

**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 No.: 000-51826

MERCER INTERNATIONAL INC.

(Exact name of Registrant as specified in its charter)



Washington

*(State or other jurisdiction
of incorporation or organization)*

**Suite 1120, 700 West Pender Street,
Vancouver, British Columbia, Canada**
(Address of Principal Executive Office)

47-0956945

(IRS Employer Identification No.)

V6C 1G8

(Zip Code)

Registrant's telephone number including area code: **(604) 684-1099**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$1.00 per share	MERC	NASDAQ Global Select Market

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

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

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

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

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes No

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

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

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

The aggregate market value of the Registrant's voting and non-voting common equity held by non-affiliates of the Registrant as of June 30, 2021, the last business day of the Registrant's most recently completed second fiscal quarter, based on the closing price of the voting stock on the NASDAQ Global Select Market on such date, was approximately \$805.9 million.

As of February 15, 2022, the Registrant had 66,037,552 shares of common stock, \$1.00 par value per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive Proxy Statement to be filed with the Securities and Exchange Commission in connection with its annual meeting of shareholders to be held in 2022 are incorporated by reference into Part III hereof.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This annual report on Form 10-K includes “forward-looking” statements within the meaning of the *Private Securities Litigation Reform Act of 1995*. Forward-looking statements can be identified by the fact that they do not relate strictly to historical or current facts. They often include words such as “believes”, “expects”, “anticipates”, “estimates”, “intends”, “plans”, “seeks” or words of similar meaning, or future or conditional verbs, such as “will”, “should”, “could”, “may”, “aims”, “intends” or “projects”. A forward-looking statement is neither a prediction nor a guarantee of future events or circumstances, and those future events or circumstances may not occur. You should not place undue reliance on forward-looking statements, which speak only as of the date of this annual report on Form 10-K. These forward-looking statements are all based on currently available operating, financial and competitive information. These forward-looking statements are subject to various risks and uncertainties, many of which are beyond our control, and many of the risks and uncertainties are currently amplified by and may continue to be amplified by the COVID-19 pandemic, including the spread of new variants such as omicron. Our actual future results and trends may differ materially depending on a variety of factors, including, but not limited to, the risks and uncertainties discussed under Item 1. “Business”, Item 1A. “Risk Factors” and Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations”. Given these risks and uncertainties, you should not rely on forward-looking statements as a prediction of actual results. Any or all of the forward-looking statements contained in this annual report on Form 10-K and any other public statement made by us, including by our management, may turn out to be incorrect. We are including this cautionary note to make applicable and take advantage of the safe harbor provisions of the *Private Securities Litigation Reform Act of 1995* for forward-looking statements. We expressly disclaim any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

INDUSTRY AND MARKET DATA

In this annual report on Form 10-K, we rely on and refer to information and statistics regarding our market share and the markets in which we compete. We have obtained some of this market share information and industry data from internal surveys, market research, publicly available information and industry publications. Such reports generally state that the information contained therein has been obtained from sources believed to be reliable, but the accuracy or completeness of such information is not guaranteed. Although we believe this information is reliable, we have not independently verified, nor can we guarantee, the accuracy or completeness of that information.

Statements in this annual report on Form 10-K concerning the production capacity of our mills are management estimates based primarily on historically achieved levels of production and assumptions regarding maintenance downtime. Statements concerning electrical generating capacity at our mills are also management estimates based primarily on our expected production (which largely determines the amount of electricity we can generate) and assumptions regarding maintenance downtime, in each case within manufacturers’ specifications of capacity.

INTERNET AVAILABILITY AND ADDITIONAL INFORMATION

In this Annual Report on Form 10-K, we incorporate by reference certain information contained in other documents filed with the U.S. Securities and Exchange Commission (“SEC”) and we refer you to such information. We file annual, quarterly and current reports and other information with the SEC. The SEC maintains a website at www.sec.gov that contains these filings. You also may access, free of charge, our reports filed with the SEC through our website. Reports filed with the SEC will be available through our website as soon as reasonably practicable after they are filed. The information contained on or connected to our website, www.mercerint.com, is not incorporated by reference into this Form 10-K and should in no way be construed as a part of this or any other report that we filed with the SEC.

CURRENCY

The following table sets out exchange rates, based on the noon buying rates in New York City for cable transfers in foreign currencies as certified for customs purposes by the Federal Reserve Bank of New York, referred to as the “Noon Buying Rate”, for the conversion of dollars to euros and Canadian dollars in effect at the end of the following periods, the average exchange rates during these periods (based on daily Noon Buying Rates) and the range of high and low exchange rates for these periods:

	Year Ended December 31,				
	2021	2020	2019	2018	2017
	(\$/€)				
End of period	1.1318	1.2230	1.1227	1.1456	1.2022
High for period	1.1196	1.0682	1.0905	1.1281	1.0416
Low for period	1.2295	1.2280	1.1524	1.2488	1.2041
Average for period	1.1830	1.1410	1.1194	1.1817	1.1301
	(\$/C\$)				
End of period	0.7827	0.7841	0.7715	0.7329	0.7989
High for period	0.7727	0.6878	0.7358	0.7326	0.7275
Low for period	0.8312	0.7865	0.7715	0.8143	0.8243
Average for period	0.7981	0.7457	0.7537	0.7722	0.7710

On February 14, 2022, the most recent weekly publication of the daily Noon Buying Rate before the filing of this annual report on Form 10-K reported that the Noon Buying Rate as of February 11, 2022 for the conversion of dollars to euros and Canadian dollars was \$1.1404 per euro and \$0.7888 per Canadian dollar.

PART I

ITEM 1. BUSINESS

In this document, please note the following:

- references to “we”, “our”, “us”, the “Company” or “Mercer” mean Mercer International Inc. and its subsidiaries, unless the context clearly suggests otherwise, and references to “Mercer Inc.” mean Mercer International Inc. excluding its subsidiaries;
- references to “\$” or “dollars” shall mean U.S. dollars, which is our reporting currency, unless otherwise stated; “€” refers to euros; and “C\$” refers to Canadian dollars;
- references to “NBHK” mean northern bleached hardwood kraft;
- references to “NBSK” mean northern bleached softwood kraft;
- references to “ADMTs” mean air-dried metric tonnes;
- references to “MW” mean megawatts and “MWh” mean megawatt hours;
- references to “Mfbm” mean thousand board feet;
- references to “MMfbm” mean million board feet; and
- our lumber metrics are converted from cubic meters to Mfbm using a conversion ratio of 1.6 cubic meters of lumber equaling one Mfbm, which is the ratio commonly used in the industry.

Due to rounding, numbers presented throughout this report may not add up precisely to totals we provide and percentages may not precisely reflect the absolute figures.

Mercer

General

We are a global forest products company with two reportable operating segments being pulp and wood products.

We have consolidated annual production capacity of approximately 2.3 million ADMTs of kraft pulp, 550 MMfbm of lumber and approximately 416.5 MW of electrical generation.

Pulp Segment

Our pulp segment consists of the manufacture, sale and distribution of pulp, electricity and other by-products at our pulp mills.

We are one of the world’s largest producers of “market” NBSK pulp, which is pulp that is sold on the open market. Our size provides us increased presence, better industry information in our markets and close customer relationships with many large pulp consumers.

We operate two modern and highly efficient NBSK mills in Eastern Germany and one NBSK mill and a “swing” kraft mill in Western Canada which produces both NBSK and NBHK.

We are the sole NBSK producer, and the only significant market pulp producer in Germany, which is the largest pulp import market in Europe. We supply the growing pulp demand in China both through our Canadian mills' ready access to the Port of Vancouver and through our Stendal mill's existing logistics arrangements.

In addition, as a result of the significant investments made in cogeneration equipment, all of our mills generate and sell a significant amount of surplus "green" energy. We also produce and sell tall oil, a by-product of our production process, which is used as both a chemical additive and as a green energy source.

Of our consolidated annual production capacity of approximately 2.3 million ADMTs of kraft pulp, approximately 2.1 million ADMTs or 91% is NBSK and the balance is NBHK.

Key operating details for each of our pulp mills are as follows:

- **Rosenthal mill.** Our Rosenthal mill is a modern, efficient ISO 9001, 14001 and 50001 certified NBSK pulp mill that has an annual production capacity of approximately 360,000 ADMTs and 57 MW of electrical generation. The Rosenthal mill is located in the town of Rosenthal am Rennsteig, Germany, approximately 300 kilometers south of Berlin.
- **Stendal mill.** Our Stendal mill is a state-of-the-art, single line, ISO 9001, 14001 and 50001 certified NBSK pulp mill that has an annual production capacity of approximately 740,000 ADMTs and 148 MW of electrical generation. The Stendal mill is located near the town of Stendal, Germany, approximately 130 kilometers west of Berlin.
- **Celgar mill.** Our Celgar mill is a modern, efficient ISO 9001 and 14001 certified NBSK pulp mill that has an annual production capacity of approximately 520,000 ADMTs and 100 MW of electrical generation. The Celgar mill is located near the city of Castlegar, British Columbia, Canada, approximately 600 kilometers east of Vancouver.
- **Peace River mill.** Our Peace River mill is a modern ISO 9001 and 14001 certified mill that produces both NBSK and NBHK pulp and has an annual production capacity of approximately 475,000 ADMTs and 70 MW of electrical generation. The Peace River mill is located near the town of Peace River, Alberta, Canada, approximately 490 kilometers north of Edmonton. Peace River also holds two 20-year renewable governmental forest management agreements and three deciduous timber allocations in Alberta with an aggregate allowable annual cut of approximately 2.4 million cubic meters of hardwood and softwood allocations totaling 400,000 cubic meters. Through our Peace River mill, we have a 50% proportionate share of the annual production capacity of the Cariboo mill, which is approximately 170,000 ADMTs and 28.5 MW of electrical generation. The Cariboo mill is located in Quesnel, British Columbia, Canada, approximately 660 kilometers north of Vancouver.

Our pulp mills are some of the newer and more modern pulp mills in Europe and North America. We believe the relative age, production capacity and electrical generation capacity of our mills provide us with certain manufacturing cost and other advantages over many of our competitors. We believe our competitors' older mills do not have the equipment or capacity to produce or sell surplus power or chemicals in a meaningful amount. In addition, as a result of the relative age of our mills, they benefit from lower maintenance capital requirements and higher efficiency relative to many of our competitors' mills.

The following table sets out our pulp production and pulp revenues for the periods indicated:

	Year Ended December 31,		
	2021	2020	2019
Pulp production ('000 ADMTs)	1,863.9	2,051.1	2,040.6
Pulp sales ('000 ADMTs)	1,812.7	2,029.4	2,098.8
Pulp revenues (in thousands)	\$ 1,389,439	\$ 1,130,302	\$ 1,370,742

We serve pulp customers in Europe, Asia and North America. We primarily work directly with customers to capitalize on our geographic diversity, coordinate sales and enhance customer relationships. We believe our ability to deliver high-quality pulp on a timely basis and our customer service makes us a preferred supplier for many customers.

Our pulp mills generate and sell surplus electricity, providing us with a stable revenue source unrelated to pulp prices. Our German pulp mills also generate tall oil from black liquor, which is sold to third parties for use in numerous applications, including bio-fuels. Since our energy and chemical production are by-products of our pulp production process, there are minimal incremental costs and our surplus energy and chemical sales are highly profitable. All of our mills generate and sell surplus energy to regional utilities or the regional electrical market. Our Stendal and Friesau mills benefit from special tariffs under Germany’s *Renewable Energy Sources Act*, or the “Renewable Energy Act” and sell their surplus energy under such tariffs until 2024 and 2029, respectively. Our Rosenthal mill sells its surplus power at market rates which fluctuate over time. Our Peace River mill sells surplus energy to its regional electrical market. Our Celgar mill is party to a fixed electricity purchase agreement with the regional public utility provider for the sale of surplus power which runs until October 2030.

The following table sets out the amount of surplus energy we produced and sold and revenues from the sale of such surplus energy and chemicals in our pulp segment for the periods indicated:

	Year Ended December 31,					
	2021		2020		2019	
	(MWh)	(\$)	(MWh)	(\$)	(MWh)	(\$)
	(in thousands)		(in thousands)		(in thousands)	
Surplus electricity ⁽¹⁾	701,971	86,311	894,534	83,420	822,841	75,018
Chemicals		7,343		6,922		11,363
Total		<u>93,654</u>		<u>90,342</u>		<u>86,381</u>

(1) Does not include our 50% joint venture interest in the Cariboo mill, which is accounted for using the equity method.

Wood Products Segment

Our wood products segment consists of the manufacture, sale and distribution of lumber, electricity and other wood residuals at our Friesau mill. It is one of Germany’s largest sawmills.

Our Friesau mill has an annual production capacity of approximately 550 MMfbm of lumber and 13 MW of electrical generation from a modern biomass fueled cogeneration power plant built in 2009. The Friesau mill is located approximately 16 kilometers west of our Rosenthal mill and has historically been one of the Rosenthal mill’s largest fiber suppliers.

The mill produces lumber for European, U.S. and other lumber export markets.

The European and U.S. lumber markets are very different. In the European market, lumber is generally customized in terms of dimensions and finishing. The U.S. market is driven primarily by demand from new housing starts and home renovation activities and dimensions and finishing are generally standardized.

Additionally, lumber production and sales in Europe are commonly measured in cubic meters, whereas in the U.S. they are measured in thousand board feet or Mfbm.

The following table sets out our lumber production and lumber revenues for the periods indicated:

	Year Ended December 31,		
	2021	2020	2019
Lumber production (MMfbm)	447.9	438.0	414.7
Lumber sales (MMfbm)	419.7	449.2	408.8
Lumber revenues (in thousands)	\$ 293,166	\$ 180,769	\$ 142,243

The Friesau mill generates electricity for minimal incremental costs, all of which is sold, providing a stable revenue source unrelated to lumber prices. The Friesau mill’s modern biomass fueled cogeneration power plant sells electricity pursuant to a long-term fixed price green power tariff that runs to 2029.

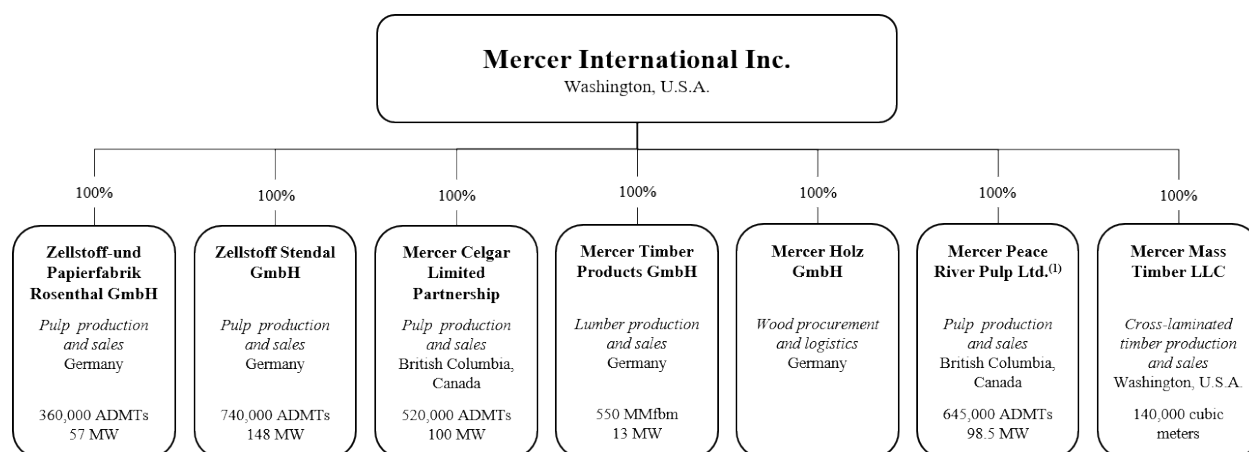
The following table sets out the amount of surplus energy we produced and sold and revenues from the sale of surplus energy by our Friesau mill for the periods indicated.

	Year Ended December 31,					
	2021		2020		2019	
	(MWh)	(\$) (in thousands)	(MWh)	(\$) (in thousands)	(MWh)	(\$) (in thousands)
Surplus electricity	74,648	11,547	88,985	10,619	83,490	9,721

Corporate Structure, History and Development of Business

Mercer Inc. is a corporation organized under the laws of the State of Washington whose common stock is quoted and listed for trading on the NASDAQ Global Select Market (MERC).

The following simplified chart sets out our principal operating subsidiaries, their jurisdictions of organization, their principal activities and their annual pulp or lumber production and electrical generation capacity:



(1) Includes 170,000 ADMTs and 28.5 MW based on Peace River’s 50% joint venture interest in the Cariboo mill.

We entered into the pulp business in 1994 by acquiring our Rosenthal mill and in 1999 converted it to the production of kraft pulp. In September 2004, we expanded our pulp operations by constructing the Stendal mill at a cost of approximately \$1.1 billion. We further expanded our pulp operations by acquiring the Celgar mill in 2005 and the Peace River mill in 2018.

In April 2017, we entered into the wood products segment when we acquired the Friesau mill.

In October 2018, we acquired the Santanol Group, which operates Indian sandalwood plantations and an oil extractives plant in Australia.

In August 2021, we acquired a cross-laminated timber facility referred to as the “CLT Facility” located near Spokane, Washington, for approximately \$51.3 million. The facility is a state-of-the-art, near-new facility that produces cross-laminated timber, or “CLT”, for use in construction and home building. It has a capacity of approximately 140,000 cubic meters of CLT. We believe it is one of the largest CLT facilities in North America and that it currently represents approximately 30% of North American manufacturing capacity. CLT is a wood panel product, made from adhering layers of solid-sawn lumber and is used as a more sustainable alternative to steel and concrete in building projects. We are currently ramping up the operations of the CLT Facility. Currently, its results are reflected in our financial results in “Corporate and Other Revenues”.

