital as a consequence of its obligations hereunder (including the making of any Swing Loans) to a level below that which such Agent, such Swing Loan Lender or such Lender could have achieved but for such adoption, change or compliance (taking into consideration such Agent's, such Swing Loan Lender's and such Lender's policies with respect to capital adequacy) by an amount deemed by such Agent, such Swing Loan Lender or such Lender to be material, then, from time to time, Borrowers shall pay upon demand to such Agent, such Swing Loan Lender or such Lender such additional amount or amounts as will compensate such Agent, such Swing Loan Lender or such Lender for such reduction. In determining such amount or amounts, such Agent, such Swing Loan Lender or such Lender may use any reasonable averaging or attribution methods. The protection of this Section 3.9 shall be available to each Agent, each Swing Loan Lender and each Lender regardless of any possible contention of invalidity or inapplicability with respect to the Applicable Law, rule, regulation, guideline or condition.

(b) A certificate of any Agent, any Swing Loan Lender or any Lender setting forth such amount or amounts as shall be necessary to compensate such Agent, such Swing Loan Lender or such Lender with respect to Section 3.9(a) hereof when delivered to Applicable Borrowing Agent shall be conclusive absent manifest error.

1.10 Taxes.

(a) Any and all payments by or on account of any Obligations hereunder or under any Other Document shall be made free and clear of and without reduction or withholding for any Taxes; provided that if the Loan Parties shall be required by Applicable Law to deduct or withhold any Taxes (including any Other Taxes) from such payments, then (i) if the deduction or withholding is in respect of Indemnified Taxes the sum payable shall be increased as necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums

payable under this Section 3.10) each Agent, each Swing Loan Lender, each Lender, each Issuer or each Participant, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Loan Parties shall make such deductions or withholdings and (iii) the Loan Parties shall timely pay the full amount deducted or withheld to the relevant Governmental Body in accordance with Applicable Law.

(b) The Loan Parties shall pay and, within three (3) days of demand therefor, indemnify each of the Secured Parties against any cost, liability or loss incurred by the relevant Secured Party in relation to all Other Taxes. Without limiting the provisions of Section 3.10(a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Body in accordance with Applicable Law.

(c) Each Loan Party shall indemnify any Agent, any Swing Loan Lender, any Lender, any Issuer and any Participant, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.10) payable or paid by such Agent, such Swing Loan Lender, such Lender, such Issuer, or such Participant, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to the Applicable Borrowing Agent by any Lender, any Swing Loan Lender, any Participant, or any Issuer (with a copy to Applicable Agent), or by any Agent on its own behalf or on behalf of any Swing Loan Lender, any Lender or any Issuer, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Body, the Loan Parties shall deliver to Applicable Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Applicable Agent.

(e) Any Foreign Lender under the US-Canada Facility that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any US Borrower is resident for tax purposes, or under any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any Other Document shall deliver to the Borrowing Agent (with a copy to Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrowing Agent or Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. With respect to any payments by the US Borrowers, notwithstanding the submission of such documentation claiming a reduced rate of or exemption from U.S. withholding tax, Agent shall be entitled to withhold United States federal income taxes at the full 30% withholding rate if in its reasonable judgment it is required to do so under the due diligence requirements imposed upon a withholding agent under § 1.1441-7(b) of the United States Income Tax Regulations or other Applicable Law. Further, Agent is indemnified under § 1.1461-1(e) of the United States Income Tax Regulations against any claims and demands of any Lender, Issuer or assignee or participant of a Lender or Issuer for the amount of any tax it deducts and withholds in accordance with regulations under § 1441 of the Code. In addition, any US-Canada Lender, if requested by the Borrowing Agent or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowing Agent or Agent as will enable the US Borrowers or Agent to determine whether or not such Lender is subject to backup

withholding or information reporting requirements. Without limiting the generality of the foregoing, in the event that any US Borrower is resident for tax purposes in the United States of America, any Foreign Lender (or other Lender) under the US-Canada Facility shall deliver to Borrowing Agent and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender (or other Lender) becomes a US-Canada Lender under this Agreement (and from time to time thereafter upon the request of the Borrowing Agent or Agent, but only if such Foreign Lender (or other Lender) is legally entitled to do so), whichever of the following is applicable: two (2) duly completed valid originals of IRS Form W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(i) two (2) duly completed valid originals of IRS Form W-8ECI,

(ii) 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 to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any US Borrower within the meaning of section 881(c)(3)(B) of the Code, (BC) a "10 percent shareholder" of US Borrowers within the meaning of section 881(c)(3)(B) of the Code or (ED) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) two duly completed valid originals of IRS Form W-8BEN-E,

(iii) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Applicable Law to permit US Borrowers to determine the withholding or deduction required to be made, or

(iv) To the extent that any US-Canada Lender is not a Foreign Lender, such Lender shall submit to Agent two (2) originals of an IRS Form W-9 or any other form prescribed by Applicable Law demonstrating that such Lender is not a Foreign Lender.

(f) Status of Lenders:

(i) A Lender and each Loan Party that is required to make a payment to which that Lender is entitled shall co-operate in completing any procedural formalities necessary for that Loan Party to obtain authorization to make payment without a Tax Deduction on account of Tax imposed by the United Kingdom, provided that where a Lender has (where relevant) confirmed its HMRC DT Treaty Passport Scheme reference number and jurisdiction of tax residence below its name on the relevant signature page or otherwise provided notification of the same to the Applicable Agent and the Applicable Borrowing Agent, it shall be under no further obligation pursuant to this paragraph (except where a Borrower DTTP Filing has been rejected by HM Revenue & Customs or where HM Revenue & Customs has not given authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing and, in each case, the Applicable Borrowing Agent has notified the relevant Lender and the Applicable Agent in writing).

(ii) If a Lender has confirmed its HMRC DT Treaty Passport Scheme reference number and jurisdiction of tax residence, the relevant Loan Parties shall

make a Borrower DTTP Filing with respect to such Lender within thirty (30) days of the date of such confirmation.

(iii) Each Lender which becomes a **Partyparty** to this Agreement after the date of this Agreement shall state in writing to the Applicable Agent at the time it becomes a **Partyparty** to this Agreement whether it is (A) not a Qualifying Lender, (B) a Qualifying Lender (other than a Treaty Lender) or (C) a Treaty Lender. If a New Lender fails to notify its status in accordance with this paragraph (iii) then such New Lender shall be treated for the purposes of this Agreement (including by each Loan Party) as if it is not a Qualifying Lender until such time as it notifies the Applicable Agent in writing which of (A), (B), or (C) applies (and the Applicable Agent, upon receipt of such notification, shall inform the relevant Loan Party). Such New Lender shall also specify in writing to the Applicable Agent at the time it becomes a **Partyparty** to this Agreement whether it is incorporated or acting through a registered office situated in a Non-Cooperative Jurisdiction. For the avoidance of doubt, failure of a New Lender to comply with this paragraph (iii) will not invalidate the transfer.

(iv) If a Lender becomes aware that it is not or ceases to be a Qualifying Lender, it shall notify the Applicable Agent as soon as reasonably practicable. If the Applicable Agent receives such notification from a Lender it shall notify the relevant Loan Party as soon as reasonably practicable.

(v) If a Lender has not confirmed its HMRC DT Treaty Passport Scheme reference number and jurisdiction of tax residence below its name on the relevant signature page or otherwise provided notification of the same to the Applicable Agent or the Applicable Borrowing Agent, no Loan Party shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport Scheme in respect of that Lender's Revolving Commitment and/or Participation Commitment (as applicable) or its participation in any Advance unless the Lender otherwise agrees. Each relevant Loan Party shall, promptly on making a Borrower DTTP Filing, deliver a copy of such Borrower DTTP Filing to the Applicable Agent for delivery to the relevant Lender.

(g) FATCA information:

(i) Subject to paragraph (iii) below, each **Partyparty** shall, within ten (10) Business Days of a reasonable request by another **Partyparty**:

(A) confirm to that other **Partyparty** whether it is:

- (1) a FATCA Exempt Party; or
- (2) not a FATCA Exempt Party; and

(B) supply to that other **Partyparty** such forms, documentation and other information relating to its status under FATCA as that other **Partyparty** reasonably requests for the purposes of that other **Partyparty**'s compliance with FATCA; and

(C) supply to that other **Partyparty** such forms, documentation and other information relating to its status as that other **Partyparty** reasonably requests for the purposes of that other **Partyparty**'s compliance with any other law, regulation or exchange of information regime.

(ii) If a **Party** confirms to another **Party** pursuant to paragraph (i)(A) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that **Party** shall notify that other **Party** reasonably promptly.

(iii) Paragraph (i) above shall not oblige any Secured Party to do anything, and paragraph (i)(C) above shall not oblige any other **Party** to do anything, which would or might in its reasonable opinion constitute a breach of:

- (A) any law or regulation;
- (B) any fiduciary duty; or
- (C) any duty of confidentiality.

(iv) If a **Party** fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (i)(A) or (B) above (including, for the avoidance of doubt, where paragraph (iii) above applies), then such **Party** shall be treated for the purposes of this Agreement or the Other Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the **Party** in question provides the requested confirmation, forms, documentation or other information.

(v) If a Loan Party is a US Tax Obligor or the Applicable Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Secured Party shall, within ten (10) Business Days of:

(A) where a Loan Party that became a Loan Party on the date of this Agreement is a US Tax Obligor and the relevant Secured Party became a Secured Party on the date of this Agreement, the date of this Agreement;

(B) where a Loan Party is a US Tax Obligor on the date a new Secured Party becomes a party to this Agreement ("**Transfer Date**") and the relevant Secured Party is a new Secured Party, the relevant Transfer Date;

(C) the date a new US Tax Obligor accedes as a Loan Party; or

(D) where a Loan Party is not a US Tax Obligor, the date of a request from the Applicable Agent,

supply to the Applicable Agent:

(1) a withholding certificate on Form W-8BEN-E, Form W-8ECI, Form W-9 or any other relevant form; or

(2) any withholding statement or other document, authorization or waiver as the Applicable Agent may require to certify or establish the status of such Secured Party under FATCA or that other law or regulation.

(vi) The Applicable Agent shall provide any withholding certificate, withholding statement, document, authorization or waiver it receives from a Secured Party pursuant to paragraph (v) above to the relevant Loan Party.

(vii) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Applicable Agent by a Secured Party pursuant to paragraph (v) above is or becomes materially inaccurate or incomplete, that Secured Party shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorization or waiver to the Applicable Agent unless it is unlawful for the Secured Party to do so (in which case the Secured Party shall promptly notify the Applicable Agent). The Applicable Agent shall provide any such updated withholding certificate, withholding statement, document, authorization or waiver to the relevant Loan Party.

(viii) The Applicable Agent may rely on any withholding certificate, withholding statement, document, authorization or waiver it receives from a Secured Party pursuant to paragraph (v) or (vii) above without further verification, provided that the Applicable Agent has no reason to believe that such certificate, statement, document, authorization or waiver is inaccurate in any material way. The Applicable Agent shall not be liable for any action taken by it under or in connection with paragraphs (v), (vi) or (vii) above.

(h) FATCA Deduction:

(i) Each **Partyparty** may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no **Partyparty** shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

(ii) Each **Partyparty** shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the **Partyparty** to whom it is making the payment and, in addition, shall notify the Company and the Applicable Agent and the Applicable Agent shall notify the other Secured Parties.

(i) If a payment made to any Lender, any Swing Loan Lender, any Participant, any Issuer, or any Agent under this Agreement or any Other Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Person fails 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, Swing Loan Lender, Participant, Issuer, or Agent shall deliver to the Applicable Agent (in the case of Swing Loan Lender, a Lender, Participant or an Issuer) and the Borrowing Agent (A) a certification signed by the chief financial officer, principal accounting officer, treasurer or controller of such Person, and (B) other documentation reasonably requested by Agent or Borrowing Agent sufficient for Agent and the Loan Parties to comply with their obligations under FATCA and to determine that Swing Loan Lender, such Lender, such Participant, such Issuer, or such Agent has complied with such applicable reporting requirements.

(j) If any Agent, any Swing Loan Lender, any Lender, any Participant or any Issuer determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Loan Parties or with

respect to which the Loan Parties have paid additional amounts pursuant to this Section 3.10, it shall pay to the Loan Parties an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Parties under this Section 3.10 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund); net of all out-of-pocket expenses (including Taxes) of such Agent, such Swing Loan Lender, such Lender, such Participant, or such Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund), provided that the Loan Parties, upon the request of such Agent, such Swing Loan Lender, such Lender, such Participant, or such Issuer, agrees to repay the amount paid over to the Loan Parties (*plus* any penalties, interest or other charges imposed by the relevant Governmental Body) to such Agent, such Swing Loan Lender, such Lender, such Participant or such Issuer in the event such Agent, such Swing Loan Lender, such Lender, such Participant or such Issuer is required to repay such refund to such Governmental Body. This Section 3.10 shall not be construed to require any Agent, any Swing Loan Lender, any Lender, any Participant, or any Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Loan Parties or any other Person.

(k) If any amount payable to a French Lender by a French Borrower under this Agreement or the Other Documents is not, or will not be (when the relevant corporate income tax is calculated) treated as a deductible charge or expense for French tax purposes for such French Borrower by reason of that amount being (i) paid or accrued to a French Lender incorporated, domiciled, established or acting through a registered office situated in a Non-Cooperative Jurisdiction, or (ii) paid to an account opened in the name of or for the benefit of that French Lender in a financial institution situated in a Non-Cooperative Jurisdiction, such French Borrower may, whilst the circumstance giving rise to the non-deductibility for French tax purposes continues, give the European Agent notice of cancellation of the French Revolving Commitment of that French Lender and its intention to procure the repayment of that French Lender's participation in the French Revolving Advances.

(l) VAT:

(i) All amounts expressed to be payable under this Agreement or an Other Document by a Loan Party to a Secured Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph 3.10(l)(ii) below, if VAT is or becomes chargeable on any supply made by a Secured Party to a Loan Party under this Agreement or Other Document and that Secured Party is required to account to the relevant Tax Authority for the VAT, that Loan Party must pay to such Secured Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Secured Party must promptly provide an appropriate VAT invoice to that Loan Party).

(ii) If VAT is or becomes chargeable on any supply made by a Secured Party (the "**Supplier**") to any other Secured Party (the "**Recipient**") under this Agreement or an Other Document, and any party other than the Recipient (the "**Relevant Party**") is required by the terms of this Agreement or Other Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

(A) (where the Supplier is the person required to account to the relevant Tax Authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (A) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant Tax Authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

(B) (where the Recipient is the person required to account to the relevant Tax Authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant Tax Authority in respect of that VAT.

(iii) Where this Agreement or an Other Document requires a Loan Party to reimburse or indemnify a Secured Party for any cost or expense, that Loan Party shall reimburse or indemnify (as the case may be) such Secured Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Secured Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant Tax Authority.

(iv) Any reference in Section 3.10(l) to any party shall, at any time when such party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated as making the supply or (as appropriate) receiving the supply under the grouping rules (as provided for in Article 11 of the Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union)).

(v) In relation to any supply made by a Secured Party to a Loan Party under this Agreement or an Other Document, if reasonably requested by such Secured Party, that Loan Party must promptly provide such Secured Party with details of that Loan Party's VAT registration and such other information as is reasonably requested in connection with such Secured Party's VAT reporting requirements in relation to such supply.

(m) Tax Mitigation:

(i) Each European Lender shall take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to Section 3.10 including (but not limited to) transferring its rights and obligations under this Agreement and Other Documents to another Affiliate or office, provided that, in respect of the French Facility, such Affiliate or other office shall be a French Qualifying Lender.

(ii) Section 3.10(m)(i) does not in any way limit the obligations of any European Loan Party under this Agreement or any Other Documents.

(iii) Each European Loan Party shall promptly indemnify each European Lender for all costs and expenses reasonably incurred by that European Lender as a result of steps taken by it under Section 3.10(m)(i).

(iv) A European Lender is not obliged to take any steps under Section 3.10(m)(i) if, in the opinion of that European Lender (acting in good faith), that such steps would not reduce or eliminate, as the case may be, amounts otherwise becoming payable under or pursuant to Section 3.10 or to do so might be disadvantageous to it.

1.11 Replacement of Lenders. If any Lender (an "**Affected Lender**") (a) makes demand upon Borrowers for (or if Borrowers are otherwise required to pay) amounts pursuant to Section 3.7 or 3.9 hereof, (b) is unable to make or maintain ~~LIBOR-Rate~~Term Benchmark Loans, RFR Loans or ~~Euro-Term~~ SOFR Rate Loans as a result of a condition described in Section 2.2(h) hereof, (c) is a Defaulting Lender, or (d) denies any consent requested by Applicable Agent pursuant to Section 16.2(b) hereof, Borrowers may, within ninety (90) days of receipt of such demand, notice (or the occurrence of such other event causing Borrowers to be required to pay such compensation or causing Section 2.2(h) hereof to be applicable), or such Lender becoming a Defaulting Lender or denial of a request by Applicable Agent pursuant to Section 16.2(b) hereof, as the case may be, by notice in writing to Applicable Agent and such Affected Lender (i) request the Affected Lender to cooperate with Borrowers in obtaining a replacement Lender satisfactory to Applicable Agent and Borrowers (the "**Replacement Lender**"); (ii) request the non-Affected Lenders to acquire and assume all of the Affected Lender's Advances and its Revolving Commitment Percentage, as provided herein, but none of such Lenders shall be under any obligation to do so; or (iii) propose a Replacement Lender subject to approval by Applicable Agent in its good faith business judgment. If any satisfactory Replacement Lender shall be obtained, and/or if any one or more of the non-Affected Lenders shall agree to acquire and assume all of the Affected Lender's Advances and its Revolving Commitment Percentage, then such Affected Lender shall assign, in accordance with Section 16.3 hereof, all of its Advances and its Revolving Commitment Percentage and other rights and obligations under this Agreement and the Other Documents to such Replacement Lender or non-Affected Lenders, as the case may be, in exchange for payment of the principal amount so assigned and all interest and fees accrued on the amount so assigned, *plus* all other Obligations then due and payable to the Affected Lender. Any Replacement Lender with respect to the French Facility must be a French Qualifying Lender. No Replacement Lender with respect to the French Facility may be incorporated, or acting through a registered office situated, in a Non-Cooperative Jurisdiction without the prior consent of the European ~~Borrower-~~Representative Borrowing Agent, which shall not be unreasonably withheld.

1.12 Currency Conversion Procedures for Judgments. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties hereby agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which in accordance with normal lending procedures Applicable Agent could purchase the Original Currency with the Other Currency after any premium and costs of exchange on the Business Day preceding that on which final judgment is given.

1.13 Indemnity in Certain Events. The obligation of Borrowers in respect of any sum due from any Borrower to any Lender hereunder shall, notwithstanding any judgment in an Other Currency, whether pursuant to a judgment or otherwise, be discharged only to the extent that, on the Business Day following receipt by any Lender of any sum adjudged to be so due in such Other Currency, such Lender may in accordance with normal lending procedures purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to such Lender in the Original Currency, Borrowers jointly and severally agree, as a separate obligation and notwithstanding any such judgment or payment, to indemnify such Lender against such loss.

1.14 Optional Currency Not Available. If at any time the Applicable Agent shall have determined that a fundamental change has occurred in the foreign exchange or interbank markets with respect to any Optional Currency (including, without limitation, changes in national or international financial, political or economic conditions or currency exchange rates or exchange controls), then (i) the Applicable Agent shall notify the Applicable Borrowing Agent of any such determination, and (ii) until the Applicable Agent notifies the Applicable Borrowing Agent that the circumstances giving rise to such determination no longer exist, the availability of Letters of Credit in the affected Optional Currency shall be suspended.

1.15 Break Funding Payments. ~~In~~(a) With respect to any Term Benchmark Loan, in the event of ~~(a)~~ the payment of any principal of any ~~LIBOR-RateTerm Benchmark~~ Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), ~~(b)~~ii the failure to borrow, continue or prepay any ~~LIBOR-RateTerm Benchmark~~ Loan on the date specified in any notice delivered pursuant hereto, or (c) the assignment of any ~~LIBOR-RateTerm Benchmark~~ Loan other than on the last day of the Interest Period applicable thereto as a result of a request by any Borrower or any Applicable Borrowing Agent pursuant to Section 3.11, then, in any such event, the European Loan Parties shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a ~~LIBOR-RateTerm 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 ~~LIBOR-RateTerm Benchmark~~ Loan had such event not occurred, at the Adjusted IBO Rate that would have been applicable to such ~~LIBOR-RateTerm 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 or continue, for the period that would have been the Interest Period for such ~~LIBOR-RateTerm 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 deposits in the relevant currency of a comparable amount and period from other banks in the Relevant Interbank 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 Applicable Borrowing Agent and shall be conclusive absent manifest error. The European Loan Parties shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(b) With respect to RFR Loan, in the event of (i) the payment of any principal of any RFR Loan other than on an RFR Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Advances), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto, (iii) the assignment of any RFR Loan other than on an RFR Interest Payment Date applicable thereto or (iv) the failure by a European Borrower to make any payment of any Advance or drawing under any Letter of Credit (or interest due thereof) on its scheduled due date or any payment thereof in a different currency, then, in any such event, the relevant Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. 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 ~~Applicable Borrowing Agent~~relevant Borrower and shall be conclusive absent manifest error. The ~~European Loan Parties~~relevant Borrower shall pay such Lender the amount shown as due on any such certificate within ~~ten (10)~~10 days after receipt thereof.

4. COLLATERAL: GENERAL TERMS

1.1 Security Interest in the Collateral. To secure the prompt payment and performance to each Agent, each Issuer and each Lender (and each other holder of any Obligations) of the Obligations, each US Loan Party hereby assigns, pledges and grants to Agent for its benefit and for the ratable benefit of each other Agent, each Lender, each Issuer and each other Secured Party, a continuing security interest in and to and Lien on all of its US Collateral, whether now owned or existing or hereafter created, acquired or arising and wheresoever located. Each US Loan Party shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect Agent's security interest and shall cause its financial statements to reflect such security interest. Each US Loan Party shall provide Agent with written notice of all commercial tort claims in excess of \$1,000,000 in Officer's Certificate required under Section 9.7 or 9.8, as the case may be, next following the commencement of legal proceedings with respect thereto, such notice to contain a brief description of the claim(s), the events out of which such claim(s) arose and the parties against which such claims may be asserted and the case title together with the applicable court and docket number. Upon delivery of each such notice, such US Loan Party shall be deemed to thereby grant to Agent a security interest and lien in and to such commercial tort claims described therein and all proceeds thereof. Each US Loan Party shall provide Agent with written notice promptly upon becoming the beneficiary under any letter of credit or otherwise obtaining any right, title or interest in any letter of credit rights, in each case having a value in excess of \$1,000,000, and at Agent's request shall take such actions as Agent may reasonably request for the perfection of Agent's security interest therein.

1.2 Perfection of Security Interest. Each US Loan Party shall take all action that may be necessary or desirable, or that Agent may request, so as at all times to maintain the validity, perfection, enforceability and priority of Agent's security interest in and Lien on the US Collateral or to enable Agent to protect, exercise or enforce its rights hereunder and in the US Collateral, including, but not limited to, (i) immediately discharging all Liens other than Permitted Encumbrances, (ii) using commercially reasonable efforts to obtain Lien Waiver Agreements, (iii) delivering to Agent, endorsed or accompanied by such instruments of assignment as Agent may specify, and stamping or marking, in such manner as Agent may specify, any and all chattel paper, instruments, letters of credits and advices thereof and documents evidencing or forming a part of the US Collateral, provided that Loan Parties shall not be required to endorse or deliver such chattel paper, instruments, letters of credit and advices thereof individually or in the aggregate with all others not so endorsed and delivered to the Agent and so marked and stamped, having a value less than \$1,000,000, (iv) entering into warehousing, lockbox, customs and freight agreements and other custodial arrangements satisfactory to Agent, and (v) executing and delivering financing statements, control agreements, instruments of pledge, notices and assignments, in each case in form and substance satisfactory to Agent, relating to the creation, validity, perfection, maintenance or continuation of Agent's security interest and Lien under the Uniform Commercial Code or other Applicable Law; provided, however, that control agreements shall not be required with respect to individual deposit accounts having a *de minimis* balance; provided, further, that the aggregate balance of all such deposit accounts described in the foregoing proviso shall not exceed \$50,000 at any time. By its signature hereto, each US Loan Party hereby authorizes Agent to file against such US Loan Party, one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code or similar notices or filings under other Applicable Law, in each case in form and substance satisfactory to Agent (which statements may have a description of collateral which is broader than that set forth herein, including without limitation a description of US Collateral as "all assets" and/or "all personal property" of any US Loan Party). All charges, expenses and fees Agent may incur in doing any of the foregoing, and any local taxes relating thereto, shall be charged to the applicable Borrowers' Account as a Revolving Advance of a Domestic

Rate Loan and added to the Obligations, or, at Agent's option, shall be paid by Loan Parties to Agent for its benefit and for the ratable benefit of the Secured Parties immediately upon demand.

1.3 Preservation of Collateral. During the continuance of an Event of Default, in addition to the rights and remedies set forth in Section 11.1 hereof, Agent: (a) may at any time take such steps as Agent deems necessary to protect Agent's interest in and to preserve the US Collateral, including the hiring of security guards or the placing of other security protection measures as Agent may deem appropriate; (b) may employ and maintain at any of any US Loan Party's premises a custodian who shall have full authority to do all acts necessary to protect Agent's interests in the US Collateral; (c) may lease warehouse facilities to which Agent may move all or part of the US Collateral; (d) may use any US Loan Party's owned or leased lifts, hoists, trucks and other facilities or equipment for handling or removing the US Collateral; and (e) shall have, and is hereby granted, a right of ingress and egress to the places where the US Collateral is located, and may proceed over and through any of US Loan Parties' owned or leased property. Each US Loan Party shall cooperate fully with all of Agent's efforts to preserve the US Collateral and will take such actions to preserve the US Collateral as Agent may direct. All of Agent's expenses of preserving the US Collateral, including any expenses relating to the bonding of a custodian, shall be charged to the applicable Borrowers' Account as a Revolving Advance maintained as a Domestic Rate Loan and added to the Obligations.

1.4 Ownership and Location of Collateral.

(a) With respect to the US Collateral, at the time the US Collateral becomes subject to Agent's security interest: (i) each US Loan Party shall be the sole owner of and fully authorized and able to sell, transfer, pledge and/or grant a first priority security interest in each and every item of its respective US Collateral to Agent; and, except for Permitted Encumbrances the US Collateral shall be free and clear of all Liens whatsoever; (ii) each document and agreement executed by each such US Loan Party or delivered to Agent or any Lender in connection with this Agreement shall be true and correct in all respects; (iii) all signatures and endorsements of each such US Loan Party that appear on such documents and agreements shall be genuine and each such US Loan Party shall have full capacity to execute same; and (iv) each such US Loan Party's equipment and Inventory and chief executive office shall be located as set forth on Schedule 4.4 and shall not be removed from such location(s) without the prior written consent of Agent except with respect to (x) the sale of Inventory in the Ordinary Course of Business, (y) the sale of equipment to the extent permitted in Section 7.1(b) hereof, and (z) nominal amounts of Inventory that are in the Ordinary Course of Business at other locations for exhibition to potential customers.

(b) (i) There is no location at which any US Loan Party has any Inventory (except for Inventory in transit) or other Collateral other than those locations listed on Schedule 4.4(b)(i); (ii) Schedule 4.4(b)(ii) hereto contains a correct and complete list, as of the Closing Date, of the legal names and addresses of each warehouse at which Inventory of any such US Loan Party having a value in excess of \$250,000 is stored; none of the receipts received by any such US Loan Party from any warehouse states that the goods covered thereby are to be delivered to bearer or to the order of a named Person or to a named Person and such named Person's assigns; (iii) Schedule 4.4(b)(iii) hereto sets forth a correct and complete list as of the Closing Date of (A) each place of business of each such US Loan Party and (B) the chief executive office of each US Loan Party; and (iv) Schedule 4.4(b)(iv) hereto sets forth a correct and complete list as of the Closing Date of the location, by state and street address, of all Real Property owned or leased by each such US Loan Party, identifying which properties are owned and which are leased, together with the names and addresses of any landlords.

1.5 Defense of Agent's and Lenders' Interests. Until (a) payment and performance in full of all of the Obligations and (b) termination of this Agreement, Agent's security interests in the US Collateral shall continue in full force and effect. During such period no US Loan Party shall, without Agent's prior written consent, pledge, sell (except for sales or other dispositions otherwise permitted in Section 7.1(b) hereof), assign, transfer, create or suffer to exist a Lien upon or encumber or allow or suffer to be encumbered in any way except for Permitted Encumbrances, any part of the US Collateral. Each US Loan Party shall defend Agent's interests in the US Collateral against any and all Persons whatsoever. At any time following demand by Agent for payment of all Obligations, Agent shall have the right to take possession of the indicia of the US Collateral and the US Collateral in whatever physical form contained, including: labels, stationery, documents, instruments and advertising materials. If Agent exercises this right to take possession of the US Collateral, US Loan Parties shall, upon demand, assemble it in the best manner possible and make it available to Agent at a place reasonably convenient to Agent. In addition, with respect to all US Collateral, Agent and Lenders shall be entitled to all of the rights and remedies set forth herein and further provided by the Uniform Commercial Code or other Applicable Law. During the continuance of an Event of Default, each US Loan Party shall, and Agent may, at its option, instruct all suppliers, carriers, forwarders, warehousemen or others receiving or holding cash, checks, Inventory, documents or instruments in which Agent holds a security interest to deliver same to Agent and/or subject to Agent's order and if they shall come into any US Loan Party's possession, they, and each of them, shall be held by such US Loan Party in trust as Agent's trustee, and such US Loan Party will immediately deliver them to Agent in their original form together with any necessary endorsement.

1.6 Inspection of Premises. At all reasonable times and, so long as no Event of Default is continuing, upon prior notice to the Borrowing Agent, and from time to time as often as Agent shall elect in its sole discretion, Agent and each Lender shall have full access to and the right to audit, check, inspect and make abstracts and copies from each US Loan Party's books, records, audits, correspondence and all other papers relating to the US Collateral and the operation of each US Loan Party's business. Agent, any Lender and their agents may enter upon any premises of any US Loan Party at any time during business hours and at any other reasonable time, and from time to time as often as Agent shall elect in its sole discretion, for the purpose of inspecting the US Collateral and any and all records pertaining thereto and the operation of such US Loan Party's business.

1.7 Appraisals. Agent may, in its sole discretion, exercised in a commercially reasonable manner, at any time after the Closing Date and from time to time, engage the services of an independent appraisal firm or firms of reputable standing, satisfactory to Agent, for the purpose of appraising the then current values of US Borrowers' and Canadian Borrowers' assets. Absent the occurrence and continuance of an Event of Default at such time, Agent shall consult with US Loan Parties as to the identity of any such firm. In the event the value of such Borrowers' domestic and Canadian Inventory or Receivables as so determined pursuant to such appraisal, is less than anticipated by Agent or Lenders, such that the Revolving Advances are in excess of such applicable Advances permitted hereunder, then, promptly upon Agent's demand for same, such Borrowers shall make mandatory prepayments of the then outstanding applicable Revolving Advances so as to eliminate the excess Advances. Not more than one inventory appraisal, each at US-Canada Borrowers' expense, shall be conducted per annum unless a Dominion Period is in effect or it is within 60 days of the end of a Dominion Period, or if an Event of Default or Default has occurred and is continuing. Not more than one field examination, at US-Canada Borrowers' expense, shall be conducted per annum unless (i) a Dominion Period is in effect or it is within 60 days of the end of a Dominion Period, (ii) if US-Canada Undrawn Availability is less than 25% of the US-Canada Formula Amount,

or (iii) if an Event of Default or Default has occurred and is continuing; provided if the US-Canada Revolving Facility Usage is Zero Dollars (\$0.00) or the US-Canada Undrawn Availability exceeds 75% of the ~~maximum~~Maximum US-Canada Revolving Advance Amount, no inventory appraisals at US-Canada Borrowers' expense shall be required.