Corporate Strategy

Our corporate strategy is to grow in businesses where we have clear competencies while maintaining modern facilities and managing the integrity of our balance sheet and liquidity, with a high standard of environmental, social and governance performance. Key elements of our strategy include:

- ***Operate World Class Assets.*** The maintenance of modern, reliable and energy efficient operations is key to our ability to produce stable returns through the economic cycle. The markets for our principal products are cyclical and subject to global economic influences. Further, our manufacturing operations are capital intensive and complex. Maintaining a high standard of maintenance and strategic capital expenditure programs differentiates us from older, higher cost, lower efficiency competitors. We believe that over time this will reduce our exposure to product price volatility, unexpected downtime and changes in environmental and regulatory conditions. We operate four modern pulp mills and one of the most modern sawmills in the world. In 2021, the majority of our capital expenditures focused on projects to increase production and operational efficiency and reduce costs. Additionally, we continuously strive to enhance our maintenance systems to improve and increase production by improving reliability. We also seek to reduce operating costs by better managing our fiber procurement, sales, marketing and logistics activities. We believe this continued focus on operational excellence enhances our profitability and cash flows.
- ***Growth and Diversification Where We Have Core Competencies.*** We are focused on growth in areas where we have a clear leadership position or high degree of competence to ensure that we can add value for shareholders. We believe that a larger company will benefit shareholders in terms of improved equity trading, liquidity and reduced variability of earnings. Our core competencies lend themselves to growth in one or more of the following areas:
 - **Pulp.** The core of our business is NBSK pulp. We are one of the largest producers of market NBSK in the world and have deep expertise and a market reputation as a reliable, efficient and high quality producer. We believe that the global demand for kraft pulp will continue to grow and that the supply of fiber to meet that demand is limited.
 - **Wood Products.** We have significant expertise in forestry and wood procurement services and have utilized that expertise and our logistics networks in support of our pulp operations. In 2017, we began leveraging this foundation into the solid wood products business with the acquisition of the Friesau sawmill which is one of the world's largest and most flexible sawmills. The mill created synergies with our wood procurement and pulp businesses. In 2021, we completed a three-year upgrade to the Friesau mill that we believe has made it one of the most technologically advanced and largest sawmills in the world. Further expansion into the wood products business is a key focus for us and we believe it will create more value for shareholders over time. In furtherance of this strategy, in 2021 we acquired the CLT Facility.
 - **Green Energy.** Our modern, highly efficient mills allow us to produce green, cogenerated electricity. Our mills are all self-sufficient in power and net exporters of electricity and our power is sold to regional utilities or the regional market. We are very experienced at building and operating cogeneration facilities and we have increased our electricity production by 12% since 2012.
 - **Wood Extractives.** We believe that we are very well positioned to fully extract all of the value from wood including those elements that were traditionally wasted or burned. We have applied considerable resources to manufacturing products such as tall oil, which is upgraded by our customers and used in adhesives and bio-fuels that are displacing fossil fuel based alternatives. We are also expanding our production of turpentine for use in aromatics and fragrances. We also acquired sandalwood plantations and an essential sandalwood oil extraction and sales business to further develop such operations and move closer to the end customer. We are also focused on researching and commercializing other complex and novel products based on wood and have established various partnerships and working relationships to advance these products.

- ***Sustainable Operations.*** We seek to meet best in class standards in environmental performance, social conditions and governance (often referred to as “ESG” standards). We believe that sustainably-focused businesses can flourish if they align themselves with societal objectives, and that the diminishing tolerance of stakeholders for under-performing companies in regards to sustainability will lead to their decline. Further, we believe that our products, which are renewable wood-based fiber, carbon sequestering solid wood products, green energy and naturally sourced wood extractives, are becoming more important for a world seeking to limit its reliance on fossil fuel-based products. We will continue to grow these products, enhance our environmental performance and stakeholder engagement and maintain strong governance and ethical business practices.
- ***Managing the Integrity of our Balance Sheet and Liquidity.*** We focus on maintaining a balance sheet that allows us to advance our objectives through the full economic cycle, while at the same time, giving us some flexibility to take advantage of strategic growth opportunities as they arise. We maintain a foundation of long term, unsecured, senior notes with maturity dates in 2026 and beyond. In addition to cash on hand, we have a series of revolving credit facilities intended to provide liquidity and flexibility in times of opportunity or economic slowdown. We commenced a dividend in 2015 and remain committed to returning capital to our shareholders through the economic cycle.

The Pulp Industry

General

Pulp is used in the production of paper, tissues and paper-related products. Pulp is generally classified according to fiber type, the process used in its production and the degree to which it is bleached. Kraft pulp, a type of chemical pulp, is produced through a sulphate chemical process in which lignin, the component of wood which binds individual fibers, is dissolved in a chemical reaction. Chemically prepared pulp allows the wood’s fiber to retain its length and flexibility, resulting in stronger paper products. Kraft pulp can be bleached to increase its brightness. Softwood kraft pulp is noted for its strength, brightness and absorption properties and is used to produce a variety of products, including lightweight publication grades of paper, tissues and other paper-related products.

There are two main types of bleached kraft pulp, being softwood kraft made from coniferous trees and hardwood kraft made from deciduous trees. Softwood species generally have long, flexible fibers which add strength to paper while fibers from species of hardwood contain shorter fibers which lend bulk and opacity.

We primarily produce and sell NBSK pulp, which is a bleached kraft pulp manufactured using northern softwood and is considered a premium grade because of its strength. It generally obtains the highest price relative to other kraft pulps. Our Peace River mill produces both NBSK and NBHK pulp.

Most paper users of market kraft pulp use a mix of softwood and hardwood grades to optimize production and product qualities. In 2021, market kraft pulp consumption was approximately 57% hardwood bleached kraft and 39% softwood bleached kraft, with the remainder comprised of unbleached pulp. Over the last several years, production of hardwood pulp, based on fast growing plantation fiber primarily from Asia and South America, has increased much more rapidly than that of softwood grades, because of longer growth cycles. Hardwood kraft generally has a cost advantage over softwood kraft as a result of lower fiber costs, higher wood yields and, for newer hardwood mills, economies of scale. As a result of this growth in supply and lower costs, kraft pulp customers have substituted some of the pulp content in their products to hardwood pulp.

However, the requirement for strength and formation characteristics in finished goods counters customers’ ability to substitute cheaper hardwood pulp for NBSK. Paper and tissue makers focus on larger paper machines with higher speeds and lower basis weights for certain papers which require the strength characteristics of softwood pulp. Additionally, where paper products are lightweight or specialized, like direct mail, magazine paper or premium tissue, or where strength or absorbency are important, softwood kraft forms a significant proportion of the fiber used. As a result, we believe that the ability of kraft pulp users to further substitute hardwood for softwood pulp is limited by such requirements.

Kraft pulp can be made in different grades, with varying technical specifications, for different end uses. Softwood kraft pulp is an important ingredient for tissue manufacturing and tissue demand tends to increase with living standards in developing countries. Softwood kraft pulp is also valued for its reinforcing role in mechanical printing papers and is sought after by producers of paper for the publishing industry, primarily for magazines and advertising materials.

Markets

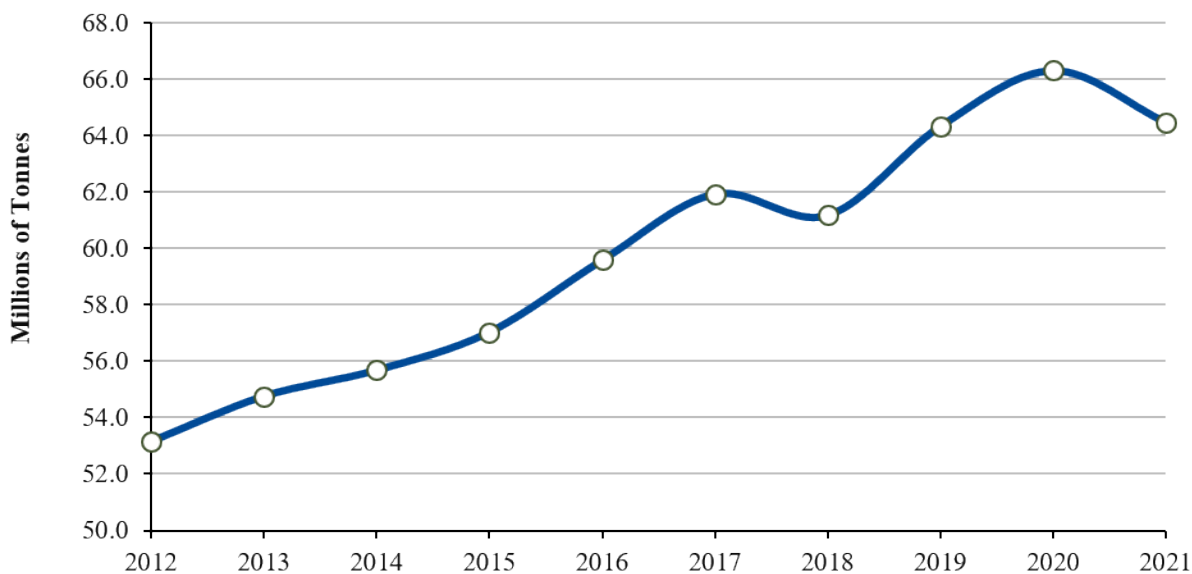
We believe that over 145 million ADMTs of chemical pulp are converted annually into tissues, printing and writing papers, carton boards and other specialty grades of paper and paperboard around the world. We also believe that approximately 45% of this pulp is sold on the open market as market pulp, while the remainder is produced for internal purposes by integrated paper and paperboard manufacturers.

The pulp business is highly cyclical in nature and markets are characterized by periods of supply and demand imbalance, which in turn affect prices. Pulp markets are highly competitive and are sensitive to cyclical changes in the global economy, industry capacity and foreign exchange rates, all of which can have a significant influence on selling prices and our operating results. The length and magnitude of industry cycles have varied over time but generally reflect changes in macro-economic conditions and levels of industry capacity. Pulp is a commodity that is generally available from other producers. Because commodity products have few distinguishing qualities from producer to producer, competition is generally based upon price, which is generally determined by supply relative to demand.

Between 2012 and 2021, worldwide demand for chemical market pulp overall for such period grew at an average rate of approximately 2% annually, with worldwide demand for bleached softwood kraft market pulp having grown at an average of approximately 1% per annum.

The following chart illustrates the global demand for chemical market pulp for the periods indicated:

Estimated Global Chemical Market Pulp Demand



NBSK pulp demand is significantly impacted by global macro-economic trends.

Over the last several years there have been several key macro trends that have had a material effect on global pulp demand. Some of the trends have had a positive effect while others have had a negative effect on pulp demand.

A major positive macro trend has been a marked increase in demand from emerging markets, and in particular China. In China alone, tissue production capacity has increased by approximately 7.7 million ADMTs over the last five years. In China, imports of chemical softwood market pulp grew overall by approximately 6% per annum for the period from 2012 to 2021 and it is a key driver of pulp demand and consumption. We believe the emerging markets now account for approximately 58% of total global demand for bleached softwood kraft market pulp and China itself now accounts for approximately 33% of global bleached softwood kraft market pulp demand compared to approximately 28% in 2012.

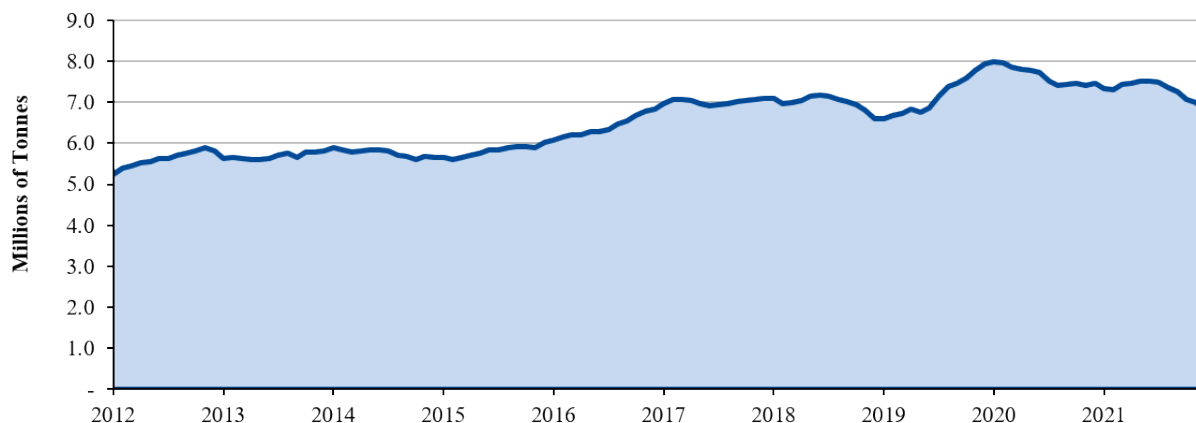
Another positive macro trend affecting pulp demand has been the increase in usage and demand for tissue and hygiene products, particularly in China and emerging markets generally. This trend was further accelerated by the COVID-19 pandemic. A further positive trend affecting pulp demand was an increase in the global reliance on online delivery of products which has increased demand for packaging and specialty products.

An important negative in pulp demand has been the material decline in graphic and printing and writing paper demand. We believe a material portion of this decline will not return.

Further, paper demand in mature markets of North America, Europe and Japan has been declining or stagnating, which negatively impacts pulp demand in those markets. Western Europe currently accounts for approximately 22% of global bleached softwood kraft market pulp demand compared to approximately 28% in 2012.

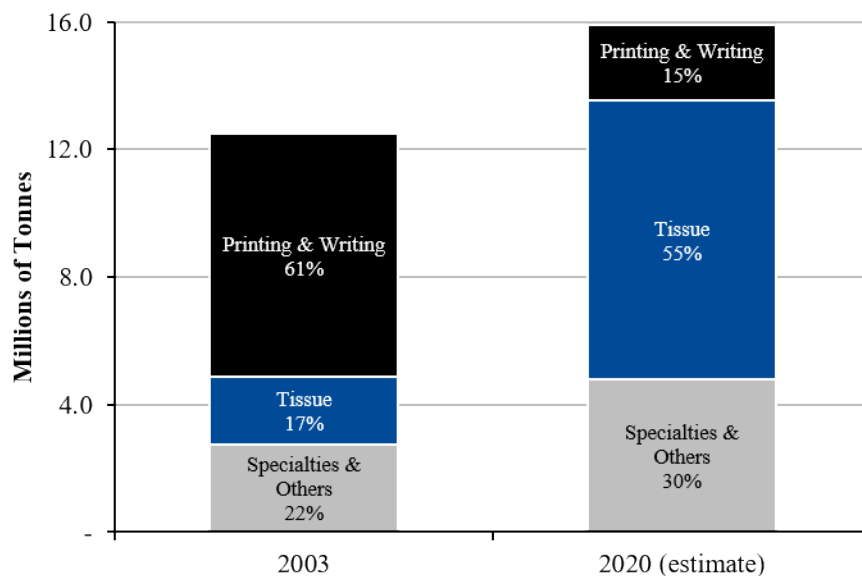
The following chart reflects NBSK pulp deliveries to China for the periods indicated:

12 Month Rolling Bleached Softwood Kraft Pulp Deliveries to China



The trends and changes in NBSK pulp demand by end use are reflected in the following chart which compares worldwide NBSK pulp demand by end use for the periods indicated:

NBSK Pulp Demand by End Use



We believe 2021 NBSK demand by end use was generally consistent with the trend in the chart above.

In 2021, there was an increase in pulp capacity of 2.8 million ADMTs, primarily of hardwood kraft pulp. Currently, we are aware of 2.9 million ADMTs of announced capacity increases primarily of hardwood kraft pulp in 2022.

NBSK Pulp Pricing

Kraft pulp is a globally traded commodity and prices are highly cyclical. Kraft pulp prices are generally quoted in dollars. Pricing is primarily influenced by the balance between supply and demand, as affected by global macro-economic conditions, changes in consumption and capacity, the level of customer and producer inventories and fluctuations in exchange rates. Generally, we and other producers consider global NBSK pulp supply and demand to be evenly balanced when world inventory levels are at about 32 days’ supply.

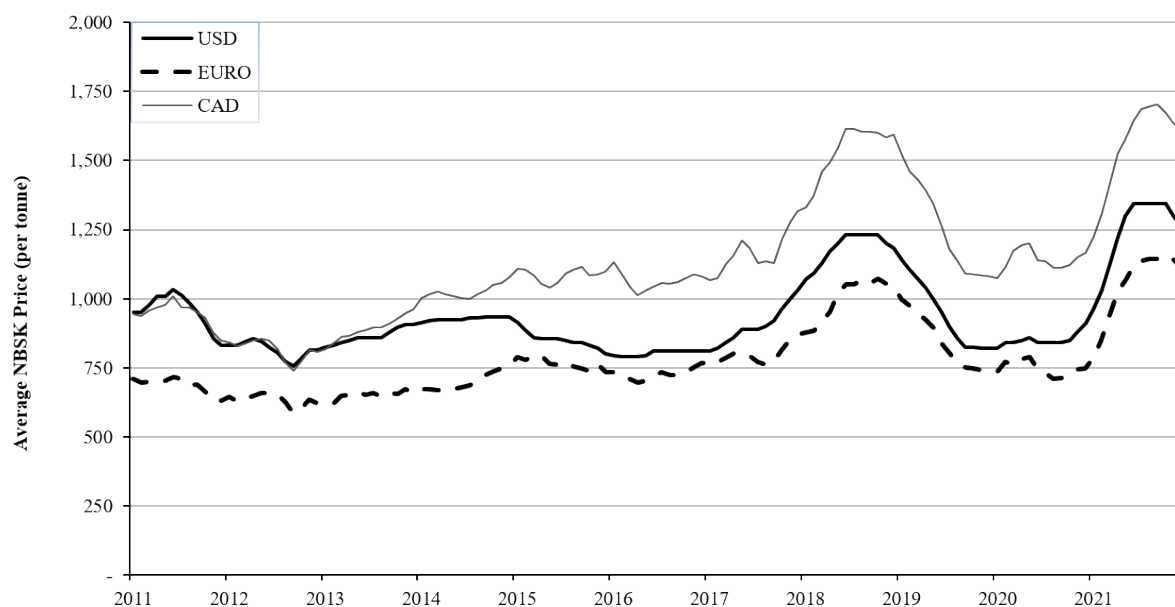
As the majority of market NBSK pulp is produced and sold by Canadian and Northern European producers, while the price of NBSK pulp is generally quoted in dollars, pricing is often affected by fluctuations in the currency exchange rates for the dollar versus the euro and the Canadian dollar. As NBSK pulp producers generally incur costs in their local currency, while pulp is quoted in dollars, a dollar strengthening generally benefits producers’ businesses and operating margins. Conversely, a weakening of the dollar versus the local currency of producers generally adversely affects producers’ businesses and operating margins.

As a corollary to changes in exchange rates between the dollar and the euro and Canadian dollar, a stronger dollar generally increases costs to customers of NBSK pulp producers and results in downward pressure on prices. Conversely, a weakening dollar generally supports higher pulp pricing. However, there is invariably a time lag between changes in currency exchange rates and pulp prices. This lag can vary and is not predictable with any certainty.

Although China is now the largest market globally for pulp, Northern Europe has also historically been a significant market. As NBSK pulp is a premium grade of pulp, the European market NBSK list price is at times used by the industry as a benchmark reference price. The third party industry quoted average European list prices for NBSK pulp since 2012 have fluctuated between a low of approximately \$760 per ADMT in 2012 and a high of \$1,345 per ADMT in 2021.

The following chart sets out the changes in third party industry quoted list prices for NBSK pulp in Europe, as stated in dollars, Canadian dollars and euros for the periods indicated:

NBSK Pulp Price History (European Delivery)



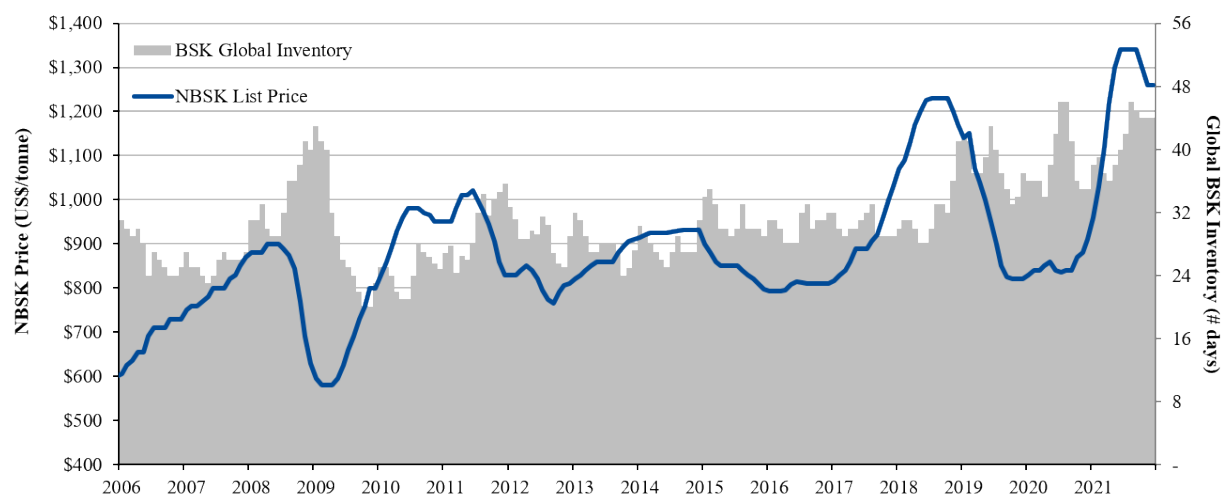
Our pulp sales realizations in Europe and North America are third party industry quoted list prices, net of customer discounts, rebates and other selling concessions. Our sales to China and Asia generally are closer to a net price with significantly lower or little discounts and rebates. As a result, our net sales realizations in China are generally similar to other markets.

The following table sets out third party industry quoted list prices for NBSK pulp in Europe and North America and net prices for NBSK pulp in China as of the dates indicated:

	December 31,	
	2021	2020
	(\$/ADMT)	
Europe (List Price)	1,260	910
North America (List Price)	1,450	1,155
China (Net Price)	760	695

The following chart sets forth changes in FOEX PIX Pulp Index prices for NBSK pulp in Europe and global bleached softwood kraft inventory levels for the periods indicated:

Pulp Price and Global Inventory History



Seasonality

We are exposed to fluctuations in quarterly sales volumes and expenses due to seasonal factors. These factors are common in the kraft pulp industry. We generally have weaker pulp demand in China in the period relating to the lunar new year and in Europe during the summer holiday months. We typically have a seasonal build-up in raw material inventories in the early winter months as our mills build up their fiber supply for the winter when there is reduced availability.

Competition

The pulp market is highly fragmented and competitive with many producers competing globally. Producers ranging from small independent manufacturers to large integrated companies produce pulp worldwide. Pulp is generally a commodity product and our pulp competes with similar products manufactured and distributed by many other producers. While many factors influence our competitive position, particularly in weak economic times, a primary factor is price. Other factors include quality, service, access to reasonably priced fiber and convenience of location. Some of our competitors are larger than we are in certain markets and have substantially greater financial resources. These resources may afford those competitors more purchasing power, increased financial flexibility, more capital resources for expansion and improvement and enable them to compete more effectively.

Our key NBSK pulp competitors are principally located in Northern Europe and Canada and include Metsä Fibre, Södra Cell, Ilim, Paper Excellence, Canfor Pulp, and SCA.

Pulp Production

The following table sets out our pulp production capacity and actual production for the periods indicated:

	Annual Production Capacity ⁽¹⁾	Year Ended December 31,	
		2021	2020
		(ADMTs)	
Total pulp production	2,265,000	1,863,893	2,051,084

(1) Capacity is the rated capacity of the plants as of December 31, 2021.

Generation and Sales of Green Energy and Chemicals

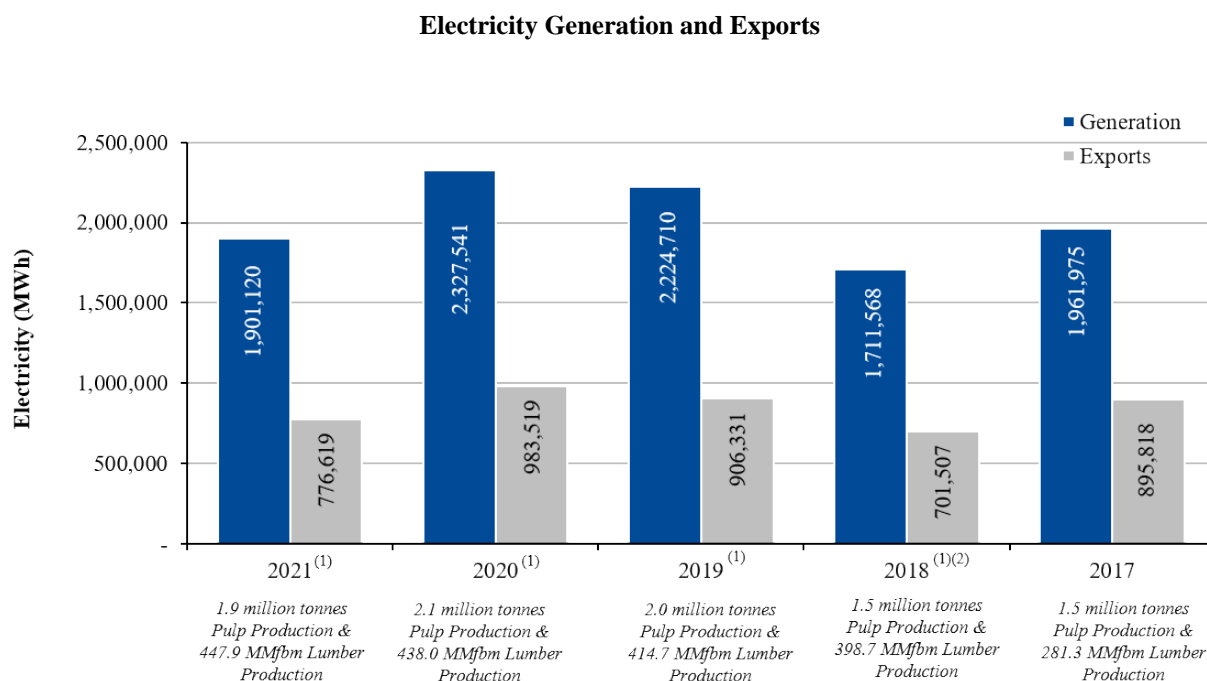
General

Our pulp mills are large scale bio-refineries that, in addition to pulp, also produce surplus “carbon neutral” or green energy. As part of the pulp production process, our mills generate green energy using carbon neutral bio-fuels such as black liquor and wood waste. Through the incineration of bio-fuels in the recovery and power boilers, our mills produce sufficient steam to cover all of our steam requirements and allow us to produce surplus electricity which we sell to third-party utilities or into the regional electricity market. As a result, we have benefited from green energy legislation, incentives and commercialization that have developed over the last decades in Europe and Canada. In addition, in recent years we have applied considerable resources to increasing our capacity to produce and sell chemicals, primarily tall oil for use in numerous applications including bio-fuels.

Our Friesau mill also generates and sells green energy produced from its biomass cogeneration power plant.

Our surplus energy and chemical sales provide us with a stable revenue source unrelated to pulp or lumber prices. Since our energy and chemical production are by-products of our production processes, there are minimal incremental costs and our surplus energy and chemical sales are highly profitable. We believe that this revenue source gives our mills a competitive advantage over other older mills which do not have the equipment or capacity to produce and/or sell surplus power and/or chemicals in a meaningful amount.

The following chart sets out our electricity generation and surplus electricity sales for the periods indicated:

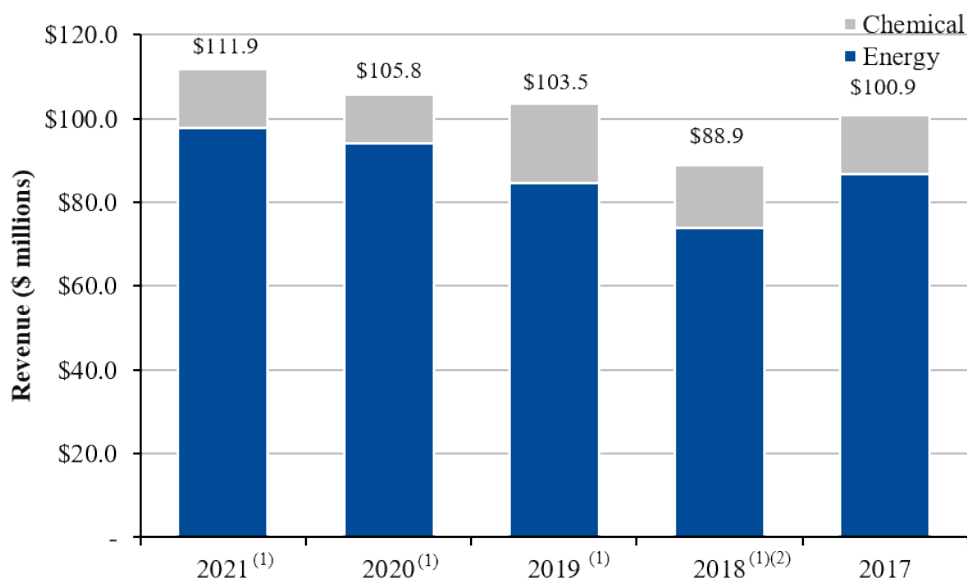


(1) Does not include electricity generation and exports of our 50% joint venture interest in the Cariboo mill, which is accounted for using the equity method.

(2) Includes results of Peace River from December 10, 2018.

The following chart sets out our consolidated revenues from electricity and chemical sales for the periods indicated:

Energy and Chemical Revenue



(1) Does not include energy revenues of our 50% joint venture interest in the Cariboo mill, which is accounted for using the equity method.

(2) Includes results of Peace River from December 10, 2018.

Germany

Until December 31, 2020, all of our German mills participated in a program established pursuant to the Renewable Energy Act, which provides for stable pricing on green energy. As of January 1, 2021, the prior special tariff in respect of our Rosenthal mill expired and it has since sold its surplus power at market rates which fluctuate over time. The special tariff for our Stendal mill is in effect until December 31, 2024 and for our Friesau mill until 2029.

In 2021, energy sales for our German pulp mills and the Friesau mill were approximately \$82.4 million or 616,033 MWh.

In connection with our focus on the growing bio-energy market, we sell tall oil, a by-product of our pulp production process which is used as both a chemical additive and as a green energy source. In 2021, we generated approximately \$7.3 million from the sale of tall oil and other chemicals from our pulp segment.

Canada

Our Celgar mill is party to an electricity sales agreement with the provincial energy utility for a ten-year term that expires in October 2030. Pursuant to the agreement, the mill agreed to supply a maximum of approximately 127,000 MWh of surplus electrical energy annually to the utility. We are pursuing “market” sales and other strategic initiatives with respect to the remainder of the mill’s surplus power.

The Peace River mill sells its surplus electricity into the Alberta market.

In 2021, our Canadian mills sold approximately 160,586 MWh of renewable electricity for proceeds of approximately \$15.5 million.

Production Costs

Our major costs of pulp production are fiber, labor, chemicals and energy.

Fiber

General

Fiber, comprised of wood chips and pulp logs, is our most significant operating expense for our pulp segment, representing about 45% of our pulp cash production costs in 2021. Further, fiber, in the form of sawlogs, represents about 75% of lumber cash production costs in 2021.

Given the significance of fiber to our total operating expenses and our limited ability to control its cost compared with our other operating costs, volatility in fiber costs can materially affect our margins and results of operations.

Our mills are situated in regions which generally provide a relatively stable supply of fiber. The fiber consumed by our pulp mills consists of wood chips produced by sawmills as a by-product of the sawmilling process and pulp logs. Wood chips are small pieces of wood used to make pulp and are either wood residuals from the sawmilling process or pulp logs chipped especially for this purpose. Pulp logs consist of lower quality logs not used in the production of lumber. The Friesau mill consumes sawlogs and waste wood, which are cyclical in both price and supply.

Generally, the cost of wood chips, pulp logs and sawlogs is primarily affected by the supply and demand for lumber. Additionally, regional factors including harvesting levels, weather conditions and insect infestations can also have a material effect on the supply, demand and price for fiber.

While fiber costs and supply are subject to cyclical changes, we expect that we will be able to continue to obtain an adequate supply of fiber on reasonably satisfactory terms for our mills due to their locations and our long-term relationships with suppliers. We have not historically experienced any significant fiber supply interruptions for our operations.

During the past few years, certain customers have endeavored to purchase pulp that is produced using fiber that meets certain recognized wood certification requirements from forest certification agencies like the Forest Stewardship Council (FSC), the Programme for the Endorsement of Forest Certification (PEFC), the Sustainable Forestry Initiative (SFI) and the Canadian Standards Association (CSA). If the fiber we purchase does not meet certain wood certifications required by customers, it may make it more difficult to, or prevent us from, selling our pulp to such customers. The chain of custody wood certification process is a voluntary process which allows a company to demonstrate that they use forest resources in accordance with strict principles and standards in the areas of sustainable forest management practices and environmental management. In an effort to procure wood only from sustainably managed sources, we employ an FSC Chain of Custody protocol and PEFC certification, which requires tracking of fiber origins and preparing risk based assessments regarding the region and operator. In the areas where we operate, we are actively engaged in the further development of certification processes. However, there is competition among private certification systems along with efforts by supporters to further these systems by having customers of forest products require products to be certified to their preferred system. Such wood certification standards continue to evolve and are not consistent from jurisdiction to jurisdiction or how they are interpreted and applied. We currently do not expect certification requirements to have a material adverse impact on our fiber procurement and sales. However, if sufficient marketplace demand requires wood raw materials to be sourced from standards that are inconsistent with those in our fiber supply regions, it could increase our operating costs and available harvest levels.

Germany

We believe we are the largest consumer of wood chips and pulp logs in Germany and often provide the best long-term economic outlet for the sale of wood chips in Eastern Germany. We coordinate the wood procurement activities for our German mills to reduce overall personnel and administrative costs, provide greater purchasing power and coordinate buying and trading activities. This coordination and integration of fiber flows also allows us to optimize transportation costs, and the species and fiber mix for our mills. We are also party to a joint wood purchasing arrangement with one of the largest wood consumers in Europe.

In 2021 our German pulp mills consumed an aggregate of approximately 4.9 million cubic meters of fiber. Approximately 58% was in the form of pulp logs and approximately 42% was in the form of sawmill wood chips.

In 2021, our per unit pulp fiber costs in Germany decreased compared to 2020, primarily as a result of the availability of beetle damaged wood and strong sawmill production.

Our Rosenthal mill sources wood chips from approximately 27 sawmills located primarily in the German states of Bavaria, Baden-Württemberg and Thuringia and primarily within a 300 kilometer radius of the Rosenthal mill. Within this radius, the Rosenthal mill is the largest consumer of wood chips. Given its location and size, the Rosenthal mill is often the best economic outlet for the sale of wood chips in the area. In 2021, approximately 90% of the fiber consumed by the Rosenthal mill was spruce and the remainder was pine. Wood chips for the Rosenthal mill are normally sourced from sawmills under one-year contracts with quarterly adjustments for market pricing. Substantially all of our chip supply is sourced from suppliers with which we have long-standing relationships. Pulp logs are sourced from the state forest agencies in Thuringia, Saxony and Bavaria and from private and municipal forest owners. In addition, the Rosenthal mill buys relevant volumes via imports from the Czech Republic.

The core wood supply region for the Stendal mill includes most of the Northeastern and Western part of Germany, primarily within an approximate 400 kilometer radius of the mill. We also purchase wood chips from Southwestern and Southern Germany as well as the Baltic Sea region. The fiber consumed by the Stendal mill consisted of approximately 63% spruce, 35% pine and 2% other species in 2021. The Stendal mill has sufficient chipping capacity to almost fully operate solely using pulp logs, if required. We source pulp logs from private and municipal forest owners and from state forest agencies. Our Stendal mill has historically also imported fiber from Poland and the Baltic Sea region.