1.8 Receivables; Deposit Accounts and Securities Accounts.

(a) Each of the Receivables shall be a bona fide and valid account representing a bona fide indebtedness incurred by the Customer therein named, for a fixed sum as set forth in the invoice relating thereto (provided immaterial or unintentional invoice errors shall not be deemed to be a breach hereof) with respect to an absolute sale or lease and delivery of goods upon stated terms of the applicable US Loan Party, or work, labor or services theretofore rendered by such US Loan Party as of the date each Receivable is created. Same shall be due and owing in accordance with the applicable US Loan Party's standard terms of sale without dispute, setoff or counterclaim except as may be stated on the accounts receivable schedules delivered by US Loan Parties to Agent.

(b) Each Customer, to the best of each applicable US Loan Party's knowledge, as of the date each Receivable is created, is and will be solvent and able to pay all Receivables on which the Customer is obligated in full when due. With respect to such Customers of any applicable US Loan Party who are not solvent, such US Loan Party has set up on its books and in its financial records bad debt reserves adequate to cover such Receivables.

(c) Each US Loan Party's chief executive office is located as set forth on Schedule 4.4(b)(iii). Until written notice is given to Agent by Borrowing Agent of any other office at which any applicable US Loan Party keeps its records pertaining to Receivables, all such records shall be kept at such executive office.

(d) US Loan Parties shall instruct their Customers to deliver all remittances upon Receivables (whether paid by check or by wire transfer of funds) to the Blocked Account(s) and/or Depository Accounts (and any associated lockboxes) as contemplated by Section 4.8(h) or as otherwise agreed to from time to time by Agent. Notwithstanding the foregoing, to the extent any such US Loan Party directly receives any remittances upon Receivables during a Dominion Period, such US Loan Party shall, at such US Loan Party's sole cost and expense, but on Agent's behalf and for Agent's account, collect as Agent's property and in trust for Agent all amounts received on Receivables, and shall not commingle such collections with any US Loan Party's funds or use the same except to pay Obligations, and shall as soon as possible and in any event no later than one (1) Business Day after the receipt thereof (i) in the case of remittances paid by check, deposit all such remittances in their original form (after supplying any necessary endorsements) and (ii) in the case of remittances paid by wire transfer of funds, transfer all such remittances, in each case, into such Blocked Account(s) and/or Depository Account(s). Each US Loan Party shall during a Dominion Period deposit in the Blocked Account and/or Depository Account or, upon request by Agent, deliver to Agent, in original form and on the date of receipt thereof, all checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness.

(e) At any time during a Dominion Period, Agent shall have the right to send notice of the assignment of, and Agent's security interest in and Lien on, the Receivables to any and all Customers or any third party holding or otherwise concerned with any of the US Collateral. At any time during the continuance of an Event of Default, Agent shall have the sole right to collect the Receivables, take possession of the US Collateral, or both. Agent's actual collection expenses, including, but not limited to, stationery and postage, telephone, facsimile, telegraph, secretarial and clerical expenses and the salaries of any collection personnel used for collection, may be charged to the applicable Borrowers' Account and added to the Obligations.

(f) Agent shall have the right to receive, endorse, assign and/or deliver in the name of Agent or any US Loan Party during a Dominion Period any and all checks, drafts and other instruments for the payment of money relating to the Receivables, and each such US Loan Party hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. Each such US Loan Party hereby constitutes Agent or Agent's designee as such Loan Party's attorney with power (i) at any time during the continuance of an Event of Default: (A) to endorse such US Loan Party's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or US Collateral; (B) to sign such US Loan Party's name on any invoice or bill of lading relating to any of the Receivables, drafts against Customers, assignments and verifications of Receivables; (C) to send verifications of Receivables to any Customer; (D) to sign such US Loan Party's name on all financing statements or any other documents or instruments deemed necessary or appropriate by Agent to preserve, protect, or perfect Agent's interest in the US Collateral and to file same; and (E) to receive, open and dispose of all mail addressed to any US Loan Party at any post office box/lockbox maintained by Agent for US Loan Parties or at any other business premises of Agent; and (ii) at any time during the continuance of an Event of Default: (A) to demand payment of the Receivables; (B) to enforce payment of the Receivables by legal proceedings or otherwise; (C) to exercise all of such US Loan Party's rights and remedies with respect to the collection of the Receivables and any other US Collateral; (D) to sue upon or otherwise collect, extend the time of payment of, settle, adjust, compromise, extend or renew the Receivables; (E) to settle, adjust or compromise any legal proceedings brought to collect Receivables; (F) to prepare, file and sign such US Loan Party's name on a proof of claim in bankruptcy or similar document against any Customer; (G) to prepare, file and sign such US Loan Party's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables; (H) to accept the return of goods represented by any of the Receivables; (I) to change the address for delivery of mail addressed to any such US Loan Party to such address as Agent may designate; and (J) to do all other acts and things necessary to carry out this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or of law, unless done maliciously or with gross (not mere) negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment); this power being coupled with an interest is irrevocable while any of the Obligations remain unpaid.

(g) Neither Agent nor any Lender shall, under any circumstances or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Receivables or any instrument received in payment thereof, or for any damage resulting therefrom.

(h) All proceeds of US Collateral shall be deposited by US Loan Parties into either (i) a lockbox account, dominion account or such other "blocked account" ("**Blocked Accounts**") established at a bank or banks (each such bank, a "**Blocked Account Bank**") pursuant to an arrangement with such Blocked Account Bank as may be acceptable to Agent, which shall spring to Full Dominion during a Dominion Period, or (ii) depository accounts ("**Depository Accounts**") established at Agent for the deposit of such proceeds, which shall spring to Full Dominion during a Dominion Period. Each applicable Loan Party, Agent and each Blocked Account Bank shall enter into a deposit account control agreement in form and substance satisfactory to Agent that is sufficient to give Agent "control" (for purposes of Articles 8 and 9 of the Uniform Commercial Code) over such account and which directs such Blocked Account Bank to transfer such funds, during a Dominion Period, so deposited on a daily basis or at other times acceptable to Agent, either to any account maintained by Agent at said Blocked Account Bank or by wire transfer to appropriate account(s) at Agent. All funds deposited in such Blocked Accounts or Depository Accounts shall immediately become subject to the security interest of Agent for its own benefit and the ratable benefit of Issuer, Lenders and all other holders of the Obligations, and Borrowing Agent shall obtain the agreement by such Blocked

Account Bank to waive any offset rights against the funds so deposited. Neither Agent nor any Lender assumes any responsibility for such blocked account arrangement, including any claim of accord and satisfaction or release with respect to deposits accepted by any Blocked Account Bank thereunder. Agent shall, during a Dominion Period, apply all funds received by it from the Blocked Accounts and/or Depository Accounts to the satisfaction of the Obligations (including the cash collateralization of the Letters of Credit) in such order as Agent shall determine in its sole discretion. Notwithstanding the foregoing, deposit accounts used solely for payroll disbursements or in which trust funds are maintained shall not constitute "Blocked Accounts" or "Depository Accounts".

(i) The parties hereto hereby acknowledge, confirm and agree that the implementation of the cash management arrangements contemplated herein is a contractual right provided to the Agent and the Lenders hereunder in order for the Agent and the Lenders to manage and monitor their collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, the Agent and Lenders are relying on the US Loan Parties' acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to them and in particular that any accommodations of credit are being provided by the Agent and Lenders strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

(j) No US Loan Party will, without Agent's consent, compromise or adjust any Receivables (or extend the time for payment thereof) or accept any returns of merchandise or grant any additional discounts, allowances or credits thereon, which, in any case, involves (i) any individual Receivable having a value in excess of \$250,000 or (ii) an annual aggregate amount of Receivables for all Loan Parties in excess of \$1,000,000, except for those compromises, adjustments, returns, discounts, credits and allowances as have been heretofore customary in the Ordinary Course of Business of such US Loan Party.

(k) All domestic and Canadian deposit accounts (including all Blocked Accounts and Depository Accounts), securities accounts and investment accounts of each applicable US Loan Party and its Subsidiaries as of the Closing Date are set forth on Schedule 4.8(k). No US Loan Party shall open any new deposit account, securities account or investment account unless (i) with respect to domestic deposit accounts, such accounts are maintained at PNC, (ii) with respect to Canadian accounts, (w) no Event of Default is continuing, (x) such accounts are maintained at JPMorgan, (y) the accounts are subject to a control agreement in form and substance satisfactory to Agent sufficient to give Agent "control" (for purposes of Articles 8 and 9 of the Uniform Commercial Code) over such account, which shall spring to Full Dominion during a Dominion Period, and (z) Borrowing Agent shall give Agent written notice of the establishment of any such Canadian accounts within three (3) days after the establishment thereof and (ii) if such account is to be maintained with a bank, depository institution or securities intermediary that is not Agent, such bank, depository institution or securities intermediary, each applicable US Loan Party and Agent shall first have entered into an account control agreement in form and substance satisfactory to Agent sufficient to give Agent "control" (for purposes of Articles 8 and 9 of the Uniform Commercial Code) over such account.

1.9 Inventory. To the extent Inventory held for sale or lease has been produced by any US Loan Party, it has been and will be produced by such Borrower in material accordance with the Federal Fair Labor Standards Act of 1938, as amended, and all rules, regulations and orders thereunder.

1.10 Maintenance of Equipment. The equipment shall be maintained in good operating condition and repair (reasonable wear and tear and casualty excepted) consistent with past practice and as needed in current operations, and all necessary replacements of and repairs thereto shall be made so that the value and operating efficiency of the equipment shall be maintained and preserved. No US Loan Party shall use or operate the equipment in violation of any law, statute, ordinance, code, rule or regulation.

1.11 Exculpation of Liability. Nothing herein contained shall be construed to constitute Agent or any Lender as any US Loan Party's agent for any purpose whatsoever, nor shall Agent or any Lender be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the US Collateral wherever the same may be located and regardless of the cause thereof. Neither Agent nor any Lender, whether by anything herein or in any assignment or otherwise, assume any of any US Loan Party's obligations under any contract or agreement assigned to Agent or such Lender, and neither Agent nor any Lender shall be responsible in any way for the performance by any US Loan Party of any of the terms and conditions thereof.

1.12 Financing Statements. Except as respects the financing statements filed by Agent, financing statements described on Schedule 1.2, and financing statements filed in connection with Permitted Encumbrances, no financing statement covering any of the US Collateral or any proceeds thereof is or will be on file in any public office.

5. REPRESENTATIONS AND WARRANTIES.

Each Loan Party represents and warrants as follows:

1.1 Authority.

(a) Each Loan Party has full power, authority and legal right to enter into this Agreement and the Other Documents to which it is a party and to perform all its respective Obligations hereunder and thereunder. This Agreement and the Other Documents to which it is a party have been duly executed and delivered by each Loan Party, and this Agreement and the Other Documents to which it is a party constitute the legal, valid and binding obligation of such Loan Party enforceable in accordance with their terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally. The execution, delivery and performance of this Agreement and of the Other Documents to which it is a party (a) are within such Loan Party's corporate, company or partnership powers, as applicable, have been duly authorized by all necessary corporate, company or partnership action, as applicable, are not in contravention of law or the terms of such Loan Party's Organizational Documents or to the conduct of such Loan Party's business or of any Material Contract or undertaking to which such Loan Party is a party or by which such Loan Party is bound, (b) will not, in any material respect, conflict with or violate any law or regulation, or any judgment, order or decree of any Governmental Body, (c) will not require the Consent of any Governmental Body, any party to a Material Contract or any other Person, except those Consents set forth on Schedule 5.1 hereto, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect or except to the extent the failure to obtain any consent would not reasonably be expected to have a material and adverse effect on any Loan Party and (d) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Encumbrances upon any asset of such Loan Party under the provisions of any agreement,

instrument, or other document to which such Loan Party is a party or by which it or its property is a party or by which it may be bound.

(b) The choice of governing law provisions contained in this Agreement and each Other Document to which any European Loan Party is a party are enforceable in the jurisdictions where such European Loan Party is organized or incorporated or any Collateral of such European Loan Party is located. Any judgment obtained in connection with this Agreement or any Other Document in the jurisdiction of the governing law this Agreement or such Other Document will be recognized and be enforceable in the jurisdictions where such European Loan Party is organized or any Collateral is located, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally.

1.2 Formation and Qualification.

(a) Each Loan Party is duly incorporated or formed, as applicable, and in good standing (or equivalent thereof in any applicable jurisdiction) under the laws of the state, province or country, as applicable, listed on Schedule 5.2(a) and is qualified to do business and is in good standing in the states listed on Schedule 5.2(a) which constitute all states, provinces or countries, as applicable, in which qualification and good standing (or equivalent thereof in any applicable jurisdiction) are necessary for such Loan Party to conduct its business and own its property and where the failure to so qualify could reasonably be expected to have a material and adverse effect on such Loan Party. Each Loan Party has, as of the Closing Date, delivered to Agent true and complete copies of its Organizational Documents and will promptly notify Agent of any amendment or changes thereto.

(b) The only Subsidiaries of the Company and each Loan Party are listed on Schedule 5.2(b). Schedule 5.2(b) also designates each of the Material Subsidiaries, US Excluded Subsidiaries and Foreign Excluded Subsidiaries. No Material Subsidiary is a US Excluded Subsidiary except the Insurance Subsidiary.

1.3 Survival of Representations and Warranties. All representations and warranties of such Loan Party contained in this Agreement and the Other Documents to which it is a party shall be true in all material respects at the time of such Loan Party's execution of this Agreement and the Other Documents to which it is a party, and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

1.4 Tax Returns. Each Loan Party's federal tax identification number (where applicable) is set forth on Schedule 5.4. Each Loan Party has filed all federal, national, state, provincial and material local tax returns and other reports each is required by law to file and has paid all federal, national, state, provincial and all other material taxes, assessments, fees and other governmental charges that are due and payable, except those which are being Properly Contested. The provision for taxes on the books of each Loan Party is adequate for all years not closed by applicable statutes, and for its current fiscal year, and no Loan Party has any knowledge of any deficiency or additional assessment in connection therewith not provided for on its books.

1.5 Deduction of Tax. No Loan Party is required to make any Tax Deduction from any payment it may make under this Agreement or any Other Document to a Secured Party, except with respect to Tax imposed (i) by the United States due to the failure of the Secured Party to which the payment is being made to comply with the requirements of Section 3.10(e), above, or to establish that it is a FATCA Exempt Party

under Section 3.10(g), above, and (ii) by the United Kingdom where a Lender is not a Qualifying Lender.

1.6 No filing or stamp Taxes. Under the laws of each Loan Party's jurisdiction of incorporation, it is not necessary that this Agreement or any Other Document be registered, filed, recorded, notarized or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Agreement or any other Document or the transactions contemplate thereby, except registration of any English Collateral Document or other security document entered into by any English Loan Party at Companies House in the United Kingdom.

1.7 VAT. No Loan Party is a member of a value added tax group.

1.8 Tax residence. Each Loan Party is and has at all times been subject to income or similar taxation generally on income from all sources (and not merely from income from sources in, or profits attributable to a permanent establishment in such jurisdiction) solely in its jurisdiction of incorporation.

1.9 Financial Statements.

(a) The cash flow and balance sheet projections of Borrowers on a Consolidated Basis and the cash flow and balance sheet projections of the Subsidiaries of the Company incorporated in Europe, in each case through fiscal year **[2017]**, copies of which are annexed hereto as Exhibit 5.9(b), were prepared by the Chief Financial Officer of the Company, are based on underlying assumptions which provide a reasonable basis for the projections contained therein and reflect Loan Parties' judgment based on present circumstances of the most likely set of conditions and course of action for the projected period. The cash flow Projections are referred to as the "**Closing Projections**".

(b) The consolidated and consolidating balance sheets of Borrowers, and such other Persons described therein, as of December 31, ~~2014~~2020 and ~~March 31~~September 30, 20152021, and the related statements of income, changes in stockholder's equity, and changes in cash flow for the period ended on such date, accompanied by reports thereon containing opinions without qualification by independent certified public accountants (in the case of year-end statements) or certified as true, correct and complete in all material respects by the President and Chief Financial Officer of the Company (in the case of quarterly statements) copies of which have been delivered to Agent, have been prepared in accordance with GAAP (subject, in the case of interim statements, to footnotes and year-end audit adjustments), consistently applied (except for changes in application to which such accountants concur) and present fairly the financial position of Borrowers on a Consolidated Basis at such date and the results of their operations for such period. Since December 31, ~~2014~~2020 except as disclosed in public securities law filings, there has been no change in the condition, financial or otherwise, of Borrowers on a Consolidated Basis as shown on the consolidated balance sheet as of such date and no change in the aggregate value of machinery, equipment and Real Property owned by Loan Parties and their Subsidiaries, except changes in the Ordinary Course of Business, none of which individually or in the aggregate has been materially adverse.

1.10 Entity Names. Except as set forth on Schedule 5.10, no Loan Party has been known by any other company or corporate name, as applicable, in the past five (5) years and does not sell Inventory under any other name except as set forth on Schedule 5.10, nor has any Loan Party been the surviving corporation or company, as applicable,

of a merger or consolidation or acquired all or substantially all of the assets of any Person during the preceding five (5) years.

1.11 O.S.H.A. Environmental Compliance; Flood Insurance.

(a) Except to the extent non-compliance would not reasonably be expected to have a Material Adverse Effect, each Loan Party is in compliance with, and its facilities, business, assets, property, leaseholds, Real Property and Fixed Assets are in compliance with, to the extent applicable, the Federal Occupational Safety and Health Act and Environmental Laws. Any outstanding citations, notices or orders of non-compliance issued to any Loan Party or relating to its business, assets, property, leaseholds or Fixed Assets under any such laws, rules or regulations are set forth on Schedule 5.11; provided no such citations, notices or orders of non-compliance would reasonably be expected to have a Material Adverse Effect.

(b) Each Loan Party has been issued all required federal, state, provincial and local licenses, certificates or permits (collectively, "**Approvals**") required under all applicable Environmental Laws and all such Approvals are current and in full force and effect, except to the extent failure to maintain such Approvals would not reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth on Schedule 5.11: (i) there have been no releases, spills, discharges, leaks or disposal (collectively referred to as "**Releases**") of Hazardous Materials at, upon, under or migrating from or onto any Real Property owned, leased or occupied by any Loan Party or any Subsidiary thereof, except for those Releases which are in compliance, in all material respects, with Environmental Laws; (ii) there are no underground storage tanks or polychlorinated biphenyls on any Real Property owned, leased or occupied by any Loan Party or any Subsidiary thereof, except for such underground storage tanks or polychlorinated biphenyls that are present in compliance with Environmental Laws, in all material respects; (iii) the Real Property including any premises owned, leased or occupied by any Loan Party or any Subsidiary thereof has never been used by any Loan Party or any Subsidiary thereof to dispose of Hazardous Materials, except as authorized by Environmental Laws; and (iv) no Hazardous Materials are managed by any Loan Party or any Subsidiary thereof on any Real Property including any premises owned, leased or occupied by any Loan Party or any Subsidiary thereof, excepting such quantities as are managed in accordance with all applicable manufacturer's instructions and compliance with Environmental Laws, in all material respects, and as are necessary for the operation of the commercial business of any Loan Party or any Subsidiary thereof or of its tenants.

(d) All Real Property owned by Loan Parties and their Subsidiaries is insured pursuant to policies and other bonds which are valid and in full force and effect and which provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each such Loan Party or Subsidiary thereof in accordance with prudent business practice in the industry of such Person. Each Loan Party and Subsidiary thereof has taken all actions required under the Flood Laws including, but not limited to, obtaining flood insurance for such property, structures and contents.

1.12 Solvency; No Litigation, Violation, Indebtedness or Default; ERISA Compliance.

(a) (i) ~~After giving effect to the Transactions, each~~ Each Loan Party ~~will be~~ is solvent, able to pay its debts as they mature, ~~will have~~ has capital sufficient to carry on its

business and all businesses in which it is about to engage, (ii) as of the Closing Date, the fair present saleable value of the assets of each Loan Party, calculated on a going concern basis, is in excess of the amount of liabilities of such Loan Party, and (iii) subsequent to the Closing Date, the fair saleable value of the assets of each Loan Party (calculated on a going concern basis) will be in excess of the amount of the liabilities of such Loan Party.

(b) Except as disclosed in Schedule 5.12(b)(i), no Loan Party has any pending or threatened litigation, arbitration, actions or proceedings which if determined adversely would be reasonably be expected to be material to such Loan Party. No Loan Party has any outstanding Indebtedness other than the Obligations, except for (i) Indebtedness disclosed in Schedule 5.12(b)(ii) and (ii) Indebtedness otherwise permitted under Section 7.8 hereof.

(c) No Loan Party is in violation of any applicable statute, law, rule, regulation or ordinance in any respect which would reasonably be expected be material and adverse to such Loan Party, nor is any Loan Party in violation of any order of any court, Governmental Body or arbitration board or tribunal. Except where any failure would not reasonably be expected to have a Material Adverse Effect, each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws.

(d) No Loan Party or any member of the Controlled Group maintains or is required to contribute to any Plan other than those listed on Schedule 5.12(d) hereto. Except where any failure would not reasonably be expected to have a Material Adverse Effect, (i) each Loan Party and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA and Section 412 of the Code in respect of each Plan, and each Plan is in compliance with Sections 412, 430 and 436 of the Code and Sections 206(g), 302 and 303 of ERISA, without regard to waivers and variances; (ii) each Plan which is intended to be a qualified plan under Section 401(a) of the Code as currently in effect has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Code and the trust related thereto is exempt from federal income tax under Section 501(a) of the Code or an application for such a determination is currently being processed by the Internal Revenue Code; (iii) neither any Loan Party nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due which are unpaid; (iv) no Plan has been terminated by the plan administrator thereof nor by the PBGC, and there is no occurrence which would cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Plan; (v) the current value of the assets of each Plan exceeds the present value of the accrued benefits and other liabilities of such Plan and neither any Loan Party nor any member of the Controlled Group knows of any facts or circumstances which would materially change the value of such assets and accrued benefits and other liabilities; (vi) neither any Loan Party nor any member of the Controlled Group has breached any of the responsibilities, obligations or duties imposed on it by ERISA with respect to any Plan; (vii) neither any Loan Party nor any member of a Controlled Group has incurred any liability for any excise tax arising under Section 4971, 4972 or 4980B of the Code, and no fact exists which could give rise to any such liability; (viii) neither any Loan Party nor any member of the Controlled Group nor any fiduciary of, nor any trustee to, any Plan, has engaged in a "prohibited transaction" described in Section 406 of the ERISA or Section 4975 of the Code nor taken any action which would constitute or result in a Termination Event with respect to any such Plan which is subject to ERISA; (ix) no Termination Event has occurred or is reasonably expected to occur; (x) there exists no event described in Section 4043 of ERISA, for which the thirty (30) day notice period has not been waived; (xi) neither any Loan Party nor any member of the Controlled Group

has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; (xii) neither any Loan Party nor any member of the Controlled Group maintains or is required to contribute to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code; (xiii) neither any Loan Party nor any member of the Controlled Group has withdrawn, completely or partially, within the meaning of Section 4203 or 4205 of ERISA, from any Multiemployer Plan so as to incur liability under the Multiemployer Pension Plan Amendments Act of 1980 and there exists no fact which would reasonably be expected to result in any such liability; and (xiv) no Plan fiduciary (as defined in Section 3(21) of ERISA) has any liability for breach of fiduciary duty or for any failure in connection with the administration or investment of the assets of a Plan.

(e) Except as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (a) the Canadian Pension Plans are duly registered under the Income Tax Act (Canada) and any other Applicable Laws which require registration, have been administered in accordance with the Income Tax Act (Canada) and such other Applicable Law and no event has occurred which could cause the loss of such registered status, (b) all obligations of the Canadian Loan Parties and their Subsidiaries (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans and the funding agreements relating thereto have been performed on a timely basis, and (c) all contributions or premiums required to be made or paid by them to the Canadian Pension Plans have been made on a timely basis in accordance with the terms of such plans and all Applicable Laws.

(f) Neither any English Loan Party nor any of its Subsidiaries or Affiliates is or has at any time been (i) an employer (for the purposes of Sections 38 to 51 of the United Kingdom's Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the United Kingdom's Pensions Schemes Act 1993) or (ii) "connected" with or an "associate" (as those terms are used in Sections 38 and 43 of the United Kingdom's Pensions Act 2004) of such an employer.

1.13 Patents, Trademarks, Copyrights and Licenses. All material Intellectual Property owned or utilized by any Loan Party: (i) is set forth on Schedule 5.13; and (ii) is valid and has been duly registered or filed with all appropriate Governmental Bodies. The Intellectual Property set forth on Schedule 5.13 constitutes all of the intellectual property rights which are necessary for the operation of each Loan Party's business. Except as set forth in Schedule 5.13 hereto, there is no objection to, pending challenge to the validity of, or proceeding by any Governmental Body to suspend, revoke, terminate or adversely modify, any such Intellectual Property and no Loan Party is aware of any grounds for any challenge or proceedings, and no such matters set forth on Schedule 5.13, if determined adversely to a Loan Party, would reasonably be expected to have a Material Adverse Effect. All material Intellectual Property owned or held by any Loan Party consists of original material or property developed by such Loan Party or was lawfully acquired by such Loan Party from the proper and lawful owner thereof. Each of such items has been maintained so as to preserve the value thereof from the date of creation or acquisition thereof.

1.14 Licenses, Permits and Accreditation. Except as could not, individually or in the aggregate, result in liability for Loan Parties and their Subsidiaries in excess of \$5,000,000 or result in criminal liability for any Loan Party, (a) each of Loan Parties and their Subsidiaries has, to the extent applicable: (i) obtained and maintains in good standing all required licenses or permits required by any applicable federal, state, provincial or local law, rule or regulation for the operation of its business in each

jurisdiction wherein it is now conducting or proposes to conduct business; and (ii) to the extent prudent and customary in the industry in which it is engaged, obtained and maintains accreditation from all generally recognized accrediting agencies; and (b) all such required licenses, permits and accreditations are in full force and effect on the date hereof and have not been revoked or suspended or otherwise limited.

1.15 Default of Indebtedness. No Loan Party is in default in the payment of the principal of or interest on any Indebtedness in excess of \$500,000 or under any instrument or agreement under or subject to which any such Indebtedness has been issued and no event has occurred under the provisions of any such instrument or agreement which with or without the lapse of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.

1.16 No Default. No Loan Party is in default in the payment or performance of any of its contractual obligations except to the extent that any such default would not be reasonably be expected to have a Material Adverse Effect.

1.17 No Burdensome Restrictions. No Loan Party is party to any contract or agreement the performance of which would reasonably be expected to have a Material Adverse Effect. As of the Closing Date, each Loan Party has heretofore delivered to Agent true and complete copies of all Material Contracts to which it is a party or to which it or any of its properties is subject. No Loan Party has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien which is not a Permitted Encumbrance.

1.18 No Labor Disputes. No Loan Party is involved in any labor dispute which would reasonably be expected to have a Material Adverse Effect; there are no material labor disputes, strikes or walkouts or union organization of any Loan Party's employees threatened or in existence and no labor contract is scheduled to expire during the Term other than as set forth on Schedule 5.18 hereto.

1.19 Margin Regulations. No Loan Party is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of any Advance will be used for "purchasing" or "carrying" "margin stock" as defined in Regulation U of such Board of Governors.

1.20 Investment Company Act. No Loan Party is an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, nor is it controlled by such a company.

1.21 Disclosure. No representation or warranty made by any Loan Party in this Agreement or in any financial statement, report, certificate or any other document furnished in connection herewith or therewith contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to any Loan Party or which reasonably should be known to such Loan Party which such Loan Party has not disclosed to Agent in writing with respect to the transactions contemplated by this Agreement which would reasonably be expected to have a Material Adverse Effect.

1.22 Swaps. No Loan Party is a party to, nor will it be a party to, any swap agreement whereby such Loan Party has agreed or will agree to swap interest rates or

currencies unless same provides that damages upon termination following an event of default thereunder are payable on an unlimited "two-way basis" without regard to fault on the part of either party.

1.23 Business and Property of Loan Parties. Upon and after the Closing Date, Loan Parties do not propose to engage in any business other than the manufacture, sale and distribution of medical equipment and activities necessary to conduct the foregoing or related thereto. On the Closing Date, each Loan Party will own all the property and possess all of the rights and Consents necessary for the conduct of the business of such Loan Party.

1.24 Ineligible Securities. Loan Parties do not intend to use and shall not use any portion of the proceeds of the Advances, directly or indirectly, to purchase during the underwriting period, or for 30 days thereafter, Ineligible Securities being underwritten by a securities Affiliate of Agent or any Lender.

1.25 Federal Securities Laws. None of Loan Parties or any of their Subsidiaries (other than the Company with respect to clauses (i) and (ii)), (i) is required to file periodic reports under the Exchange Act or securities legislation of Canada, France, England or the Netherlands, (ii) has any securities registered under the Exchange Act or securities legislation of Canada, France, England or the Netherlands or (iii) has filed a registration statement that has not yet become effective under the Securities Act or securities legislation of Canada, France, England or the Netherlands.

1.26 Equity Interests. The authorized and outstanding Equity Interests of each Loan Party, and each legal and beneficial holder thereof, are as set forth on Schedule 5.26 hereto. All of the Equity Interests of each Loan Parties have been duly and validly authorized and issued and are fully paid and non-assessable and have been sold and delivered to the holders hereof in compliance with, or under valid exemption from, all federal, provincial and state laws and the rules and regulations of each Governmental Body governing the sale and delivery of securities. Except for the rights and obligations set forth on Schedule 5.26, there are no subscriptions, warrants, options, calls, commitments, rights or agreement by which any Loan Party or any of the shareholders of any Loan Party is bound relating to the issuance, transfer, voting or redemption of shares of its Equity Interests or any pre-emptive rights held by any Person with respect to the Equity Interests of Loan Parties. Except as set forth on Schedule 5.26, Loan Parties have not issued any securities convertible into or exchangeable for shares of its Equity Interests or any options, warrants or other rights to acquire such shares or securities convertible into or exchangeable for such shares.

1.27 Commercial Tort Claims. No Loan Party has any commercial tort claims in excess of \$1,000,000 whether or not a proceeding has been filed, except as set forth on Schedule 5.27 hereto.

1.28 Letter of Credit Rights. No Loan Party has any letter of credit rights in excess of \$1,000,000 except as set forth on Schedule 5.28 hereto.

1.29 Material Contracts. Schedule 5.29 sets forth all Material Contracts of Loan Parties and any material defaults thereunder. Except where any failure or default would reasonably be expected to have a Material Adverse Effect, all Material Contracts are in full force and effect and no material defaults currently exist thereunder.

1.30 Fraud and Abuse. Except as would not, individually or in the aggregate, constitute a Material Adverse Effect or result in liability for Loan Parties in excess of

\$1,000,000 or result in criminal liability for any Loan Party, neither any Loan Party and its Subsidiaries nor, to the knowledge of any Chief Executive Officer, Chief Financial Officer, Treasurer or Compliance Officer of the Company, any of their officers or directors, have engaged in any activities which are prohibited under federal Medicare and Medicaid statutes, 42 U.S.C. Section 1320a-7b or 42 U.S.C., or any other Applicable Laws in any applicable jurisdiction. Section 1395nn or the regulations promulgated pursuant to such statutes or related state, local or provincial statutes or regulations, or which are prohibited by binding rules of professional conduct, including but not limited to the following: (a) knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact in any applications for any benefit or payment; (b) knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact for use in determining rights to any benefit or payment; (c) failing to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment on its own behalf or on behalf of another with the intent to secure such benefit or payment fraudulently; (d) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind, or offering to pay such remuneration (i) in return for referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, Medicaid or other applicable third party payors, including any Governmental Body, or (ii) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service, or item for which payment may be made in whole or in part by Medicare, Medicaid or other applicable third party payors, including any Governmental Body.