Our Friesau mill is dependent on the consistent supply of sawlog fiber. Wood fiber is the single largest input cost and accounts for about 75% of its cash costs of producing lumber in 2021. Our Friesau mill is located in an area where there is a significant amount of high-quality fiber within economic reach. The wood fiber requirements of the Friesau mill are met primarily through open market purchases and contract purchases from state forestry agencies and private and municipal forest owners.

In Germany, over the last several years, the price and supply of wood chips has been affected from time to time by increasing demand from alternative or renewable energy producers and government initiatives for carbon neutral energy. In 2021, increasing energy prices and a stronger economy increased the demand for wood chips resulting from initiatives by European governments to promote the use of wood as a carbon neutral energy.

Offsetting some of the increases in demand for wood fiber have been initiatives to increase harvest levels in Germany, particularly from small private forest owners whose forests have been harvested at rates much lower than their rate of growth.

Additionally, over the last three years, there has been a material increase in the availability of harvestable wood as a result of beetle infestation of German forests. Generally, beetle-infested wood is harvested more rapidly so as to be useable before deterioration makes the wood unsuitable for its intended purposes. Most of such beetle-infested wood has now been harvested and processed. While such beetle-infested wood can increase fiber supply and lead to lower prices in the short-term, such increased harvest levels can lead to challenges in maintaining a sustainable harvest level over the long-term and can lead to periods of reduced harvest levels in the future.

We believe that Germany has the highest availability of softwood forests in Europe suitable for harvesting and manufacturing.

Canada

In 2021, our Celgar and Peace River mills consumed approximately 4.1 million cubic meters of fiber. Approximately 66% of such fiber was in the form of sawmill wood chips and the remaining 34% came from pulp logs processed through their woodrooms or chipped by a third-party. Our Canadian mills' woodrooms are able to process about 24% of their fiber needs. The source of fiber at the mill is characterized by a mixture of species (aspen, spruce, pine, hemlock, douglas fir and cedar) and the mill sources fiber from a number of Canadian and U.S. suppliers.

In 2021, our Canadian pulp mills' per unit fiber costs modestly increased compared to 2020, due to the negative impact of a weaker dollar on our Canadian dollar denominated fiber costs.

The availability of fiber for our mills is in large part influenced by the strength of the lumber market. Lumber markets are primarily driven by U.S. housing starts, home renovation activities and, to a lesser degree, demand from China.

In 2021, our Canadian mills had access to over 30 different chip suppliers, most of whom are in Canada and, in the case of the Celgar mill, are also in the United States. Chips are purchased in Canada and the United States in accordance with chip purchase agreements. Generally, pricing is reviewed and adjusted periodically to reflect market conditions. The contracts for the Celgar mill are generally for one year with quarterly adjustments or on three-month terms. The chip contracts for Peace River are generally for three to five years with monthly adjustments indexed to the average pulp price.

To secure the volume of pulp logs required by its woodroom and field chippers, the Celgar mill has entered into pulp log supply agreements. Such agreements can range from three-month to one-year terms, with a number of different suppliers, many of whom are also contract chip suppliers for the mill. All of the pulp log agreements can be terminated by either party for any reason, upon seven days' written notice. The Celgar mill also bids on British Columbia timber sales from time to time.

Peace River holds two 20-year renewable governmental forest management agreements and three deciduous timber allocations in Alberta with an aggregate allowable annual cut of approximately 2.4 million cubic meters of hardwood, of which it currently harvests approximately 44%, and 400,000 cubic meters of softwood, which it sells or trades to sawmills surrounding the Peace River mill in exchange for wood chips. The forest management agreements were last renewed for a 20-year term expiring in 2029. While our Peace River mill can satisfy all of its hardwood fiber requirements from its forest management agreements and timber allocations, in order to optimize its fiber flow, it satisfies a small portion of its needs from third-party owned timberlands. Softwood fiber supply is from residual sawmill chips from local surrounding sawmills.

Labor

Our labor costs have increased over time due to inflation in wages and health care costs.

Energy

Our energy is primarily generated from renewable carbon neutral sources, such as black liquor and wood waste. Our mills produce all of our energy requirements and generate excess energy which we sell to third-party utilities and to regional markets. We utilize fossil fuels, such as natural gas, primarily in our lime kilns and we use a limited amount for start-up and shut-down operations. Additionally, from time to time, mill process disruptions occur and we consume small quantities of purchased electricity and fossil fuels to maintain operations. As a result, all of our mills are subject to fluctuations in the prices for fossil fuels.

Chemicals

Our pulp mills use certain chemicals which are generally available from several suppliers and sourcing is primarily based upon pricing and location. Our chemical costs have increased in recent years.

Sales, Marketing and Distribution

Our global sales and marketing group is responsible for conducting all sales and marketing of the pulp produced at our mills and currently has approximately 25 employees. This group largely handles all European and North American sales directly. Sales to Asia are made directly or through commission agents overseen by our sales group. The global sales and marketing group handles sales to over 250 customers. We coordinate and integrate the sales and marketing activities of our German mills to realize on a number of synergies between them. These include reduced overall administrative and personnel costs and coordinated selling, marketing and transportation activities. We also coordinate pulp sales across our mills on a global basis, thereby providing our larger customers with seamless service across all major geographies. In marketing our pulp, we seek to establish long-term relationships by providing a competitively priced, high-quality, consistent product and excellent service. In accordance with customary practice, we maintain long-standing relationships with our customers, pursuant to which we periodically reach agreements on specific volumes and prices.

Our lumber sales are handled by our sales teams in Germany and Vancouver. We also sell lumber through commissioned agents in certain markets.

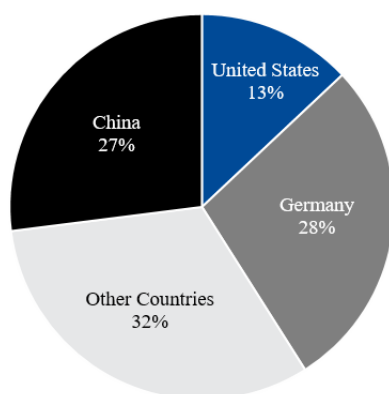
The following table sets out our pulp revenues by geographic area for the periods indicated:

	Year Ended December 31,	
	2021	2020
	(in thousands)	
United States	\$ 183,143	\$ 149,759
Germany	388,900	268,978
China	375,891	364,527
Other countries	441,505	347,038
Total ⁽¹⁾	<u>\$ 1,389,439</u>	<u>\$ 1,130,302</u>

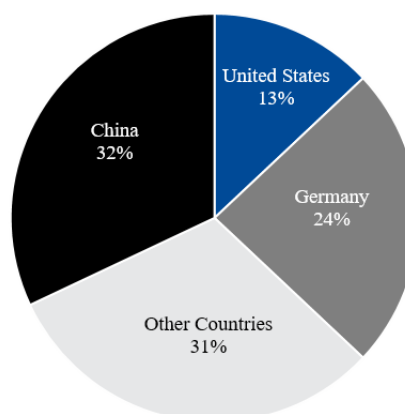
(1) Excluding intercompany sales.

The following charts set out the geographic distribution of our pulp revenues as a percentage of our total pulp revenues for the periods indicated:

2021 Geographically Segmented Pulp Sales



2020 Geographically Segmented Pulp Sales



The following table sets out the distribution of our pulp sales volumes by end use for the periods indicated:

	Year Ended December 31,	
	2021	2020
	(in thousands of ADMTs)	
Tissue	612	807
Specialty	350	338
Printing & Writing	763	779
Other	88	105
Total	1,813	2,029

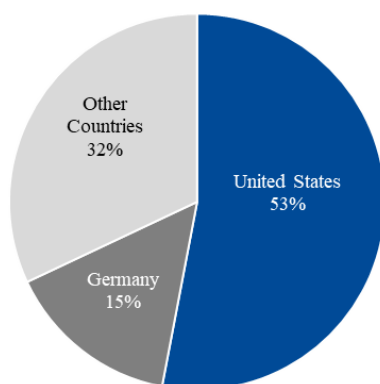
The following table set out our lumber revenues by geographic area for the periods indicated:

	Year Ended December 31,	
	2021	2020
	(in thousands)	
United States	\$ 156,762	\$ 93,802
Germany	45,071	34,065
Other countries	91,333	52,902
Total⁽¹⁾	\$ 293,166	\$ 180,769

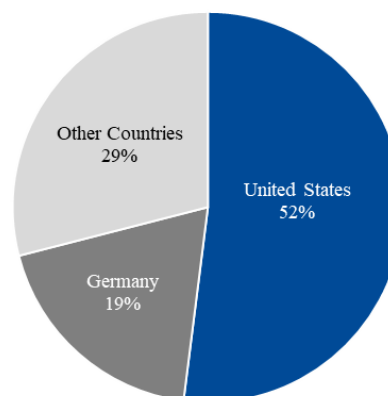
(1) Excluding intercompany sales.

The following charts set out the geographic distribution of our lumber revenues as a percentage of our total lumber revenues for the periods indicated:

2021 Geographically Segmented Lumber Sales



2020 Geographically Segmented Lumber Sales



Our pulp and lumber sales are on customary industry terms. As of December 31, 2021, we had no material payment delinquencies. In 2021 and 2020, no customer accounted for 10% or more of our revenues. We do not believe our pulp or lumber sales are dependent upon the activities of any single customer and the loss of any single customer would not have a material adverse effect on us.

Transportation

We transport our pulp and lumber generally by truck, rail and ocean carriers through third-party carriers. We have a small fleet of trucks in Germany that deliver some of our German mills' pulp.

Our German pulp mills are currently the only market kraft pulp producers in Germany, which is the largest import market for kraft pulp in Europe. We therefore have a competitive transportation cost advantage compared to Canadian and Northern European pulp producers when shipping to customers in Europe. Due to the location of our German mills, we are able to deliver pulp to many of our customers primarily by truck and rail.

Our Canadian mills' pulp is transported to customers by truck, rail and ocean carrier to ensure timely delivery. The majority of our Canadian mills' pulp for overseas markets is initially delivered primarily by rail to the Port of Vancouver for shipment overseas by ocean carrier. Based in Western Canada, our Canadian mills are well positioned to service Asian customers. The majority of our Canadian mills' pulp for domestic markets is shipped by rail directly to the customer or to third-party warehouses in the United States. We also operate a logistics and reload center near Trail, British Columbia to provide us with additional warehouse space and greater transportation flexibility in terms of access to rail and trucking options.

The Friesau mill's lumber is transported to customers by truck, rail and ocean carriers through third-party carriers.

In each of 2021 and 2020, outbound transportation costs comprised approximately 12% and 13%, respectively, of our total consolidated costs and expenses.

Capital Expenditures

We have continued to make capital investments designed to increase pulp, green energy and chemical production, reduce costs and improve efficiency and environmental performance at our pulp mills. The improvements made over the years have increased the competitive position of our pulp segment. Since its acquisition, we have also made capital investments to optimize sawmill production at the Friesau mill.

The following table sets out the total capital expenditures by segment (excluding any related governmental grants) for the periods indicated:

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Pulp segment	\$ 139,312 ⁽¹⁾	\$ 53,751
Wood products segment	18,002	23,788
Total	\$ 157,314	\$ 77,539

(1) Includes expenditures for the recovery boiler rebuild at the Peace River mill which is financed with insurance proceeds of \$21.5 million.

In our pulp segment, capital investments at our Rosenthal mill in 2021 and 2020 primarily related to wastewater improvement and maintenance projects.

Capital investments at the Stendal mill in 2021 primarily related to capacity expansion projects. In 2020, they primarily related to capacity expansion, land for fiber storage and maintenance projects.

Capital investments at the Celgar mill in 2021 primarily related to upgrades to the woodroom and maintenance projects. In 2020, they primarily related to fiber consumption improvement projects and maintenance projects.

Capital investments at the Peace River mill in 2021 primarily related to the recovery boiler rebuild, which was financed with insurance proceeds of \$21.5 million and upgrades to the woodroom. In 2020, they primarily related to large maintenance projects.

In our wood products segment, in 2021, we completed expansion and optimization projects at the Friesau mill to, among other things, increase annual lumber production and improve production grade capabilities and efficiencies.

Qualifying capital investments at industrial facilities in Germany that reduce pollutants in the effluent discharge offset wastewater fees that would otherwise be required to be paid. For more information about our environmental capital expenditures, see "– Environmental".

In 2022, excluding amounts being financed through government grants and expected insurance proceeds, we currently expect our total capital expenditures to be approximately \$175.0 million to \$200.0 million.

In 2022, we currently expect our capital expenditures in our pulp segment to be principally comprised of upgrades to the woodrooms at our Canadian mills, production improvement projects at our German pulp mills and maintenance projects.

In 2022, we currently expect capital expenditures in our wood products segment to be for further upgrades to our Friesau mill's sorter line and other production improvement projects and maintenance projects.

Innovation

We utilize our expertise with wood, its processing and by-products to expand our product mix. As a result, we seek to develop new products based on our expertise in wood processing and working with derivatives of the kraft pulping process. Currently these processes are focused on:

- the production and sale of CLT at our recently-acquired CLT Facility;
- the further refinement of materials contained in black liquor, the extractive chemical and lignin containing compounds that are a result of the kraft pulping process;
- the further refinement of cellulose materials that are currently the basis of pulp; and
- higher use products that may be derived from wood and plant processing and harvesting including oils from sandalwood trees and plants.

We are working on some of these initiatives on our own, with others and in conjunction with industry associations or joint venture partners. We are also researching potential higher use products that may be derived from processing different species of trees and plants.

Environmental

Our operations are subject to a wide range of environmental laws and regulations, dealing primarily with:

- air, water and land;
- solid and hazardous waste management;
- waste disposal;
- remediation and contaminated sites; and
- chemical usage.

Compliance with these laws and regulations generally involves capital expenditures as well as additional operating costs. We cannot easily quantify the future amounts of capital expenditures we might have to make to comply with these laws and regulations or the effects on our operating costs because in some instances compliance standards have not been developed, have not become final or definitive or may be amended in the future. In addition, it is difficult to isolate the environmental component of most manufacturing capital projects.

We devote significant management and financial resources to comply with all applicable environmental laws and regulations. In particular, the operation of our plants is subject to permits, authorizations and approvals and we must comply with prescribed emission limits. Compliance with these requirements is monitored by local authorities and non-compliance may result in administrative orders, fines or closures of the non-compliant mill. Our total capital expenditures on environmental projects at our mills were approximately \$8.4 million in 2021 and approximately \$2.3 million in 2020. In 2022, capital expenditures for environmental projects are expected to be approximately \$10.6 million.

Environmental responsibility is a priority for our operations. To ensure compliance with environmental laws and regulations, we regularly monitor emissions at our mills and periodically perform environmental audits of operational sites and procedures both with our internal personnel and outside consultants. These audits identify opportunities for improvement and allow us to take proactive measures at the mills as considered appropriate.

We believe we have obtained all required environmental permits, authorizations and approvals for our operations. We believe our operations are currently in material compliance with the requirements of all applicable environmental laws and regulations and our respective operating permits.

Under German state environmental rules relating to effluent discharges, industrial users are required to pay wastewater fees based upon the amount of pollutants they discharge in their effluent. These rules also provide that an industrial user who undertakes environmental capital expenditures and lowers certain effluent pollutants to prescribed levels may offset the amount of these expenditures against the wastewater fees that they would otherwise be required to pay. We expect capital investment programs and other environmental initiatives at our German mills

will continue to offset the wastewater fees that are payable and we believe they will ensure that our operations continue in substantial compliance with prescribed standards.

In Canada, in addition to existing provincial air quality regulations, an air quality management system, referred to as “AQMS”, outlines a comprehensive national approach for improving air quality in Canada. Under the AQMS, all levels of government are to work collaboratively to respond to different air quality challenges across the country. The AQMS includes four elements:

- Canadian Ambient Air Quality Standards (CAAQS), meant to drive local air quality improvements. They provide the basis for provincial territorial governments to determine the level of action needed.
- A framework for regional and local air quality management through air zones and regional airsheds.
- Base-level Industrial Emissions Requirements (BLIERs) for certain major industries.
- An intergovernmental working group to improve collaboration and reduce emissions from mobile sources (*i.e.* sources such as in-use cars and trucks).

In 2016, Environment Canada released the Pan-Canadian Framework on Clean Growth and Climate Change. The framework put in place a national, sector-based greenhouse gas reduction program applicable to a number of industries. In addition, the various provincial governments, including British Columbia and Alberta, have introduced legislation with the intention of reducing greenhouse gas emissions.

British Columbia has, for example, introduced a carbon tax and low-carbon fuel standards. British Columbia has also implemented performance standards, such as greenhouse gas emissions benchmarks for select industrial facilities and sectors, and new greenhouse gas emissions reporting regulations for certain industrial operations. British Columbia has also established greenhouse gas emission offset projects.

In 2019, the federal government began phasing in a federal carbon tax pricing system in provinces and territories without a provincial carbon tax program. As of January 1, 2022, the federal carbon tax pricing system applies to Saskatchewan, Manitoba and Alberta, as well as the territories of Nunavut and the Yukon.

We believe that these water and air emission measures in Germany and Canada have not had, and in 2022 will not have, a significant effect on our operations. Although these measures could have a material adverse effect on our operations in the future, we expect that we will not be disproportionately affected by these measures as compared with owners of comparable operations. We also expect that these measures will not significantly disrupt our planned operations.

Future regulations or permits may place lower limits on allowable types of emissions, including air, water, waste and hazardous materials, and may increase the financial consequences of maintaining compliance with environmental laws and regulations or conducting remediation. Our ongoing monitoring and policies have enabled us to develop and implement effective measures to maintain emissions in substantial compliance with environmental laws and regulations to date in a cost-effective manner. However, there can be no assurance that this will be the case in the future.

Climate Change

Changing weather patterns and climatic conditions due to natural and man-made causes have added to the unpredictability and frequency of natural disasters, such as hurricanes, wildfires and wind, rain, hail, snow and ice storms. Such changes and resulting conditions can adversely affect our operations, resulting in variations in the cost and availability of raw materials, such as fiber, unplanned downtime, changes in operating rates and disruptions in transportation and logistics. For example, in 2021, significant wildfires and later flooding in Western Canada disrupted and reduced harvesting activities and fiber supply and logistics and transportation.

As there is uncertainty about the severity, extent and speed at which climate change is occurring, we are unable to identify and predict all of the consequences of climate change and the timing of the same on our business and operations.

The effects and perceived effects of climate change and social and governmental responses have created both opportunities and negative consequences for our business.

The focus on climate change has generated a substantial increase in demand and in legislative requirements for carbon neutral or green energy. Pulp mills consume wood residuals, being wood chips and pulp logs, as the base raw material for their production process. Wood chips are residuals left over from lumber production and pulp logs are generally lower quality logs left over from logging that are unsuitable for the production of lumber. Sawmills consume sawlogs and residuals, like wood chips, are generally sold to other industrial consumers like pulp and pellet producers.

As part of their production process, our pulp mills take wood residuals and process them through a digester where cellulose is separated from the wood to be used in pulp production and the remaining residuals, called black liquor, are used for green energy production. As a result of their use of wood residuals and because our mills generate combined heat and power in a process known as cogeneration, they are efficient producers of energy. Our Friesau mill utilizes residual bark and shavings from consumed logs to produce energy. This energy is carbon neutral and produced from a renewable source. Our relatively modern mills generate a substantial amount of energy that is surplus to their operational requirements.

These factors, along with governmental initiatives in respect of renewable or green energy legislation, have provided business opportunities for us to enhance our generation and sales of green energy to regional utilities.

We are constantly exploring other initiatives to enhance our generation and sales of surplus green energy and chemical by-products. Other potential opportunities that may result from climate change include:

- the expansion of softwood forests and increased growth rates for such forests;
- more intensive forestry practices and timber salvaging versus harvesting standing timber;
- greater demand for sustainable energy and cellulosic biomass fuels;
- additional governmental incentives or requirements to enhance biomass energy production; and
- additional social or investor focus or demand for biomass or green energy or sustainability initiatives.

Historically, the principal driver behind reducing the effects of climate change and moving to a carbon neutral economy primarily resulted from initiatives from governmental or international bodies, including the United Nations and international treaties amongst various countries. However, over the last few years, there has been a significant push and focus on climate change and carbon reduction by private institutions including, among others, institutional investors, ratings agencies, shareholders, communities, other stakeholders and the public generally. This has resulted in, among other things, a significant amount of capital being provided for "green" or carbon neutral initiatives, on favorable terms, some of which are referred to as "green bonds".

We cannot currently predict which, if any, of these potential opportunities will be realized by us or their economic effect on our business.

While not all of the specific consequences to our business from climate change are predictable, one of the most significant adverse consequences is that the focus on renewable energy has created greater demand and competition for wood residuals or fiber from renewable energy producers like the pellet industry in Germany.

In Europe, the price and supply of wood residuals has been periodically affected by an increasing demand from alternative or renewable energy producers and governmental initiatives for carbon neutral energy. In 2021, increasing energy prices and a stronger economy increased the demand for wood chips resulting from initiatives implemented by European governments to promote the use of wood as a carbon neutral energy. Additionally, the growing interest and focus in British Columbia on renewable green energy has created additional competition for such fiber. Such additional demand for wood residuals may increase the competition and prices for wood residuals used by our mills over time.

In response to climate change risks, there have been governmental initiatives and legislation on the international, national, state and local levels. Such governmental action or legislation can have an important effect on the demand and prices for fiber. As governments pursue green energy initiatives, they risk creating incentives and demand for wood residuals from renewable energy producers that "cannibalizes" or adversely affects traditional users, such as lumber and pulp and paper producers. We are continually engaged in dialogue with governments to educate and try

to ensure potential initiatives recognize the traditional and continuing role of our mills in the overall usage of forestry resources and the economies of local communities.

Other potential negative consequences from climate change that can affect our business include:

- a greater susceptibility of northern forests to disease, fire and insect infestation;
- the disruption of transportation systems and power supply lines due to more severe storms;
- the loss of fresh water transportation for logs and pulp due to lower water levels;
- decreases in the quantity and quality of processed water for our mill operations;
- the loss of northern forests in areas in sufficient proximity to our mills to competitively acquire fiber; and
- lower harvest levels decreasing the supply of harvestable timber and, as a consequence, wood residuals.

Well-publicized events have been attributed at least in part to climate change, including a beetle infestation that has damaged significant amounts of forest lands and harvestable timber in Western Canada and more recently over the last three years in Germany. Beetle infestation of forest lands has both short-term and long-term consequences for our business. In the short-term, there is often a material increase in harvest levels of infested forests as parties seek to utilize such wood before it deteriorates too much to be useable for its intended purposes. As a result, there can be a material increase in fiber availability and lower fiber prices resulting both from such increased supply and the lower quality of such infested fiber. Over the last three years, our German mills have benefitted from such lower fiber prices. Infestation and increased harvest levels resulting therefrom can create over-harvesting and challenges for maintaining sustainable harvest levels over the long-term and can result in lower harvest levels in future periods.

Changes in climate conditions have also been attributed at least in part to increasingly frequent and severe wildfires in the interior of Western Canada and portions of the western United States and Europe. We cannot currently predict whether such climate-affected conditions will continue, or the frequency or severity of the same in the future.

Wood Products Industry

General

With approximately 3.7 billion cubic meters, Germany has the largest timber reserves in Europe. The principal species are spruce, pine, beech and oak. Many of the German forest areas have been certified according to PEFC or FSC standards. Modern solid wood products include sawn and planed lumber which are used in different areas.

Demand for softwood lumber is cyclical and influenced by transportation costs, exchange rates, government tariffs and the competitiveness of substitute products, as well as factors that affect consumer confidence and drive demand for residential construction, such as interest rates, disposable income, unemployment rates, perceived job security and other indicators of general economic conditions. Demand can vary from region to region within a country and seasonal factors that determine optimal building conditions can also affect demand.

Lumber Products and Markets

Our Friesau mill, which was built in 1992 and has two high-volume Linck sawlines, has the ability to produce both rough and planed products. The sawmill principally manufactures finished sawn lumber milled from spruce and pine, including European metric and specialty lumber, U.S. dimensional lumber and J-grade lumber, in various sizes and grades.

The process for manufacturing lumber results in a significant percentage of each sawlog ending up as by-products or residuals such as wood chips, trim blocks, sawdust shavings and bark. By-products are typically used as fuel for our cogeneration power plant or sold to a wide variety of customers. In addition, we utilize a significant portion of the chips from the Friesau mill at our Rosenthal pulp mill.

The main markets for our lumber products are in the United States, Europe and the Far East.

Our Friesau mill fosters a diverse customer base in each of its key markets. Customers include national and regional distributors, large construction firms, secondary manufacturers, retail yards and home centers.

Competition

The markets for our lumber products are highly competitive on a global basis and producers compete generally on price, quality and service. Factors influencing our competitive position include, among others, the availability, quality and cost of raw materials, including fiber, energy and labor and the efficiency and productivity of the Friesau mill in relation to its competitors. The Friesau mill competes in international markets subject to currency fluctuations and global business conditions.

Our Friesau mill competes against many producers, a number of whom own and operate more mills than we do and numerous competitors have greater financial resources or lower production costs than us.

Human Capital

We believe the strength of our workforce is one of the significant contributors to our success as a global company. All our employees contribute to our success and help us drive strong financial performance. Attracting, developing and retaining global talent with the right skills to drive our business is central to our purpose, mission and long-term growth strategy.

As of December 31, 2021, we employ approximately 2,415 people, of which approximately 1,515 of whom work in our German operations and approximately 835 of whom work in our Canadian operations. Our pulp segment employs approximately 1,855 people and our wood products segment employs approximately 455 people. The majority of our employees in both segments are bound by collective agreements. The collective agreement with hourly workers at our Celgar mill expired in 2021 and the mill currently continues to operate under such agreement until a new collective agreement is finalized. While we currently expect the mill to enter into a new agreement based primarily upon a pattern agreement settled with a regional competitor, we cannot assure that a new agreement will be entered into without workplace disruptions or on satisfactory terms. We consider the relationships with our employees, and the unions which represent them, to be good. Strong labor management relations are fundamental to our operations. Accordingly, we recognize and work cooperatively with the unions and works councils to ensure we build and maintain superior working conditions, a supportive work environment, training and growth opportunities and fair compensation packages.

We employ a collaborative group of skilled, dedicated, resourceful and innovative individuals who support our core purpose and reflect our values every day. Investment in our people drives our excellence and accordingly, we are committed to attracting, retaining and developing quality personnel. By nature of the industries in which we operate, many of our employees are professionals who require specialized knowledge and skills and include various categories of engineers and many licensed trade persons and equipment operators. Our senior managers and directors have extensive experience in the forest products industry, and we have experienced managers at all of our mills. Our management has a proven track record of implementing new initiatives and capital projects in order to reduce costs throughout our operations as well as identifying and harnessing new revenue opportunities.

We aim to support our employees with a well-paying job, rich career opportunities, and a balanced and secure future accompanied by time away from work. All of our employees are provided competitive benefits packages that provide pension, medical, dental, and vision care benefits. Employees are also able to access specialized assistance such as physiotherapy and counselling services. We provide a deep mix of training to help our people grow and be more effective in their current and future roles.

We conduct confidential engagement surveys of our workforce that are administered and analyzed by an independent third party. Aggregate survey results are reviewed by executive officers and the board of directors. We create action plans at global, operational and managerial levels. By acting on results both at an aggregate enterprise level and an operational level, we believe we have been able to enhance our culture and improve our overall engagement.

Maintaining a robust pipeline of talent is crucial to our ongoing success and is a key aspect of succession planning efforts across the organization. Our leadership and people teams are responsible for attracting and retaining top talent by facilitating an environment where employees feel supported and encouraged in their professional and personal development. Specifically, we promote employee development by reviewing strategic positions regularly and identifying potential internal candidates to fill those roles, evaluating job skill sets to identify competency gaps and creating developmental plans to facilitate employee professional growth. We invest in our employees through training and development programs, on the job experiences and coaching. We provide technical and leadership programs across the organization that enable colleagues to grow skills and capabilities to become more successful. We also have dedicated talent programs that support and accelerate leadership development and strengthen our succession plans. Additionally, we understand the importance of maintaining competitive compensation, benefits and appropriate training that provides growth, developmental opportunities and multiple career paths for our employees.

Health and Safety

Safety is a core value of our company. The industries in which we operate have their own particular set of risks including hazards from our complex industrial manufacturing facilities such as manufacturing processes, heavy and complex equipment, operating boilers, energy production, and the use and recovery of chemicals. Accordingly, there is no initiative that attracts a higher degree of focus for our management team than our “Road to Zero” program, which is a company-wide initiative designed to create safe and productive work environments with a goal of zero workplace incidents.

We have developed tools to analyze potential and incurred incidents and we have resources to develop prevention initiatives. In particular, we focus on modelling responses to eliminate the risk, where possible, by using the “hierarchy of controls” adopted by many of the world’s leading health and safety organizations. Our priority is the elimination of hazards, followed by safe administrative practices and appropriate personal protective equipment. We identify, monitor, educate, and take a data-driven approach to drive workplace safety improvements. Many of our programs revolve around education, hazard identification, and risk mitigation strategies. These proactive initiatives bring safety to the forefront of our work practices. Our teams of safety professionals are dedicated to finding and utilizing the right tools to prevent all workplace injuries. Our Chief Executive Officer is the Chair of our Senior Safety Leadership Committee, referred to as the “SSLC”, which designs and implements broad policies, strategies, expenditures, and training for our employees. The SSLC has engaged a globally recognized safety consultant specializing in the design and implementation of health and safety management systems. Such advisors have been supporting the initiatives established by the SSLC and providing leadership training, policy implementation, and practical tools to support our employees.

We closely monitor the health and safety issues related to the COVID-19 pandemic. In 2021, we encouraged and supported remote-access initiatives so that key staff can work from home or from non-office locations; restricted business travel, based on guidance from the World Health Organization; provided alternative arrangements for site and staff meetings; provided safe working environments that include disinfection of work stations, increased cleaning by janitorial staff, separated shifts, limited staff gatherings in lunchrooms; and instituted social distancing and self-assessment opportunities, which were overseen by trained staff. Employees experiencing cold- or flu-like symptoms were prohibited from coming into the operations and were advised to seek medical attention in line with provincial and regional COVID-19 guidelines. From an operational standpoint, we aligned the work processes at our operating locations within the guidelines of relevant authorities and remained fully operational. A dedicated leadership team met daily to respond to evolving developments and to adjust our operations accordingly while ensuring the safety and health of our employees, contractors, customers, and partners.

Diversity, Equity and Inclusion

We believe that a culture of diversity and inclusion is critical in making the best decisions for our people and achieving sustainable business success. While gender is only one aspect under diversity, a number of our top management positions were and continue to be held by women. We continue to effect changes to our recruiting and training processes to make our workplaces even more reflective of the diversity that exists in our communities. We believe that making our workplace more equal and inclusive will make us a stronger, more resilient and a more sustainable business over the long-term.

We have adopted an enterprise wide diversity management program. Its goal is to respond to the particular conditions at each of our operations to develop diversity within our teams. One of the first objectives of the program has been to enhance equal opportunities for women in our business. This is a key goal, not just to improve diversity but also to address demographic changes and potential shortages of skilled workers in the future by inspiring more women to take up technical positions in our industry.

Currently, women comprise 30% of our board of directors, about 23% of our top 100 management positions and 18% of our total workforce. Our goal is to improve our recruitment of women so that they comprise 30% of our new hires by 2030.

In Canada, our operations work closely and partner with regional First Nations groups to foster mutually-beneficial economic activities and beneficial relationships. We are party to a logging joint venture with one First Nations group and are working to expand the scope and size of the business and to include other regional groups. We are also pursuing additional joint business or venture opportunities with First Nations groups, including a joint trucking and transportation business. Additionally, we have programs to provide training and job skills to regional First Nations groups.

In Germany, we have an extensive apprenticeship program and outreach events for prospective employees. We believe that these programs and events, among other things, help us to reach out and attract new employees, including more women employees who perhaps in the past had not considered technical or operating employment opportunities at our mills or the forest products industry generally.

We have partnered with a global management consulting company that works to create “Change that Matters”. Their long-standing commitment to advancing gender parity, diversity, and inclusion in business aligns with our values and goals. We are working together to create a custom strategy to assist us in becoming the employer of choice, both locally and globally, for future employees.

We do not employ nor do we contract with any parties that employ people who are subjected to unsafe conditions. The vast majority of our employees are part of a union or are represented by a works council with whom we have worked to design conditions that are safe from harassment and discrimination. In addition, as a supportive workplace, we do our best to accommodate the distinct circumstances of our employees that may require modified workplaces. We have also adopted a written Code of Business Conduct and Ethics and other corporate policies to support a corporate culture which, among other things, promotes a work environment that prohibits intimidation and harassment and encourages and promotes diversity and inclusion.

Community Involvement

We make donations to community groups and charitable organizations in the communities in which we operate and live. We believe this commitment and engagement with local communities helps us to attract and retain employees and enhances our social licence in such communities.

Commitment to Sustainability

We manage and operate our business, including the natural resources under our care or direction, with a long-term view and focus on sustainability. We believe by doing so we will be able to deliver value to our customers, employees, shareholders, communities and other stakeholders. We strive to maintain the highest environmental, social and governance standards. We believe that by caring for the health and safety of our workers, maintaining the environmental quality of our operations and being part of and actively engaged in the communities in which we operate we enhance the value for all of our various stakeholders and our social licence to operate. We work to build all of these values and goals into our corporate culture or what we refer to as the “Mercer Way”. We believe that focusing on sustainability as a key driver in all of our operations and business will enhance our decision-making, our business and our relationships with our various stakeholders and communities in which we operate. We believe all of the foregoing elements are inter-connected and are vital to our long-term future, success and sustainability.

We focus significant attention on minimizing our environmental impact with the goal of reducing the environmental footprint of our existing operations to make them sustainable over the long-term, to ensure we have a social licence to operate and to offset or reduce the impact of our operations. We endeavor to adapt to emerging trends, support

new technologies and foster environmental stewardship in the areas in which we operate. Our endeavors are aligned with the United Nations Sustainable Development Goals and other key environmental standards in the areas of low carbon transition, water stewardship, waste, forestry, air emissions, recycling, sourcing and biodiversity.

As part of our commitment and focus on sustainability, we have, among other things:

- increased our focus on sustainability including with improved management, goal setting and recording capabilities that will be communicated with stakeholders to ensure proper acknowledgment of our sustainability accomplishments and initiatives;
- conducted a climate risk change scenario and opportunities assessment as part of our adoption of the Task Force on Climate-related Financial Disclosure recommendations. In doing so, we partnered with a global non-profit organization focused on sustainability to develop a series of climate change scenarios for 2030. These models were developed with extensive input from the climate community, and augmented with industry trends and climate projections. The scenarios were then analyzed and used to identify and assess the potential impacts of climate change-related risks and opportunities on the Company. As a result of this process, we identified three areas of our strategy that may incur risks and opportunities across the scenarios: (i) shifting market demand; (ii) wood and fiber supply; and (iii) stakeholder perceptions. Further information on the key parameters and assumptions used to develop the various models is available on our website;
- enhanced our environmental tracking, measuring and reporting system for both water and air parameters at all of our facilities; and
- spent considerable time with our stakeholders including governments and First Nations to expand our relationships in all areas of our business.

Description of Certain Indebtedness

The following summarizes certain material provisions of our senior notes and revolving working capital facilities. The summaries are not complete and are qualified by reference to the applicable documents and the applicable amendments to such documents on file with the SEC, and incorporated by reference herein.