Notwithstanding the foregoing, Loan Parties are aware of, and have disclosed, the existence of the OIG Investigation and Consent Decree. Loan Parties believe that the programs described in the subpoena are in compliance with all applicable Laws, except where the failure to be in compliance would not constitute a Material Adverse Effect. Loan Parties are cooperating fully with the government inquiry.

1.31 Other Regulatory Protection. Except for oxygen products, none of Loan Parties and their Subsidiaries manufactures pharmaceutical products. Except as set forth on Schedule 5.31, none of Loan Parties and none of the Subsidiaries of Loan Parties (a) participates in Medicare or Medicaid or other similar government programs in applicable jurisdictions as a provider or supplier, rather, Loan Parties and their Subsidiaries are manufacturers and sell to providers for purposes of Medicare, Medicaid and any other Medical Reimbursement Program or other similar government programs in applicable jurisdictions, (b) is a party to any Medicare Provider Agreement or Medicaid Provider Agreement, or (c) bills for items or services to any Medical Reimbursement Program or other similar government programs in applicable jurisdictions. Each of Loan Parties and its Subsidiaries is in compliance with all applicable rules, regulations and other requirements of the Food and Drug Administration and Health Canada (for purposes hereof collectively, "FDA"), the Federal Trade Commission (for purposes hereof, "FTC"), the Consumer Product Safety Commission, the United States Customs Service and the United States Postal Service and other state, national, provincial or federal regulatory authorities or jurisdictions in which such Loan Party or any of its Subsidiaries do business or distribute and market products, except to the extent that any such noncompliance, individually or in the aggregate, does not constitute a Material Adverse Effect. Neither the FDA, the FTC, the Consumer Product Safety Commission, nor any other such regulatory authority has requested (or, to the knowledge of any authorized officer, are considering requesting) any product recalls or other enforcement actions that (a) if complied with, individually or in the aggregate, would reasonably be expected to

constitute a Material Adverse Effect or (b) with which Loan Parties and their Subsidiaries have not complied within the time period allowed, except where any such failure would not reasonably be expected to have a Material Adverse Effect.

1.32 Excluded Pledge Entity . Each entity listed on Schedule 5.32 ("**Excluded Pledge Entity**") has total assets of less than \$10,000,000 ("**Threshold Assets**").

1.33 Centre of Main Interests and Establishments. For the purposes of the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), each European Loan Party's centre of main interests (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

1.34 European Distribution Agreements. Each European Distribution Agreement is in full force and effect and, under Swiss law, each European Distribution Agreement provides that any right, title or interest in any Receivables arising from the sale of any Inventory referred to therein shall vest in the European Loan Party party to such European Distribution Agreement.

1.35 EEA Financial Institution. No Loan Party is an EEA Financial Institution.

1.36 Certificate of Beneficial Ownership. The Certificate of Beneficial Ownership executed and delivered to Agent and Lenders for each Borrower (other than the Company) on or prior to the date of this Agreement, as updated from time to time in accordance with this Agreement, is accurate, complete and correct as of the date hereof and as of the date any such update is delivered. The Borrowers acknowledge and agree that the Certificate of Beneficial Ownership is one of the Other Documents.

1.37 Sanctions and other Anti-Terrorism Laws. No (a) Covered Entity, nor any employees, officers, directors, affiliates, consultants, brokers or agents acting on a Covered Entity's behalf in connection with this Agreement: (i) is a Sanctioned Person; (ii) directly, or indirectly through any third party, is engaged in any transactions or other dealings with or for the benefit of any Sanctioned Person or Sanctioned Country, or any transactions or other dealings that otherwise are prohibited by any Anti-Terrorism Laws; (b) Collateral is Embargoed Property.

5.38 Anti-Corruption Laws. Each Covered Entity has (a) conducted its business in compliance with all Anti-Corruption Laws and (b) has instituted and maintains policies and procedures designed to ensure compliance with such Laws.

6. AFFIRMATIVE COVENANTS.

Each Loan Party shall, and shall cause each of its Subsidiaries to, until payment in full of the Obligations and termination of this Agreement:

1.1 Compliance with Laws. Comply in all material respects with all Applicable Laws with respect to the Collateral or any part thereof or to the operation of such Loan Party's business the non-compliance with which would reasonably be expected to be material and adverse to any Loan Party (except to the extent (a) any separate provision of this Agreement shall expressly require compliance with any particular Applicable Law(s) pursuant to another standard or (b) any Applicable Law is being Properly Contested).

1.2 Conduct of Business and Maintenance of Existence and Assets. (a) Conduct continuously and operate actively its business according to good business practices and maintain all of its properties useful or necessary in its business in good working order and condition (reasonable wear and tear and casualty excepted and except as may be disposed of in accordance with the terms of this Agreement), including all material Intellectual Property and take all actions necessary to enforce and protect the validity of any material intellectual property right or other right included in the Collateral; (b) keep in full force and effect its existence and comply with all laws and regulations governing the conduct of its business where the failure to do so would reasonably be expected to have a Material Adverse Effect; and (c) make all such reports and pay all such franchise and other taxes and license fees and do all such other acts and things as may be lawfully required to maintain its rights, licenses, leases, powers and franchises under the laws of the United States, Canada, France, England or the Netherlands or any political subdivision thereof where the failure to do so would reasonably be expected to have a Material Adverse Effect.

1.3 Books and Records; Inspection Rights.

(a) Keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business and affairs (including without limitation accruals for taxes, assessments, Charges, levies and claims, allowances against doubtful Receivables and accruals for depreciation, obsolescence or amortization of assets), that allow Loan Parties to prepare financial reports in accordance with, or as required by, GAAP consistently applied in the opinion of such independent public accountant as shall then be regularly engaged by Loan Parties.

(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 conduct at such Loan Party's premises field examinations of such Loan Party's assets, liabilities, books and records, including examining and making 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; provided that it is intended that prior to a Default or Event of Default, the European Agent and the European Lenders will only conduct one (provided, that if the European Undrawn Availability is less than 50% of the Maximum European Revolving Advance Amount, then two) field examination(s) in any twelve (12) month period (exclusive of any field examination performed prior to the Effective Date) (it being understood that there are no limitations on the number of field examinations that may be performed during the continuance of a Default or an Event of Default) which field examinations shall be at the European Borrowers' sole cost and expense. Each European Loan Party acknowledges that the European Agent, after exercising its rights of inspection, may prepare and distribute to the European Lenders certain reports pertaining to each European Loan Party's assets for internal use by the European Agent and the European Lenders.

1.4 Payment of Taxes. Unless Properly Contested, pay, when due, all Priority Payables and all taxes, assessments and other Charges lawfully levied or assessed upon such Loan Party or any of the Collateral, including real and personal property taxes, assessments and charges and all franchise, income, employment, social security benefits, withholding, and sales taxes. If any tax by any Governmental Body is or may be imposed on or as a result of any transaction between any Loan Party and any Agent or any Lender which any Agent or any Lender may be required to withhold or pay or if any taxes, assessments, or other Charges remain unpaid after the date fixed for their payment, or if

any claim shall be made which, in any Agent's opinion, may reasonably be expected to create a valid Lien on the Collateral, such Agent may, upon notice to Loan Parties (or during an Event of Default without notice to Loan Parties) pay the taxes, assessments or other Charges and each Loan Party hereby indemnifies and holds such Agent and each Lender harmless in respect thereof. The amount of any payment by an Agent under this Section 6.4 shall be charged to ~~Loan Parties~~Borrowers' Account as a Revolving Advance under the relevant facility maintained as a Domestic Rate Loan in the case of a Revolving Advance under the US-Canada Facility and a ~~LIBOR Rate~~Term Benchmark Loan with an interest period of one month or an RFR Loan (as applicable) in the case of a Revolving Advance under the English Facility and the French Facility and added to the Obligations and, until Loan Parties shall furnish the relevant Agent with an indemnity therefor (or supply the relevant Agent with evidence satisfactory to such Agent that due provision for the payment thereof has been made), the relevant Agent may hold without interest any balance standing to Loan Parties' credit and such Agent shall retain its security interest in and Lien on any and all Collateral held by such Agent.

1.5 Tax residence. Ensure that it is subject to income or similar taxation generally on income from all sources (and not merely from income from sources in, or profits attributable to a permanent establishment in such jurisdiction) solely in its jurisdiction of incorporation.

1.6 Financial Covenant; Minimum Undrawn Availability.

(a) Cause to be maintained the US-Canada Undrawn Availability Required
Amount at all times.

(b) Cause to be maintained the European Undrawn Availability Required
Amount at all times.

1.7 Insurance.

(a) (i) Keep all its insurable properties and properties in which such Loan Party has an interest insured against the hazards of fire, flood, sprinkler leakage, those hazards covered by extended coverage insurance and such other hazards, and for such amounts, as is customary in the case of companies engaged in businesses similar in size and scope to such Loan Party's including business interruption insurance; (ii) maintain a bond in such amounts as is customary in the case of companies engaged in businesses similar to such Loan Party insuring against larceny, embezzlement or other criminal misappropriation of insured's officers and employees who may either singly or jointly with others at any time have access to the assets or funds of such Loan Party either directly or through authority to draw upon such funds or to direct generally the disposition of such assets; (iii) maintain public and product liability insurance against claims for personal injury, death or property damage suffered by others; (iv) maintain all such worker's compensation or similar insurance as may be required under the laws of any state, province or jurisdiction in which such Loan Party is engaged in business; (v) furnish Applicable Agent with (A) copies of all policies and evidence of the maintenance of such policies by the renewal thereof at least thirty (30) days before any expiration date, and (B) appropriate loss payable endorsements in form and substance satisfactory to Applicable Agent, naming Applicable Agent as an additional insured and mortgagee and/or lender loss payee (as applicable) as its interests may appear with respect to all insurance coverage referred to in clauses (i) and (ii) above, and providing (I) that all proceeds thereunder shall be payable to Applicable Agent, (II) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy, and (III) that such policy and loss payable clauses may not be cancelled, amended or terminated unless at least thirty (30) days prior written notice is given to Applicable Agent (or in the case of non-payment, at least ten (10) days prior written notice). All

of the coverages required in this Section 6.7(a) shall be maintained with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company. In the event of any loss thereunder, the carriers named therein hereby are directed by Applicable Agent and the applicable Loan Party to make payment for such loss to Applicable Agent and not to such Loan Party and Applicable Agent jointly. If any insurance losses are paid by check, draft or other instrument payable to any Loan Party and Applicable Agent jointly, Agent may endorse such Loan Party's name thereon and do such other things as Applicable Agent may deem advisable to reduce the same to cash.

(b) Each Loan Party shall take all actions required under the Flood Laws and/or requested by Applicable Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing Applicable Agent with the address and/or GPS coordinates of each structure on any real property that will be subject to a mortgage in favor of Applicable Agent, for the benefit of Lenders, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral, and thereafter maintaining such flood insurance in full force and effect for so long as required by the Flood Laws.

(c) With respect to any claims in excess of \$1,000,000 individually or \$5,000,000 in the aggregate in any calendar year and with respect to any claims during the continuance of a Default or Event of Default, Applicable Agent is hereby authorized to adjust and compromise claims under insurance coverage referred to in Sections 6.7(a)(i) and (iii) and 6.7(b) above. All loss recoveries received by Applicable Agent under any such insurance may be applied to the Obligations, in such order as Applicable Agent in its sole discretion shall determine. Any surplus shall be paid by Applicable Agent to Loan Parties or applied as may be otherwise required by law. Any deficiency thereon shall be paid by Loan Parties to Applicable Agent, on demand. Anything hereinabove to the contrary notwithstanding, and subject to the fulfillment of the conditions set forth below, Applicable Agent shall remit to Borrowing Agent or European Borrowing Agent (as applicable) insurance proceeds received by Applicable Agent during any calendar year under insurance policies procured and maintained by Loan Parties which insure Loan Parties' insurable properties to the extent such insurance proceeds do not exceed \$5,000,000 in the aggregate during such calendar year or \$1,000,000 per occurrence. In the event the amount of insurance proceeds received by Applicable Agent for any occurrence exceeds \$1,000,000, then Applicable Agent shall not be obligated to remit the insurance proceeds to Borrowing Agent or European Borrowing Agent (as applicable) unless Borrowing Agent or European Borrowing Agent (as applicable) shall provide Applicable Agent with evidence reasonably satisfactory to Applicable Agent that the insurance proceeds will be used by Loan Parties to repair, replace or restore the insured property which was the subject of the insurable loss. In the event Borrowing Agent or European Borrowing Agent (as applicable) has previously received (or, after giving effect to any proposed remittance by Applicable Agent to Borrowing Agent or European Borrowing Agent (as applicable) would receive) insurance proceeds which equal or exceed \$5,000,000 in the aggregate during any calendar year, then Applicable Agent may, in its sole discretion, either remit the insurance proceeds to Borrowing Agent or European Borrowing Agent (as applicable) upon Borrowing Agent or European Borrowing Agent (as applicable) providing Applicable Agent with evidence reasonably satisfactory to Applicable Agent that the insurance proceeds will be used by Loan Parties to repair, replace or restore the insured property which was the subject of the insurable loss, or apply the proceeds to the Obligations, as aforesaid. The agreement of Applicable Agent to remit insurance proceeds in the manner above provided shall be subject in each instance to satisfaction of each of the following conditions: (x) No Event of Default or Default shall then have occurred, (y) Loan Parties shall use such insurance proceeds promptly to repair, replace or restore the insurable property which was the subject of the insurable loss and for no other purpose, and (z) such remittances shall be made under such procedures as Applicable Agent may establish. If any Loan Party fails to obtain insurance as hereinabove provided, or to keep the same in force,

Applicable Agent, if Applicable Agent so elects, may obtain such insurance and pay the premium therefor on behalf of such Loan Party, which payments shall be charged to Borrowers' Account and constitute part of the obligations.

1.8 Payment of Indebtedness and Leasehold Obligations. Pay, discharge or otherwise satisfy (i) at or before maturity (subject, where applicable, to specified grace periods) all its Indebtedness, except when the failure to do so would not reasonably be expected to be material and adverse to any Loan Party or when the amount or validity thereof is currently being Properly Contested, subject at all times to any applicable subordination arrangement in favor of Lenders and (ii) when due its rental obligations under all material leases of real property under which it is a tenant, and shall otherwise comply, in all material respects, with all other terms of such leases and keep them in full force and effect.

1.9 Environmental Matters.

(a) Except where any non-compliance would not reasonably be expected to have a Material Adverse Effect, result in liability for Loan Parties and their Subsidiaries in excess of \$1,000,000 or result in criminal liability for any Loan Party or Subsidiary thereof, ensure that the Real Property and all operations and businesses conducted thereon are in compliance and remain in compliance with all Environmental Laws in all respects and it shall manage any and all Hazardous Materials on any Real Property in compliance with Environmental Laws.

(b) Establish and maintain an environmental management and compliance system to assure and monitor continued compliance with all applicable Environmental Laws which system shall include periodic environmental compliance audits to be conducted by knowledgeable environmental professionals. All potential violations and violations of Environmental Laws shall be reviewed with legal counsel to determine any required reporting to applicable Governmental Bodies and any required corrective actions to address such potential violations or violations.

(c) Respond promptly to any Hazardous Discharge or Environmental Complaint and take all necessary action in order to safeguard the health of any Person and to avoid subjecting the Collateral or Real Property to any Lien. If any Loan Party shall fail to respond promptly to any Hazardous Discharge or Environmental Complaint or any Loan Party shall fail to comply with any of the requirements of any Environmental Laws, Agent on behalf of Lenders may, but without the obligation to do so, for the sole purpose of protecting Agent's interest in the Collateral: (i) give such notices or (ii) enter onto the Real Property (or authorize third parties to enter onto the Real Property) and take such actions as Agent (or such third parties as directed by Agent) deem reasonably necessary or advisable, to remediate, remove, mitigate or otherwise manage with any such Hazardous Discharge or Environmental Complaint. All reasonable costs and expenses incurred by Agent and Lenders (or such third parties) in the exercise of any such rights, including any sums paid in connection with any judicial or administrative investigation or proceedings, fines and penalties, together with interest thereon from the date expended at the Default Rate for Domestic Rate Loans constituting Revolving Advances shall be paid upon demand by Loan Parties, and until paid shall be added to and become a part of the Obligations secured by the Liens created by the terms of this Agreement or any other agreement between Agent, any Lender and any Loan Party.

(d) Promptly upon the written request of Agent from time to time, if any Loan Party has received an Environmental Complaint, or if Agent has a reasonable good faith basis to believe that there has occurred a Hazardous Discharge that requires remedial or investigatory action under Environmental Laws or that is the subject to regulatory inquiry, Loan Parties shall

provide Agent, at Loan Parties' expense, with an environmental site assessment or environmental compliance audit report prepared by an environmental engineering firm acceptable in the reasonable opinion of Agent, to assess with a reasonable degree of certainty the existence of a Hazardous Discharge and the potential costs in connection with abatement, remediation and removal of any Hazardous Materials found on, under, at or within the Real Property. Any report or investigation of such Hazardous Discharge proposed and acceptable to the responsible Governmental Body shall be acceptable to Agent. If such estimates, individually or in the aggregate, exceed \$250,000, Agent shall have the right to require Loan Parties to post a bond, letter of credit or other security reasonably satisfactory to Agent to secure payment of these costs and expenses.

1.10 Standards of Financial Statements. Cause all financial statements referred to in Sections 9.7, 9.8, 9.9, 9.10, 9.11, 9.12 and 9.13 as to which GAAP is applicable to be complete and correct in all material respects (subject, in the case of interim financial statements, to the absence of footnotes and normal year-end audit adjustments) and to be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except as disclosed therein and agreed to by such reporting accountants or officer, as applicable).

1.11 Federal Securities Laws. Promptly notify Agent in writing if any Loan Party (other than, with respect to clause (i) or (ii), the Company) or any of their Subsidiaries (i) is required to file periodic reports under the Exchange Act or securities legislation of Canada, France, England or the Netherlands, (ii) registers any securities under the Exchange Act or securities legislation of Canada, France, England or the Netherlands or (iii) files a registration statement under the Securities Act or securities legislation of Canada, France, England or the Netherlands.

1.12 Execution of Supplemental Instruments. Execute and deliver to Agent from time to time, upon demand, such supplemental agreements, statements, assignments and transfers, or instructions or documents relating to the Collateral (including the filing and recording of financing statements and other documents and the execution of *daily* assignments in respect of French Borrower's Receivables which are no longer subject to extendible retention of title), and such other instruments as Agent may request, in order that the full intent of this Agreement may be carried into effect.

1.13 Government Receivables. To the extent any Borrower desires such Receivables to constitute Eligible Receivables, take all steps necessary to protect Applicable Agent's interest in the Collateral under the Federal Assignment of Claims Act, the Financial Administration Act (Canada) and any similar applicable provincial statute, the Uniform Commercial Code and all other applicable state, national, provincial or local statutes or ordinances and deliver to Applicable Agent appropriately endorsed, any instrument or chattel paper connected with any Receivable arising out of any contract between any Loan Party and the relevant Governmental Body or any department, agency or instrumentality of any of them.

1.14 Keepwell. If it is a Qualified ECP Loan Party, then jointly and severally, together with each other Qualified ECP Loan Party, hereby absolutely unconditionally and irrevocably (a) guarantees the prompt payment and performance of all Swap Obligations owing by each Non-Qualifying Party (it being understood and agreed that this guarantee is a guaranty of payment and not of collection), and (b) undertakes to provide such funds or other support as may be needed from time to time by any Non-Qualifying Party to honor all of such Non-Qualifying Party's obligations under this Agreement or any Other Document in respect of Swap Obligations (provided, however, that each Qualified ECP Loan Party shall only be liable under this Section 6.14 for the

maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 6.14, or otherwise under this Agreement or any Other Document, voidable under applicable law, including applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Loan Party under this Section 6.14 shall remain in full force and effect until payment in full of the Obligations and termination of this Agreement and the Other Documents. Each Qualified ECP Loan Party intends that this Section 6.14 constitute, and this Section 6.14 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of each other Borrower and Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the CEA.

1.15 [Reserved].

1.16 Canadian Pension Plans. For each existing, or hereafter adopted, Canadian Benefit Plan, in a timely fashion comply with and perform in all material respects all of its obligations under and in respect of such Canadian Benefit Plan and all Applicable Laws (including any fiduciary, funding, investment and administration obligations). All employer or employee payments, contributions or premiums required to be remitted, paid to or in respect of each Canadian Benefit Plan shall be paid or remitted in a timely fashion in accordance with the terms thereof, any funding agreements and all Applicable Laws.

1.17 Proposed Reorganization. The Proposed Reorganization will take place in stages. Immediately upon the liquidation of Invacare CV, Invacare International shall pledge 65% of its equity interest in LUX 1 (of, if a holding company is inserted as the owner of LUX 1, in such first-tier foreign Subsidiary) to the Agent on behalf of the Lenders pursuant to the Pledge Agreement.

1.18 Threshold Assets Exceeded. In the event that the total assets of any Excluded Pledge Entity ceases to be less than the Threshold Assets, such Subsidiary shall cease to be an Excluded Pledge Entity and the applicable Loan Party shall promptly deliver to the Agent such original certificates and Security Documents (as defined in the Pledge Agreement) as required pursuant to the terms of the Pledge Agreement or as the Agent shall reasonably deem to be necessary, to perfect the Agent's Lien and security interest in the Subsidiary Stock of such Subsidiary.

1.19 Transfer of Accounts of European Borrowers and Dutch Guarantor, Notification of Account Debtors.

(a) At any time following a European Dominion Triggering Event, the European Borrowers and the Dutch Guarantor shall (i) at the request of the European Agent, use reasonable endeavors to cause their European Blocked Accounts (each an "**Existing Blocked Account**") to be transferred to the name of the European Agent and (ii) with respect to any Existing Blocked Accounts held with an account bank in a jurisdiction other than England and Wales, promptly open new European Blocked Accounts with (and, at the discretion of the European Agent, in the name of) the European Agent in London (or an Affiliate of the European Agent in London), such new bank accounts being European Blocked Accounts under and for the purposes of this Agreement.

If new European Blocked Accounts have been established pursuant to this Section (each a "**New Blocked Account**"), the European Borrowers and the Dutch Guarantor shall ensure that the proceeds of all Receivables owing to them will immediately be re-directed to the New Blocked Accounts. Until all proceeds of Receivables have been redirected to the New Blocked Accounts, each European Borrower and the Dutch Guarantor shall cause all amounts on deposit

in any Existing Blocked Account to be transferred to a New Blocked Account at the end of each Business Day, provided that if any such European Borrower or the Dutch Guarantor does not instruct such re-direction or transfer, each of them hereby authorizes the European Agent to give such instructions on their behalf to the applicable Customers and/or the account bank holding such Existing Blocked Account (as applicable).

(b) At any time during a European Dominion Period, each European Borrower and the Dutch Guarantor agrees that if any of its Customers have not previously received notice of the security interest of the European Collateral Agent over its Receivables, it shall, at the request of the European Agent or European Collateral Agent, promptly give notice to such Customers and if any European Borrower and/or the Dutch Guarantor does not serve such notice, each of them hereby authorizes the European Collateral Agent to serve notice on their behalf.

1.20 European Cash Management Provisions.

(a) All proceeds of the English Collateral, the French Collateral and the Dutch Collateral shall be deposited by the European Borrowers and the Dutch Guarantors into a blocked account ("**European Blocked Accounts**") established at the European Agent (or an Affiliate of the European Agent) for the deposit of such proceeds. Each applicable European Borrower, Dutch Guarantor, the European Agent and the European Agent in its capacity as account bank with respect to the European Blocked Accounts (or Affiliate of the European Agent in such role, as applicable) shall enter into a deposit account control agreement or equivalent arrangement, in each case in form and substance satisfactory to the European Agent that is sufficient to give the European Agent "control" at all times over such account. All funds deposited in such European Blocked Accounts shall immediately become subject to the security interest of the European Collateral Agent for its own benefit and the ratable benefit of the Secured Parties. During a European Dominion Period, the European Agent may apply (or cause to be applied) all funds received by it from the European Blocked Accounts to the satisfaction of the Obligations of the European Borrowers (including the cash collateralization of the Letters of Credit in accordance with the terms of this Agreement) in such order as is required hereunder. If the funds standing to the credit of any European Blocked Account are not in the same currency in which the European Swing Loans and/or European Revolving Advances were made (the "**Advance Currency**"), the European Agent may, in its sole discretion, during a European ~~Cash~~ Dominion Period or following an Event of Default convert such funds to the currency in which the relevant European Swing Loans and/or European Revolving Advances were made at its spot rate of exchange for the purposes of applying the funds to the satisfaction of the European Obligations and European Borrowers and Dutch Guarantors agree to hold the European Agents and each European Lender harmless from and against any costs of exchange, the cost of covering the currency in which such European Swing Loan and/or European Revolving Advance was originally made, and from any change in the value of the Advance Currency, or such other currency, in relation to the currency that was due and owing. In the event that all outstanding Obligations of the European Borrowers have been satisfied in full, any remaining funds received by the European Agent from the European Blocked Accounts shall be transferred to the Agent for application against the then-outstanding Obligations of the US-~~Canadian~~Canada Borrowers in accordance with Section 4.8(h).

(b) The European Loan Parties shall use their reasonable endeavors to ensure that their Customers deliver all remittances with respect to Receivables (whether paid by check, by wire transfer of funds or by any other means available to such Customer) to such European Blocked Accounts. Notwithstanding the foregoing, to the extent (A) such Customers cannot deliver all remittances upon Receivables (whether paid by check, by

wire transfer of funds or otherwise) to such European Blocked Accounts, or (B) any European Loan Party directly receives any remittances upon Receivables, such European Loan Party shall, at such European Loan Party's sole cost and expense, but on the European Agent's behalf and for the European Agent's account, collect as the European Agent's property and in trust for the European Agent all amounts received with respect to Receivables, and shall not (to the extent possible) commingle such collections with any of the European Loan Party's other funds or use the same and shall as soon as possible and in any event no later than one (1) Business Day after the receipt thereof (i) in the case of remittances paid by check or such other payment instruments as are customarily used to collect receivables by the European Loan Parties in such country, deposit all such remittances in their original form (after supplying any necessary endorsements) and (ii) in the case of remittances paid by wire transfer of funds, transfer all such remittances, in each case, into such European Blocked Accounts.

(c) All deposit accounts (including all European Blocked Accounts, securities accounts and investment accounts) of each European Loan Party as of the Closing Date are set forth on Schedule 6.20(c). No European Borrower or Dutch Guarantor shall open any new deposit account, securities account or investment account or designate such account as an account into which proceeds of Receivables are to be paid for the purposes of inclusion in the European Formula Amount unless the European Borrowing Agent shall have given at least thirty (30) days prior written notice to the European Agent and:

(i) a security interest (which, in relation to accounts located in England and Wales shall be a fixed charge, rather than a floating charge), governed by the laws of the jurisdiction in which such account is located, in form and substance satisfactory to the European Collateral Agent has been entered into between the relevant European Borrower and the European Collateral Agent;

(ii) in the event that the security interest is governed by the laws of a jurisdiction other than England and Wales, a side letter or other agreement satisfactory to the European Collateral Agent, setting out any required additions or amendments to this Agreement to enable the European Collateral Agent to effectively hold and maintain such security interest for the benefit of the Security Secured Parties under the laws of the applicable jurisdiction has been entered into; and

(iii) an account control agreement in form and substance satisfactory to the European Collateral Agent sufficient to give the European Agent "control" over such account has been entered into between the relevant bank or financial institution, the European Collateral Agent and the relevant European Borrower.

1.21 English Pension Plans

(a) Each English Loan Party shall ensure that all pension schemes operated by or maintained for the benefit of itself, its Subsidiaries and Affiliates (each, a "member of the Group") and/or any of their employees are fully funded based on the statutory funding objective under Sections 221 and 222 of the United Kingdom's Pensions Act 2004 and that no action or omission is taken by any member of the Group in relation to such a pension scheme which has or is reasonably likely to have a Material Adverse Effect (including, without limitation, the termination or commencement of winding-up proceedings of any such pension scheme or any member of the Group ceasing to employ any member of such a pension scheme).

(b) Each English Loan Party shall ensure that no member of the Group is or has been at any time an employer (for the purposes of Sections 38 to 51 of the United Kingdom's Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the United Kingdom's Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are used in Sections 38 or 43 of the United Kingdom's Pensions Act 2004) such an employer.

(c) Following European Agent's ~~Request~~request, each English Loan Party shall deliver to the Applicable Agent at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to any English Loan Party), actuarial reports in relation to all pension schemes mentioned in Section 6.21.

(d) Each English Loan Party shall promptly notify the Applicable Agent of any material change in the rate of contributions to any pension schemes mentioned in Section 6.21 paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).

(e) Each English Loan Party shall promptly notify the Applicable Agent if it is required to give notice to the Pensions Regulator of a notifiable event under Section 69 of the Pensions Act 2004. The relevant English Loan Party shall, promptly upon request by the Applicable Agent, supply the Applicable Agent with a copy of any notice given to the Pensions Regulator in respect of that notifiable event, together with such details of the event and the circumstances giving rise to it, as the Applicable Agent may reasonably require.

(f) Each English Loan Party shall promptly notify the Applicable Agent of any investigation or proposed investigation by the Pensions Regulator which may lead to the issue of a Financial Support Direction or a Contribution Notice to it or any member of the Group.

(g) Each English Loan Party shall immediately notify the Applicable Agent if it receives a Financial Support Direction or a Contribution Notice from the Pensions Regulator.

(h) All pension schemes established or maintained by any English Loan Party shall comply with all provisions of the relevant law and employ reasonable actuarial assumptions, where relevant; and no member of the Group shall have any unfunded liability in respect of any pension scheme; except as could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

1.22 Financial Assistance. Each European Loan Party shall comply in all respects with applicable legislation governing financial assistance and/or capital maintenance, including Sections 678 and 679 of the United Kingdom's Companies Act 2006, articles L225-216 and following of the French Commercial Code, and any equivalent and applicable provisions under the laws of the jurisdiction of organization of each European Loan Party, including in relation to the execution of the European Collateral Documents and payment of amounts due under this Agreement.

1.23 European Collateral.~~6.24~~ Each European Loan Party shall ensure that (i) a copy of, or reference to, its standard terms and conditions of purchase is attached to or included on (as applicable) each purchase order or equivalent document with its suppliers, (ii) its standard terms and conditions of purchase at all times contain a condition to the effect that title to the purchased goods transfers to the European Loan

Party at a time no later than on delivery of the purchased goods to the European Loan Party, (iii) its standard terms and conditions of purchase are not amended in any respect materially adverse to the Lenders without the prior consent in writing of the European Agent, and (iv) if the reference on any purchase order or equivalent document is to the standard terms and conditions of purchase as set out on a specified website, the relevant website must be maintained, up to date and publicly accessible at all times. During any European Dominion Period or at any other time at which the European Agent considers that the Collateral of any European Loan Party may be at risk, at the request of the European Agent, the specified European Loan Party must send a copy of its standard terms and conditions of purchase (or other notice satisfactory to the European Agent which rejects retention of title and/or extendible retention of title provisions in relation to the European Loan Party's Inventory) to its suppliers.

~~1.246-25~~ Certificate of Beneficial Ownership and Other Additional Information. Provide to Agent and the Lenders: (i) confirmation of the accuracy of the information set forth in the most recent Certificate of Beneficial Ownership provided to the Agent and Lenders; (ii) a new Certificate of Beneficial Ownership, in form and substance acceptable to Agent and each Lender, when the individual(s) to be identified as a Beneficial Owner have changed; and (iii) such other information and documentation as may reasonably be requested by Agent or any Lender from time to time for purposes of compliance by Agent or such Lender with applicable laws (including without limitation the USA Patriot Act and other "know your customer" and anti-money laundering rules and regulations), and any policy or procedure implemented by Agent or such Lender to comply therewith.

~~1.256-26~~ [Conditions Subsequent.