Senior Notes

In January 2021, we issued \$875.0 million aggregate principal amount of 5.125% senior notes due February 1, 2029, referred to as the “2029 Senior Notes” to refinance all \$250.0 million in aggregate principal amount of our 6.500% Senior Notes due 2024, referred to as the “2024 Senior Notes”, pursuant to a tender offer and a subsequent redemption and to redeem all \$550.0 million in aggregate principal amount of our 7.375% senior notes due 2025, referred to as the “2025 Senior Notes”. After giving effect to the foregoing transactions, we now have outstanding the following issues of senior notes, collectively referred to as the “Senior Notes”:

- \$300.0 million in aggregate principal amount of 5.500% senior notes due 2026, referred to as the “2026 Senior Notes”; and
- \$875.0 million in aggregate principal amount of 2029 Senior Notes.

The 2026 Senior Notes mature on January 15, 2026 and interest on the 2026 Senior Notes is payable semi-annually in arrears on each January 15 and July 15. Commencing July 15, 2018, interest is payable to holders of record of the 2026 Senior Notes on the immediately preceding January 1 and July 1 and is computed on the basis of a 360-day year consisting of twelve 30-day months. Commencing January 15, 2021, the 2026 Senior Notes became redeemable at our option at a price equal to 102.750% of the principal amount redeemed and declining ratably on January 15 of each year thereafter to 100.000% on or after January 15, 2023.

The 2029 Senior Notes mature on February 1, 2029 and interest on the 2029 Senior Notes is payable semi-annually in arrears on each February 1 and August 1. Commencing August 1, 2021, interest is payable to holders of record of the 2029 Senior Notes on the immediately preceding January 15 and July 15 and is computed on the basis of a 360-day year consisting of twelve 30-day months. Commencing February 1, 2024, the 2029 Senior Notes will become redeemable at our option at a price equal to 102.563% of the principal amount redeemed and declining ratably on February 1 of each year thereafter to 100.000% on or after February 1, 2026.

The indentures governing the Senior Notes contain covenants limiting, among other things, our ability and the ability of our restricted subsidiaries to: incur additional indebtedness or issue preferred stock; pay dividends or make other distributions to our shareholders; purchase or redeem capital stock or subordinated indebtedness; make investments; create liens; incur restrictions on the ability of our restricted subsidiaries to pay dividends or make other payments to us; sell assets; consolidate or merge with or into other companies or transfer all or substantially all of our assets; and engage in transactions with affiliates. As of December 31, 2021, all of our subsidiaries were restricted subsidiaries.

The Senior Notes are unsecured and are not guaranteed by any of our operating subsidiaries, all of which are located outside the United States. Our obligations under the Senior Notes rank: effectively junior in right of payment to all of our existing and future secured indebtedness, to the extent of the assets securing such indebtedness, and all indebtedness and liabilities of our subsidiaries; equal in right of payment with all of our existing and future unsecured senior indebtedness; and senior in right of payment to any of our future subordinated indebtedness.

Pan-German Revolving Credit Facility

In December 2018, certain of our German subsidiaries entered into a €200.0 million joint revolving credit facility, referred to as the “German Facility”, with a group of bank lenders. The principal terms of the facility include:

- The total availability under the German Facility is €200.0 million.
- The German Facility matures in December 2023.
- The German Facility is unsecured and is jointly and severally guaranteed by each of our German subsidiaries.
- Interest under the German Facility is payable on loans of Euribor plus 1.05% to 2.00% depending on the leverage ratio as defined in the underlying credit agreement.
- A commitment fee equal to 35% of the applicable margin on the unused and uncanceled amount of the German Facility is payable quarterly in arrears.
- The German Facility contains financial maintenance covenants which are tested on a quarterly basis, commencing March 31, 2019, which require: (i) our German subsidiaries that are party thereto to maintain a leverage ratio of “net debt” (excluding shareholder loans) to EBITDA of not greater than 3.50:1.00; and (ii) defined capital of not less than €400.0 million.
- The German Facility contains other customary restrictive covenants which, among other things, govern the ability of our German subsidiaries to incur liens, sell assets, incur indebtedness, make acquisitions with proceeds from the German Facility, enter into joint ventures or repurchase or redeem shares. The German Facility also contains customary events of default.

The German Facility is available to all of the borrowers, subject to maximum borrowing sub-limits for certain of the borrowers.

As of December 31, 2021, approximately €10.5 million (\$11.9 million) of the German Facility was supporting bank guarantees leaving approximately €189.5 million (\$214.6 million) available.

Canadian Revolving Credit Facility

In January 2022, our Celgar and Peace River mills and certain other subsidiaries entered into a new C\$160.0 million revolving credit facility with a syndicate of three North American banks, referred to as the “Canadian Revolving Facility”. This facility replaced and discharged a prior C\$60.0 million revolving credit facility for our Celgar mill and a C\$60.0 million revolving credit facility for our Peace River mill. The principal terms of the Canadian Revolving Facility include:

- The total availability under the Canadian Revolving Facility is C\$160.0 million.
- The facility matures in January 2027.
- The facility is available by way of: (i) Canadian denominated advances, which bear interest at a designated prime rate per annum; (ii) banker’s acceptance equivalent loans, which bear interest at the applicable Canadian dollar banker’s acceptance plus 1.20% to 1.45% per annum; (iii) dollar denominated base rate advances at the greater of the federal funds rate plus 0.50%, an Adjusted Term SOFR for a one month tenor plus 1.00% and the bank’s applicable reference rate for U.S. dollar loans; and (iv) dollar SOFR advances, which bear interest at Adjusted Term SOFR plus 1.20% to 1.45% per annum.
- The facility includes a C\$15.0 million sub-limit for letters of credit for all borrowers and are required to pay 1.20% to 1.45% per annum, plus a 0.125% annual fee where there is more than one lender under the facility, on issued letters of credit.
- The availability of the facility is subject to a borrowing base limit that is based on the borrowers’ combined eligible inventory levels and accounts and certain eligible equipment from time to time.
- The facility is secured by, among other things, a first priority charge on substantially all of the assets of the borrowers.
- The facility includes a springing financial covenant, which is measured when either excess availability under the facility is less than the greater of 10% of the line cap thereunder and C\$14.0 million in either case for five consecutive days or less than the greater of 7.5% of the line cap and C\$10.0 million, at any time, and which requires the borrowers to comply on a combined basis with a 1.00:1.00 fixed charge coverage ratio.
- The facility also contains restrictive covenants which, among other things, restrict the ability of the borrowers to declare and pay dividends, incur indebtedness, incur liens, make investments, including in its existing joint ventures, and make payments on subordinated debt. The facility contains customary events of default.

ITEM 1A. RISK FACTORS

The statements in this “Risk Factors” section describe material risks to our business and should be considered carefully. You should review carefully the risk factors listed below, as well as those factors listed in other documents we file with the SEC. In addition, these statements constitute our cautionary statements under the *Private Securities Litigation Reform Act of 1995*. Our disclosure and analysis in this annual report on Form 10-K and in our annual report to shareholders contain some forward-looking statements that set forth anticipated results based on management’s current plans and assumptions. If any of the risks and uncertainties described in the cautionary factors described below actually occur or continue to occur, our business, financial condition and results of operations and the trading price of our common stock could be materially and adversely affected. Moreover, the risks below are not the only risks we face and additional risks not currently known to us or that we presently deem immaterial may emerge or become material at any time and may negatively impact our business, reputation, financial condition, results of operations or the trading price of our common stock.

Risks Related to our Business

The ongoing COVID-19 pandemic could materially adversely affect our business, financial position and results of operations.

Since its initial outbreak and spread in late 2019, the COVID-19 pandemic has resulted in significant and widespread global infections and fatalities. During the pandemic, various levels of governments globally have from

time to time taken emergency and other measures to attempt to contain the virus, including travel bans and restrictions, quarantines, business closures, shelter in place orders and other shutdowns and restrictions.

The impact of the pandemic and the global response thereto has, among other things, significantly disrupted global economic activity, negatively impacted gross domestic product, disrupted supply chains and caused volatility in financial markets. Various countries have suffered declines in gross domestic product growth, business activity and increases in unemployment.

During the pandemic, there have been several “waves” or periods during which there has been a significant widespread increase in reported infections and the emergence and rapid spread of new variants of the COVID-19 virus. In response to such waves, various countries have from time to time re-imposed various restrictions on social, business, travel and other activities.

Since around the end of 2020, there has been a widespread roll-out of vaccines to aid in the prevention and spread of the COVID-19 virus. The roll-out of vaccines has generally resulted in more reopening of economies and a general discussion of whether to treat the COVID-19 virus as endemic and learning to live with it.

Although reported results for the vaccines are generally encouraging, we cannot predict how successful the vaccines will be over time, including against new and yet unknown variants of the virus. Further, we are currently unable to predict the overall impact of the emergence of new variants on global economic activity.

As demand for our products has principally historically been determined by general global macro-economic activities, demand and prices for our products have historically decreased substantially during economic slowdowns. A significant economic downturn may adversely affect our sales and profitability and may also adversely affect our customers and suppliers. Additionally, significant disruptions and volatility in financial markets could have a negative impact on our ability to access capital in the future.

Our products are an important constituent of many pandemic related high demand goods such as tissue and cleaning products and certain personal protective equipment. However, our mills could experience disruptions, downtime and closures in the future as a result of changes to existing government response measures, outbreaks of the virus among our employees or operations or disruptions to raw material supplies or access to logistics networks.

The magnitude and duration of the disruption and resulting decline in business activity that may result from the ongoing pandemic, new variants and/or resurgences is currently uncertain. The extent to which the pandemic impacts our business, operations and financial results will depend on numerous evolving factors that we may not be able to accurately predict, including:

- the duration and scope of the pandemic, including from new and unknown variants of the virus;
- governmental, business and individuals' actions that have been and may in the future be taken in response to the pandemic including any resurgence or additional waves of viral infection or any emergence and spread of new variants of the virus;
- the impact of the pandemic on economic activity and actions taken in response thereto, including the recent easing of health and safety restrictions and measures and reopening of economies;
- the effectiveness of vaccines or treatments over time;
- the effect on our customers' demand for pulp and wood products and our vendors' ability to supply us with raw materials;
- the availability of logistics networks, our ability to ship our products to customers and the availability of any required contractors to perform maintenance services; and
- any closures of our and our customers' operating facilities.

The effect of the pandemic, including remote working arrangements for employees, has also increased the risk of cyberattacks on, and other material breaches of, our and our third party service providers' information technology systems.

Our business is highly cyclical in nature.

The pulp and lumber businesses are highly cyclical in nature and markets are characterized by periods of supply and demand imbalance, which in turn can cause material fluctuations in prices. Pulp and lumber markets are sensitive to cyclical changes in the global economy, industry capacity and foreign exchange rates, all of which can have a significant influence on selling prices and our operating results. The length and magnitude of industry cycles have varied over time but generally reflect changes in macro-economic conditions and levels of industry capacity. Pulp and lumber are commodities that are generally available from other producers. Because commodity products have few distinguishing qualities from producer to producer, competition is generally based upon price, which is generally determined by supply relative to demand.

Industry capacity can fluctuate as changing industry conditions can influence producers to idle production capacity or permanently close mills. In addition, to avoid substantial cash costs in idling or closing a mill, some producers will choose to operate at a loss, sometimes even a cash loss, which can prolong weak pricing environments due to oversupply. Oversupply of our products can also result from producers introducing new capacity in response to favorable pricing trends. Certain integrated pulp and paper producers have the ability to discontinue paper production by idling their paper machines and selling their pulp production on the market, if market conditions, prices and trends warrant such actions.

Currently, we are aware of 2.9 million ADMTs of announced capacity increases, primarily of hardwood kraft pulp in 2022. However, we cannot predict whether new capacity will be announced or will come on line in the future. If any new capacity, particularly for NBSK pulp, is not absorbed in the market or offset by curtailments or closures of older, high-cost pulp mills, the increase could put downward pressure on pulp prices and materially adversely affect our results of operations, margin and profitability. Additionally, while NBHK pulp is not a direct competitor to NBSK pulp, if any future increases in pulp supply are not absorbed by demand growth, such supply could put downward pressure on NBSK pulp prices as well.

Demand for each of pulp and lumber has historically been determined primarily by general global macro-economic conditions and has been closely tied to overall business activity. Pulp prices have been and are likely to continue to be volatile and can fluctuate widely over time.

A pulp producer's actual sales price realizations are third party industry quoted list prices net of customer discounts, rebates and other selling concessions. Our sales price realizations may also be affected by price movements between the order and shipment dates.

Global pulp and lumber markets have historically been characterized by considerable swings in prices which have and will result in variability in our earnings. Prices for pulp and lumber are driven by many factors outside our control. We have little influence over the timing and extent of price changes. Because market conditions beyond our control determine the prices for pulp and lumber, prices may fall below our cash production costs, requiring us to either incur short-term losses on product sales or cease production at one or more of our mills. Therefore, our profitability depends on managing our cost structure, particularly raw materials which represent a significant component of our operating costs and can fluctuate based upon factors beyond our control. If the prices of our products decline, or if prices for our raw materials increase, or both, our results of operations and cash flows could be materially adversely affected.

Cyclical fluctuations in the price and supply of our raw materials, particularly fiber, could adversely affect our business.

Our main raw material is fiber in the form of wood chips, pulp logs and sawlogs. Fiber represented approximately 45% of our pulp cash production costs and approximately 75% of our lumber cash production costs in 2021. Fiber is a commodity and both prices and supply are cyclical. Fiber pricing is subject to regional market influences and our costs of fiber may increase in a region as a result of local market shifts. The cost of wood chips, pulp logs and sawlogs is primarily affected by the supply and demand for lumber. Demand for these raw materials is generally determined by the volume of pulp and paper products and wood products produced globally and regionally. Governmental regulations related to the environment, forest stewardship and green or renewable energy can also affect the supply of fiber. In Europe, governmental initiatives to increase the supply of renewable energy have led to more renewable energy projects, including in Germany. Demand for wood residuals from such energy producers has generally put upward pressure on prices for wood residuals. Wood chip supply in Germany was generally stable during the last three years due to stable sawmill production and lower demand from pellet producers and board manufacturers; however, there is no assurance that wood chip supply will continue to be stable or that supply will not be reduced or that fiber costs will not increase in the future.

Similarly, strong lumber markets in North America and particularly in the United States resulting from a recovery in U.S. housing starts and a robust home renovations market over the last two years have resulted in increased sawmilling activity. This increased the supply of wood chips which are generally a lower cost than pulp logs. However, the lumber industry is highly cyclical and a slowdown in sawmilling activities would reduce the availability of both wood chips and pulp logs and put upward pressure on fiber costs. There is no assurance that sawmill activity will be stable or not decline or that fiber prices will not increase in the future.

The 2006 Softwood Lumber Agreement, which governed softwood lumber exports from Canada to the United States, expired in 2015, and a one-year post-expiration period during which the United States agreed not to impose trade sanctions expired in October 2016. In November 2016, a petition was filed by a coalition of U.S. lumber producers to the U.S. Department of Commerce and the U.S. International Trade Commission requesting an investigation into alleged subsidies provided to Canadian lumber producers. Since then, the U.S. Department of Commerce announced various countervailing and anti-dumping duty rates on Canadian softwood lumber and the United States and Canada have engaged in proceedings under the North American Free Trade Agreement and through the World Trade Organization. In November 2021, the U.S. Department of Commerce reduced the countervailing duty to 6.32% and the anti-dumping rate to 11.59%, for a total cash deposit rate of 17.91% for “all other” Canadian lumber producers. It is uncertain when or if the United States and Canada may settle a new agreement and what terms or restrictions it may contain. Any duties or other restrictions imposed on Canadian softwood lumber exports by the United States could negatively impact Canadian sawmill production in our Canadian mills’ supply area and result in reduced availability and increased costs for wood chips for our Canadian mills. While we believe this may be partially offset by increased wood chip supply from U.S. sawmills and pulp log availability, we cannot currently predict the overall effect on our Canadian mills’ overall fiber costs.

Availability of fiber may be further limited by adverse responses to and prevention of wildfires, weather, insect infestation, disease, ice storms, wind storms, flooding and other natural causes. In addition, the quantity, quality and price of fiber we receive could be affected by man-made causes such as those resulting from industrial disputes, material curtailments or shut-down of operations by suppliers, government orders and legislation (including new taxes or tariffs). Any or a combination of these can affect fiber prices in a region.

The cyclical nature of pricing for fiber represents a potential risk to our profit margins if pulp and lumber producers are unable to pass along price increases to their customers or we cannot offset such costs through higher prices for our surplus energy.

Other than the renewable forest licenses of our Peace River mill, we do not own any timberlands or have any material long-term governmental timber concessions. We also currently have few long-term fiber contracts at our German operations. Fiber is available from a number of suppliers and we have not historically experienced material supply interruptions or substantial sustained price increases. However, our requirements have increased and may continue to do so as we expand capacity through capital projects or other efficiency measures at our mills. As a result, we may not be able to purchase sufficient quantities of these raw materials to meet our production requirements at prices acceptable to us during times of tight supply. An insufficient supply of fiber or reduction in the quality of fiber we receive would materially adversely affect our business, financial condition, results of operations and cash flows.

In addition to the supply of fiber, we are, to a lesser extent, dependent on the supply of certain chemicals and other inputs used in our production facilities. Any disruption in the supply of these chemicals or other inputs could affect our ability to meet customer demand in a timely manner and could harm our reputation. Any material increase in the cost of these chemicals or other inputs could have a material adverse effect on our business, results of operations, financial condition and cash flows.

We face intense competition in the forest products industry.

We compete with numerous forest products companies, some of which have greater financial resources. The trend toward consolidation in the forest products industry has led to the formation of sizable global producers that have greater flexibility in pricing and financial resources for marketing, investment, research and development, innovation, and expansion. Additionally, certain of our competitors are fully or more vertically integrated than we are and may have different priorities when operating their respective businesses. Because the markets for our products are highly competitive, actions by competitors can affect our ability to compete and the volatility of prices at which our products are sold.

The forest products industry is also capital intensive, and we require significant investment to remain competitive. Some of our competitors may be lower-cost producers in some of the businesses in which we operate. For example, the sizable low-cost hardwood grade pulp capacity in South America, which continues to grow as a result of ongoing investment and whose costs are thought to be very competitive, and the actions those mills take to gain market share, could continue to adversely affect our competitive position in similar grades. Failure to compete effectively could have a material adverse effect on our business, financial condition or results of operations.

Our business is subject to risks associated with climate change and social and government responses thereto.

Our operations and those of our suppliers are subject to climate change variations which can impact the productivity of forests, the abundance of species, harvest levels and fiber supply. Further, over the last few years, changing weather patterns and climate conditions due to natural and man-made causes have added to the frequency and unpredictability of natural disasters like wildfires, insect infestation of softwood forests, floods, rain, wind, snow and ice storms. One or a combination of these factors could adversely affect our fiber supply which is our largest cash production cost. There are differing scientific studies and opinions relating to the severity, extent and speed at which climate change is or may be occurring around the world. As a result, we are currently unable to identify and predict all of the specific consequences of climate change on our business and operations.

Further, governmental initiatives and social focus in response to climate change also have an impact on operations. Their demand for carbon neutral green energy has created greater demand and competition for the wood residuals and fiber that is consumed by our pulp mills as part of their production processes. This can drive up the cost of fiber for our mills.

If our fiber costs increase and we cannot pass on these costs to our customers or offset them through higher prices for our sales of surplus energy, it will negatively affect our operating margins, results of operations and financial position. If we cannot obtain the fiber required to operate our mills, we may have to curtail and/or shut down production. This could have a material adverse effect on our operations, financial results and financial position.

Other risks to our business from climate change include:

- a greater susceptibility of northern forests to disease, fire and insect infestation, which could diminish fiber availability;
- the disruption of transportation systems and power supply lines due to more severe storms;
- the loss of fresh water transportation for logs and pulp due to lower water levels;
- decreases in the quantity and quality of processed water for our mill operations;
- the loss of northern forests in areas in sufficient proximity to our mills to competitively acquire fiber; and
- lower harvest levels decreasing the supply of harvestable timber and, as a consequence, wood residuals.

Any of these natural disasters could also affect woodlands or cause variations in the cost of raw materials, such as fiber or restrict or negatively impact our logistics and transportation of goods and materials. Changes in precipitation could make wildfires more frequent or more severe, and could adversely affect timber harvesting and the supply of fiber to our operations. The effects of global, regional, and local weather conditions, and climate change, including the costs of complying with evolving climate change regulations and transition costs relating to a low carbon economy could also adversely impact our results of operations.

If we are unable to offer products certified to globally recognized forestry management and chain of custody standards or meet customers' product specifications, it could adversely affect our ability to compete.

We market and sell pulp and lumber, with specific designations to certain globally recognized forest management and chain of custody standards as well as product specifications to meet customers' requirements. Our ability to conform to new or existing guidelines for certification depends on a number of factors, many of which are beyond our control, such as: changes to the standards or the interpretation or the application of the standards; the collaboration of our suppliers in the timely sharing of product information; the adequacy of government-implemented conservation measures; and in Canada the existence of or potential territorial disputes between First Nations peoples and governments. If we are unable to offer certified products, or to meet commitments to supply certified product or meet the product specifications of our customers, it could adversely affect the marketability of our products and our ability to compete with other producers.

Our operations require substantial capital and we may be unable to maintain adequate capital resources to provide for such capital requirements.

Our business is capital intensive and requires that we regularly incur capital expenditures to maintain our equipment, improve efficiencies and, as a result of changes to environmental regulations that require capital expenditures, bring our operations into compliance with such regulations. In addition, we may approve projects in the future that will require significant capital expenditures. Increased capital expenditures could have a material adverse effect on our cash flow and our ability to satisfy our debt obligations. If our available cash resources and cash generated from operations are not sufficient to fund our operating needs and capital expenditures, we would have to obtain additional funds from borrowings or other available sources or reduce or delay our capital expenditures. Our indebtedness could adversely limit or impair our ability to raise additional capital. We may not be able to obtain additional funds on favorable terms or at all. If we cannot maintain or upgrade our equipment as may be required from time to time, we may become unable to manufacture products that compete effectively. An inability to make required capital expenditures in a timely fashion could have a material adverse effect on our growth, business, financial condition or results of operations.

Trends in non-print media and changes in consumer habits regarding the use of paper have and are expected to continue to adversely affect the demand for market pulp.

Trends in non-print media are expected to continue to adversely affect demand for traditional print media, including for printing, writing and graphic papers. Neither the timing nor the extent of these trends can be predicted with certainty. Our paper, magazine, book and catalog publishing customers could increase their use of, and compete with, non-print media, including multimedia technologies, electronic storage and communication platforms which could further reduce their consumption of papers and in turn their demand for market pulp. The demand for such paper products has weakened significantly over the last several years and has accelerated since the COVID-19

pandemic as confinement and work from home has altered consumer habits, which could become permanent and further negatively impact the demand for market pulp.

Fluctuations in prices and demand for lumber could adversely affect our business.

The financial performance of the Friesau mill depends on the demand for and selling price of lumber, which is subject to significant fluctuations. The markets for lumber are highly volatile and are affected by economic conditions in Europe, Asia and the United States, the strength of housing markets and the home renovations activity in such regions, the growing importance of the Asian market, changes in industry production capacity, changes in inventory levels and other factors beyond our control. Additionally, interest rates have a significant impact on residential construction and renovation activity, which in turn influence the demand for and price of lumber.

Our wood products segment lumber products are vulnerable to declines in demand due to competing technologies or materials.

Our lumber products may compete with alternative products. For example, plastic, wood/plastic or composite materials may be used by builders as alternatives to the lumber products produced by our wood products segment. Changes in the prices for oil, chemicals and other products can change the competitive position of our wood products segment lumber products relative to available alternatives and could increase substitution of those products for our wood products segment products. If use of these alternative products grows, demand for and pricing of our wood products segment products could be adversely affected.

We have limited control over the operations of the Cariboo mill.

Our 50% ownership interest in the Cariboo mill is through an unincorporated joint venture partnership. The ownership and operation of such mill is subject to an underlying agreement and its day-to-day operations are principally conducted by our joint venture partner. Joint venture partnerships generally involve special risks, including that the business and strategic interests of the joint venture partner and ourselves may not coincide or that the joint venture partner may be unable to meet its economic or other obligations thereunder. We have limited control over the actions of the joint venture partner in respect of the Cariboo mill, including any non-performance, default or bankruptcy of such party. Any non-performance by our joint venture partner or other actions taken by the joint venture partner in connection with the day-to-day operation of the Cariboo mill may adversely affect our results of operations and financial condition.

We may experience material disruptions to our production.

A material disruption at one of our manufacturing facilities could prevent us from meeting customer demand, reduce our pulp, lumber and energy sales and/or negatively impact our results of operations. Any of our mills could cease operations unexpectedly due to a number of events, including:

- unscheduled maintenance outages;
- prolonged power failures;
- equipment failure;
- employee errors or failures;
- design error or employee or contractor error;
- chemical spill or release;
- explosion of a boiler;
- disruptions in the transportation infrastructure, including roads, bridges, railway tracks, tunnels, canals and ports;
- fires, floods, earthquakes, windstorms, pest infestations, severe weather conditions or other natural catastrophes affecting our production of goods or the supply of raw materials like fiber;
- prolonged supply disruption of major inputs;

- labor difficulties;
- capital projects that require temporary cost increases or curtailment of production; and
- other operational problems.

Any such downtime or facility damage could prevent us from meeting customer demand for our products and/or require us to make unplanned capital expenditures. If any of our facilities were to incur significant downtime, our ability to meet our production capacity targets and satisfy customer requirements would be impaired and could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Future acquisitions may result in additional risks and uncertainties in our business.

In order to grow our business, we may seek to acquire additional assets or companies. Our ability to pursue selective and accretive acquisitions will be dependent on management's ability to identify, acquire and develop suitable acquisition targets in both new and existing markets. In pursuing acquisition and investment opportunities, we face competition from other companies having similar growth strategies, many of which may have substantially greater resources than us. Competition for these acquisitions or investment targets could result in increased acquisition or investment prices, higher risks and a diminished pool of businesses or assets available for acquisition.

Acquisitions also frequently result in recording of goodwill and other intangible assets, which are subject to potential impairments in the future that could have a material adverse effect on our operating results. Furthermore, the costs of integrating acquired businesses (including restructuring charges associated with the acquisitions, as well as other acquisition costs, such as accounting fees, legal fees and investment banking fees) could significantly impact our operating results.

Although we perform diligence on the businesses we purchase, in light of the circumstances of each transaction, an unavoidable level of risk remains regarding the actual condition of these businesses. We may not be able to ascertain the value or understand the potential liabilities of the acquired businesses and their operations until we assume operating control of the assets and operations of these businesses.

Furthermore, future acquisitions could entail a number of risks, including:

- diversion of management's attention from our ongoing business;
- difficulty integrating the operations, including financial and accounting functions, sales and marketing procedures, technology and other corporate administrative functions of the combined operations;
- increased operating costs;
- exposure to substantial unanticipated liabilities;
- difficulty in realizing projected synergies, efficiencies and cost savings;
- difficulty maintaining relationships with present and potential customers, distributors and suppliers due to uncertainties regarding service, production quality and prices; and
- problems retaining key employees.

If we are unable to address any of these risks, our results of operations and financial condition could be materially adversely affected.

We are subject to risks related to our employees.

The majority of our employees are unionized and we have collective agreements in place with our employees at all of our mills, other than the Peace River mill which is non-union. Although we have not experienced any material work stoppages in the past, there can be no assurance that we will be able to negotiate acceptable collective agreements or other satisfactory arrangements with our employees upon the expiration of our collective agreements. This could result in a strike or work stoppage by the affected workers. The registration or renewal of the collective agreements or the outcome of our wage negotiations could result in higher wages or benefits paid to union members. Many of the employment positions in our operations require technical or other operating training and/or experience. Changing demographics may make it more difficult for us to recruit skilled employees in the future. Accordingly,

we could experience a significant disruption of our operations or higher ongoing labor costs, which could have a material adverse effect on our business, financial condition, results of operations and cash flows. In addition, whenever we seek to reduce the workforce at any of our mills, the affected mill's labor force could seek to hinder or delay such actions, we could incur material severance or other costs and our operations could be disrupted.

We are dependent on key personnel.

Our future success depends, to a large extent, on the efforts and abilities of our executive and senior mill operating officers. Such officers are industry professionals, many of whom have operated through multiple business cycles. The loss of one or more of our officers could make us less competitive, which could materially adversely affect our business, financial condition, results of operations and cash flows. We do not maintain key person life insurance for any of our executive or senior mill operating officers.

In addition, by nature of the industries in which we operate, many of our employees are professionals who require specialized knowledge and skills, including various categories of engineers and licensed trade persons and equipment operators. Any inability to attract, train and retain such employees could adversely affect our business and results of operations.

If our long-lived assets become impaired, we may be required to record non-cash impairment charges that could have a material impact on our results of operations.

We review the carrying value of long-lived assets for impairment when events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. Should the markets for our products deteriorate or should we decide to invest capital differently or should other cash flow assumptions change, it is possible that we will be required to record non-cash impairment charges in the future that could have a material adverse effect on our results of operations.

Our insurance coverage may not be adequate.

We have obtained insurance coverage that we believe would ordinarily be maintained by an operator of facilities similar to our mills. Our insurance is subject to various limits and exclusions. Damage or destruction to our facilities could result in claims that are excluded by, or exceed the limits of, our insurance coverage. Additionally, the weak global and financial markets have also reduced the availability and extent of credit insurance for our customers. If we cannot obtain adequate credit insurance for our customers, we may be forced to amend or curtail our planned operations which could negatively impact our sales revenues, results of operations and financial position.

We rely on third parties for transportation services.

Our business primarily relies upon third parties for the transportation of pulp and lumber to our customers, as well as for the delivery of our raw materials to our mills. Our pulp, lumber and raw materials are principally transported by truck, barge, rail and sea-going vessels, all of which are highly regulated. Increases in transportation rates can also materially adversely affect our results of operations.

Further, if our transportation providers fail to deliver our pulp or lumber in a timely manner, it could negatively impact our customer relationships and we may be unable to manufacture pulp or lumber in response to customer orders or sell them at full value. Also, if any of our transportation providers were to cease operations, we may be unable to replace them at a reasonable cost. The occurrence of any of the foregoing events could materially adversely affect our results of operations.

Failures or security breaches of our information technology systems could disrupt our operations and negatively impact our business.

We use information technologies to manage our operations and various business functions. We rely on various technologies to process, store and report on our business and to communicate electronically between our facilities, personnel, customers and suppliers as well as for administrative functions and many of such technology systems are dependent on one another for their functionality. We also use information technologies to process financial information and results of operations for internal reporting purposes and to comply with regulatory, legal and tax requirements. We rely on third party providers for some of these information technologies and support. Our ability

to effectively manage our business and coordinate the production, distribution and sale of our products is highly dependent on our technology systems. Despite our security design and controls and other operational safeguards, and those of our third party providers, our information technology systems may be vulnerable to a variety of interruptions, including during the process of upgrading or replacing hardware, software, databases or components thereof, natural disasters, terrorist attacks, telecommunications failures, computer viruses, cyber-attacks, hackers, unauthorized access attempts and other security issues or may be breached due to employee error, malfeasance or other disruptions. Any such interruption or breach could result in operational disruptions or the misappropriation of sensitive data that could subject us to civil and criminal penalties, litigation or have a negative impact on our reputation. There can be no assurance that such disruptions or misappropriations and the resulting repercussions will not negatively impact our cash flows and materially affect our results of operations or financial condition.

In addition, many of our information technology systems, such as those we use for administrative functions, including human resources, payroll, accounting and internal and external communications, as well as the information technology systems of our third-party business partners and service providers, whether cloud-based or hosted in proprietary servers, contain personal, financial or other information that is entrusted to us by our customers and personnel. Many of our information technology systems also contain proprietary and other confidential information related to our business, such as business plans and research and development initiatives. To the extent we or a third party were to experience a material breach of our or such third party's information technology systems that results in the unauthorized access, theft, use, destruction or other compromises of our customers' or personnel's data or confidential information stored in such systems, including through cyber-attacks or other external or internal methods, it could result in a violation of applicable privacy and other laws, and subject us to litigation and governmental investigations and proceedings, any of which could result in our exposure to material liability.

Risks Related to our Debt

Our level of indebtedness could negatively impact our financial condition, results of operations and liquidity.

As of December 31, 2021, we had approximately \$1,261.9 million of indebtedness outstanding. We may also incur additional indebtedness in the future. Our high debt levels may have important consequences for us, including, but not limited to the following:

- our ability to obtain additional financing for working capital, capital expenditures, general corporate and other purposes or to fund future operations may not be available on terms favorable to us or at all;
- a significant amount of our operating cash flow is dedicated to the payment of interest and principal on our indebtedness, thereby diminishing funds that would otherwise be available for our operations and for other purposes;
- increasing our vulnerability to current and future adverse economic and industry conditions;
- a substantial decrease in net operating cash flows or increase in our expenses could make it more difficult for us to meet our debt service requirements, which could force us to modify our operations;
- our leveraged capital structure may place us at a competitive disadvantage by hindering our ability to adjust rapidly to changing market conditions or by making us vulnerable to a downturn in our business or the economy in general;
- causing us to offer debt or equity securities on terms that may not be favorable to us or our shareholders;
- limiting our flexibility in planning for, or reacting to, changes and opportunities in our business and our industry; and
- our level of indebtedness increases the possibility that we may be unable to generate cash sufficient to pay the principal or interest due in respect of our indebtedness.

The indentures that govern our Senior Notes, and our credit facilities contain restrictive covenants which impose operating and other restrictions on us and our subsidiaries. These restrictions will affect, and in many respects will limit or prohibit, our ability to, among other things, incur or guarantee additional indebtedness, pay dividends or make distributions on capital stock or redeem or repurchase capital stock, make investments or acquisitions, create

liens and enter into mergers, consolidations or transactions with affiliates. The terms of our indebtedness also restrict our ability to sell certain assets, apply the proceeds of such sales and reinvest in our business.

Certain of the agreements governing our indebtedness have covenants that require us to maintain prescribed financial ratios and tests. Failure to comply with such covenants could result in events of default and could have a material adverse effect on our liquidity, results of operations and financial condition.

Our ability to repay or refinance our indebtedness will depend on our future financial and operating performance. Our performance, in turn, will be subject to prevailing economic and competitive conditions, as well as financial, business, legislative, regulatory, industry and other factors, many of which are beyond our control. Our ability to meet our future debt service and other obligations may depend in significant part on the extent to which we can successfully implement our business strategy. We cannot assure you that we will be able to implement our strategy fully or that the anticipated results of our strategy will be realized. Over the next several years, we will require financing to refinance maturing debt obligations (unless extended), and such refinancing may not be available on favorable terms or at all.

Changes in credit ratings issued by nationally recognized statistical rating organizations could adversely affect our cost of financing and have an adverse effect on the market price of our securities.

Credit rating agencies rate our debt securities on factors that include our operating results, actions that we take, their view of the general outlook for our industry and their view of the general outlook for the economy. Actions taken by the rating agencies can include maintaining, upgrading or downgrading the current rating or placing the company on a watch list for possible future downgrading. Downgrading the credit rating of our debt securities or placing us on a watch list for possible future downgrading could limit our access to credit markets, increase our cost of financing and have an adverse effect on the market price of our securities, including our Senior Notes.

We are exposed to interest rate fluctuations.

Interest on borrowings under our revolving credit facilities are at “floating” rates. As a result, increases in interest rates will increase our costs of borrowing and reduce our operating margins.

Risks Related to Macro-economic Conditions

A weakening of the global economy, including capital and credit markets, could adversely affect our business and financial results and have a material adverse effect on our liquidity and capital resources.