(a) Within 10 Business Days of the Closing Date, the French Borrower shall provide to the European Agent evidence that European Collateral Agent (in its capacity as Collateral Agent under the French Master Receivables Assignment Agreement) has been named as sole loss payee on the credit insurance (assurance-crédit) policy in the name of the French Borrower held with Compagnie Française D'Assurance Pour Le Commerce Extérieur (COFACE) with policy number 458286 G21 001.

(b) Prior (and as a condition precedent) to the first Advance under the French Facility, the French Borrower shall provide evidence (whether by way of legal opinion or otherwise) to the European Agent (in form and substance satisfactory to the European Agent) that, pursuant to the French Commissionaire Agreement, the French Borrower has title to the receivables generated by it with respect to sales of product owned by Invacare International Sarl and that Invacare International Sarl will not have an interest as a result of the French Commissionaire Agreement in such receivables in priority to any interest that the European Collateral Agent may have pursuant to the French Master Receivables Agreement.

7. NEGATIVE COVENANTS.

No Loan Party shall, or shall permit any of its Subsidiaries to, until satisfaction in full of the Obligations and termination of this Agreement:

1.1 Merger, Consolidation, Acquisition and Sale of Assets.

(a) Enter into any merger, amalgamation consolidation or other reorganization with or into any other Person or acquire all or a substantial portion of the assets or Equity Interests of any Person or consummate an LLC Division or permit any other Person to consolidate with or merge or amalgamate with it, except (i) any Loan Party other than the

Company or any other Subsidiary that is not a Loan Party (other than the Insurance Subsidiary) may consolidate or merge into another Loan Party which is wholly-owned by one or more of the other Loan Parties so long as such Loan Party is the survivor, (ii) Excluded Subsidiaries (other than the Insurance Subsidiary) may consolidate or merge into other Excluded Subsidiaries (other than the Insurance Subsidiary), (iii) Foreign Excluded Subsidiaries not directly owned by a Loan Party may consolidate or merge into another such Foreign Excluded Subsidiary, (iv) any Subsidiary (other than the Insurance Subsidiary) may merge into the Company so long as the Company is the survivor, (v) in connection with the Proposed Reorganization, Invacare CV and Invacare Holdings may be liquidated and all of the assets of Invacare CV and Invacare Holdings transferred to Invacare International, (vi) any Subsidiary of the Company permitted to consolidate or merge with the Company or another Subsidiary of the Company pursuant to clauses (i)-(iv) above may, instead of consolidating or merging with the Company or another Subsidiary, transfer all of its assets to the Company or a Subsidiary of the type specified in clauses (i)-(iv) above, respectively, and subsequently the Subsidiary which transferred its assets may be dissolved or liquidated; for example, a Foreign Excluded Subsidiary not directly owned by a Loan Party may transfer all of its assets to another such Foreign Excluded Subsidiary, and the Foreign Excluded Subsidiary which transferred all of its assets may then be dissolved or liquidated and (vii) MCLP may sell all of the Equity Interests in MI to the Company.

(b) Sell, lease, transfer or otherwise dispose of any of its properties or assets (including by way of an LLC Division), except Permitted Dispositions.

(c) For the avoidance of doubt, the Canadian Reorganization is expressly permitted.

1.2 Creation of Liens. Create or suffer to exist any Lien or transfer upon or against any of its property or assets now owned or hereafter created or acquired, except Permitted Encumbrances.

1.3 Guarantees. Become liable upon the obligations or liabilities of any Person by assumption, endorsement or guaranty thereof or otherwise (other than to Lenders) except (a) as disclosed on Schedule 7.3, (b) guarantees by one or more Loan Parties or Subsidiaries thereof of the Indebtedness or obligations of any other Loan Parties or Subsidiaries thereof to the extent such Indebtedness or obligations are permitted to be incurred and/or outstanding pursuant to the provisions of this Agreement and (c) the endorsement of checks in the Ordinary Course of Business.

1.4 Investments. Purchase or acquire obligations or Equity Interests of, or any other interest in, any Person, other than Permitted Investments.

1.5 Loans. Make advances, loans or extensions of credit to any Person, including any Loan Party, or Subsidiary or Affiliate of a Loan Party other than as described in clauses (H), (I), (K) and (L) of the definition of Permitted Investments.

1.6 Capital Expenditures. Contract for, purchase or make any expenditure or commitments for Capital Expenditures in any fiscal year in an aggregate amount for all Loan Parties in excess of \$35,000,000.

1.7 Dividends. Declare, pay or make any dividend or distribution on any Equity Interests of any Loan Party (other than dividends or distributions payable in its stock, or split-ups or reclassifications of its stock) or apply any of its funds, property or assets to the purchase, redemption or other retirement of any Equity Interest, or of any options to purchase or acquire any Equity Interest of any Loan Party, except

(a) in respect of dividends and distributions made by any US-Canada Loan Party, for dividends and distributions made to Loan Parties;

(b) in respect of dividends and distributions made by any European Loan Party, for dividends and distributions made to any other person, provided that, while any amount of the European Facility Revolving Facility Usage is outstanding, no European Loan Party may make a dividend or distribution or apply any of its funds, property or assets to the purchase, redemption or other retirement of any Equity Interest, other than to another European Loan Party unless the European Undrawn Availability at that time, and immediately after paying such dividend or making such distribution, exceeds (and has at all times in the preceding 30 day period exceeded) \$3,000,000;

(c) the Company may pay or make dividends or distributions in an amount not to exceed \$475,000 per fiscal quarter so long as no Event of Default or Default shall exist immediately prior to or after giving effect to such dividend or distribution,

(d) repurchases, redemptions or reductions in number of shares issued (including, by utilization of the "net share" concept) by the Company of any Equity Interests in the Company made in connection with (I) the surrender of shares by employees to (x) facilitate the payment by such employees of the taxes associated with compensation received by such employees under the Company's stock-based compensation plans and, (y) to satisfy the purchase price of non-qualified stock options, in an amount not to exceed \$2,000,000 in the aggregate (for both (x) and (y)) in any fiscal year and (II) the deduction by the Company, of a portion of restricted stock previously (i.e. prior to the date of the deduction) granted to employees under the Company's stock-based compensation plans to facilitate the payment by such employees of the taxes associated with the vesting of such restricted stock; provided, in each case, that prior to and after giving effect to such repurchases, redemptions or reductions no Default or Event of Default exists or is continuing;

(e) any purchase by the Company of a 2022 Convertible Notes Hedge Transaction or a 2026 Convertible Notes Hedge Transaction; provided that prior to and after giving effect to such purchase (i) no Default or Event of Default exists or is continuing and (ii) US-Canada Undrawn Availability shall not be less than the US-Canada Undrawn Availability Test Amount for the thirty (30) consecutive days ending as of the date of the most recently delivered US-Canada Borrowing Base Certificate;

(f) purchases, redemptions or retirements by the Company of any Equity Interests upon exercise and settlement or termination of the 2022 Convertible Notes Hedge Transactions or the 2026 Convertible Notes Hedge Transactions;

(g) distributions on the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes (including, without limitation, upon conversion thereof); provided that prior to and after giving effect to such distributions (other than the payment of interest on the 2022 Convertible Notes, the 2024 Convertible Notes, the 2026 Convertible Notes and/or delivery of common shares of the Company (together with cash in lieu of any fractional shares) upon any conversion of the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes) (i) no Default or Event of Default exists or is continuing and (ii) US-Canada Undrawn Availability shall not be less than the US-Canada Undrawn Availability Test Amount for the thirty (30) consecutive days ending as of the date of the most recently delivered US-Canada Borrowing Base Certificate;

(h) purchases, redemptions or other retirements of any shares of common stock of the Company arising from the conversion of the 2022 Convertible Notes, the

2024 Convertible Notes or the 2026 Convertible Notes; provided that prior to and after giving effect to such purchases, redemptions or retirements (i) no Default or Event of Default exists or is continuing and (ii) US-Canada Undrawn Availability shall not be less than the US-Canada Undrawn Availability Test Amount for the thirty (30) consecutive days ending as of the date of the most recently delivered US-Canada Borrowing Base Certificate; and

(i) the issuance of, entry into, (including any payments of premiums in connection therewith), performance of obligations under (including any payments of interest), and conversion, exercise, repurchase, redemption, settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, common shares of the Company or any combination thereof) or the satisfaction of any condition that would permit or require any of the foregoing, any 2021 Convertible Notes Warrant Transactions, 2022 Convertible Notes, any 2022 Convertible Notes Call Spread Transaction, any 2024 Convertible Notes, any 2026 Convertible Notes, and any 2026 Convertible Notes Hedge Transaction.

~~(j) —~~

1.8 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness other than Permitted Indebtedness.

1.9 Nature of Business. Substantially change the nature of the business in which it is presently engaged, nor except as specifically permitted hereby purchase or invest, directly or indirectly, in any assets or property other than in the Ordinary Course of Business for assets or property which are useful in, necessary for and are to be used in its business as presently conducted.

1.10 Transactions with Affiliates. Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise enter into any transaction or deal with, any Affiliate, except for (i) transactions among Loan Parties and their Subsidiaries which are not expressly prohibited by the terms of this Agreement and which are in the Ordinary Course of Business, (ii) payment by Loan Parties and their Subsidiaries of dividends and distributions permitted under Section 7.7 hereof, and (iii) transactions disclosed to Agent in writing, which are in the Ordinary Course of Business, on an arm's-length basis on terms and conditions no less favorable than terms and conditions which would have been obtainable from a Person other than an Affiliate.

1.11 Leases. Enter as lessee into any lease arrangement for real or personal property (unless capitalized and permitted under Section 7.6 hereof or entered into in connection with a Sale and Leaseback Transaction permitted pursuant to clause (D) of the definition of Permitted Dispositions) if after giving effect thereto, aggregate annual rental payments for all leased property would exceed \$25,000,000 in any one fiscal year in the aggregate for all Loan Parties and their Subsidiaries.

1.12 Subsidiaries.

(a) Own or create directly or indirectly any Subsidiaries other than (i) any Subsidiary which has joined this Agreement as a Borrower or Guarantor on the Closing Date and the Excluded Subsidiaries; (ii) any Subsidiary (A) formed (or acquired) after the Closing Date which joins this Agreement as a Guarantor, or elects instead to join this Agreement as a Borrower, and satisfies each other applicable requirement set forth in Section 16.21; provided that notwithstanding any provision of this Agreement or in any Other Document to the contrary, any Subsidiary which (1) is organized under the laws of the United States of America, any State thereof, the District of Columbia, or Canada (or any province thereof) (2) is owned solely by a

Foreign Excluded Subsidiary, and (3) is a limited liability company which has not elected to be treated as a corporation for United States federal tax purposes, shall not be required to guaranty the Guaranteed Obligations (as defined in the Guaranty Agreement) of any Loan Party, or (B) which is an Excluded Subsidiary as of the Closing Date that subsequently becomes a Material Subsidiary, which joins this Agreement as a Guarantor and satisfies each other applicable requirement set forth in Section 16.21, and (iii) any Foreign Excluded Subsidiary; and

(b) Become or agree to become a party to a Joint Venture.

1.13 Fiscal Year and Accounting Changes. No US-Canada Loan Party shall change its fiscal year from December 31, nor shall any European Loan Party change its fiscal year from November 30 or, in any case, make any change (i) in accounting treatment and reporting practices except as required by GAAP or (ii) in tax reporting treatment except as required by law.

1.14 Pledge of Credit. Now or hereafter pledge Agent's or any Lender's credit on any purchases, commitments or contracts or for any purpose whatsoever or use any portion of any Advance in or for any business other than such Loan Party's business operations as conducted on the Closing Date.

1.15 Amendment of Organizational Documents. (i) Change its legal name, (ii) change its form of legal entity (e.g., converting from a corporation to a limited liability company or vice versa), (iii) change its jurisdiction of organization or become (or attempt or purport to become) organized in more than one jurisdiction, or (iv) otherwise amend, modify or waive any term or material provision of its Organizational Documents unless required by law, in any such case without (x) giving at least thirty (30) days prior written notice of such intended change to Agent, (y) having received from Agent confirmation that Agent has taken all steps necessary for Agent to continue the perfection of and protect the enforceability and priority of its Liens in the Collateral belonging to such Loan Party and in the Equity Interests of such Loan Party and (z) in any case under clause (iv), if the change would be adverse to the Lenders as determined by the Agent, having received the prior written consent of Applicable Required Lenders to such amendment, modification or waiver.

1.16 Compliance with ERISA; Canadian Pension Plans. (i) (x) Maintain, or permit any member of the Controlled Group to maintain, or (y) become obligated to contribute, or permit any member of the Controlled Group to become obligated to contribute, to any Plan, other than those Plans disclosed on Schedule 5.12(d), (ii) engage, or permit any member of the Controlled Group to engage, in any non-exempt "prohibited transaction", as that term is defined in Section 406 of ERISA or Section 4975 of the Code, (iii) terminate, or permit any member of the Controlled Group to terminate, any Plan where such event could result in any liability of any Loan Party or any member of the Controlled Group or the imposition of a lien on the property of any Loan Party or any member of the Controlled Group pursuant to Section 4068 of ERISA, (iv) incur, or permit any member of the Controlled Group to incur, any withdrawal liability to any Multiemployer Plan; (v) fail promptly to notify Agent of the occurrence of any Termination Event, (vi) fail to comply, or permit a member of the Controlled Group to fail to comply, with the requirements of ERISA or the Code or other Applicable Laws in respect of any Plan, (vii) fail to meet, permit any member of the Controlled Group to fail to meet, or permit any Plan to fail to meet all minimum funding requirements under ERISA and the Code, without regard to any waivers or variances, or postpone or delay or allow any member of the Controlled Group to postpone or delay any funding requirement with respect of any Plan, (viii) cause, or permit any member of the Controlled Group to cause, a representation or warranty in Section 5.12(d) to cease to be true and correct, (ix) permit its unfunded pension fund obligations and liabilities under any Canadian Pension

Plan to remain unfunded other than in accordance with Applicable Law, or (x) maintain, sponsor, administer, contribute to, participate in or assume or incur any liability in respect of any Specified Canadian Pension Plan, or acquire an interest in any Person if such Person sponsors, administers, contributes to, participates in or has any liability in respect of, any Specified Canadian Pension Plan.

1.17 Prepayment of Indebtedness. At any time, directly or indirectly, prepay any Indebtedness in excess of \$1,000,000 in the aggregate during the Term, (other than Indebtedness (a) to Lenders, (b) of a Loan Party to another Loan Party, (c) of an Excluded Subsidiary to a Loan Party, (d) of an Excluded Subsidiary to another Excluded Subsidiary, or (e) under the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes (including, for the avoidance of doubt, conversion, exercise, repurchase, redemption, settlement or early termination or cancellation); provided, that, in each case, prior to and after giving effect to such prepayment (i) no Default or Event of Default exists or is continuing, (ii) in the case of clauses (a), (b), (c) or (d), US-Canada Undrawn Availability shall not be less than the US-Canada Undrawn Availability Test Amount for the thirty (30) consecutive days ending as of the date of the most recently delivered US-Canada Borrowing Base Certificate and (iii) in the case of clause (e), after giving effect to such transaction, the Convertible Notes Prepayment Test is met) or repurchase, redeem, retire or otherwise acquire any Indebtedness of any Loan Party in excess of \$1,000,000 in the aggregate during the Term (other than Indebtedness (a) of a Loan Party to another Loan Party, (b) of an Excluded Subsidiary to a Loan Party, (c) of an Excluded Subsidiary to another Excluded Subsidiary, or (d) under the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes; provided, that, in each case, prior to and after giving effect to such repurchases, redemptions, retirements or acquisitions (i) no Default or Event of Default exists or is continuing, (ii) in the case of clauses (a), (b) or (c), US-Canada Undrawn Availability shall not be less than the US-Canada Undrawn Availability Test Amount for the thirty (30) consecutive days ending as of the date of the most recently delivered US-Canada Borrowing Base Certificate and (iii) in the case of clause (d), after giving effect to such transaction, the Convertible Notes Prepayment Test is met). Notwithstanding the above, any Loan Party and any of its Subsidiaries may at any time, directly or indirectly, prepay, repurchase, redeem, retire or otherwise acquire any Indebtedness of any Loan Party under the 2022 Convertible Notes or under the 2024 Convertible Notes (solely with respect to the 2024 Convertible Notes, not in excess of \$50,000,000 in the aggregate during the Term) (including, in each case, for the avoidance of doubt, conversion, exercise, repurchase, redemption, settlement or early termination or cancellation) to the extent such prepayment, repurchase, redemption, retirement or other acquisition is made with the proceeds of the issuance of the 2026 Convertible Notes.

Notwithstanding the above, no European Loan Party may, at any time that any amount of the European ~~Facility~~ Revolving Facility Usage is outstanding, directly or indirectly, repay any Indebtedness other than to another European Loan Party or acquire any Indebtedness other than of any other European Loan Party unless the European Undrawn Availability at that time, and immediately after making such repayment, exceeds (and has at all times in the preceding 30 day period exceeded) \$3,000,000.

1.18 Membership / Partnership Interests. Designate or permit any of their Subsidiaries to (a) treat their limited liability company membership interests or partnership interests, as the case may be, as securities as contemplated by the definition of "security" in Section 8-102(15) and by Section 8-103 of Article 8 of the Uniform Commercial Code or (b) certificate their limited liability membership interests or partnership interests, as applicable.

1.19 Covenants as to Certain Indebtedness. Amend or modify any provisions of the documents governing the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes, in each case, in any material and adverse way (with any changes to the interest rate, redemption requirements, amortization schedule, negative covenants and events of default deemed to be material for purposes hereof, but without limiting any other changes which may be material) without providing at least fifteen (15) calendar days' prior written notice to Agent and Lenders, and obtaining the prior written consent of the Applicable Required Lenders, it being understood for the avoidance of doubt, that adjustments, amendments, and modifications expressly required to be made pursuant to the terms of the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes shall be permitted. Notwithstanding the foregoing, the issuance of the 2026 Convertible Notes is expressly permitted so long as the Borrowers provide Agent and Lenders with (x) a draft preliminary offering memorandum describing all material terms (other than pricing terms) of the 2026 Convertible Notes, in form and substance reasonably acceptable to Agent, and (y) the final form of indenture governing the 2026 Convertible Notes as soon as available.

1.20 Agreements Restricting Dividends. Enter into any Agreement with any Person which restricts any of the Subsidiaries of the Company's right to pay dividends or other distributions to the Company or any other Loan Party or repay intercompany loans from the Subsidiaries of the Company to the Company or any other Loan Party.

1.21 Reserved.

1.22 ~~7.21~~ Restrictions on Insurance Subsidiary. Permit the Insurance Subsidiary to have any substantial assets, liabilities or business operations, other than such assets, liabilities and operations necessary (a) to provide insurance coverage to the Company and certain of its Subsidiaries, or (b) to comply with applicable Laws.

1.23 ~~7.22~~ European Distribution Agreements. Agree to amend, or terminate, or take any action to amend or terminate any European Distribution Agreement without the prior written consent of the European Agent.

1.24 ~~7.23~~ VAT Group. Become a member of any value added tax group.

1.25~~7.24~~ French Borrower; Bills of exchange/promissory notes. Shall not endorse in favour of, or grant security to, any party other than the European Agent or the European Collateral Agent in respect of, or over, any promissory note, bill of exchange or other instrument (such as a billet à ordre or lettre de change) evidencing a Receivable due to the French Borrower.

8. CONDITIONS PRECEDENT.

1.1 Conditions to Initial Advances. The agreement of Lenders to make the initial Advances requested to be made on the Closing Date is subject to the satisfaction, or waiver by Agent, immediately prior to or concurrently with the making of such Advances, of the following conditions precedent:

(a) Note. Agent shall have received the Notes duly executed and delivered by an authorized officer of each Loan Party;

(b) Agreement and Other Documents. Agent shall have received an executed copy of this Agreement and each of the executed Other Documents, as applicable;

(c) Financial Condition Certificates. Agent shall have received an executed Financial Condition Certificate in the form of Exhibit 8.1(g);

(d) Closing Certificate. Agent shall have received a closing certificate signed by the Chief Financial Officer of each Loan Party dated as of the date hereof, stating that (i) all representations and warranties set forth in this Agreement and the Other Documents are true and correct on and as of such date, (ii) Loan Parties are in compliance with all covenants set forth in this Agreement and the Other Documents (including without limitation financial covenants), and (iii) on such date no Default or Event of Default has occurred or is continuing;

(e) Borrowing Base. Agent shall have received evidence from Borrowers that the aggregate amount of Eligible Receivables, Eligible Inventory and Eligible Fixed Assets is sufficient in value and amount to support Advances in the amount requested by Loan Parties on the Closing Date;

(f) European Undrawn Availability. After giving effect to the initial Advances hereunder, European Loan Parties shall have European Undrawn Availability of at least \$10,000,000 as evidenced by a Closing Date Borrowing Base Certificate provided to European Agent;

(g) Blocked Accounts. Loan Parties shall have opened the Depository Accounts and/or European Blocked Accounts with Applicable Agent (or an Affiliate of the Applicable Agent) or Applicable Agent shall have received duly executed agreements establishing the Blocked Accounts with financial institutions acceptable to such Agent for the collection or servicing of the Receivables and proceeds of the Collateral and Applicable Agent shall have entered into control agreements with the applicable financial institutions in form and substance satisfactory to such Agent with respect to such Blocked Accounts;

(h) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code or PPSA financing statement) required by this Agreement, any related agreement or under law or reasonably requested by any Agent to be filed, registered or recorded in order to create, in favor of such Agent, a perfected security interest in or lien upon the Collateral shall have been properly filed, registered or recorded in each jurisdiction in which the filing, registration or recordation thereof is so required or requested, and such Agent shall have received an acknowledgment copy, or other evidence satisfactory to it, of each such filing, registration or recordation and satisfactory evidence of the payment of any necessary fee, tax or expense relating thereto;

(i) Lien Waiver Agreements. Agent shall have received Lien Waiver Agreements with respect to all U.S. or Canadian locations or places at which Inventory, machinery, equipment and books and records are located; provided that to the extent that an executed Lien Waiver Agreement with respect to any such locations has not been received and the Inventory at such location is sought to be included as Eligible Inventory in the US-Canada Formula Amount, the Agent shall institute reserves with respect thereto;

(j) Secretary's Certificates, Authorizing Resolutions and Good Standings of Borrowers. Agent shall have received a certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of each Borrower in form and substance satisfactory to Agent dated as of the Closing Date which shall certify (i) copies of resolutions in form and substance reasonably satisfactory to Agent, of the board of directors (or other equivalent governing body, member or partner) of such Borrower authorizing (x) the execution, delivery and performance of this Agreement, the Notes and each Other Document to which such Borrower is a party (including authorization of the incurrence of indebtedness, borrowing of Revolving Advances and Swing Loans and requesting of Letters of Credit on a joint and several

basis with all Borrowers as provided for herein), and (y) the granting by such Borrower of the security interests in and liens upon the Collateral to secure all of the joint and several Obligations of Borrowers (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of such Borrower authorized to execute this Agreement and the Other Documents, (iii) copies of the Organizational Documents of such Borrower as in effect on such date, complete with all amendments thereto, (iv) that attached is evidence of the good standing (or equivalent status) of such Borrower in its jurisdiction of organization and each applicable jurisdiction where the conduct of such Loan Party's business activities or the ownership of its properties necessitates qualification, in the form of good standing certificate(s) (or the equivalent thereof issued by any applicable jurisdiction (if any)) dated not more than thirty (30) days prior to the Closing Date, issued by the Secretary of State or other appropriate official of each such jurisdiction and (v) the solvency of the relevant Borrower;

(k) Secretary's Certificates, Authorizing Resolutions and Good Standings of Guarantors. Agent shall have received a certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of each Guarantor in form and substance satisfactory to Agent dated as of the Closing Date which shall certify (i) copies of resolutions in form and substance reasonably satisfactory to Agent, of the board of directors (or other equivalent governing body, member or partner) of each Guarantor authorizing (x) the execution, delivery and performance of such Guarantor's Guaranty and each Other Document to which such Guarantor is a party, and (y) the granting by such Guarantor of the security interests in and liens upon the Collateral to secure its obligations under its Guaranty (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of such Guarantor authorized to execute this Agreement and the Other Documents, (iii) copies of the Organizational Documents of such Guarantor as in effect on such date, complete with all amendments thereto, (iv) that attached is evidence of the good standing (or equivalent status) of such Guarantor in its jurisdiction of organization and each applicable jurisdiction where the conduct of such Guarantor's business activities or the ownership of its properties necessitates qualification, in the form of good standing certificate(s) (or the equivalent thereof issued by any applicable jurisdiction) dated not more than thirty (30) days prior to the Closing Date, issued by the Secretary of State or other appropriate official of each such jurisdiction and (v) the solvency of the relevant Guarantor;

(l) Legal Opinion. Agents shall have received the executed legal opinion of U.S., Canadian, English and French counsel to Borrowers and Guarantors (but not Quebec counsel) or counsel to the European Agent (as applicable) in form and substance satisfactory to Agents which shall cover such matters incident to the transactions contemplated by this Agreement, the Notes, the Other Documents, and related agreements as Agents may reasonably require and each Loan Party hereby authorizes and directs such counsel to deliver such opinions to Agents and Lenders;

(m) No Litigation. (i) no litigation, investigation or proceeding before or by any arbitrator or Governmental Body shall be continuing or threatened against any Loan Party or against the officers or directors of any Loan Party (A) in connection with this Agreement, the Other Documents or any of the transactions contemplated thereby and which, in the reasonable opinion of any Agent, is deemed material or (B) which could, in the reasonable opinion of any Agent, have a Material Adverse Effect; and (ii) no injunction, writ, restraining order or other order of any nature materially adverse to any Loan Party or the conduct of its business or inconsistent with the due consummation of the Transactions shall have been issued by any Governmental Body (it being acknowledged that the Consent Decree Event, on its own, and assuming the Company's compliance with the Consent Decree, is not a Material Adverse Effect

as to the Company and its Subsidiaries that would prohibit the closing of the transactions contemplated herein);

(n) Collateral Examination. Agents shall have completed Collateral examinations and received appraisals and field examinations, the results of which shall be satisfactory in form and substance to Agents, of the U.S., Canadian and European Receivables, Inventory, Eligible Fixed Assets and General Intangibles and domestic machinery and equipment of each Loan Party and all books and records in connection therewith;

(o) Fees. Agents shall have received all fees payable to Agents and Lenders on or prior to the Closing Date hereunder, including pursuant to Article 3 hereof and each Fee Letter;

(p) Closing Projections. Agents shall have received a copy of the Closing Projections which shall be satisfactory in all respects to Agents; which Closing Projections shall be prepared on a monthly basis and include a balance sheet, income statement, cash flow statement and estimated Borrowing Base Certificate, as well as a pro forma opening balance sheet to include the pro forma capital structure and demonstrating Borrower's ability to service it's the Indebtedness contemplated herein;

(q) Insurance. Applicable Agent shall have received in form and substance satisfactory to Applicable Agent, (i) evidence that adequate insurance, including without limitation, casualty and liability insurance, required to be maintained under this Agreement is in full force and effect, (ii) insurance certificates issued by Loan Parties' insurance broker containing such information regarding Loan Parties' casualty and liability insurance policies as Applicable Agent shall request and naming Applicable Agent as an additional insured and/or lenders loss payee, as applicable, and (iii) loss payable endorsements issued by Loan Parties' insurer naming Applicable Agent as lenders loss payee;

(r) Payment Instructions. Applicable Agent shall have received written instructions from Borrowing Agent directing the application of proceeds of the initial Advances made pursuant to this Agreement;

(s) Consents; Licenses. Agent shall have received any and all Consents necessary to permit the effectuation of the transactions contemplated by this Agreement and the Other Documents; and, Agent shall have received such Consents and waivers of such third parties as might assert claims with respect to the Collateral, as Agent and its counsel shall deem necessary, and Agent shall have received copies of all material regulatory licenses;

(t) No Adverse Material Effect. (i) Since December 31, 2014, there shall not have occurred any event, condition or state of facts which could reasonably be expected to have a Material Adverse Effect and (ii) no representations made or information supplied to any Agent or Lenders shall have been proven to be inaccurate or misleading in any material respect (it being acknowledged that the Consent Decree Event, on its own, and assuming the Company's compliance with the Consent Decree, is not a Material Adverse Effect as to the Company and its Subsidiaries that would prohibit the closing of the transactions contemplated herein);

(u) Contract Review. Agent shall have received and reviewed all Material Contracts of Loan Parties including those Material Contracts that constitute leases, union contracts, labor contracts, vendor supply contracts, license agreements and distributorship agreements and such contracts and agreements shall be satisfactory in all respects to Agent;

(v) Compliance with Laws. Agent shall be reasonably satisfied that each Loan Party is in compliance with all pertinent federal, state, provincial, local or territorial

regulations, including those with respect to the Federal Occupational Safety and Health Act, the Environmental Protection Act, ERISA and the Anti-Terrorism Laws and any other Applicable Laws, including regarding Canadian Pension Plans and Canadian Anti-Money Laundering Legislation;

(w) Indebtedness Documents. Copies of all material agreements as to existing Indebtedness, including any intercreditor or subordination agreements;

(x) Business due diligence. Satisfactory results of all business due diligence investigations in relation to the European Loan Parties. In addition, the European Agent shall (i) have received and be satisfied with the audited and unaudited financial statements of the Subsidiaries of the Company incorporated in Europe for the most recently completed fiscal periods as well as projections for the fiscal years 2015 – 2017 and (ii) have received all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, for each European Loan Party;

(y) Commissionaire arrangements. The commissionaire (or equivalent arrangements) to which the English Borrowers and the French Borrowers are party shall have been amended to the satisfaction of the European Agent;

(z) French Borrower: With respect to the French Borrower, a list of all its Receivables to be assigned under the French Collateral Documents, a list of all amounts outstanding to its RoT Suppliers and letters countersigned by the French Borrower with respect to the effective global letter (*taux effectif global letter*) of the French Revolving Advances and French Swing Loans; and

(aa) Other. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the Transactions shall be satisfactory in form and substance to Agent and its counsel.

1.2 Reserved.

1.3 Conditions to Each Advance. The agreement of Lenders to make any Advance requested to be made on any date (including the initial Advance), is subject to the satisfaction of the following conditions precedent as of the date such Advance is made:

(a) Representations and Warranties. Each of the representations and warranties made by the Company or any Loan Party in or pursuant to this Agreement, the Other Documents and any related agreements to which it is a party, and each of the representations and warranties contained in any certificate, document or financial or other statement furnished at any time under or in connection with this Agreement, the Other Documents or any related agreement shall be true and correct in all respects on and as of such date as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date);

(b) No Default. No Event of Default or Default shall have occurred and be continuing on such date, or would exist after giving effect to the Advances requested to be made, on such date; provided, however that Applicable Agent, in its sole discretion, may continue to make Advances notwithstanding the existence of an Event of Default or Default and that any Advances so made shall not be deemed a waiver of any such Event of Default or Default; and

(c) Maximum Advances. In the case of any type of Advance requested to be made, after giving effect thereto, the aggregate principal amount of such type of Advance shall not exceed the maximum principal amount of such type of Advance permitted under this Agreement.

(d) Loans or Letters of Credit Denominated in an Optional Currency. In the case of any Loan or Letter of Credit to be denominated in an Optional Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Agent, the Applicable Required Lenders (in the case of any Loan Advance to be denominated in an Optional Currency) or the applicable Issuer (in the case of any Letter of Credit to be denominated in an Optional Currency) would make it impracticable for such Loan or Letter of Credit to be denominated in the relevant Optional Currency.

Each request for an Advance by any Loan Party hereunder shall constitute a representation and warranty by each Loan Party as of the date of such Advance that the conditions contained in this subsection shall have been satisfied.

9. INFORMATION AS TO LOAN PARTIES.

Each Loan Party shall, or (except with respect to Section 9.11) shall cause Applicable Borrowing Agent on its behalf to, until satisfaction in full of the Obligations and the termination of this Agreement:

1.1 Disclosure of Material Matters. Promptly upon learning thereof, report to Applicable Agent all matters materially affecting the value, enforceability or collectability of any portion of the Collateral, including any Loan Party's reclamation or repossession of, or the return to any Loan Party of, a material amount of goods or claims or disputes asserted by any Customer or other obligor.

1.2 Schedules; Inventory Reports; Borrowing Base Certificates, etc. Deliver to Applicable Agent (i) on or before the twentieth (20th) day of each month as and for the prior month (or, at any time during a Dominion Period or a European Dominion Period, on or before Tuesday of each week as and for the prior week) (a) accounts receivable ageings inclusive of reconciliations to the general ledger, (b) accounts payable schedules inclusive of reconciliations to the general ledger, (c) Inventory reports with respect to US-Canada Loan Parties and (d) a Borrowing Base Certificate with respect to such Facility, in form and substance satisfactory to Applicable Agent (which shall be calculated as of the last day of the prior month and which shall not be binding upon any Agent or restrictive of any Agent's rights under this Agreement), and (ii) during a Dominion Period or a European Dominion Period, on or before Tuesday of each week, a sales report / roll forward for the prior week. In addition, the Applicable Borrowing Agent will deliver to Applicable Agent at such intervals as Applicable Agent may require: (i) confirmatory assignment schedules; (ii) copies of Customer's invoices; (iii) evidence of shipment or delivery; and (iv) such further schedules, documents and/or information regarding the Collateral as Applicable Agent may require including trial balances and test verifications. Agent shall have the right to confirm and verify all Receivables in such Borrower's name by any manner and through any medium it considers advisable and do whatever it may deem reasonably necessary to protect its interests hereunder. The items to be provided under this Section 9.2 are to be in form satisfactory to Applicable Agent and executed by Applicable Borrowing Agent and delivered to Applicable Agent from time to time solely for Applicable Agent's convenience in maintaining records of the Collateral, and any Loan Party's failure to deliver any of such items to Applicable Agent shall not affect, terminate, modify or

otherwise limit any Agent's Lien with respect to the Collateral. Unless otherwise agreed to by any Agent, the items to be provided under this Section 9.2 shall be delivered to Applicable Agent by the specific method of Approved Electronic Communication designated by Applicable Agent.

1.3 Environmental Reports.

(a) Furnish Agent, concurrently with the delivery of the financial statements referred to in Sections 9.7 and 9.8, with a certificate signed by the President of Borrowing Agent stating, to the best of his knowledge, that each Loan Party is in compliance in all material respects with all applicable Environmental Laws. To the extent any Loan Party is not in compliance with the foregoing laws, the certificate shall set forth with specificity all areas of non-compliance and the proposed action such Loan Party will implement in order to achieve full compliance.

(b) In the event any Loan Party obtains, gives or receives notice of any Release or threat of Release of a reportable quantity of any Hazardous Materials at the Real Property (any such event being hereinafter referred to as a "**Hazardous Discharge**") or receives any notice of violation, request for information or notification that it is potentially responsible for investigation or cleanup of environmental conditions at the Real Property, demand letter or complaint, order, citation, or other written notice with regard to any Hazardous Discharge or violation of Environmental Laws affecting the Real Property or any Loan Party's interest therein or the operations or the business (any of the foregoing is referred to herein as an "**Environmental Complaint**") from any Person, including any Governmental Body, then Borrowing Agent shall, within five (5) Business Days, give written notice of same to Agent detailing facts and circumstances of which any Loan Party is aware giving rise to the Hazardous Discharge or Environmental Complaint. Such information is to be provided to allow Agent to protect its security interest in and Lien on the Collateral and is not intended to create nor shall it create any obligation upon Agent or any Lender with respect thereto.

(c) Borrowing Agent shall promptly forward to Agent copies of any request for information, notification of potential liability, demand letter relating to potential responsibility with respect to the investigation or cleanup of Hazardous Materials at any other site owned, operated or used by any Loan Party to manage of Hazardous Materials and shall continue to forward copies of correspondence between any Loan Party and the Governmental Body regarding such claims to Agent until the claim is settled. Borrowing Agent shall promptly forward to Agent copies of all documents and reports concerning a material Hazardous Discharge or Environmental Complaint at the Real Property, operations or business that any Loan Party is required to file under any Environmental Laws. Such information is to be provided solely to allow Agent to protect Agent's security interest in and Lien on the Collateral.

1.4 Litigation. Promptly notify Agent in writing of any claim, litigation, suit or administrative proceeding affecting any Loan Party, whether or not the claim is covered by insurance, and of any litigation, suit or administrative proceeding, which in any such case affects the Collateral or which could reasonably be expected to have a Material Adverse Effect.

1.5 Material Occurrences. Immediately notify Agents and Lenders in writing upon the occurrence of: (a) any Event of Default or Default; (b) any event which with the giving of notice or lapse of time, or both, would constitute an event of default under the 2022 Convertible Notes, the 2024 Convertible Notes and/or the 2026 Convertible Notes; (c) any event, development or circumstance whereby any financial statements or other reports furnished to any Agent fail in any material respect to present fairly, in accordance with GAAP consistently applied, the financial condition or operating results of any Loan

Party as of the date of such statements; (d) any accumulated retirement plan funding deficiency which, if such deficiency continued for two plan years and was not corrected as provided in Section 4971 of the Code, could subject any Loan Party to a tax imposed by Section 4971 of the Code; (e) each and every default by any Loan Party which might result in the acceleration of the maturity of any Indebtedness, including the names and addresses of the holders of such Indebtedness with respect to which there is a default existing or with respect to which the maturity has been or could be accelerated, and the amount of such Indebtedness; and (f) any other development in the business or affairs of any Loan Party, which could reasonably be expected to have a Material Adverse Effect; in each case describing the nature thereof and the action Loan Parties propose to take with respect thereto.

1.6 Government Receivables. Notify Applicable Agent promptly if any of its Receivables having a value, individually or in the aggregate, in excess of \$1,000,000 arise out of contracts between any Borrower and the United States, Canada, France, England, the Netherlands, any state, province or any department, agency or instrumentality of any of them.

1.7 Annual Financial Statements. Furnish Agents and Lenders within ninety (90) days after the end of each fiscal year of Loan Parties, financial statements of the Company and other Loan Parties and their Subsidiaries on a consolidating and consolidated basis including, but not limited to, statements of income and stockholders' equity and cash flow from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, all prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail and reported upon without qualification by its current independent certified public accounting firm or another such firm of national standing selected by Loan Parties or any other firm satisfactory to Agent (the "Accountants"). ~~Commencing with the fiscal year ending December 31, 2015, the~~ The report of the Accountants shall be accompanied by an Officer's Certificate. Loan Parties will be deemed to have complied with this financial statement delivery requirement by delivering, within the required ninety (90) day time period, a copy of its Quarterly Report on Form 10-K as filed with the SEC and the financial statements contained therein.

1.8 Quarterly Financial Statements. Furnish Agents and Lenders within forty-five (45) days after the end of each of the first three (3) fiscal quarters in each fiscal year, an unaudited balance sheet of the Company and other Loan Parties and their Subsidiaries on a consolidated and consolidating basis and unaudited statements of income and stockholders' equity and cash flow of Company and other Loan Parties and their Subsidiaries on a consolidated and consolidating basis reflecting results of operations from the beginning of the fiscal year to the end of such quarter and for such quarter, prepared on a basis consistent with prior practices and complete and correct in all material respects, subject to footnotes and normal year-end adjustments that individually and in the aggregate are not material to Loan Parties' business operations and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year. The reports shall be accompanied by an Officer's Certificate. Loan Parties will be deemed to have complied with this financial statement delivery requirement by delivering, within the required forty-five (45) day time period, a copy of its Quarterly Report on Form 10-Q as filed with the SEC and the financial statements contained therein.

1.9 Monthly Financial Statements. At any time after a Dominion Triggering Event or a European Dominion Triggering Event has occurred, furnish Agents and Lenders within thirty (30) days after the end of each month (other than for the months of

March, June, September and December which shall be delivered in accordance with Sections 9.7 and 9.8 as applicable), an unaudited balance sheet of Company and other Loan Parties and their Subsidiaries on a consolidated and consolidating basis and unaudited statements of income and stockholders' equity and cash flow of Company and other Loan Parties and their Subsidiaries on a consolidated and consolidating basis reflecting results of operations from the beginning of the fiscal year to the end of such month and for such month, prepared on a basis consistent with prior practices and complete and correct in all material respects, subject to footnotes and normal year-end adjustments that individually and in the aggregate are not material to Loan Parties' business operations and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year. The reports shall be accompanied by an Officer's Certificate.

1.10 Other Reports. Furnish Agent within ten (10) days after the issuance thereof, with copies of such financial statements, reports and returns as each Loan Party shall send to its stockholders generally, members or material creditors (as applicable), it being understood that any document, report or other information that is not expressly required to be delivered in physical form and that is filed by the Company with the SEC shall be deemed to be delivered to on the date on which such report is posted on the SEC's website at www.sec.gov.

1.11 Additional Information. Furnish Agents with such additional information as Agents shall reasonably request in order to enable Agents to determine whether the terms, covenants, provisions and conditions of this Agreement and the Notes have been complied with by Loan Parties including, without the necessity of any request by any Agent, (a) copies of all environmental audits and reviews, (b) at least thirty (30) days prior thereto, notice of any Loan Parties' opening of any new office or place of business where a material portion of business of any such Loan Party is conducted or Collateral having a value in excess of \$500,000 is located or any Loan Party's closing of any existing office or place of business where a material portion of business of any such Loan Party is conducted or Collateral having a value in excess of \$500,000 is located, (c) promptly upon any Loan Party's learning thereof, notice of any labor dispute to which any Loan Party may become a party, any strikes or walkouts relating to any of its plants or other facilities, and the expiration of any labor contract to which any Loan Party is a party or by which any Loan Party is bound and (d) at such times as may be requested by the European Agent, in relation to the French Borrowers: (A) information in relation to outstanding trade payables, and (B) detailed information (in the form, and containing the details, specified by the European Agent) relating to that entity's Receivables.

1.12 Projected Operating Budget. Furnish Agents and Lenders, within five (5) days following acceptance of such by the board of directors of the Company in each fiscal year and, in any event, no later than February 20 of each fiscal year, commencing with the year 2015, a month by month projected operating budget and cash flow of Company and other Loan Parties and their Subsidiaries on a consolidated and consolidating basis for such fiscal year (including an income statement for each month and a balance sheet as at the end of the last month in each fiscal quarter), such projections to be accompanied by a certificate signed by the President or Chief Financial Officer of each Loan Party to the effect that such projections have been prepared on the basis of sound financial planning practice consistent with past budgets and financial statements and that such officer has no reason to question the reasonableness of any material assumptions on which such projections were prepared.

1.13 Variances From Operating Budget. Furnish Agents, concurrently with the delivery of the financial statements referred to in Sections 9.7 and 9.8 (and if applicable,

Section 9.9), a written report summarizing all material variances from budgets submitted by Loan Parties pursuant to Section 9.12 and a discussion and analysis by management with respect to such variances, it being understood that any such report and discussion that is filed by the Company with the SEC shall be deemed to be delivered to on the date on which such report and discussion is posted on the SEC's website at www.sec.gov.

1.14 Notice of Suits, Adverse Events. Furnish Agents with prompt written notice of (i) any lapse or other termination of any Consent issued to any Loan Party by any Governmental Body or any other Person that is material to the operation of any Loan Party's business, (ii) any refusal by any Governmental Body or any other Person to renew or extend any such Consent; and (iii) copies of any periodic or special reports filed by any Borrower or any Guarantor with any Governmental Body or Person, if such reports indicate any material change in the business, operations, affairs or condition of any Borrower or any Guarantor, or if copies thereof are requested by Lender, and (iv) copies of any material notices and other communications from any Governmental Body or Person which specifically relate to any Borrower or any Guarantor, it being understood that any such notice that is filed by the Company with the SEC shall be deemed to be delivered to on the date on which such notice is posted on the SEC's website at www.sec.gov.

1.15 ERISA Notices and Requests; Canadian Pension Plans; English Pension Plans. Furnish Agent with immediate written notice in the event that (i) any Loan Party knows that a Termination Event has occurred, together with a written statement describing such Termination Event and the action, if any, which such Loan Party or any member of the Controlled Group has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, Department of Labor or PBGC with respect thereto, (ii) any Loan Party knows that a prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the Code) has occurred together with a written statement describing such transaction and the action which such Loan Party or any member of the Controlled Group has taken, is taking or proposes to take with respect thereto, (iii) a funding waiver request has been filed with respect to any Plan together with all communications received by any Loan Party with respect to such request, (iv) [reserved], (v) any Loan Party shall receive from the PBGC a notice of intention to terminate a Plan or to have a trustee appointed to administer a Pension Benefit Plan or Multiemployer Plan, together with copies of each such notice, (vi) any Loan Party shall receive any favorable or unfavorable determination letter from the Internal Revenue Service regarding the qualification of a Plan under Section 401(a) of the Code, together with copies of each such letter; (vii) any Loan Party shall receive a notice regarding the imposition of withdrawal liability, together with copies of each such notice; (viii) any Loan Party shall fail to make a material required installment or any other material required payment under the Code or ERISA on or before the due date for such installment or payment; or (ix) any Loan Party knows that (a) a Multiemployer Plan has been terminated, (b) the administrator or plan sponsor of a Multiemployer Plan intends to terminate a Multiemployer Plan, (c) the PBGC has instituted or will institute proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan or (d) a Multiemployer Plan is subject to Section 432 of the Code or Section 305 of ERISA.

Promptly after any Loan Party or any Subsidiary or any Affiliate knows of the occurrence of (i) any violation or asserted violation of any Applicable Law (including any applicable provincial pension benefits legislation) in any material respect with respect to any Canadian Pension Plan or; (ii) any Canadian Pension Termination Event, the Canadian Borrowers will deliver to the Agent a certificate of a senior officer of the Canadian Borrowers setting forth details as to such occurrence and the action, if any, that such Canadian Borrowers, such Canadian Loan Party or Subsidiary or Affiliate is required or proposes to take, together with any

notices (required, proposed or otherwise) given to or filed with or by such Canadian Loan Party, such Subsidiary, such Affiliate, FSCO, a Canadian Pension Plan participant (other than notices relating to an individual participant's benefits) or the Canadian Pension Plan administrator with respect thereto.

Promptly and in any event within three Business Days of when an officer of any English Loan Party obtains actual knowledge (i) of an investigation or proposed investigation by the Pensions Regulator which may lead to the issue of a Financial Support Direction or a Contribution Notice to any English Loan Party, (ii) that any amount is due to any pension scheme of any English Loan Party pursuant to Sections 75 or 75A of the United Kingdom's Pension Act 1995, (iii) that an amount is payable under Sections 75 or 75A of the United Kingdom's Pension Act 1995, and/or (iv) of any material change to the rate or basis to the employer contributions to a pension scheme of any English Loan Party, the English Borrowers will deliver to the European Agent a certificate of a senior officer of the English Borrowers setting forth details as to such occurrence, describing such matter or event and the action proposed to be taken with respect thereto.

1.16 Notices Under Certain Indebtedness Documents. At the same time sent or provided to the holders of the 2022 Convertible Notes, the 2024 Convertible Notes and/or the 2026 Convertible Notes (in each case, without duplication), deliver to Agent copies of all notices and reports provided in connection with the 2022 Convertible Notes, the 2024 Convertible Notes and/or the 2026 Convertible Notes, it being understood that any such notices or reports that are filed by the Company with the SEC shall be deemed to be delivered to Agent on the date on which such notices or reports are posted on the SEC's website at www.sec.gov.

1.17 Consent Decree. Provide to Agent written status updates with respect to the Consent Decree and Consent Decree Event and any other pending governmental and/or regulatory investigations and proceedings involving the Company or any of its Subsidiaries promptly following request therefor by Agent.

1.18 Additional Documents. Execute and deliver to any Agent, upon request, such documents and agreements as such Agent may, from time to time, reasonably request to carry out the purposes, terms or conditions of this Agreement.

1.19 Updates to Certain Schedules. Deliver to Agent promptly as shall be required to maintain the related representations and warranties as true and correct, updates to Schedule 4.4 (Locations of Chief Executive Offices, Equipment and Inventory), Schedule 5.13 (Intellectual Property, Source Code Escrow Agreements), Schedule 5.26 (Equity Interests), Schedule 5.27 (Commercial Tort Claims), Schedule 5.28 (Letter-of-Credit Rights), and Schedule 5.29 (Material Contracts); provided, that in the absence of the occurrence and continuance of any Event of Default, Loan Party shall only be required to provide such updates on a quarterly basis in connection with delivery of an Officer's Certificate with respect to the applicable quarter. Any such updated Schedules delivered by Loan Parties to Agent in accordance with this Section 9.3 shall automatically and immediately be deemed to amend and restate the prior version of such Schedule previously delivered to Agent and attached to and made part of this Agreement.

1.20 European Distribution Agreement. Immediately notify the European Agent upon becoming aware that the counterparty to a European Distribution Agreement or any other third party is seeking to amend, terminate or repudiate such European Distribution Agreement.

10. EVENTS OF DEFAULT.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

1.1 Nonpayment. Failure by any Loan Party to pay when due (a) any principal or interest on the Obligations (including without limitation pursuant to Section 2.8), or (b) any other fee, charge, amount or liability provided for herein or in any Other Document, in each case whether at maturity, by reason of acceleration pursuant to the terms of this Agreement, by notice of intention to prepay or by required prepayment.

1.2 Breach of Representation. Any representation or warranty made or deemed made by any Loan Party in this Agreement, any Other Document or any related agreement or in any certificate, document or financial or other statement furnished at any time in connection herewith or therewith shall prove to have been incorrect or misleading in any material respect on the date when made or deemed to have been made;

1.3 Financial Information. Failure by any Loan Party to (i) furnish financial information when due or promptly upon request, or (ii) permit the inspection of its books or records or access to its premises for audits and appraisals in accordance with the terms hereof;

1.4 Judicial Actions. Issuance of a notice of Lien, levy, assessment, injunction or attachment (a) against any Loan Party's Inventory or Receivables or Fixed Assets having a value in excess of \$250,000 or (b) against a material portion of any Loan Party's other property which is not stayed or lifted within thirty (30) days;

1.5 Noncompliance. Except as otherwise provided for in Sections 10.1, 10.3 and 10.5(ii), (i) failure or neglect of any Loan Party or any Person to perform, keep or observe any term, provision, condition, covenant herein contained, or contained in any Other Document or any other agreement or arrangement, now or hereafter entered into between any Loan Party or such Person, and any Agent or any Lender, or (ii) failure or neglect of any Loan Party to perform, keep or observe any term, provision, condition or covenant, contained in Sections 4.5, 6.1, 6.3, 6.12, 6.13, 9.4 or 9.6 hereof which is not cured within ten (10) days from the occurrence of such failure or neglect;

1.6 Judgments. Any (a) judgment or judgments, writ(s), order(s) or decree(s) for the payment of money are rendered against any Borrower or any Guarantor for an aggregate amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage and is not subject to an insolvency proceeding) in excess of \$500,000 or against all Borrowers or Guarantors for an aggregate amount in excess of \$500,000 and (b) (i) action shall be legally taken by any judgment creditor to levy upon assets or properties of any Borrower or any Guarantor to enforce any such judgment, (ii) such judgment shall remain undischarged for a period of ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, shall not be in effect, or (iii) any Liens arising by virtue of the rendition, entry or issuance of such judgment upon assets or properties of any Borrower or any Guarantor shall be senior to any Liens in favor of any Agent on such assets or properties;

1.7 Bankruptcy. Any Borrower, any Guarantor, any Subsidiary or Affiliate of any Loan Party shall (i) apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, receiver and manager, custodian, trustee, monitor, liquidator or similar fiduciary of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (iii) make a general assignment for the benefit of

creditors, (iv) commence a voluntary case under any state, provincial or federal bankruptcy or receivership laws (as now or hereafter in effect), (v) be adjudicated a bankrupt or insolvent (including by entry of any order for relief in any involuntary bankruptcy or insolvency proceeding commenced against it), (vi) file a petition or any other proceeding seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesce to, or fail to have stayed and dismissed within ten (10) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (viii) suffer any Insolvency Event to exist or take any action for the purpose of effecting any of the foregoing;

1.8 Material Adverse Effect. The occurrence of any event or development which could reasonably be expected to have a Material Adverse Effect;

1.9 Lien Priority. Any Lien created hereunder or provided for hereby or under any related agreement for any reason ceases to be or is not a valid and perfected Lien having a first priority interest (subject only to Permitted Encumbrances, other than with respect to Eligible Inventory and Eligible Fixed Assets, Purchase Money Security Interests) that have priority as a matter of Applicable Law to the extent such Liens only attach to Collateral other than Receivables, Inventory or Fixed Assets;

1.10 Cross Default. Either (x) any specified "event of default" under any Indebtedness in excess of \$1,000,000 (other than the Obligations) of any Loan Party, or any other event or circumstance which would permit the holder of any such Indebtedness of any Loan Party to accelerate such Indebtedness (and/or the obligations of such Loan Party thereunder) prior to the scheduled maturity or termination thereof, shall occur (regardless of whether the holder of such Indebtedness shall actually accelerate, terminate or otherwise exercise any rights or remedies with respect to such Indebtedness), other than any event or circumstance (including, without limitation, the passage of time) that results in the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes becoming convertible pursuant to their terms; provided that, solely to the extent such 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes are converted in connection with such event or circumstance, prior to and after giving effect to such conversions (i) no Default or Event of Default exists or is continuing and (ii) US-Canada Undrawn Availability shall not be less than the US-Canada Undrawn Availability Test Amount for the thirty (30) consecutive days ending as of the date of the most recently delivered US-Canada Borrowing Base Certificate or (y) a default of the obligations of any Loan Party under any other agreement to which it is a party shall occur which has or is reasonably likely to have a Material Adverse Effect;

1.11 Breach of Guaranty or Pledge Agreement. Termination or breach of any Guaranty, Guarantor Security Agreement, Pledge Agreement, the Canadian Security Agreement, any European Collateral Document or similar agreement executed and delivered to any Agent in connection with the Obligations of any Loan Party, or if any Guarantor or pledgor attempts to terminate, challenges the validity of, or its liability under, any such Guaranty, Guarantor Security Agreement, Pledge Agreement, Canadian Security Agreement, European Collateral Document or similar agreement;

1.12 Change of Control. Any Change of Control shall occur;

1.13 Invalidity. Any material provision of this Agreement or any Other Document shall, for any reason, cease to be valid and binding on any Borrower or any Guarantor, or any Borrower or any Guarantor shall so claim in writing to any Agent or any Lender or any Loan Party challenges the validity of or its liability under this Agreement or any Other Document;

1.14 Seizures. Any (a) portion of the Collateral having a value in excess of \$250,000 shall be seized, subject to garnishment or taken by a Governmental Body, or any Borrower or any Guarantor, or (b) the title and rights of any Borrower or any Guarantor which is the owner of any material portion of the Collateral shall have become the subject matter of claim, litigation, suit, garnishment or other proceeding which might, in the opinion of any Agent, upon final determination, result in impairment or loss of the security provided by this Agreement or the Other Documents;

1.15 Operations. The operations of any Borrower's or any Guarantor's material manufacturing facilities are interrupted (other than in connection with any regularly scheduled shutdown for employee vacations and/or maintenance in the Ordinary Course of Business) at any time for more than ten (10) consecutive days, unless such Borrower or Guarantor shall (i) be entitled to receive for such period of interruption, proceeds of business interruption insurance sufficient to assure that its per diem cash needs during such period is at least equal to its average per diem cash needs for the consecutive three month period immediately preceding the initial date of interruption and (ii) receive such proceeds in the amount described in clause (i) preceding not later than thirty (30) days following the initial date of any such interruption; provided, however, that notwithstanding the provisions of clauses (i) and (ii) of this section, an Event of Default shall be deemed to have occurred if such Borrower or Guarantor shall be receiving the proceeds of business interruption insurance for a period of ten (10) consecutive days;

1.16 Pension Plans. (i) An event or condition specified in Sections 7.16 or 9.15 hereof shall occur or exist with respect to any Plan and, as a result of such event or condition, together with all other such events or conditions, any Loan Party or any member of the Controlled Group shall incur, or in the opinion of Agent be reasonably likely to incur, a liability to a Plan or the PBGC (or both) in excess of \$1,000,000 or which, in the reasonable judgment of Agent, would have a Material Adverse Effect; or the occurrence of any Termination Event, or any Canadian Pension Termination Event, or any Loan Party's failure to immediately report a Termination Event, or a Canadian Pension Termination Event, in accordance with Section 9.15 hereof or (ii) the Pensions Regulator issues (a) a warning relating to a Financial Support Direction or a Contribution Notice or (b) a Financial Support Direction or a Contribution Notice to any English Loan Party or any English Loan Party has been notified that any of them has incurred a debt or other liability under Sections 75 or 75A of the United Kingdom's Pension Act 1995; in each case that could reasonably be expected to result in a Material Adverse Effect;

1.17 Anti-Money Laundering/International Trade Law Compliance. Any representation or warranty contained in Section 16.18 is or becomes false or misleading at any time; or

1.18 Any Exclusion from Medical Reimbursement Programs. Any Loan Party shall be temporarily or permanently excluded from any Medical Reimbursement Program or similar government or insurance program in any applicable jurisdiction, where such exclusion arises from fraud or other claims or allegations which, individually or in the aggregate, could exceed \$1,000,000 or cause a Material Adverse Effect.

11. LENDERS' RIGHTS AND REMEDIES AFTER DEFAULT.

1.1 Rights and Remedies.

(a) Upon the occurrence of: (i) an Event of Default pursuant to Section 10.7 (other than Section 10.7(vii)), all Obligations (other than Hedge Liabilities and Cash Management Liabilities) shall be immediately due and payable and this Agreement and the

obligation of Lenders to make Advances shall be deemed terminated, (ii) during the continuance of any of the other Events of Default and at any time thereafter, at the option of Agent or at the direction of Applicable Required Lenders all Obligations (other than Hedge Liabilities and Cash Management Liabilities) under the applicable Facility shall be immediately due and payable and Agent or Applicable Required Lenders shall have the right to terminate the applicable facility under this Agreement and to terminate the obligation of Lenders to make Advances under such Facility; and (iii) without limiting Section 8.3 hereof, any Default under Section 10.7(vii) hereof, the obligation of Lenders to make Advances hereunder shall be suspended until such time as such involuntary petition shall be dismissed. During the continuance of any Event of Default, any Agent shall have the right to exercise any and all rights and remedies provided for herein, under the Other Documents, under the Uniform Commercial Code, under the PPSA under the terms of the Collateral Documents and at law or equity generally, including the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process. Applicable Agent may enter any of any Loan Party's premises or other premises without legal process and without incurring liability to any Loan Party therefor, and Applicable Agent may thereupon, or at any time thereafter, in its discretion without notice or demand, take the Collateral and remove the same to such place as Agent may deem advisable and Agent may require any or each of Loan Parties to make the Collateral available to Applicable Agent at a convenient place. During the continuance of an Event of Default with or without having the Collateral at the time or place of sale, Applicable Agent may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as Applicable Agent may elect. Except as to that part of the Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Applicable Agent shall give any or each of Loan Parties reasonable notification of such sale or sales, it being agreed that in all events written notice mailed to Applicable Borrowing Agent at least ten (10) days prior to such sale or sales is reasonable notification. At any public sale Applicable Agent or any Lender may bid (including credit bid) for and become the purchaser, and Applicable Agent, any Lender or any other purchaser at any such sale thereafter shall hold the Collateral sold absolutely free from any claim or right of whatsoever kind, including any equity of redemption and all such claims, rights and equities are hereby expressly waived and released by each Loan Party. In connection with the exercise of the foregoing remedies, including the sale of Inventory, Applicable Agent is granted a perpetual nonrevocable, royalty free, nonexclusive license and Applicable Agent is granted permission to use all of each Loan Party's (a) Intellectual Property which is used or useful in connection with Inventory for the purpose of marketing, advertising for sale and selling or otherwise disposing of such Inventory and (b) equipment for the purpose of completing the manufacture of unfinished goods. The cash proceeds realized from the sale of any Collateral shall be applied to the Obligations in the order set forth in Section 11.5 hereof. Noncash proceeds will only be applied to the Obligations as they are converted into cash. If any deficiency shall arise, Loan Parties shall remain liable to Agents and Lenders therefor. Upon the occurrence of an Event of Default which is continuing, Agent may seek the appointment of a receiver, receiver-manager, monitor or keeper (a "**Receiver**") under the laws of Canada or any Province thereof including to take possession of all or any portion of the Collateral of Canadian Loan Parties or to operate same and, to the maximum extent permitted by Applicable Law, may seek the appointment of such a receiver without the requirement of prior notice or a hearing. Any such Receiver shall, so far as concerns responsibility for his/her acts, be deemed agent of such Loan Parties and not Agent and the Lenders, and Agent and the Lenders shall not be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver, his/her servants or employees. Subject to the provisions of the instrument appointing him/her, any such Receiver shall have power to take possession of Collateral of the Canadian Loan Parties, to preserve Collateral of such Loan Parties or its value, to carry on or concur in carrying on all or any part of the business of such Loan Parties and to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of Collateral

of such Loan Parties. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including the Canadian Loan Parties, enter upon, use and occupy all premises owned or occupied by such Loan Parties wherein Collateral of such Loan Parties may be situated, maintain Collateral of such Loan Parties upon such premises, borrow money on a secured or unsecured basis and use Collateral of the [CreditLoan](#) Parties directly in carrying on such Loan Parties business or as security for loans or advances to enable the Receiver to carry on such Loan Parties' business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by Agent, all money received from time to time by such Receiver in carrying out his/her appointment shall be received in trust for and paid over to Agent. Every such Receiver may, in the discretion of Agent, be vested with all or any of the rights and powers of Agent and the Lenders. Agent may, either directly or through its nominees, exercise any or all powers and rights given to a Receiver by virtue of, and in accordance with, the foregoing provisions of this paragraph and Applicable Law.

(b) To the extent that Applicable Law imposes duties on any Agent to exercise remedies in a commercially reasonable manner, each Loan Party acknowledges and agrees that it is not commercially unreasonable for such Agent: (i) to fail to incur expenses reasonably deemed significant by such Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Customers or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Customers and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as any Loan Party, for expressions of interest in acquiring all or any portion of such Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets; (ix) to dispose of assets in wholesale rather than retail markets; (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure such Agent against risks of loss, collection or disposition of Collateral or to provide to such Agent a guaranteed return from the collection or disposition of Collateral; or (xii) to the extent deemed appropriate by such Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist such Agent in the collection or disposition of any of the Collateral. Each Loan Party acknowledges that the purpose of this Section 11.1(b) is to provide non-exhaustive indications of what actions or omissions by Applicable Agent would not be commercially unreasonable in Applicable Agent's exercise of remedies against the Collateral and that other actions or omissions by Applicable Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11.1(b). Without limitation upon the foregoing, nothing contained in this Section 11.1(b) shall be construed to grant any rights to any Loan Party or to impose any duties on any Agent that would not have been granted or imposed by this Agreement or by Applicable Law in the absence of this Section 11.1(b).

1.2 Agent's Discretion. Applicable Agent shall have the right in its sole discretion to determine which rights, Liens, security interests or remedies Applicable Agent may at any time pursue, relinquish, subordinate, or modify, which procedures, timing and methodologies to employ, and what any other action to take with respect to any or all of the Collateral and in what order, thereto and such determination will not in

any way modify or affect any of Agents' or Lenders' rights hereunder as against Loan Parties or each other.

1.3 Setoff. Subject to Section 14.13, in addition to any other rights which any Agent or any Lender may have under Applicable Law, during the continuance of any Event of Default hereunder, such Agent and such Lender shall have a right, immediately and without notice of any kind, to apply any Loan Party's property held by such Agent and such Lender or any of their Affiliates to reduce the Obligations and to exercise any and all rights of setoff which may be available to such Agent and such Lender with respect to any deposits held by such Agent or such Lender.

1.4 Rights and Remedies not Exclusive. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any rights or remedy shall not preclude the exercise of any other right or remedies provided for herein or otherwise provided by law, all of which shall be cumulative and not alternative.

1.5 Allocation of Payments After Event of Default. Notwithstanding any other provisions of this Agreement to the contrary, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by any Agent on account of the Obligations (including without limitation any amounts on account of any of Cash Management Liabilities or Hedge Liabilities), or in respect of the Collateral shall be paid over or delivered as follows:

FIRST, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of Agent in connection with enforcing its rights and the rights of Lenders under this Agreement and the Other Documents arising from, related to or connected with the US-Canada Advances and any protective advances made by Agent with respect to the US-Canada Collateral under or pursuant to the terms of this Agreement (other than with respect to those arising from or connected with any Cash Management Liabilities and/or Hedge Liabilities), and (b) with respect to the proceeds realized from the sale of any European Collateral, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of European [Agent and/or European Collateral](#) Agent in connection with enforcing its rights and the rights of European Lenders under this Agreement and the Other Documents arising from, related to or connected with the European Advances and any protective advances made by European Agent with respect to the European Collateral under or pursuant to the terms of this Agreement or the European Collateral Documents (other than with respect to those arising from or connected with any Cash Management Liabilities and/or Hedge Liabilities);

SECOND, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral to payment of any fees owed to Agent arising from, related to or connected with the US-Canada Advances (other than with respect to those arising from or connected with any Cash Management Liabilities and/or Hedge Liabilities), and (b) with respect to the proceeds realized from the sale of any European Collateral to payment of any fees owed to European [Agent and/or European Collateral](#) Agent arising from, related to or connected with the European Advances (other than with respect to those arising from or connected with any Cash Management Liabilities and/or Hedge Liabilities);

THIRD, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of each of Lenders to the extent owing to such Lender pursuant to the terms of this Agreement arising from, related to or connected with the US-Canada Advances or otherwise with respect to the Obligations arising from, related to or connected with the US-Canada Advances owing to such Lender (other than with respect to those arising from or

connected with any Cash Management Liabilities and/or Hedge Liabilities), and (b) with respect to the proceeds realized from the sale of any European Collateral to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of each of European Lenders to the extent owing to such European Lender pursuant to the terms of this Agreement arising from, related to or connected with the European Advances or otherwise with respect to the Obligations arising from, related to or connected with the European Advances owing to such Lender (other than with respect to those arising from or connected with any Cash Management Liabilities and/or Hedge Liabilities);

FOURTH, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral, to the payment of all of the Obligations consisting of accrued interest on account of the US-Canada Swing Loans, and (b) with respect to the proceeds realized from the sale of any European Collateral, to the payment of all of the European Obligations consisting of accrued interest on account of the European Swing Loans;

FIFTH, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral, to the payment of the outstanding principal amount of the Obligations consisting of US-Canada Swing Loans, and (b) with respect to the proceeds realized from the sale of any European Collateral, to the payment of the outstanding principal amount of the European Obligations consisting of European Swing Loans;

SIXTH, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral, to the payment of all Obligations arising under this Agreement and the Other Documents consisting of accrued fees and interest arising from, related to or connected with the US-Canada Advances (other than interest in respect of US-Canada Swing Loans paid pursuant to clause FOURTH above), and (b) with respect to the proceeds realized from the sale of any European Collateral, to the payment of all European Obligations arising under this Agreement and the Other Documents consisting of accrued fees and interest arising from, related to or connected with the European Advances (other than interest in respect of European Swing Loans paid pursuant to clause FOURTH above);

SEVENTH, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral, to the payment of the outstanding principal amount of the Obligations arising from, related to or connected with the US-Canada Advances (other than principal in respect of US-Canada Swing Loans paid pursuant to clause FIFTH above and other than Cash Management Liabilities and Hedge Liabilities) and including the payment or cash collateralization of any outstanding US-Canada Letters of Credit in accordance with Section 3.2(b) hereof, and (b) with respect to the proceeds realized from the sale of any European Collateral, to the payment of the outstanding principal amount of the European Obligations arising from, related to or connected with the European Advances (other than principal in respect of European Swing Loans paid pursuant to clause FIFTH above and other than Cash Management Liabilities and Hedge Liabilities) and including the payment or cash collateralization of any outstanding European Letters of Credit in accordance with Section 3.2(b) hereof;

EIGHTH, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral, to all other Obligations arising from, related to or connected with the US-Canada Advances (other than Cash Management Liabilities and Hedge Liabilities) which shall have become due and payable (hereunder, under the Other Documents or otherwise) and not repaid pursuant to clauses "FIRST" through "SEVENTH" above, and (b) with respect to the proceeds realized from the sale of any European Collateral, to all other European Obligations arising from, related to or connected with the European Advances (other than Cash Management Liabilities and Hedge Liabilities) which shall have become due and payable (hereunder, under the Other Documents or otherwise) and not repaid pursuant to clauses "FIRST" through "SEVENTH" above;

NINTH, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral, to any Cash Management Liabilities and Hedge Liabilities arising from, related to or connected with the US-Canada Advances, including the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of Agent and each of Lenders arising from or connected with any such Cash Management Liabilities and/or Hedge Liabilities), which shall have become due and payable or otherwise and not repaid pursuant to clauses "FIRST" through "EIGHTH", and (b) with respect to the proceeds realized from the sale of any European Collateral, to any Cash Management Liabilities and Hedge Liabilities arising from, related to or connected with the European Advances, including the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of European Agent [and/or European Collateral Agent](#) and each of the European Lenders arising from or connected with any such Cash Management Liabilities and/or Hedge Liabilities, which shall have become due and payable or otherwise and not repaid pursuant to clauses "FIRST" through "EIGHTH";

TENTH, (a) with respect to the proceeds realized from the sale of any US-Canada Collateral, to all other Obligations arising from, related to or connected with the US-Canada Advances which shall have become due and payable and not repaid pursuant to clauses "FIRST" through "NINTH", and (b) with respect to the proceeds realized from the sale of any European Collateral, to all other European Obligations arising from, related to or connected with the European Advances which shall have become due and payable and not repaid pursuant to clauses "FIRST" through "NINTH";

ELEVENTH, with respect to the proceeds realized from the sale of any US-Canada Collateral, upon the satisfaction of all Obligations arising from, related to or connected with the US-Canada Advances (including the payment or cash collateralization of the outstanding US-Canada Letters of Credit and the payment of all Cash Management Liabilities and Hedge Liabilities arising from, related to or connected with the US-Canada Advances, including the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of Agent and each of Lenders arising from or connected with any such Cash Management Liabilities and/or Hedge Liabilities), to the payment of the European Obligations arising from, related to or connected with the European Advances pursuant to clauses "FIRST" through "TENTH" above;

TWELFTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (ii) each of Lenders shall receive (so long as it is not a Defaulting Lender) an amount equal to its pro rata share (based on the proportion that the then outstanding US-Canada Advances or European Advances, as the case may be, held by such Lender bears to the aggregate then outstanding US-Canada Advances or European Advances, as the case may be) of amounts available to be applied pursuant to clauses "SIXTH", "SEVENTH", "EIGHTH", "TENTH" and "ELEVENTH" above and, with respect to clause "NINTH" above, an amount equal to its pro rata share (based on the proportion that the then outstanding Cash Management Liabilities and Hedge Liabilities arising from, related to or connection with US-Canada Advances or Cash Management Liabilities and Hedge Liabilities arising from, related to or connection with European Advances, as the case may be, held by such Lender bears to the aggregate then outstanding Cash Management Liabilities and Hedge Liabilities arising from, related to or connection with US-Canada Advances or Cash Management Liabilities and Hedge Liabilities arising from, related to or connection with European Advances, as the case may be); and (iii) notwithstanding anything to the contrary in this Section 11.1, no Swap Obligations of any Non-Qualifying Party shall be paid with amounts received from such Non-Qualifying Party under its Guaranty (including sums received as a result of the exercise of remedies with respect to such Guaranty) or from the

proceeds of such Non-Qualifying Party's Collateral if such Swap Obligations would constitute Excluded Hedge Liabilities, provided, however, that to the extent possible appropriate adjustments shall be made with respect to payments and/or the proceeds of Collateral from other Borrowers and/or Guarantors that are Eligible Contract Participants with respect to such Swap Obligations to preserve the allocation to Obligations otherwise set forth above in this Section 11.1; and (iv) to the extent that any amounts available for distribution pursuant to clause "SEVENTH" above are attributable to the issued but undrawn amount of outstanding US-Canada Letters of Credit or European Letters of Credit, as the case may be, such amounts shall be held by any Agent as cash collateral for the US-Canada Letters of Credit or European Letters of Credit, as the case may be, pursuant to Section 3.2(b) hereof and applied (A) first, to reimburse Issuer from time to time for any drawings under such US-Canada Letters of Credit or European Letters of Credit, as the case may be, and (B) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clauses "SEVENTH," "EIGHTH", "NINTH" "TENTH" and "ELEVENTH" above in the manner provided in this Section 11.1.

Notwithstanding anything to the contrary in this Agreement or any Other Document, amounts received from any European Loan Party on account of the Obligations of any European Loan Party shall be applied solely to the payment of Obligations of the European Loan Parties.

12. WAIVERS AND JUDICIAL PROCEEDINGS.

1.1 Waiver of Notice. Each Loan Party hereby waives notice of non-payment of any of the Receivables, demand, presentment, protest and notice thereof with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, Collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

1.2 Delay. No delay or omission on any Agent's or any Lender's part in exercising any right, remedy or option shall operate as a waiver of such or any other right, remedy or option or of any Default or Event of Default.

1.3 Jury Waiver. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

13. EFFECTIVE DATE AND TERMINATION.

1.1 Term. This Agreement, which shall inure to the benefit of and shall be binding upon the respective successors and permitted assigns of each Loan Party, each Agent and each Lender, shall become effective on the date hereof and shall continue in full force and effect until the earlier of (the "**Term**") (i) January 16, 2024 or (ii) subject to the following sentence, one hundred (100) days prior to the maturity of the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes, or the maturity date of a refinancing of any of the 2022 Convertible Notes, 2024 Convertible Notes or the 2026 Convertible Notes (the "**Springing Maturity Date**") unless sooner terminated as herein provided. If a Springing Maturity Date would cause the Term to expire prior to January 16, 2024, the Borrowers may elect, in lieu of allowing the Term to expire, to increase the Availability Block by the amount due within such one hundred (100) day period pursuant to the 2022 Convertible Notes, the 2024 Convertible Notes or the 2026 Convertible Notes (or any refinancing thereof) so long as (A) no Default or Event of Default exists or is continuing and (B) after giving effect to such increase in the Availability Block, the Convertible Notes Prepayment Test is met. Loan Parties may terminate this Agreement at any time upon prior written notice to Agent and upon indefeasible payment in full of all of the Obligations.

1.2 Termination. The termination of the Agreement shall not affect any Agent's or any Lender's rights, or any of the Obligations having their inception prior to the effective date of such termination or any Obligations which pursuant to the terms hereof continue to accrue after such date, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created and Obligations (other than contingent indemnification Obligations to the extent that no claim giving rise thereto has been asserted) have been fully and indefeasibly paid, disposed of, concluded or liquidated. The security interests, Liens and rights granted to Agents and Lenders hereunder and the financing statements filed hereunder shall continue in full force and effect, notwithstanding the termination of this Agreement or the fact that Borrowers' Account may from time to time be temporarily in a zero or credit position, until all of the Obligations (other than contingent indemnification Obligations to the extent that no claim giving rise thereto has been asserted) of each Loan Party have been indefeasibly paid and performed in full after the termination of this Agreement or each Loan Party has furnished Agents and Lenders with an indemnification satisfactory to Agents and Lenders with respect thereto. Accordingly, each Loan Party waives any rights which it may have under the Uniform Commercial Code to demand the filing of termination statements with respect to the Collateral, and Agents shall not be required to send such termination statements to each Loan Party, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms and all Obligations (other than contingent indemnification Obligations to the extent that no claim giving rise thereto has been asserted) have been indefeasibly paid in full in immediately available funds. All representations, warranties, covenants, waivers and agreements contained herein shall survive termination hereof until all Obligations (other than contingent indemnification Obligations to the extent that no claim giving rise thereto has been asserted) are indefeasibly paid and performed in full.

14. REGARDING AGENT.

1.1 Appointment. Each Lender hereby designates each Agent to act in such capacity for such Lender under this Agreement and the Other Documents. Each Lender hereby irrevocably authorizes each Agent to take such action on its behalf under the provisions of this Agreement and the Other Documents and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of such Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto and each Agent shall hold all Collateral, payments of

principal and interest, fees (except the fees set forth in Sections 2.7(b), 3.3 and 3.4 and each Fee Letter), charges and collections received pursuant to this Agreement, for the ratable benefit of Lenders. Each Agent may perform any of its duties hereunder by or through its agents or employees. As to any matters not expressly provided for by this Agreement (including collection of the Note) no Agent shall be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of Applicable Required Lenders, and such instructions shall be binding; provided, however, that no Agent shall be required to take any action which, in such Agent's discretion, exposes such Agent to liability or which is contrary to this Agreement or the Other Documents or Applicable Law unless such Agent is furnished with an indemnification reasonably satisfactory to such Agent with respect thereto.

1.2 Nature of Duties. No Agent shall have any duties or responsibilities except those expressly set forth in this Agreement and the Other Documents. No Agent or any of its officers, directors, employees or agents shall be (i) liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), or (ii) responsible in any manner for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement, or in any of the Other Documents or in any certificate, report, statement or other document referred to or provided for in, or received by such Agent under or in connection with, this Agreement or any of the Other Documents or for the value, validity, effectiveness, genuineness, due execution, enforceability or sufficiency of this Agreement, or any of the Other Documents or for any failure of any Loan Party to perform its obligations hereunder. No Agent shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any of the Other Documents, or to inspect the properties, books or records of any Loan Party. The duties of each Agent, as applicable, as respects the Advances to Loan Parties shall be mechanical and administrative in nature; no Agent shall have by reason of this Agreement a fiduciary relationship in respect of any Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect of this Agreement or the transactions described herein except as expressly set forth herein.

1.3 Lack of Reliance on Agents. Independently and without reliance upon any Agent or any other Lender, each Lender has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of each Borrower and each Guarantor in connection with the making and the continuance of the Advances hereunder and the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of each Borrower and each Guarantor. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before making of the Advances or at any time or times thereafter except as shall be provided by any Loan Party pursuant to the terms hereof. No Agent shall be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any agreement, document, certificate or a statement delivered in connection with or for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement or any Other Document, or of the financial condition of any Borrower or any Guarantor, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement, the Note, the Other Documents or the

financial condition or prospects of any Loan Party, or the existence of any Event of Default or any Default.

1.4 Resignation of any Agent; Successor Agents. Any Agent may resign on sixty (60) days written notice to each Lender and Borrowing Agent and upon such resignation, Applicable Required Lenders will promptly designate a successor Agent reasonably satisfactory to Borrowers (provided that no such approval by Borrowers shall be required (i) in any case where the successor Agent is one of Lenders or (ii) after the occurrence and during the continuance of any Event of Default). Any such successor Agent shall succeed to the rights, powers and duties of Applicable Agent, and shall in particular, if applicable, succeed to all of such Agent's right, title and interest in and to all of the Liens in the Collateral securing the Obligations created hereunder or any Other Document (including the Pledge Agreement and all account control agreements), and the term "Agent" ~~or~~, "European Agent" or "European Collateral Agent", as applicable, shall mean such successor agent effective upon its appointment, and the applicable former Agent's rights, powers and duties as such Agent shall be terminated, without any other or further act or deed on the part of such former Agent. However, notwithstanding the foregoing, if at the time of the effectiveness of the new Agent's appointment, any further actions need to be taken in order to provide for the legally binding and valid transfer of any Liens in the Collateral from former Agent to new Agent and/or for the perfection of any Liens in the Collateral as held by new Agent or it is otherwise not then possible for new Agent to become the holder of a fully valid, enforceable and perfected Lien as to any of the Collateral, former Agent shall continue to hold such Liens solely as agent for perfection of such Liens on behalf of new Agent until such time as new Agent can obtain a fully valid, enforceable and perfected Lien on all Collateral, provided that the applicable Agent shall not be required to or have any liability or responsibility to take any further actions after such date as such agent for perfection to continue the perfection of any such Liens (other than to forego from taking any affirmative action to release any such Liens). For the purposes of any Dutch Collateral Document, any resignation by the European Agent is not effective with respect to its rights under the Parallel Debt until all rights and obligations under the Parallel Debt have been assigned and assumed to the successor agent. After any Agent's resignation as an Agent, the provisions of this Article 14, and any indemnification rights under this Agreement, including without limitation, rights arising under Section 16.5 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was such Agent under this Agreement (and in the event such resigning Agent continues to hold any Liens pursuant to the provisions of the immediately preceding sentence, the provisions of this Article 14 and any indemnification rights under this Agreement, including without limitation, rights arising under Section 16.5 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it in connection with such Liens).

1.5 Certain Rights of Agents. If any Agent shall request instructions from Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any Other Document, such Agent shall be entitled to refrain from such act or taking such action unless and until such Agent shall have received instructions from Applicable Required Lenders; and such Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, Lenders shall not have any right of action whatsoever against any Agent as a result of its acting or refraining from acting hereunder in accordance with the instructions of Applicable Required Lenders.

1.6 Reliance. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, email, facsimile, telex, teletype or telecopier message, cablegram, order or other document or telephone message believed by it to be genuine and correct and to have been signed, sent

or made by the proper person or entity, and, with respect to all legal matters pertaining to this Agreement and the Other Documents and its duties hereunder, upon advice of counsel selected by it. Each Agent may employ agents and attorneys-in-fact and shall not be liable for the default or misconduct of any such agents or attorneys-in-fact selected by such Agent with reasonable care.

1.7 Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder or under the Other Documents, unless such Agent has received notice from a Lender or Borrowing Agent referring to this Agreement or the Other Documents, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that any Agent receives such a notice, such Agent shall give notice thereof to Lenders. Each Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by Applicable Required Lenders; provided, that, unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of Lenders.

1.8 Indemnification. To the extent any Agent is not reimbursed and indemnified by Loan Parties, each Lender will reimburse and indemnify such Agent in proportion to its respective portion of the outstanding Advances and its respective Participation Commitments in the outstanding Letters of Credit and outstanding Swing Loans (or, if no Advances are outstanding, pro rata according to the percentage that its Revolving Commitment Amount constitutes of the total aggregate Revolving Commitment Amounts), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in performing its duties hereunder, or in any way relating to or arising out of this Agreement or any Other Document; provided that Lenders shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment).

1.9 Each Agent in its Individual Capacity. With respect to the obligation of any Agent to lend under this Agreement, the Advances made by it shall have the same rights and powers hereunder as any other Lender and as if it were not performing the duties as such Agent specified herein; and the term "Lender" or any similar term shall, unless the context clearly otherwise indicates, include such Agent in its individual capacity as a Lender. Any Agent may engage in business with any Loan Party as if it were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

1.10 Delivery of Documents. To the extent any Agent receives financial statements required under Sections 9.7, 9.8, 9.9, 9.12 and 9.13, Borrowing Base Certificates from any Loan Party pursuant to the terms of this Agreement which any Loan Party is not obligated to deliver to each Lender, such Agent will promptly furnish such documents and information to Lenders.

1.11 Loan Parties' Undertaking to Agents. Without prejudice to their respective obligations to Lenders under the other provisions of this Agreement, each Loan Party hereby undertakes with each Agent to pay to such Agent from time to time on demand all amounts from time to time due and payable by it for the account of such Agent or

Lenders or any of them pursuant to this Agreement to the extent not already paid. Any payment made pursuant to any such demand shall pro tanto satisfy the relevant Loan Party's obligations to make payments for the account of Lenders or the relevant one or more of them pursuant to this Agreement.

1.12 No Reliance on Agent's Customer Identification Program. To the extent the Advances or this Agreement is, or becomes, syndicated in cooperation with other Lenders, each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "**CIP Regulations**"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of Loan Parties, their Affiliates or their agents, the Other Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such Anti-Terrorism Laws.

1.13 Other Agreements. Each of Lenders agrees that it shall not, without the express consent of Applicable Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of Applicable Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or any deposit accounts of any Loan Party now or hereafter maintained with such Lender. Anything in this Agreement to the contrary notwithstanding, each of Lenders further agrees that it shall not, unless specifically requested to do so by any Agent, take any action to protect or enforce its rights arising out of this Agreement or the Other Documents, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the Other Documents shall be taken in concert and at the direction or with the consent of Applicable Agent or Applicable Required Lenders.

1.14 Appointment for English Law.

(a) In this Agreement, any English Collateral Document and the English Law Guaranty, any rights and remedies exercisable by, any documents to be delivered to, or any other indemnities or obligations in favor of the European [Agent and/or the European Collateral](#) Agent shall be, as the case may be, exercisable by, delivered to, or be indemnities or other obligations in favor of, the European [Collateral](#) Agent (or any other person acting in such capacity) in its capacity as security trustee of the Secured Parties to the extent that the rights, deliveries, indemnities or other obligations relate to any English Collateral Document or the security thereby created or the English Law Guaranty. Any obligations of the European [Collateral](#) Agent (or any other person acting in such capacity) in this Agreement, any English Collateral Document and the English Law Guaranty shall be obligations of the European [Collateral](#) Agent in its capacity as security trustee of the Secured Parties to the extent that the obligations relate to any English Collateral Document or the security thereby created or the English Law Guaranty. Additionally, in its capacity as security trustee of the Secured Parties, the European [Collateral](#) Agent (or any other person acting in such capacity) shall have (i) all the rights, remedies and benefits in favor of any Agent contained in the provisions of the whole of this Article 14, (ii) all the powers of an absolute owner of the security constituted by any English Collateral Document and (iii) all the rights, remedies and powers granted to it and be subject to all the obligations and duties owed by it under any English Collateral Document, the English Law Guaranty and/or any of the Other Documents.

(b) Each Secured Party hereby appoints the European [Collateral](#) Agent to act as its trustee under and in relation to any English Collateral Document and/or the English Law Guaranty and to hold the assets subject to the security or the guarantee obligation thereby created as trustee for the Secured Parties on the trusts and other terms contained in any English Collateral Document and/or the English Law Guaranty and each Secured Party hereby irrevocably authorizes the European [Collateral](#) Agent in its capacity as security trustee of Secured Parties to exercise such rights, remedies, powers and discretions as are specifically delegated to the European [Collateral](#) Agent as security trustee of the Secured Parties by the terms of any English Collateral Document and/or the English Law Guaranty together with all such rights, remedies, powers and discretions as are reasonably incidental thereto.

(c) The Secured Parties agree that, at any time that the person acting as security trustee of the Secured Parties in respect of any English Collateral Document and/or the English Law Guaranty, as applicable, shall be a person other than the Agents, such other person shall have the rights, remedies, benefits and powers granted to the European [Collateral](#) Agent in its capacity as security trustee of the Secured Parties under this Agreement and (as the case may be) any English Collateral Document and/or the English Law Guaranty, as applicable.

(d) Nothing shall require the European Agent in the capacity as security trustee of the Secured Parties under this Agreement, any English Collateral Document or the English Law Guaranty to act as a trustee at common law or to be holding any property on trust, in any jurisdiction outside the United States of America, England or France which may not operate under the principles of trust or where such trust would not be recognized or its effects would not be enforceable.

1.15 Appointment for French Law.

Each Secured Party hereby irrevocably appoints the European [Collateral](#) Agent to create, register, manage and enforce any Lien created by the French Collateral Documents pursuant to article 2328-1 of the French Civil Code, as amended from time to time.

1.16 Availability of US-Canada Collateral.

Each European Lender ~~and~~, European Agent [and European Collateral Agent](#) hereby acknowledge and agree that they may not direct Agent to exercise any rights and remedies with respect to, or otherwise enforce any Lien in, any US-Canada Collateral to satisfy European Obligations unless and until all rights and remedies with respect to all European Collateral shall have been fully exhausted.

1.17 Parallel Debt.

(a) Each Loan Party hereby irrevocably and unconditionally undertakes to pay (each such payment undertaking, a "**Parallel Debt**") to the European Agent amounts equal to the amounts due by that Loan Party in respect of its Corresponding Obligations as they may exist from time to time.

(b) The Parallel Debt of each Loan Party will be payable in the currency or currencies of the Corresponding Obligations and will become due and payable as and when and to the extent the relevant Corresponding Obligations become due and payable. An Event of Default in respect of the Corresponding Obligations shall constitute a default (*verzuim*) within the meaning of section 3:248 of the Dutch Civil Code with respect to the Parallel Debt without any notice being required.

(c) Each of the parties to this Agreement hereby acknowledges that:

(i) each Parallel Debt constitutes an undertaking, obligation and liability to the European Agent which is separate and independent from, and without prejudice to, the Corresponding Obligations of the relevant Loan Party; and

(ii) each Parallel Debt represents the European Agent's own separate and independent claim to receive payment of the Parallel Debt from the relevant Loan Party, it being understood, in each case, that pursuant to this paragraph (c), the amount which may become payable by each Loan Party by way of Parallel Debt shall not exceed at any time the total of the amounts which are payable under or in connection with the Corresponding Obligations of that Loan Party at such time.

(d) An amount paid by a Loan Party to the European Agent in respect of the Parallel Debt will discharge the liability of the Loan Parties under the Corresponding Obligations in an equal amount.

(e) For the purpose of this Section 14.17, the European Agent acts in its own name and for itself and not as agent, trustee or representative of any other Secured Party.

1.18 Erroneous Payments.

(a) If the Agent notifies a Lender, Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, Issuer or Secured Party (any such Lender, Issuer, Secured Party or other recipient, a "Payment Recipient") that the Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuer, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent, and such Lender, Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of the Overnight Bank Funding Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice from the Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, Issuer or Secured Party hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a

payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in an amount different than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such, prepayment or repayment (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Lender, Issuer or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) In the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuer or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this Section 14.18(b),

(c) Each Lender, Issuer or Secured Party hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuer or Secured Party under any Other Document, or otherwise payable or distributable by the Agent to such Lender, Issuer or Secured Party from any source, against any amount due to the Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor by the Agent in accordance with immediately preceding clause (a), from any Lender or Issuer that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf (such unrecovered amount, an “Erroneous Payment Return Deficiency”), upon the Agent’s notice to such Lender or Issuer at any time, (i) such Lender or Issuer shall be deemed to have assigned its loans (but not its commitments) of the relevant class with respect to which such Erroneous Payment was made (the “Erroneous Payment Impacted Class”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the loans (but not commitments) of the Erroneous Payment Impacted Class, the “Erroneous Payment Deficiency Assignment”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance),

and is hereby (together with the Borrower) deemed to execute and deliver an assignment and assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender or Issuer shall deliver any Notes evidencing such loans to the Borrower or the Agent, (ii) the Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Agent as the assignee Lender shall become a Lender or Issuer, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuer shall cease to be a Lender or Issuer, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable commitments which shall survive as to such assigning Lender or assigning Issuer and (iv) the Agent may reflect in the Register its ownership interest in the loans subject to the Erroneous Payment Deficiency Assignment. The Agent may, in its discretion, sell any loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender or Issuer shall be reduced by the net proceeds of the sale of such loan (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Lender or Issuer (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the commitments of any Lender or Issuer and such commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Agent has sold a loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Agent may be equitably subrogated, the Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuer or Secured Party under the Other Documents with respect to such Erroneous Payment Return Deficiency (the “Erroneous Payment Subrogation Rights”).

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other loan party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower or any other loan party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including without limitation, waiver of any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations under this Section 14.18 shall survive the resignation or replacement of the Agent, the termination of all of the commitments and/or repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Other Document.

15. BORROWING AGENCY.

1.1 Borrowing Agency Provisions.

(a) Each US-Canada Loan Party hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity to (i) borrow, (ii) request advances, (iii) request the issuance of US-Canada Letters of Credit, (iv) sign and endorse notes, (v) execute and deliver all instruments, documents, applications, security agreements, reimbursement agreements and letter of credit agreements for US-Canada Letters of Credit and all other certificates, notice, writings and further assurances now or hereafter required hereunder, (vi) make elections regarding interest rates, (vii) give instructions regarding US-Canada Letters of Credit and agree with Issuer upon any amendment, extension or renewal of any US-Canada Letter of Credit and (viii) otherwise take action under and in connection with this Agreement and the Other Documents, all on behalf of and in the name such US-Canada Loan Party or US-Canada Loan Parties, and hereby authorizes Applicable Agent to pay over or credit all loan proceeds hereunder in accordance with the request of Borrowing Agent.

(b) Each European Loan Party hereby irrevocably designates European Borrowing Agent to be its attorney and agent and in such capacity to (i) borrow, (ii) request advances, (iii) request the issuance of European Letters of Credit, (iv) sign and endorse notes, (v) execute and deliver all instruments, documents, applications, security agreements, reimbursement agreements and letter of credit agreements for European Letters of Credit and all other certificates, notice, writings and further assurances now or hereafter required hereunder, (vi) make elections regarding interest rates, (vii) give instructions regarding European Letters of Credit and agree with Issuer upon any amendment, extension or renewal of any European Letter of Credit and (viii) otherwise take action under and in connection with this Agreement and the Other Documents, all on behalf of and in the name such European Loan Party or European Loan Parties, and hereby authorizes Applicable Agent to pay over or credit all loan proceeds hereunder in accordance with the request of European Borrowing Agent.

(c) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Loan Parties and at their request. No Agent or any Lender shall incur liability to Loan Parties as a result thereof. To induce each Agent and Lenders to do so and in consideration thereof, each Loan Party hereby indemnifies each Agent and each Lender and holds each Agent and each Lender harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against any Agent or any Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of Loan Parties as provided herein, reliance by any Agent or any Lender on any request or instruction from any Borrowing Agent or any other action taken by any Agent or any Lender with respect to this Section 15.1 except due to willful misconduct or gross (not mere) negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(d) All Obligations shall be joint and several, and each Loan Party shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Loan Party shall in no way be affected by any extensions, renewals and forbearance granted by any Agent or any Lender to any Loan Party, failure of any Agent or any Lender to give any Loan Party notice of borrowing or any other notice, any failure of any Agent or any Lender to pursue or preserve its rights against any Loan Party, the release by any Agent or any Lender of any Collateral now or thereafter acquired from any Loan Party, and such agreement by each Loan Party to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by any Agent or any Lender to the other Loan Parties or any Collateral for such Loan Party's Obligations or the lack thereof. Each Loan Party waives all suretyship defenses.

1.2 Waiver of Subrogation. Each Loan Party expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Loan Party may now or hereafter have against the other Loan Parties or any other Person directly or contingently liable for the Obligations hereunder, or against or with respect to any other Loan Parties' property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until termination of this Agreement and repayment in full of the Obligations.

16. MISCELLANEOUS.

1.1 Governing Law. This Agreement and each Other Document (unless and except to the extent expressly provided otherwise in any such Other Document), and all matters relating hereto or thereto or arising herefrom or therefrom (whether arising under contract law, tort law or otherwise) shall, in accordance with Section 5-1401 of the General Obligations Law of the State of New York, be governed by and construed in accordance with the laws of the State of New York. Any judicial proceeding brought by or against any Loan Party with respect to any of the Obligations, this Agreement, the Other Documents or any related agreement may be brought in any court of competent jurisdiction in the State of New York, United States of America (unless and except to the extent expressly provided otherwise in any such Other Document or related agreement), and, by execution and delivery of this Agreement, each Loan Party accepts for itself and in connection with its properties, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, but with respect to any Canadian Loan Party only, the Agents and Lenders shall not be precluded from initiating any proceeding against such Canadian Loan Party in the Courts of the Province of Ontario, Canada sitting in Toronto in their absolute and sole discretion. Each Loan Party hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified or registered mail (return receipt requested) directed to Applicable Borrowing Agent at its address set forth in Section 16.6 and service so made shall be deemed completed five (5) days after the same shall have been so deposited in the mails of the United States of America, or, at Agent's option, by service upon Applicable Borrowing Agent which each Loan Party irrevocably appoints as such Loan Party's agent for the purpose of accepting service within the State of New York. Nothing herein shall affect the right to serve process in any manner permitted by law or shall limit the right of any Agent or any Lender to bring proceedings against any Loan Party in the courts of any other jurisdiction. Each Loan Party waives any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens. Each Loan Party waives the right to remove any judicial proceeding brought against such Loan Party in any state court to any federal court. Any judicial proceeding by any Loan Party against any each Agent or any Lender involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this Agreement or any related agreement, shall be brought only in a federal, state or provincial court located in the County of New York, State of New York.

1.2 Entire Understanding.

(a) This Agreement and the documents executed concurrently herewith contain the entire understanding between each Loan Party, each Agent and each Lender and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, signed by each Loan Party's, each Agent's

and each Lender's respective officers. Neither this Agreement nor any portion or provisions hereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Each Loan Party acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Other Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement.

(b) Applicable Required Lenders, Agents with the consent in writing of Applicable Required Lenders, and Loan Parties may, subject to the provisions of this Section 16.2(b), from time to time enter into written supplemental agreements to this Agreement or the Other Documents executed by Loan Parties, for the purpose of adding or deleting any provisions or otherwise changing, varying or waiving in any manner the rights of Lenders, Agents or Loan Parties thereunder or the conditions, provisions or terms thereof or waiving any Event of Default thereunder, but only to the extent specified in such written agreements; provided, however, that no such supplemental agreement shall:

(i) increase the Revolving Commitment Percentage or the maximum dollar amount of the Revolving Commitment Amount of any Lender directly affected thereby under the European Facility or US-Canada Facility, as applicable, without the consent of such Lender;

(ii) whether or not any Advances are outstanding, extend the Term or the time for payment of principal or interest of any Advance (excluding the due date of any mandatory prepayment of an Advance), or any fee payable to any Lender, or reduce the principal amount of or the rate of interest borne by any Advances or reduce any fee payable to any Lender, without the consent of each Lender directly affected thereby under the European Facility or US-Canada Facility, as applicable (except that Applicable Required Lenders may elect to waive or rescind any imposition of the Default Rate under Section 3.1 or of default rates of Letter of Credit fees under Section 3.2 (unless imposed by Applicable Agent));

(iii) except in connection with any increase pursuant to Section 2.23 or Section 2.25 hereof, increase the Maximum US-Canada Revolving Advance Amount, Maximum English Revolving Advance Amount or Maximum French Revolving Advance Amount without the consent of each Lender directly affected thereby under the European Facility or US-Canada Facility, as applicable;

(iv) alter the definition of the terms Applicable Required Lenders, European Required Lenders, Required Lenders for Eligibility or US-Canada Required Lenders or alter, amend or modify this Section 16.2(b) without the consent of all Lenders;

(v) alter, amend or modify the provisions of Section 11.5 without the consent of all Lenders;

(vi) release any US-Canada Collateral during any calendar year (other than in accordance with the provisions of this Agreement) having an aggregate value in excess of \$1,000,000 without the consent of all US-Canada Lenders or release any European Collateral during any calendar year (other than in accordance with the provisions of this Agreement) having an aggregate value in excess of \$1,000,000 without the consent of all European Lenders;

(vii) alter the definition of the term Availability Block, Eligible Domestic Receivables, Eligible Domestic Inventory, Eligible Foreign In-Transit Inventory, Eligible Fixed Assets, Eligible Canadian Receivables, Eligible Canadian Inventory, US Receivables Advance Rate, US Inventory Advance Rate, US Inventory NOLV Advance Rate,

US-Canada Formula Amount, Canadian Receivables Advance Rate, Canadian Inventory Advance Rate, Canadian Inventory NOLV Advance Rate, European Formula Amount, English Formula Amount, French Formula Amount or European Receivables Advance Rate in a manner that has the effect of increasing the US-Canada Formula Amount, English Formula Amount or French Formula Amount, without the consent of all of the applicable Required Lenders for Eligibility;

(viii) change the rights and duties of any Agent without the consent of all Lenders;

(ix) subject to clause (e) below, permit (A) any US-Canada Revolving Advance to be made if after giving effect thereto the total of US-Canada Revolving Advances outstanding hereunder would exceed the US-Canada Formula Amount for more than sixty (60) consecutive Business Days or exceed one hundred and ten percent (110%) of the US-Canada Formula Amount without the consent of each US-Canada Lender directly affected thereby, and (B) any European Revolving Advance to be made if after giving effect thereto the total of (x) English Revolving Advances outstanding hereunder would exceed the English Formula Amount for more than sixty (60) consecutive Business Days or exceed one hundred and ten percent (110%) of the English Formula Amount or (y) French Revolving Advances outstanding hereunder would exceed the French Formula Amount for more than sixty (60) consecutive Business Days or exceed one hundred and ten percent (110%) of the French Formula Amount, in each case without the consent of each European Lender directly affected thereby;

(x) increase the Advance Rates above the Advance Rates in effect on the Closing Date without the consent of all of the applicable Required Lenders for Eligibility;

(xi) release any Guarantor or Borrower without the consent of all Lenders; or

(xii) subordinate all or substantially all of Agent's Liens in the US-Canada Collateral under this Agreement or the Other Documents without the consent of all US-Canada Lenders or subordinate all or substantially all of European Collateral Agent's Liens in the European Collateral under this Agreement or the Other Documents without the consent of all European Lenders.

(c) Any such supplemental agreement shall apply equally to each Lender and shall be binding upon Loan Parties, Lenders and Agents and all future holders of the Obligations. In the case of any waiver, Loan Parties, Agents and Lenders shall be restored to their former positions and rights, and any Event of Default waived shall be deemed to be cured and not continuing, but no waiver of a specific Event of Default shall extend to any subsequent Event of Default (whether or not the subsequent Event of Default is the same as the Event of Default which was waived), or impair any right consequent thereon.

(d) In the event that an Agent requests the consent of a Lender pursuant to this Section 16.2 in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby," the consent of the Applicable Required Lenders is obtained, but the consent of other necessary Lenders is not obtained, then Agent may, at its option, require such non-consenting Lender to assign its interest in the Advances to any Agent or to another Lender or to any other Person designated by Agent (the "**Designated Lender**"), for a price equal to (i) the then outstanding principal amount thereof *plus* (ii) accrued and unpaid interest and fees due such Lender, which interest and fees shall be paid when collected from Loan Parties. In the event Agent elects to require any Lender to assign its interest to any Agent or to the Designated Lender, Agent will so notify such Lender in writing within forty five (45) days following such Lender's denial, and such Lender will assign its

interest to such Agent or the Designated Lender no later than five (5) days following receipt of such notice pursuant to a Commitment Transfer Supplement executed by such Lender, such Agent or the Designated Lender, as appropriate, and Agent; provided however, that the consent of Loan Parties (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) an Event of Default or Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Permitted Assignee; provided further, that Loan Parties shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to Agent within ten (10) Business Days after having received prior notice thereof.

(e) Notwithstanding (i) the existence of a Default or an Event of Default, (ii) that any of the other applicable conditions precedent set forth in Section 8.3 hereof have not been satisfied or the commitments of Lenders to make Revolving Advances hereunder have been terminated for any reason, or (iii) any other contrary provision of this Agreement, (A) Agent may at its discretion and without the consent of any Lender, voluntarily permit the outstanding US-Canada Revolving Advances at any time to exceed the US-Canada Formula Amount at such time by up to ten percent (10%) of the US-Canada Formula Amount for up to sixty (60) consecutive Business Days and (B) European Agent may at its discretion and without the consent of any Lender, voluntarily permit the outstanding (x) English Revolving Advances or French Revolving Advances at any time to exceed the English Formula Amount and/or the French Formula Amount, in each case by up to ten percent (10%) of the English Formula Amount or the French Formula Amount (as applicable) for up to sixty (60) consecutive Business Days (collectively, the "**Out-of-Formula Loans**"); provided that in no event shall the Revolving Advances (when combined with the outstanding Swing Loans and Letters of Credit) exceed the aggregate Revolving Commitment Amounts of all Lenders. If Applicable Agent is willing in its sole and absolute discretion to permit such Out-of-Formula Loans, Lenders holding the Revolving Commitments under the applicable Facility shall be obligated to fund such Out-of-Formula Loans in accordance with their respective Revolving Commitment Percentages under such Facility, and such Out-of-Formula Loans shall be payable on demand and shall bear interest at the Default Rate consisting of Domestic Rate Loans in the case of the US-Canada Facility or LIBOR Rate Term Benchmark Loans with an Interest Period of one (1) month or RFR Loans (as applicable) in the case of the English Facility and the French Facility ~~with an Interest Period of one (1) Month~~; provided that, if Applicable Agent does permit Out-of-Formula Loans, neither such Agent nor Lenders shall be deemed thereby to have changed the limits of Sections 2.1(a), 2.1(b) or 2.1(c) nor shall any Lender be obligated to fund Revolving Advances in excess of its applicable Revolving Commitment Amount under such Facility. For purposes of this paragraph, the discretion granted to Agent hereunder shall not preclude involuntary overadvances that may result from time to time due to the fact that the US-Canada Formula Amount, English Formula Amount or French Formula Amount, as applicable, was unintentionally exceeded for any reason, including, but not limited to, Collateral previously deemed to be "Eligible Receivables", "Eligible Inventory" or "Eligible Fixed Assets", as applicable, becomes ineligible, collections of Receivables applied to reduce outstanding Revolving Advances are thereafter returned for insufficient funds or overadvances are made to protect or preserve the Collateral. In the event (y) Agent involuntarily permits the outstanding US-Canada Revolving Advances to exceed the US-Canada Formula Amount by more than ten percent (10%), or (z) European Agent involuntarily permits (A) the outstanding European Revolving Advances to exceed the European Formula Amount, (B) the outstanding English Revolving Advances to exceed the English Formula Amount or (C) the outstanding French Revolving Advances to exceed the French Formula Amount, in each case by more than ten percent (10%), in any case, Applicable Agent shall use its efforts to have the applicable Borrowers under the applicable Facility decrease such excess in as expeditious a manner as is practicable under the circumstances and not inconsistent with the reason for such excess. Revolving Advances under any Facility made after Applicable Agent has determined the existence of involuntary overadvances shall be deemed to be involuntary overadvances and shall be decreased in accordance with the preceding sentence. To the extent

any Out-of-Formula Loans are not actually funded by the other Lenders under any applicable Facility as provided for in this Section 16.2(e), Applicable Agent may elect in its discretion to fund such Out-of-Formula Loans and any such Out-of-Formula Loans so funded by Applicable Agent shall be deemed to be Revolving Advances under the relevant Facility made by and owing to Applicable Agent, and Applicable Agent shall be entitled to all rights (including accrual of interest) and remedies of a Lender holding a Revolving Commitment under such Facility under this Agreement and the Other Documents with respect to such Revolving Advances.

(f) In addition to (and not in substitution of) the discretionary Revolving Advances permitted above in this Section 16.2, Applicable Agent is hereby authorized by applicable Loan Parties and applicable Lenders under the applicable Facility, at any time in Applicable Agent's sole discretion, regardless of (i) the existence of a Default or an Event of Default, (ii) whether any of the other applicable conditions precedent set forth in Section 8.3 hereof have not been satisfied or the commitments of Lenders to make Revolving Advances hereunder have been terminated for any reason, or (iii) any other contrary provision of this Agreement, to make Revolving Advances under such Facility to applicable Loan Parties on behalf of such Lenders which Applicable Agent, in its reasonable business judgment, deems necessary or desirable (a) to preserve or protect the Collateral, or any portion thereof, (b) to enhance the likelihood of, or maximize the amount of, repayment of the Advances and other Obligations, (c) to pay any other amount chargeable to Loan Parties pursuant to the terms of this Agreement, or (d) during a European Dominion Period or at any time at which it considers that the Collateral of the French Borrowers may be at risk to pay all outstanding amounts payable to any or all of a French Borrower's RoT Suppliers (the "**Protective Advances**"); provided, that at any time after giving effect to any such Protective Advances, (1) the outstanding US-Canada Revolving Advances do not exceed the lesser of (A) one hundred and ten percent (110%) of the US-Canada Formula Amount or (B) the Maximum US-Canada ~~Maximum~~ Revolving Advance Amount less the aggregate undrawn amount of outstanding US-Canada Letters of Credit and outstanding amount of US-Canada Swing Loans, (2) the outstanding European Revolving Advances calculated based on the then current Dollar Equivalent do not exceed the lesser of: (X) one hundred ten percent (110%) of the European Formula Amount or (Y) the Maximum European Revolving Advance Amount less the Dollar Equivalent of aggregate undrawn amount of outstanding European Letters of Credit and outstanding amount of European Swing Loans, (3) the outstanding English Revolving Advances calculated based on the then current Dollar Equivalent do not exceed the lesser of: (X) one hundred ten percent (110%) of the English Formula Amount or (Y) the Maximum English Revolving Advance Amount less the Dollar Equivalent of aggregate undrawn amount of outstanding English Letters of Credit and outstanding amount of English Swing Loans or (4) the outstanding French Revolving Advances calculated based on the then current Dollar Equivalent do not exceed the lesser of: (X) one hundred ten percent (110%) of the French Formula Amount or (Y) the Maximum French Revolving Advance Amount less the Dollar Equivalent of aggregate undrawn amount of outstanding French Letters of Credit and outstanding amount of French Swing Loans. Lenders holding the Revolving Commitments under any Facility shall be obligated to fund such Protective Advances and effect a settlement with Applicable Agent therefor upon demand of Applicable Agent in accordance with their respective applicable Revolving Commitment Percentages under such Facility. To the extent any Protective Advances under any Facility are not actually funded by the other Lenders under such Facility as provided for in this Section 16.2(f), any such Protective Advances funded by Applicable Agent shall be deemed to be Revolving Advances under such Facility made by and owing to Applicable Agent, and Applicable Agent shall be entitled to all rights (including accrual of interest) and remedies of a Lender holding a Revolving Commitment under such Facility under this Agreement and the Other Documents with respect to such Revolving Advances.

1.3 Successors and Assigns; Participations; New Lenders.

(a) This Agreement shall be binding upon and inure to the benefit of Loan Parties, each Agent, each Lender, all future holders of the Obligations and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations under this Agreement (including, in each case, by way of an LLC Division) without the prior written consent of each Agent and each Lender.

(b) Each Loan Party acknowledges that in the regular course of commercial banking business one or more Lenders may at any time and from time to time sell participating interests in the Advances to Participants. Each Participant may exercise all rights of payment (including rights of set-off) with respect to the portion of such Advances held by it or other Obligations payable hereunder as fully as if such Participant were the direct holder thereof provided that (i) Loan Parties shall not be required to pay to any Participant more than the amount which it would have been required to pay to Lender which granted an interest in its Advances or other Obligations payable hereunder to such Participant had such Lender retained such interest in the Advances hereunder or other Obligations payable hereunder unless the sale of the participation to such Participant is made with Loan Party's prior written consent, and (ii) in no event shall Loan Parties be required to pay any such amount arising from the same circumstances and with respect to the same Advances or other Obligations payable hereunder to both such Lender and such Participant. Each Loan Party hereby grants to any Participant a continuing security interest in any deposits, moneys or other property actually or constructively held by such Participant as security for the Participant's interest in the Advances.

(c) Any Lender, with the consent of Applicable Agent, may sell, assign or transfer all or any part of its rights and obligations under or relating to Revolving Advances under this Agreement and the Other Documents to one or more additional Persons (other than an Ineligible Purchaser) and one or more additional Persons (other than an Ineligible Purchaser) may commit to make Advances hereunder (each a "**Purchasing Lender**"), in minimum amounts of not less than \$5,000,000, pursuant to a Commitment Transfer Supplement, executed by a Purchasing Lender, the transferor Lender, and Applicable Agent and delivered to Applicable Agent for recording, provided, however, that 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 with respect to each of the Revolving Advances under this Agreement in which such Lender has an interest. Upon such execution, delivery, acceptance and recording, from and after the transfer effective date determined pursuant to such Commitment Transfer Supplement, (i) Purchasing Lender thereunder shall be a party hereto and, to the extent provided in such Commitment Transfer Supplement, have the rights and obligations of a Lender thereunder with an applicable Revolving Commitment Percentage as set forth therein, and (ii) the transferor Lender thereunder shall, to the extent provided in such Commitment Transfer Supplement, be released from its obligations under this Agreement, the Commitment Transfer Supplement creating a novation for that purpose. Such Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing Lender and the resulting adjustment of the applicable Revolving Commitment Percentages arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Other Documents. Each Loan Party hereby consents to the addition of such Purchasing Lender and the resulting adjustment of the applicable Revolving Commitment Percentages arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Other Documents. Loan Parties shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing provided, however, that the consent of Loan Parties (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) an Event of Default or Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a

Permitted Assignee; provided that Loan Parties shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Applicable Agent within five (5) Business Days after having received prior notice thereof.

(d) Any Lender, with the consent of Applicable Agent which shall not be unreasonably withheld or delayed, may directly or indirectly sell, assign or transfer all or any portion of its rights and obligations under or relating to Revolving Advances under this Agreement and the Other Documents to an entity, whether a corporation, partnership, trust, limited liability company or other entity that (i) is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and (ii) is administered, serviced or managed by the assigning Lender or an Affiliate of such Lender (a "**Purchasing CLO**" and together with each Participant and Purchasing Lender, each a "**Transferee**" and collectively the "**Transferees**"), pursuant to a Commitment Transfer Supplement modified as appropriate to reflect the interest being assigned ("**Modified Commitment Transfer Supplement**"), executed by any intermediate purchaser, the Purchasing CLO, the transferor Lender, and Applicable Agent as appropriate and delivered to Applicable Agent for recording. Upon such execution and delivery, from and after the transfer effective date determined pursuant to such Modified Commitment Transfer Supplement, (i) Purchasing CLO thereunder shall be a party hereto and, to the extent provided in such Modified Commitment Transfer Supplement, have the rights and obligations of a Lender thereunder and (ii) the transferor Lender thereunder shall, to the extent provided in such Modified Commitment Transfer Supplement, be released from its obligations under this Agreement, the Modified Commitment Transfer Supplement creating a novation for that purpose. Such Modified Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing CLO. Each Loan Party hereby consents to the addition of such Purchasing CLO. Loan Parties shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing.

(e) Applicable Agent shall maintain at its address a copy of each Commitment Transfer Supplement and Modified Commitment Transfer Supplement delivered to it and a register (in each case, the "**Register**") for the recordation of the names and addresses of each Lender under the applicable Facility and the outstanding principal, accrued and unpaid interest and other fees due hereunder. The entries in the Register shall be conclusive, in the absence of manifest error, and each Loan Party, Agents and Lenders may treat each Person whose name is recorded in the Register as the owner of the Advance recorded therein for the purposes of this Agreement. The Register shall be available for inspection by Borrowing Agent or any Lender at any reasonable time and from time to time upon reasonable prior notice. Applicable Agent shall receive a fee in the amount of \$3,500 payable by the applicable Purchasing Lender and/or Purchasing CLO upon the effective date of each transfer or assignment (other than to an intermediate purchaser) to such Purchasing Lender and/or Purchasing CLO.

(f) Each Loan Party authorizes each Lender to disclose to any Transferee and any prospective Transferee, subject to the provisions of Section 16.15, any and all financial information in such Lender's possession concerning such Loan Party which has been delivered to such Lender by or on behalf of such Loan Party pursuant to this Agreement or in connection with such Lender's credit evaluation of such Loan Party.

(g) Notwithstanding anything to the contrary contained in this Agreement, any Lender may at any time and from time to 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 any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained in this Agreement, any Transferee of the French Revolving Commitments, French Revolving Advances (including French Swing Loans or Protective Advances made to the French Borrower) must qualify as a French Qualifying Lender and any Transferee of the French Letters of Credits must qualify as a French Qualifying Letter of Credit Issuer.

1.4 Application of Payments. Each Agent shall have the continuing and exclusive right to apply or reverse and re-apply any payment and any and all proceeds of Collateral to any portion of the Obligations, subject to Section 11.5 hereof. To the extent that any Loan Party makes a payment or any Agent or any Lender receives any payment or proceeds of the Collateral for any Loan Party's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by such Agent or such Lender.

1.5 Indemnity. Each Loan Party shall defend, protect, indemnify, pay and save harmless each Agent, each Issuer, each Lender and each of their respective officers, directors, Affiliates, attorneys, employees and agents (each an "**Indemnified Party**") for and from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, actions, judgments, suits, costs, charges, expenses and disbursements of any kind or nature whatsoever (including reasonable and documented fees and disbursements of counsel) (collectively, "**Claims**") which may be imposed on, incurred by, or asserted against any Indemnified Party in arising out of or in any way relating to or as a consequence, direct or indirect, of: (i) this Agreement, the Other Documents, the Advances and other Obligations and/or the transactions contemplated hereby ~~including the Transactions~~, (ii) any action or failure to act or action taken only after delay or the satisfaction of any conditions by any Indemnified Party in connection with and/or relating to the negotiation, execution, delivery or administration of the Agreement and the Other Documents, the credit facilities established hereunder and thereunder and/or the transactions contemplated hereby ~~including the Transactions~~, (iii) any Loan Party's or any Guarantor's failure to observe, perform or discharge any of its covenants, obligations, agreements or duties under or breach of any of the representations or warranties made in this Agreement and the Other Documents, (iv) the enforcement of any of the rights and remedies of any Agent, any Issuer or any Lender under the Agreement and the Other Documents, (v) any threatened or actual imposition of fines or penalties, or disgorgement of benefits, for violation of any Anti-Terrorism Law by any Loan Party, any Affiliate or Subsidiary of any Borrowers, or any Guarantor, and (vi) any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Body or instrumentality or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not any Agent or any Lender is a party thereto. Without limiting the generality of any of the foregoing, each Loan Party shall defend, protect, indemnify, pay and save harmless each Indemnified Party from (x) any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party arising out of or in any way relating to or as a consequence, direct or indirect, of the issuance of any Letter of Credit hereunder and (y) any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party under any Environmental Laws with respect to or in connection with the Real Property, any Hazardous Discharge, the presence of any Hazardous Materials affecting the Real Property (whether or not the same originates or emerges from the Real Property or any contiguous real estate), including any Claims consisting of or relating to the imposition or assertion of any Lien on any of the Real Property under any Environmental Laws and any loss of value of the

Real Property as a result of the foregoing except to the extent such loss, liability, damage and expense is attributable to any Hazardous Discharge resulting from actions on the part of any Agent or any Lender. Loan Parties' obligations under this Section 16.5 shall arise upon the discovery of the presence of any Hazardous Materials at the Real Property, whether or not any federal, state, provincial or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Materials, in each such case except to the extent that any of the foregoing arises out of the gross negligence or willful misconduct of the Indemnified Party (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Without limiting the generality of the foregoing, this indemnity shall extend to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) asserted against or incurred by any of the Indemnified Parties by any Person under any Environmental Laws or similar laws by reason of any Loan Party's or any other Person's failure to comply with laws applicable to solid or hazardous waste materials, including Hazardous Materials and Hazardous Waste, or other Toxic Substances. Additionally, if any taxes (excluding taxes imposed upon or measured solely by the net income of Agents and Lenders, but including any intangibles taxes, stamp tax, recording tax or franchise tax) shall be payable by Agents, Lenders or Loan Parties on account of the execution or delivery of this Agreement, or the execution, delivery, issuance or recording of any of the Other Documents, or the creation or repayment of any of the Obligations hereunder, by reason of any Applicable Law now or hereafter in effect, Loan Parties will pay (or will promptly reimburse Agents and Lenders for payment of) all such taxes, including interest and penalties thereon, and will indemnify and hold the Indemnified Parties harmless from and against all liability in connection therewith. Notwithstanding the foregoing, the Loan Parties shall have no obligation to any Indemnified Party under this Section 16.5 with respect to any liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Party or its officers, directors, employees, attorneys, or agents. This Section 16.5 shall not apply to the extent that the losses, claims or damages relate to any Taxes described in Section 3.10.

1.6 Notice. Any notice or request hereunder may be given to Borrowing Agent or any Loan Party or to any Agent or any Lender at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section 16.6. Any notice, request, demand, direction or other communication (for purposes of this Section 16.6 only, a **“Notice”**) to be given to or made upon any party hereto under any provision of this Agreement shall be given or made by telephone (save with respect to Notices to European Agent) or in writing (which includes by means of electronic transmission (i.e., **“e-mail”**)) or by setting forth such Notice on a website to which Loan Parties are directed (an **“Internet Posting”**) if Notice of such Internet Posting (including the information necessary to access such site) has previously been delivered to the applicable parties hereto by another means set forth in this Section 16.6) in accordance with this Section 16.6. Any such Notice must be delivered to the applicable parties hereto at the addresses and numbers set forth under their respective names on Section 16.6 hereof or in accordance with any subsequent unrevoked Notice from any such party that is given in accordance with this Section 16.6. Any Notice shall be effective:

(a) In the case of hand-delivery, when delivered;

(b) If given by mail, four (4) days after such Notice is deposited with the United States Postal Service, Canada Post or other applicable postal service, with first-class postage prepaid, return receipt requested;

(c) In the case of a telephonic Notice, when a party is contacted by telephone, if delivery of such telephonic Notice is confirmed no later than the next Business Day by hand delivery, an electronic transmission, an Internet Posting or an overnight courier delivery of a confirmatory Notice (received at or before noon on such next Business Day), provided always that telephonic Notice shall not be a valid form of communication to the European Agent;

(d) In the case of electronic transmission, when actually received;

(e) In the case of an Internet Posting, upon delivery of a Notice of such posting (including the information necessary to access such site) by another means set forth in this Section 16.6; and

(f) If given by any other means (including by overnight courier), when actually received.

Any Lender giving a Notice to any Applicable Borrowing Agent or any Loan Party shall concurrently send a copy thereof to Agent, and Agent shall promptly notify the other Agents and other Lenders of its receipt of such Notice.

(A) If to Agent or PNC at:

PNC Bank, National Association
PNC Agency Services
PNC Firstside Center
500 First Avenue, 4th Floor
Pittsburgh, Pennsylvania 15219
Attention: Cheryl Thon
Telephone: (412) 762-7806
Facsimile: (412) 762-8672

with a copy to:

PNC Bank, National Association
PNC Agency Services
PNC Firstside Center
500 First Avenue, 4th Floor
Pittsburgh, Pennsylvania 15219
Attention: Trina Barkley
Telephone: (412) 768-0423
Facsimile: (412) 705-2006

with an additional copy to:

PNC Bank, National Association
1900 East Ninth Street, 9th Floor
Cleveland, Ohio 44114
Attention: Todd Milenius
Telephone: (216) 222-9761
Facsimile: (216) 222-8155

(B) If to European Agent [or European Collateral Agent](#) at:

J.P. Morgan **Europe Limited**
Loans Agency 6th floor

25 Bank Street, Canary Wharf
London E14 5JP
United Kingdom
Attention: Loans Agency
Telephone: +44 20 7134 8188
Telecopier: +44 20 7777 2360
Email: loan_and_agency_london@jpmorgan.com

signature pages hereof

(C) If to a Lender other than Agent, as specified on the

(D) If to any Applicable Borrowing Agent or any Loan Party:

Invacare Corporation
One Invacare Way
Elyria, OH 44035
Attention: Kathleen P. Leneghan
Telephone: (440) 329-6717
Email: kleneghan@invacare.com

with a copy to:

Calfee, Halter & Griswold LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114
Attention: Brian A. McMahon
Telephone: (216) 622-8660
Email: bmcMahon@calfee.com

1.7 Survival. The obligations of Loan Parties under Sections 2.2(f), 2.2(g), 2.2(h), 3.7, 3.8, 3.9, 3.10, 16.5 and 16.9 and the obligations of Lenders under Sections 2.2, 2.14(b), 2.15, 2.17, 2.18, 14.8 and 16.5, shall survive termination of this Agreement and the Other Documents and payment in full of the Obligations.

1.8 Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

1.9 Expenses. Loan Parties shall pay (i) all reasonable and documented out-of-pocket expenses incurred by each Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of counsel for such Agent), and shall pay all reasonable and documented fees and time charges and disbursements for attorneys who may be employees of each Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the Other Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by any Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (iii) all reasonable and documented out-of-pocket expenses incurred by any Agent, any Lender or any Issuer (including the reasonable and documented fees, charges and disbursements of any counsel for any Agent, any Lender or any Issuer), and

shall pay reasonable and documented all reasonable and documented fees and time charges for attorneys who may be employees of any Agent, any Lender or any Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the Other Documents, including its rights under this Section 16.9, or (B) in connection with the Advances 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 Advances or Letters of Credit, and (iv) all reasonable and documented out-of-pocket expenses of each Agent's regular employees and agents engaged periodically to perform audits of the any Loan Party's or any Loan Party's Affiliate's or Subsidiary's books, records and business properties including, without limitation, for field examinations and the preparation of reports based on the fees charged by a third party retained by the European Agent or the internally allocated fees for each Person employed by the European Agent with respect to each field examination, subject to the limitations set forth in Section 6.3.

1.10 Injunctive Relief. Each Loan Party recognizes that, in the event any Loan Party fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, or threatens to fail to perform, observe or discharge such obligations or liabilities, any remedy at law may prove to be inadequate relief to Lenders; therefore, Agents, if any Agent so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving that actual damages are not an adequate remedy.

1.11 Consequential Damages. Neither any Agent nor any Lender, nor any agent or attorney for any of them, shall be liable to any Borrower, or any Guarantor (or any Affiliate of any such Person) for indirect, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations or as a result of any transaction contemplated under this Agreement or any Other Document.

1.12 Captions. The captions at various places in this Agreement are intended for convenience only and do not constitute and shall not be interpreted as part of this Agreement.

1.13 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

1.14 Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

1.15 Confidentiality; Sharing Information. Each Agent, each Lender and each Transferee shall hold all non-public information obtained by such Agent, such Lender or such Transferee pursuant to the requirements of this Agreement in accordance with such Agent's, such Lender's and such Transferee's customary procedures for handling confidential information of this nature and such non-public information shall not be disclosed by such Agent, such Lender or such Transferee to Persons who are not parties to this Agreement; provided, however, each Agent, each Lender and each Transferee may disclose such confidential information (a) to its employees, officers, directors, examiners,

Affiliates, outside auditors, counsel and other professional advisors, (b) to any Agent, any Lender or to any prospective Transferees (so long as the Persons to whom such disclosure is made are informed of the confidential nature of such information and have agreed to keep such information confidential), and (c) as required or requested by any Governmental Body or representative thereof or pursuant to legal process; provided, further that (i) unless specifically prohibited by Applicable Law, each Agent, each Lender and each Transferee shall use its reasonable best efforts prior to disclosure thereof, to notify the applicable Loan Party of the applicable request for disclosure of such non-public information (A) by a Governmental Body or representative thereof (other than any such request in connection with an examination of the financial condition of a Lender or a Transferee by such Governmental Body) or (B) pursuant to legal process and (ii) in no event shall any Agent, any Lender or any Transferee be obligated to return any materials furnished by any Loan Party other than those documents and instruments in possession of any Agent or any Lender in order to perfect its Lien on the Collateral once the Obligations have been paid in full and this Agreement has been terminated; provided that any disclosure under sub-clauses (A) or (B) of this sentence shall be limited to the information required by such Governmental Body or such legal process. Each Loan Party acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to such Loan Party or one or more of its Affiliates (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and each Loan Party hereby authorizes each Lender to share any information delivered to such Lender by such Loan Party and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such Subsidiary or Affiliate of such Lender, it being understood that any such Subsidiary or Affiliate of any Lender receiving such information shall be bound by the provisions of this Section 16.15 as if it were a Lender hereunder. Such authorization shall survive the repayment of the other Obligations and the termination of this Agreement. Notwithstanding any non-disclosure agreement or similar document executed by any Agent in favor of any Loan Party or any of any Loan Party's affiliates, the provisions of this Agreement shall supersede such agreements.

1.16 Publicity. Each Loan Party and each Lender hereby authorizes Agents to make appropriate announcements of the financial arrangement entered into among Loan Parties, Agents and Lenders, including announcements which are commonly known as tombstones, in such publications and to such selected parties as Agents shall deem appropriate in consultation with, and subject to the approval of, the Borrowing Agent, such approval not to be unreasonably withheld, conditioned or delayed.

1.17 Certifications From Banks and Participants; USA PATRIOT Act.

(a) Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA PATRIOT Act and the applicable regulations: (1) within ten (10) days after the Closing Date, and (2) as such other times as are required under the USA PATRIOT Act.

(b) The USA PATRIOT Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, any Lender may from time to time

request, and each Loan Party shall provide to such Lender, such Loan Party's name, address, tax identification number and/or such other identifying information as shall be necessary for Lender to comply with the USA PATRIOT Act and any other Anti-Terrorism Law.

1.18 Anti-Terrorism Laws.

(a) Each Borrower and each Guarantor represents and warrants that (i) no Covered Entity is a Sanctioned Person and (ii) no Covered Entity, either in its own right or through any third party, (A) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (B) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (C) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

(b) Each Borrower and each Guarantor covenants and agrees that: (A) they shall immediately notify the Agent and each of the Lenders in writing upon the occurrence of a Reportable Compliance Event; and (B) if, at any time, any Collateral becomes Embargoed Property, then, in addition to all other rights and remedies available to the Agent and each of the Lenders, upon request by the Agent or any of the Lenders, the Loan Parties shall provide substitute Collateral acceptable to the Lenders that is not Embargoed Property.

(c) Each Borrower and each Guarantor covenants and agrees that (i) no Covered Entity will become a Sanctioned Person or allow any employees, officers, directors, affiliates, consultants, brokers, or agents acting on its behalf in connection with this Agreement to become a Sanctioned Person, (ii) no Covered Entity, either in its own right or through any third party, will (A) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (B) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (C) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (D) use the Advances to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law, (iii) the funds used to repay the Obligations will not be derived from any unlawful activity, (iv) each Covered Entity shall comply with all Anti-Terrorism Laws ~~and~~, (v) ~~Loan Parties shall promptly notify Agent in writing upon the occurrence of a Reportable Compliance Event~~ it will now repay the Loans with Embargoed Property or funds derived from any unlawful activity; (vi) it will not permit any Collateral to become Embargoed Property; and (e) it will not cause any Lender or Agent to violate any Anti-Terrorism Law.

(d) ~~(e)~~ 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-Terrorism Laws.

In addition to the foregoing, the Loan Parties acknowledge that, pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws within Canada, the Lenders and the Agent may be required to obtain, verify and record information regarding the Loan Parties, their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the

transactions contemplated hereby. The Loan Parties shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any Agent, or any prospective assign or participant of a Lender or any Agent, in order to comply therewith, whether now or hereafter in existence.

1.19 Canadian Borrowers and Canadian Guarantors.

(a) Liability of Canadian Loan Parties. Notwithstanding anything in this Agreement or any of the Other Documents to the contrary, the parties intend that this Agreement and the Other Documents do hereby provide, and shall in all circumstances be interpreted to provide, that the Canadian Loan Parties are jointly and severally liable for, and the Canadian Collateral shall secure, all Advances, interest on such Advances, and all other Obligations, including, without limitation, general fees, reimbursements, indemnities and charges hereunder and under any Other Document. Nothing in this Section 16.19 is intended to limit, nor shall it be deemed to limit, any liability of the Company or any other US Loan Party for any of the Obligations, whether in its primary capacity as a Borrower, as a Guarantor, at law or otherwise. All Obligations of the Borrowers, both the Canadian Borrowers and the US Borrowers, and Guarantors, both the US Guarantors and the Canadian Guarantors, are joint and several.

(b) Company as Agent. The Canadian Borrowers, in addition to the appointment of the Company as the Borrowing Agent as provided herein, further hereby irrevocably appoint the Company as its agent to receive the proceeds of any Advances made to any Canadian Borrower hereunder. Agent shall be entitled to rely in such matters on all communications delivered by the Company as being delivered on behalf of the Canadian Borrowers.

1.20 European Borrowers and European Guarantors.

(a) Generally. Without limiting the joint and several nature of all US Borrowers' and Canadian Borrowers' Obligations, the Obligations of the European Borrowers shall be several in nature, and the Obligations of the European Guarantors shall be limited if and to the extent expressly set forth in the English Law Guaranty.

(b) Liability of European Borrowers. The parties intend that this Agreement shall in all circumstances be interpreted to provide that each European Borrower is liable only for Advances made to such European Borrower, interest on such Advances, such European Borrower's reimbursement obligations with respect to any Letter of Credit issued for its account and its ratable share of any of the other Obligations, including, without limitation, general fees, reimbursements, indemnities and charges hereunder and under any Other Document that are attributable, or attributed as a ratable share, to it. The liability of each European Borrower for the payment of any of the Obligations or the performance of its covenants, representations and warranties set forth in this Agreement and the Other Documents shall be several from but not joint with the Obligations of the US Loan Parties and the Canadian Loan Parties. Nothing in this Section 16.20 is intended to limit, nor shall it be deemed to limit, any of the liability of any US Loan Party or any Canadian Loan Party for any of the Obligations, whether in its primary capacity as a Borrower, as a Guarantor, at law or otherwise.

(c) Additional European Guarantors. European Agent may at any time request that Invacare Holdings Two S.a.r.l and/or Invacare Holdings Two B.V. become a European Guarantor by providing a Guaranty in favour of the European Collateral Agent as security trustee for the Secured Parties in form satisfactory to the European Collateral Agent;

(d) Notice to French Guarantors. The European Agent shall use reasonable endeavors to notify in writing to the European Borrowing Agent, prior to 31 March of each year, the amount of outstanding guaranteed obligations as at 31 December of the preceding year, and the date of the expiry of such obligations, of the French Guarantors

under the English Law Guaranty. For the avoidance of doubt, the English Law ~~Guarantee~~Guaranty shall not be considered as a “cautionnement” under French law.

(e) Representation of Dutch Loan Party. If any Loan Party incorporated under the laws of the Netherlands, is represented by an attorney in connection with the signing and/or execution of this Agreement or any other agreement, deed or document referred to in or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the other parties to this Agreement that the existence and extent of the attorney's authority and the effects of the attorney's exercise or purported exercise of his or her authority shall be governed by the laws of the Netherlands.

1.21 Joinder of Guarantors and Borrowers. Any Subsidiary of the Company which is required to join this Agreement as a Guarantor, or any Subsidiary of the Company which elects to join this Agreement as a Borrower, pursuant in each case to Section 7.12 shall execute and deliver to Agent (i) a Guarantor Joinder or Borrower Joinder, as applicable, pursuant to which it shall, after acceptance of such Guarantor Joinder or Borrower Joinder by Agent, join this Agreement as a US Loan Party, Canadian Loan Party, English Loan Party or French Loan Party, as applicable, and join each of the Other Documents to which the US Loan Parties or Canadian Loan Parties, as applicable, are parties, (ii) documents in the forms described in Section 8.1 (or foreign jurisdictional equivalents, if any), modified as appropriate to relate to such Subsidiary, and (iii) documents necessary to grant and perfect Liens in favor of Agent for the benefit of Lenders in the Equity Interest of, and Collateral held by, such Subsidiary. Joinder of each new Loan Party pursuant to this Section shall be subject to compliance with all the other terms and conditions set forth in this Agreement and the Other Documents, including without limitation Section 6.1 and Section 3.10.

1.22 Amendment and Restatement. This Agreement amends and restates in its entirety the Existing Credit Agreement. All references to the "Credit Agreement", the "Agreement" or derivations thereof contained in the Other Documents delivered in connection with the Existing Credit Agreement or this Agreement shall, and shall be deemed to, refer to this Agreement. Notwithstanding the amendment and restatement of the Existing Credit Agreement by this Agreement, the Obligations of the Borrowers and the other Loan Parties outstanding under the Existing Credit Agreement and the Other Documents as of the Closing Date shall remain outstanding and shall constitute continuing Obligations hereunder without novation and shall continue as such to be secured by the Collateral. Such Obligations shall in all respects be continuing and this Agreement shall not be deemed to evidence or result in a novation or repayment and reborrowing of such Obligations. The Liens securing payment of the Obligations under the Existing Credit Agreement, as amended and restated in the form of this Agreement, shall in all respects be continuing, securing the payment of all Obligations.

1.23 CAM Exchange.

(a) On the CAM Exchange Date,

(i) the European Revolving Commitments shall have terminated in accordance with Article 11;

(ii) each European Lender shall fund its participation in any outstanding European Swing Loans and Protective Advances under the English Facility and/or the French Facility, in each case in accordance with the terms of this Agreement;

(iii) each European Lender shall fund its participation in any unreimbursed disbursements made under the European Letters of Credit, in each case in accordance with the terms of this Agreement; and

(iv) each European Lender shall purchase in Dollars at par participation interests in the Designated Obligations under the English Facility and the French Facility from the other European Lenders (and shall make payments in Dollars to the European Agent for reallocation to other European Lenders to the extent necessary to give effect to such sub participations) and shall assume the obligation to reimburse each Issuer for unreimbursed disbursements under outstanding European Letters of Credit under each Facility to the extent necessary such that the interests of each European Lender in the Designated Obligations immediately following the CAM Exchange Date (including all sub participation interests obtained as described above) shall equal the CAM Percentage of such European Lender in each component of the Designated Obligations.

(b) Each European Lender and each Person acquiring a sub participation interest from any European Lender as contemplated by this Section 16.23 hereby consents and agrees to the CAM Exchange.

(c) As a result of the CAM Exchange, from and after the CAM Exchange Date, each payment received by European Agent pursuant to this Agreement or any Other Document in respect of any of the Designated Obligations shall be distributed to the relevant European Lenders, for distribution pro rata in accordance with the CAM Percentage.

(d) In the event that on or after the CAM Exchange Date, the aggregate amount of the Designated Obligations shall change as a result of the making of a disbursement under a European Letter of Credit by an Issuer that is not reimbursed by the applicable European Borrowers, then each European Lender shall promptly reimburse such Issuer for its CAM Percentage of the Dollar Equivalent of such unreimbursed payment.

Notwithstanding any other provision of this Section 16.23, each Secured Party agrees that if any Secured Party is required under applicable law to withhold or deduct any taxes or other amounts from payments made by it hereunder or as a result hereof, such Person shall be entitled to withhold or deduct such amounts and pay over such taxes or other amounts to the applicable Governmental Body imposing such tax without any obligation to indemnify any Secured Party with respect to such amounts and without any other obligation of gross up or offset with respect thereto and there shall be no recourse whatsoever by any Secured Party subject to such withholding to any other Secured Party making such withholding and paying over such amounts, but without diminution of the rights of such Secured Party subject to such withholding as against Borrowers and the other Loan Parties to the extent (if any) provided in this Agreement and the Other Documents. Any amounts so withheld or deducted shall be treated as, for the purpose of this Section 16.23, having been paid to such Secured Party to which such withholding or deduction was made.

Notwithstanding anything to the contrary set forth in this Section 16.23 or otherwise provided for in the Agreement, in no event shall any European Lender that is not a French Qualifying Lender be required to take any action in connection with the CAM Exchange if (x) such action would require such European Lender to hold Designated Obligations (or interests or sub participations therein) to the extent that such interests are only permitted to be held by a French Qualifying Lender, (y) such European Lender would lose any benefits or rights it may have as a European Lender under this Agreement, or (z) such action would otherwise violate Applicable Law (including French law) in any respect.

1.24 Release of GCM I and Liens on the GCM I Disposed Assets and GCM I Inventory. Subject to the condition that the proceeds of the sale of the GCM I Disposed Assets and the GCM I Inventory be applied to the repayment of the outstanding advances in accordance with Section 2.19(a), effective as of the GCM I Disposition Effective Date, the Agent and the Lenders hereby unconditionally and irrevocably (i) terminate, release and discharge any and all Liens and security interests in the GCM I Disposed Assets and the GCM I Inventory and (ii) release GCM I as Borrower under the Credit Agreement and under any Other Document to which it is a party, and it shall be relieved of any and all obligations or liabilities whatsoever under the Credit Agreement and any Other Documents, and any liens filed against GCM I in favor of the Agent in connection with the Credit Agreement and the Other Documents are hereby released and terminated.

1.25 Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in this Agreement, any Other Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any ~~EEA~~Affected Financial Institution arising under this Agreement or any Other Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of ~~an EEA~~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 an ~~EEA~~applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an ~~EEA~~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 ~~EEA~~Affected Financial Institution, its parent undertaking, 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 Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any ~~EEA~~applicable Resolution Authority.

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[SIGNATURE PAGES ~~FOLLOW~~OMITTED]

[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

Each of the parties has signed this Agreement as of the day and year first above written.

US BORROWERS:

Invacare Corporation, an Ohio corporation

By: _____

Name: Kathleen P. Leneghan

Title: Senior Vice President and Chief Financial Officer

Freedom Designs, Inc., a California corporation

Alber USA, LLC, an Ohio limited liability company

Medbloec, Inc., a Delaware corporation

By: _____

Name: Kathleen P. Leneghan

Title: Vice President and Treasurer

Invacare Continuing Care, Inc., a Missouri corporation

By: _____

Name: Kathleen P. Leneghan

Title: Vice President and Treasurer

~~[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]~~

US GUARANTORS:

~~Adaptive Switch Laboratories, Inc., a Texas corporation
Invacare Credit Corporation, an Ohio corporation
Invacare Holdings, LLC, an Ohio limited liability company
Invamex Holdings LLC, a Delaware limited liability company~~

~~By: _____
Name: Kathleen P. Leneghan
Title: Vice President and Treasurer~~

[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

CANADIAN BORROWERS:

Invacare Canada L.P., an Ontario limited partnership, by its general partner,

Invacare Canada General Partner Inc.

Motion Concepts L.P., an Ontario limited partnership, by its general partner,

Carroll Healthcare Inc.

Perpetual Motion Enterprises Limited, an Ontario corporation

By: _____

Name: Kathleen P. Leneghan

Title: Vice President and Treasurer

CANADIAN GUARANTORS:

Carroll Healthcare General Partner, Inc., an Ontario corporation

Carroll Healthcare Inc., an Ontario corporation

Invacare Canada General Partner Inc., a Canada corporation

By: _____

Name: Kathleen P. Leneghan

Title: Vice President and Treasurer

[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

ENGLISH BORROWERS:

~~Invacare Limited, a company incorporated in England and Wales with company number 05178693~~

~~By: _____~~

~~Name: Philippe Gretz~~

~~Title: Director~~

ENGLISH GUARANTORS:

~~Invacare Limited, a company incorporated in England and Wales with company number 05178693~~

~~By: _____~~

~~Name: Philippe Gretz~~

~~Title: Director~~

~~Invacare UK Operations Limited, a company incorporated in England and Wales with company number 03281202~~

~~By: _____~~

~~Name: Philippe Gretz~~

~~Title: Director~~

[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]

FRENCH BORROWERS:

Invacare Poirier SAS

By: _____

Name: Philippe Gretz

Title: President Duly Authorised

FRENCH GUARANTORS:

Invacare Poirier SAS

By: _____

Name: Philippe Gretz

Title: President Duly Authorised

Invacare France Operations S.A.S.

By: _____

Name: Philippe Gretz

Title: President Duly Authorised

DUTCH GUARANTORS:

Invacare B.V.

By:—

Name:— Désirée de la Fuente — van Baal

Title:— Statutory Director

By:—

Name:— Marco Koole

Title:— Statutory Director

·

~~[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]~~

~~PNC BANK, NATIONAL ASSOCIATION,
as Lender and as Agent~~

~~By:
Name: Todd Milenius
Title: Senior Vice President~~

~~[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]~~

~~KEYBANK NATIONAL ASSOCIATION,
as Lender~~

~~By:
Name: Jonathan Roe
Title: Vice President~~

~~[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]~~

~~JPMORGAN CHASE BANK, N.A.,
as Lender~~

~~By:
Name: Erik Barragan
Title: Authorized Officer~~

~~[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]~~

~~**J.P. MORGAN EUROPE LIMITED**, as European Agent~~

~~By:—~~

~~Name:—Matthew Sparkes~~

~~Title:—Authorised Officer~~

~~**J.P. MORGAN AG**, as Lender~~

~~By:—~~

~~Name:—Matthew Sparkes~~

~~Title:—Authorised Officer~~

~~[SIGNATURE PAGE TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT]~~

~~CITIZENS BUSINESS CAPITAL, A DIVISION
OF CITIZENS ASSET FINANCE, INC.,
as Lender~~

~~By:
Name: David Slattery
Title: Vice President~~

ANNEX A

US Borrowers

Invacare Corporation, an Ohio corporation
Freedom Designs, Inc., a California corporation
Invacare Continuing Care, Inc., a Missouri corporation
Medbloc, Inc., a Delaware corporation
Alber USA, LLC, an Ohio limited liability company

ANNEX B

US Guarantors

Adaptive Switch Laboratories, Inc., a Texas corporation
Invacare Credit Corporation, an Ohio corporation
Invacare Holdings, LLC, an Ohio limited liability company
Invamex Holdings LLC, a Delaware limited liability company

ANNEX C

Canadian Borrowers

Invacare Canada L.P., an Ontario limited partnership

Carroll Healthcare L.P., an Ontario limited partnership

Motion Concepts L.P., an Ontario limited partnership

Perpetual Motion Enterprises Limited, an Ontario corporation

ANNEX D

Canadian Guarantors

Carroll Healthcare General Partner, Inc., an Ontario corporation

Carroll Healthcare Inc., an Ontario corporation

Invacare Canada General Partner Inc., a Canada corporation

ANNEX E

English Borrowers

Invacare Limited, a company incorporated in England and Wales with company number 05178693.

ANNEX F

English Guarantors

Invacare Limited, a company incorporated in England and Wales with company number 05178693.

Invacare UK Operations Limited, a company incorporated in England and Wales with company number 03281202

ANNEX G

French Borrowers

Invacare Poirier SAS, a French *société par actions simplifiée* located at Route de Saint Roch, 37230, Fondettes, France and registered with the companies registry of Tours under number 479 207 060

ANNEX H

French Guarantors

Invacare Poirier SAS, a French *société par actions simplifiée* located at Route de Saint Roch, 37230, Fondettes, France and registered with the companies registry of Tours under number 479 207 060

Invacare France Operations S.A.S.

ANNEX I

Dutch Guarantors

Invacare B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under Dutch law and registered with the Dutch trade register under number 18041272

Schedule 1.2(c)

Canadian Reorganization

A reorganization consisting substantially of the following steps:

1. Carroll Healthcare Inc., an Ontario corporation and a Canadian Guarantor ("Carroll Inc.") will contribute its partnership units of Carroll Healthcare L.P., an Ontario limited partnership and a Canadian Borrower ("Carroll LP") to Invacare Canada L.P., an Ontario limited partnership and a Canadian Borrower ("Invacare Canada") for consideration consisting of additional partnership units of Invacare Canada;
2. Carroll LP will be terminated in accordance with its limited partnership agreement and applicable law and an undivided interest in its assets will be distributed to its partners on a pro rata basis;
3. Carroll Healthcare General Partner, Inc., an Ontario corporation and a Canadian Guarantor ("Carroll GP"), will sell its one percent (1%) undivided interest in the assets received from Carroll LP to Invacare Canada for cash consideration; and
4. Carroll GP will then be dissolved and its assets will be distributed to its sole shareholder Invacare Canadian Holdings, Inc., a Delaware corporation and a US Guarantor.

Schedule 1.2(m)

Mortgage-Eligible Properties

<u>COUNTRY</u>	<u>LOCATION</u>	<u>Square feet</u>	<u>Use</u>
FRANCE	Fondettes	191,856	Factory / Warehouse
GERMANY	Isny	47,232	Manufacturing/warehouse/office
ITALY	Thiene	21,528	Warehouse & offices
SWEDEN	Dio	110,524	Manufacturing of manual wheelchairs and office

Schedule 7.3
Guarantees

1. Guarantee by the Company for indebtedness incurred by certain of its German Subsidiaries to Deutsche Bank in an aggregate amount not to exceed EUR 18,000,000. As of the Closing Date, indebtedness incurred is \$0.
2. Guarantee by the Company for indebtedness incurred by Dynamic Controls to HSBC for overdraft facilities in an aggregate amount not to exceed NZD 500,000.
3. Letters of Comfort in favor of subsidiaries in Denmark, Norway, and Sweden declaring the Company's financial or other support with regard to intercompany loans existing at 30 November 2014.
4. The Company guarantees the prompt payment by the following subsidiaries of all rents and all other sums payable by the subsidiaries under the following leases:
 - 1) Warehouse Building Lease, dated January 28, 2014, between TR Tipton Corp. and Garden City Medical, Inc., for premises located at 770 Tipton Industrial Drive, Suite A, Lawrenceville, GA, pursuant to the Lease Guarantee, dated January 28, 2014.
5. Guarantees in connection with the following (the "Canadian Forward Contract):

Current Canadian Hybrid Structure

The hybrid structure is comprised of the following three agreements:

- 1) A Promissory Note (the "Note") dated August 2, 2013 in the principal amount of Cdn\$63,450,000 (due on August 2, 2023) payable by Carroll Healthcare Inc. ("Carroll") and payable to Invacare Canadian Holdings, Inc. ("Canadian Holdings")
- 2) A Forward Capital Contribution Agreement ("FSA1") dated August 2, 2013 between Invacare Canadian Holdings, LLC ("Holdings LLC") and Canadian Holdings.
- 3) A Forward Subscription Agreement ("FSA2") dated August 2, 2013 between Carroll and Holdings LLC.

Changes to the Canadian Hybrid Structure

In order to address the changes in tax laws, the current hybrid structure will be changed as follows in 2015:

- 1) Canadian Holdings will enter into an agreement with Carroll pursuant to which Canadian Holdings will guarantee the liabilities and obligations of Holdings LLC under FSA2.
 - 2) The Note will be amended such that (i) Carroll will grant to Canadian Holdings a security interest in all of Carroll's proceeds under FSA2, and (ii) Canadian Holdings' recourse under the Note will be limited to Carroll's proceeds under FSA2.
6. Substantially all of the domestic subsidiaries (the "Guarantor Subsidiaries") of the Company are guarantors of the indebtedness of the Company under the Debentures. Each of the Guarantor Subsidiaries has fully and unconditionally guaranteed, on a joint and several basis, to pay principal, premium, and interest related to the Debentures. Specifically, the Debentures are guaranteed on an unsecured senior subordinated basis by all of the Company's existing domestic subsidiaries (other than the Company's captive insurance subsidiary and any receivables subsidiaries) and certain future direct and indirect 100% owned domestic subsidiaries.
 7. The Company has guaranteed for Invacare Holdings Two B.V. all except two million of the cash pool liabilities Invacare Holdings Two B.V. has to entities with positive balances.
 8. The Company has agreed to reimburse Scandinavian Mobility International APS if the tax audit appeal is not successful, which will be approximately 5-6 million USD.
 9. Guarantee and indemnification by the Company of the obligations of Dynamic Controls that are or become owed to New Zealand arising from time to time in connection with the R&D Growth Grant awarded by New Zealand to Dynamic Controls, as such grant may be extended from time to time.
 10. Other guarantees of obligations (not including Indebtedness for borrowed money) of Subsidiaries incurred in the Ordinary Course of Business. For example, the Company frequently is asked by one of its foreign Subsidiaries to guarantee obligations under real property leases.

EXHIBIT 1.2(e)

FORM OF BORROWING REQUEST FOR EUROPEAN BORROWERS

[Insert onto Letterhead of European Borrowing Agent]

European Borrowing Request

Date []

J.P. Morgan AG
Loans Agency, 6th Floor
25 Bank Street, Canary Wharf
London, E14 5JP
United Kingdom
Attention: Loans. Agency
Fax: +44 (0)207 777 2360
Email: loans_and_agency_london@jpmorgan.com

Dear Sir or Madam:

This European Borrowing Request is delivered pursuant to Section 2.2(b) of the Amended and Restated Revolving Credit and Security Agreement dated as of September 30, 2015 (together with all amendments, restatements, modifications and supplements thereto and restatements thereto, and as amended or amended and restated from time to time, the "Credit Agreement"), among Invacare Corporation and others as US-Canada Borrowers, Invacare Limited and others as European Borrowers, the other Loan Parties party thereto, the Lenders party thereto, PNC Bank, National Association, in various capacities including as Agent and J.P. Morgan AG, in various capacities including as European Agent. Unless otherwise defined herein, capitalized terms used in this European Borrowing Request have the meanings ascribed thereto in the Credit Agreement. The European Borrowing Agent hereby gives you notice pursuant to Section 2.2(b) of the Credit Agreement of the following request for a European Revolving Advance (the "Proposed Loan") under the Credit Agreement:

- (a) The European Borrowing Agent, on behalf of the applicable European Borrower, hereby notifies the European Agent of its request to credit the following account for the Proposed Loan:

- (a) Name of the applicable European Borrower:

- (b) Aggregate amount of the Proposed Loan is:

- (c) Borrowing date (must be a Business Day) of the Proposed Loan is:

- (d) The Proposed Loan shall be a: (mark with x)

Term Benchmark Loan
RFR Loan

(e) The currency of the Proposed Loan shall be: (mark with x)

Euro
Sterling
U.S. Dollars

(f) The initial Interest Period (where applicable) of the Proposed Loan is: (mark with x)

One Month
Three Month

[●]
as European Borrowing Agent

By: _____
Name: _____
Title: _____

Invacare Corporation Subsidiaries

- 1 Adaptive Switch Laboratories, Inc., a Texas corporation.
- 2 Alber GmbH, a German limited liability company.
- 3 Alber GmbH, a Swiss limited liability company.
- 4 Alber USA, LLC, an Ohio limited liability company.
- 5 Invacare Logistics GmbH, a German limited liability company.
- 6 Carroll Healthcare General Partner Inc., an Ontario corporation.
- 7 Carroll Healthcare Inc., an Ontario corporation.
- 8 Freedom Designs, Inc., a California corporation.
- 9 Invacare AB, a Swedish company.
- 10 Invacare AG, a Swiss company.
- 11 Invacare A/S, a Danish company.
- 12 Invacare AS, a Norwegian company.
- 13 Invacare Asia Ltd., a Hong Kong company.
- 14 Invacare Australia Pty Limited, an Australian company.
- 15 Invacare Austria GmbH, an Austrian company.
- 16 Invacare B.V., a Netherlands company.
- 17 Invacare Canada General Partner Inc., a Canadian federal corporation.
- 18 Invacare Canada L.P., an Ontario limited partnership.
- 19 Invacare Credit Corporation, an Ohio corporation.
- 20 Invacare Dolomite AB, a Swedish company.
- 21 Invacare (Deutschland) GmbH, a German company.
- 22 Invacare France Operations SAS, a French company.
- 23 Invacare Enterprise Management Services (Suzhou) Co., Ltd., a China company
- 24 Invacare Germany Holding GmbH, a German company.
- 25 Invacare GmbH, a German company.
- 26 Invacare Holding AS, a Norwegian company.
- 27 Invacare Holdings C.V., a Netherlands partnership.
- 28 Invacare Holdings, LLC, an Ohio limited liability company.
- 29 Invacare Holdings SARL, a Luxembourg company.
- 30 Invacare Holding Two AB, a Swedish company.
- 31 Invacare Holdings Two B.V., a Netherlands company.
- 32 Invacare Holdings Two SARL, a Luxembourg company.
- 33 Invacare Ireland Ltd., an Ireland company.
- 34 Invacare International GmbH, a Swiss company.
- 35 Invacare Limited, a UK company.
- 36 Invacare MeccSan Srl, an Italian company.
- 37 Invacare New Zealand, a New Zealand company.
- 38 Invacare NV, a Belgium company.
- 39 Invacare Poirier SAS, a French company.
- 40 Invacare (Portugal)—Sociedade Industrial e Comercial de Ortopedia, Lda., a Portuguese company.
- 41 Invacare (Portugal) II—Material Ortopedico, Lda., a Portuguese company.
- 42 Invacare Rea AB, a Swedish company.
- 43 Invacare S.A., a Spanish company.
- 44 Invacare Thailand Ltd., a Thailand limited liability company
- 45 Invacare UK Operations Ltd., a UK company.

- 46 Invacare Verwaltungs GmbH, A German limited liability company.
- 47 Invamex Holdings LLC, a Delaware limited liability company.
- 48 Invamex S. de R.L. de C.V., a Mexican corporation.
- 49 Invatection Insurance Company, a Vermont corporation.
- 50 Medbloc, Inc., a Delaware corporation.
- 51 Motion Concepts, L.P., an Ontario limited partnership.
- 52 Perpetual Motion Enterprises Limited, an Ontario corporation.

Note that all entities are direct or indirect wholly owned subsidiaries.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8, No. 333-109794) dated October 17, 2003 pertaining to the Invacare Corporation 2003 Performance Plan,
- (2) Registration Statement (Form S-8, No. 333-136391) dated August 8, 2006 pertaining to the Invacare Corporation 2003 Performance Plan,
- (3) Registration Statement (Form S-8, No. 333-188803) dated May 23, 2013 pertaining to the Invacare Corporation 2013 Equity Compensation Plan,
- (4) Registration Statement (Form S-8, No. 333-215206) dated December 21, 2016 pertaining to the Invacare Corporation 2013 Equity Compensation Plan,
- (5) Registration Statement (Form S-8, No. 333-225110) dated May 22, 2018 pertaining to the Invacare Corporation 2018 Equity Compensation Plan,
- (6) Registration Statement (Form S-8, No. 333-231641) dated May 21, 2019 pertaining to the Invacare Corporation 2018 Equity Compensation Plan,
- (7) Registration Statement (Form S-8, No. 333-238793) dated May 29, 2020 pertaining to the Invacare Corporation 2018 Equity Compensation Plan, and
- (8) Registration Statement (Form S-8, No. 333-256497) dated May 26, 2021 pertaining to the Invacare Corporation 2018 Equity Compensation Plan,

of our reports dated March 8, 2022, with respect to the consolidated financial statements and schedule of Invacare Corporation and subsidiaries and the effectiveness of internal control over financial reporting of Invacare Corporation and subsidiaries included in this Annual Report (Form 10-K) of Invacare Corporation and subsidiaries for the year ended December 31, 2021.

/s/ Ernst & Young LLP

Cleveland, Ohio
March 8, 2022

CERTIFICATIONS

I, Matthew E. Monaghan, certify that:

1. I have reviewed this annual report on Form 10-K of Invacare 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; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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.

INVACARE CORPORATION

/s/ MATTHEW E. MONAGHAN

Matthew E. Monaghan
Chief Executive Officer
(Principal Executive Officer)

Date: March 8, 2022

CERTIFICATIONS

I, Kathleen P. Leneghan, certify that:

1. I have reviewed this annual report on Form 10-K of Invacare 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; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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.

INVACARE CORPORATION

/s/ KATHLEEN P. LENEGHAN

Kathleen P. Leneghan
Chief Financial Officer
(Principal Financial Officer)

Date: March 8, 2022

Certification
Pursuant to Section 18 U.S.C. Section 1350,
as adopted pursuant to Section 906
of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report of Invacare Corporation (the “company”) on Form 10-K for the period ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Matthew E. Monaghan, Chief Executive Officer of the company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the company.

/s/ MATTHEW E. MONAGHAN

Matthew E. Monaghan
Chief Executive Officer
(Principal Executive Officer)

Date: March 8, 2022

A signed original of this written statement required by Section 906 has been provided to Invacare Corporation and will be retained by Invacare Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

Certification
Pursuant to Section 18 U.S.C. Section 1350,
as adopted pursuant to Section 906
of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report of Invacare Corporation (the “company”) on Form 10-K for the period ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Kathleen P. Leneghan, Chief Financial Officer of the company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the company.

/s/ KATHLEEN P. LENEGHAN

Kathleen P. Leneghan
Chief Financial Officer
(Principal Financial Officer)

Date: March 8, 2022

A signed original of this written statement required by Section 906 has been provided to Invacare Corporation and will be retained by Invacare Corporation and furnished to the Securities and Exchange Commission or its staff upon request.