As demand for our products has principally historically been determined by general global macro-economic activities, demand and prices for our products have historically decreased substantially during economic slowdowns. A significant economic downturn may affect our sales and profitability. Further, our suppliers and customers may also be adversely affected by an economic downturn. Additionally, restricted credit and capital availability restrains our customers’ ability or willingness to purchase our products, resulting in lower revenues. Depending on their severity and duration, the effects and consequences of a global economic downturn could have a material adverse effect on our liquidity and capital resources, including our ability to raise capital, if needed, and otherwise negatively impact our business and financial results.

In addition, financial uncertainties and other events in our major international markets, including inflation and other market factors, may negatively impact the global economy and consequently, our results of operations.

We are exposed to currency exchange rate fluctuations.

We have manufacturing operations in Germany and Canada. Most of the operating costs and expenses of our German mills are incurred in euros and those of our Canadian mills in Canadian dollars. However, the majority of our sales are in products quoted in dollars. Our results of operations and financial condition are reported in dollars. As a result, our costs generally benefit from a strengthening dollar but are adversely affected by a decrease in the value of the dollar relative to the euro and to the Canadian dollar. Such declines in the dollar relative to the euro and the Canadian dollar reduce our operating margins and the cash flow available to fund our operations and to service our debt. This could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Further, while a strengthening dollar generally lowers our costs and expenses, it increases the cost of pulp to our customers and generally puts downward pressure on pulp prices and reduces our energy, chemical and European lumber sales revenues as they are sold in euros and Canadian dollars.

Although we report in dollars, we hold certain assets and liabilities, including our mills, in euros and Canadian dollars. We translate foreign denominated assets and liabilities into dollars at the rate of exchange on the balance sheet date. Equity accounts are translated using historical exchange rates. Unrealized gains or losses from these translations are recorded in other comprehensive income (loss) and do not affect our net earnings, operating income or Operating EBITDA.

Certain intercompany dollar advances between Mercer Inc. and its foreign subsidiaries are held in euros and Canadian dollars. Mercer Inc. holds some cash in foreign currencies and certain foreign subsidiaries hold some cash and other balances in dollars. When such advances, cash and other balances are translated into the applicable local currency at the end of each reporting period, the gains or losses thereon are reflected in net earnings.

Political uncertainty, an increase in trade protectionism or geo-political conflict could have a material adverse effect on global macro-economic activities and trade and adversely affect our business, results of operations and financial condition.

The rise of economic nationalist sentiments, trade protectionism and geo-political security has led to increasing political uncertainty and unpredictability throughout the world. Additionally, there can be no assurance that additional or new trade tensions and tariffs will not arise between various trade partners. These potential developments, market perceptions concerning these and related issues and the attendant regulatory uncertainty regarding, for example, the posture of governments with respect to international trade or national security issues, could have a material adverse effect on global trade and economic growth which, in turn, can adversely affect our business, results of operation and financial condition.

Increased trade protectionism could materially adversely affect our business. If the current global economy or outlook is undermined by downside risks and there is a prolonged economic downturn, governments may resort to new or enhanced trade barriers to protect their domestic industries against imports, thereby depressing demand. Changes in the trade policies of the U.S. and other countries, such as the announcement of unilateral tariffs on imported products, have already triggered retaliatory actions from affected countries, resulting in “trade wars” that could have a material adverse effect on global trade and economic growth.

International security issues and adverse developments in respect thereof such as the current political tension between Russia, Ukraine and potentially western security alliances could materially adversely affect global trade and economic activity.

Protectionist developments or adverse international political tensions or developments, or the perception they may occur, may have a material adverse effect on global economic conditions, and may significantly reduce global trade. Increasing trade protectionism in the markets could increase the risks associated with exporting goods to such markets. These developments could have a material adverse effect on our business, results of operations and financial condition.

We may incur losses as a result of unforeseen or catastrophic events, including the emergence of a new pandemic, terrorist attacks or natural disasters.

The occurrence of unforeseen or catastrophic events, including the emergence of a new pandemic or other widespread health emergency (or concerns over the possibility of such an emergency), terrorist attacks or natural

disasters, could create economic and financial disruptions and could lead to operational difficulties (including travel limitations) that could impair our ability to manage or operate our business and adversely affect our results of operations.

Legal and Regulatory Risks

We are subject to extensive environmental regulation and we could incur substantial costs as a result of compliance with, violations of or liabilities under applicable environmental laws and regulations.

Our operations are subject to numerous environmental laws and regulations as well as permits, guidelines and policies relating to the protection of the environment. These laws, regulations, permits, guidelines and policies govern, among other things:

- unlawful discharges to land, air, water and sewers;
- waste collection, storage, transportation and disposal;
- hazardous waste;
- dangerous goods and hazardous materials and the collection, storage, transportation and disposal of such substances;
- the clean-up of unlawful discharges;
- land use planning;
- municipal zoning; and
- employee health and safety.

In addition, as a result of our operations, we may be subject to remediation, clean-up or other administrative orders or amendments to our operating permits, and we may be involved from time to time in administrative and judicial proceedings or inquiries. Future orders, proceedings or inquiries could have a material adverse effect on our business, financial condition and results of operations. Environmental laws and land use laws and regulations are constantly changing. New regulations or the increased enforcement of existing laws could have a material adverse effect on our business and financial condition. In addition, compliance with regulatory requirements is expensive, at times requiring the replacement, enhancement or modification of equipment, facilities or operations. There can be no assurance that we will be able to maintain our profitability by offsetting any increased costs of complying with future regulatory requirements.

We are subject to liability for environmental damage at the facilities that we own or operate, including damage to neighboring landowners, residents or employees, particularly as a result of the contamination of soil, groundwater or surface water and especially drinking water. The costs of such liabilities can be substantial. Our potential liability may include damages resulting from conditions existing before we purchased or operated these facilities. We may also be subject to liability for any offsite environmental contamination caused by pollutants or hazardous substances that we or our predecessors arranged to transport, treat or dispose of at other locations. In addition, we may be held legally responsible for liabilities as a successor owner of businesses that we acquire or have acquired. Except for Stendal, our facilities have been operating for decades and we have not done invasive testing to determine whether or to what extent any such environmental contamination exists. As a result, these businesses may have liabilities for conditions that we discover or that become apparent, including liabilities arising from non-compliance with environmental laws by prior owners. Because of the limited availability of insurance coverage for environmental liability, any substantial liability for environmental damage could materially adversely affect our results of operations and financial condition.

We have incurred, and we expect to continue to incur, significant capital, operating and other expenditures as a result of complying with applicable environmental laws and regulations.

Further, enactment of new environmental laws or regulations, changes in existing laws or regulations or the interpretation of these laws and regulations might require significant capital expenditures. We may be unable to generate sufficient funds or access other sources of capital to fund unforeseen environmental liabilities or expenditures.

We participate in German statutory energy programs.

In Germany, our Stendal and Friesau mills sell surplus green energy at fixed prices or tariffs pursuant to the Renewable Energy Act. Our Stendal mill's tariff expires in 2024 and our Friesau mill's tariff expires in 2029. Our Rosenthal mill's tariff has expired and since January 1, 2021, it has sold its power at market rates which fluctuate over time.

The availability of tariffs and other incentives for our green energy production activities is dependent, to a large extent, on political and policy developments relating to environmental concerns in the regions in which we operate. We cannot currently predict the scope of any such measures whether they will provide similar economic incentives as under the tariffs, when, if at all, they will be implemented or their potential application and impact on the expiry of their existing tariffs in 2024 and 2029, respectively, our Stendal and Friesau mills.

Our international sales and operations are subject to applicable laws relating to trade, export controls, foreign corrupt practices and competition laws, the violation of which could adversely affect our operations.

As a result of our international sales and operations, we are subject to trade and economic sanctions and other restrictions imposed by the United States, Canada and other governments or organizations, including prohibitions in the United States against foreign competitors' (including our operating subsidiaries) receipt of certain unlawful foreign governmental benefits. We are also subject to the U.S. *Foreign Corrupt Practices Act of 1977*, the Canadian *Corruption of Foreign Public Officials Act* and other anti-bribery laws that generally bar bribes or unreasonable gifts to foreign governments or officials. Changes in trade sanction laws could restrict our business practices, including cessation of business activities in sanctioned countries or with sanctioned entities, and may result in modifications to compliance programs. Violations of these laws or regulations could result in sanctions including fines, loss of authorizations needed to conduct our international business, the imposition of tariffs or duties and other penalties, which could adversely impact our business, operating results and financial condition.

In 2021, the European Commission commenced a cartel investigation into the wood pulp sector in Europe to investigate if there was an infringement of European Union competition law. In October 2021, the Commission conducted inspections of several European pulp producers, including our German operations. The matter is currently in the investigation stage and we are cooperating with the investigation and expect to engage with the European Commission if the investigation continues. We are unable to predict the timing of, and what further actions, if any, the Commission may pursue. If the Commission were to pursue actions against such European pulp producers, including our German operations, and ultimately there was a non-appealable determination of an infringement of European competition law, it could impose significant financial penalties on such producers, including us, that could have a material adverse effect on us and our business.

Risks Related to Ownership of our Shares

The price of our common stock may be volatile.

The market price of our common stock may be influenced by many factors, some of which are beyond our control, including those described above and the following:

- actual or anticipated fluctuations in our operating results or our competitors' operating results;
- announcements by us or our competitors of new products, capacity changes, significant contracts, acquisitions or strategic investments;
- our growth rate and our competitors' growth rates;
- the financial market and general economic conditions;
- changes in stock market analyst recommendations regarding us, our competitors or the forest products industry generally or lack of analyst coverage of our common stock;
- sales of common stock by our executive officers, directors and significant shareholders;
- changes in accounting principles; and
- changes in laws and regulations.

In addition, there has been significant volatility in the market price and trading volume of securities of companies operating in the forest products industry that often has been unrelated to the operating performance of particular companies. Some companies that have had volatile market prices for their securities have had securities litigation brought against them. If litigation of this type is brought against us, it could result in substantial costs and would divert management's attention and resources.

A small number of our shareholders could significantly influence our business.

There are a few significant shareholders of our common stock who own a substantial percentage of the outstanding shares of our common stock. These few significant shareholders, either individually or acting together, may be able to exercise significant influence over matters requiring shareholder approval, including the election of directors and approval of significant corporate transactions, such as a merger or other sale of the company or our assets. This concentration of ownership may make it more difficult for other shareholders to effect substantial changes in the company, may have the effect of delaying, preventing or expediting, as the case may be, a change in control of the company and may adversely affect the market price of our common stock. Further, the possibility that one or more of these significant shareholders may sell all or a large portion of their common stock in a short period of time could adversely affect the trading price of our common stock. Also, the interests of these few shareholders may not be in the best interests of all shareholders.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We own the Rosenthal, Stendal, Celgar, Peace River pulp mills, the Friesau sawmill and their underlying properties and have a 50% joint venture interest in the Cariboo pulp mill. We also own the CLT Facility and its underlying property near Spokane, Washington and sandalwood plantations in Western Australia.

Rosenthal Mill. The Rosenthal mill is situated on a 230 acre site in the town of Rosenthal am Rennsteig in the state of Thuringia, approximately 300 kilometers south of Berlin. The Saale River flows through the site of the mill. In late 1999, we completed a major capital project which converted the Rosenthal mill to the production of kraft pulp. It is a single line mill with a current annual production capacity of approximately 360,000 ADMTs of kraft pulp. The mill is self-sufficient in steam and electrical power. Some excess electrical power which is constantly generated is sold to the regional power grid. The facilities at the mill include:

- an approximately 425,000 square feet fiber storage area;
- debarking and chipping facilities for pulp logs;
- an approximately 700,000 square feet roundwood yard;
- a fiber line, which includes a Kamy continuous digester and bleaching facilities;
- a pulp machine, which includes a dryer, a cutter and a baling line;
- an approximately 60,000 square feet finished goods storage area;
- a chemical recovery line, which includes a recovery boiler, evaporation plant, recausticizing plant and lime kiln;
- a fresh water plant;
- a wastewater treatment plant; and
- a power station with a turbine capable of producing 57 MW of electrical power from steam produced by the recovery boiler and a power boiler.

Stendal Mill. The Stendal mill is situated on a 96.5 hectare site owned by Stendal that is part of a larger 1,250 hectares industrial park near the town of Stendal in the state of Saxony-Anhalt, approximately 300 kilometers north of the Rosenthal mill and 130 kilometers west of Berlin. The mill is adjacent to the Elbe River and has access to harbor facilities for water transportation. The mill is a single line mill with a current annual design production capacity of approximately 740,000 ADMTs of kraft pulp. The Stendal mill is self-sufficient in steam and electrical power. Some excess electrical power which is constantly being generated is sold to the regional power grid. The facilities at the mill include:

- an approximately 740,000 square feet fiber and roundwood storage area;
- debarking and chipping facilities for pulp logs;
- a fiber line, which includes 12 SuperBatch™ digesters and bleaching facilities;
- a pulp machine, which includes a dryer, a cutter and two baling lines;
- an approximately 105,000 square feet finished goods storage area;
- a chemical recovery line, which includes a recovery boiler, evaporation plant, recausticizing plant and lime kiln;
- a fresh water plant;
- a wastewater treatment plant; and
- a power station with two turbines capable of producing 148 MW of electrical power.

Celgar Mill. The Celgar mill is situated on a 400 acre site near the city of Castlegar, British Columbia. The mill is located on the south bank of the Columbia River, approximately 600 kilometers east of the port city of Vancouver, British Columbia, and approximately 32 kilometers north of the Canada-U.S. border. The city of Seattle, Washington is approximately 650 kilometers southwest of Castlegar. The Celgar mill is a single line mill with a current annual production capacity of approximately 520,000 ADMTs of kraft pulp. The mill is self-sufficient in steam and electrical power. Some excess electrical power which is constantly generated is sold to the regional power grid. The facilities at the Celgar mill include:

- an approximately 450,000 square feet fiber storage area and approximately 440,000 square feet log storage;
- a woodroom containing debarking and chipping facilities for pulp logs;
- a fiber line, which includes a dual vessel hydraulic digester, a two stage oxygen delignification system and a four stage bleach plant;
- two pulp machines, which each include a dryer, a cutter and a baling line;
- an approximately 28,000 square feet on-site finished goods storage area and an approximately 29,000 square feet off-site finished goods storage area;
- a chemical recovery line, which includes a recovery boiler, evaporation plant, recausticizing plant and lime kiln;
- a wastewater treatment system; and
- a power station with two turbines capable of producing approximately 100 MW of electrical power.

Peace River Mill. The Peace River mill is situated on a 791 acre site near the town of Peace River, Alberta, approximately 490 kilometers north of Edmonton. The mill has an annual production capacity of approximately 475,000 ADMTs of kraft pulp. The mill is self-sufficient in steam and electrical power. The facilities at the Peace River mill include:

- an approximately 1,130,000 square feet fiber storage area and approximately 2,700,000 square feet log storage;
- an approximately 189 railcar siding/storage capacity;

- a fiber line which includes a dual vessel hydraulic digester, a single stage oxygen delignification system and a four stage bleach plant;
- a pulp machine which includes a dryer, cutter and two baling lines;
- an approximately 56,000 square feet on-site finished goods storage area;
- a chemical recovery line which includes a recovery boiler, evaporation plant, recausticizing plant and a lime kiln;
- a fresh water treatment plant;
- a wastewater treatment system; and
- two turbines capable of producing approximately 70 MW of electrical power.

Friesau Mill. The Friesau mill is situated on a 62 acre site in the town of Saalburg-Ebersdorf, Germany, approximately 300 kilometers south of Berlin and only 16 kilometers from the Rosenthal mill. It is a two line sawmill with an annual production capacity of approximately 550 MMfbm of lumber on a continuously operating basis. The mill also sells electrical power generation to the regional power grid at fixed green power tariffs. The mill is self-sufficient in thermal power. The facilities at the Friesau mill include:

- an approximately 1,000,000 square feet roundwood storage area;
- three log debarking and two sorting lines;
- two Linck sawing lines;
- 42 lumber kilns capable of matching sawmill production;
- two continuous kilns;
- three planer lines;
- an approximately 663,800 square feet finished goods storage area; and
- a biomass fueled cogeneration power plant capable of producing 13 MW of electrical power.

CLT Facility. The CLT Facility is situated on a 54 acre site near Spokane, Washington. It has an area of approximately 270,000 square feet and has an annual production capacity of approximately 140,000 cubic meters of CLT.

Santanol. Santanol owns and leases approximately 2,500 hectares of Indian sandalwood plantations and a processing and extraction plant in Western Australia.

ITEM 3. LEGAL PROCEEDINGS

In 2021, the European Commission opened a cartel investigation into the wood pulp sector in Europe to investigate if there was an infringement of European Union competition law. In October 2021, the Commission conducted inspections of major European pulp producers including our German operations. We are cooperating with the investigation. As the matter is currently in the investigation stage, we cannot predict the timing of the same and what further actions, if any, the European Commission may pursue or what the outcome of any such actions may be.

We are also subject to routine litigation incidental to our business. We do not believe that the outcome of such litigation will have a material adverse effect on our business or financial condition.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

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

- (a) *Market Information.* Our shares are quoted for trading on the NASDAQ Global Select Market under the symbol “MERC”.
- (b) *Shareholder Information.* As of February 15, 2022, there were approximately 169 holders of record of our shares and a total of 66,037,552 shares were outstanding.
- (c) *Dividend Information.* On February 17, 2022, our board of directors approved a quarterly dividend of \$0.0750 per share to be paid to holders of our common stock on April 6, 2022 to shareholders of record on March 30, 2022.

In 2021, our board of directors approved four quarterly dividend payments of \$0.065 per share each, the first being paid on April 7, 2021, the second being paid on July 7, 2021, the third being paid on October 6, 2021 and the fourth being paid on December 30, 2021.

The further declaration and payment of dividends is at the discretion of our board of directors and will depend upon various factors, including our earnings, financial condition, restrictions imposed by our credit facilities and the terms of any other indebtedness that may be outstanding, cash requirements, future prospects and other factors deemed relevant by our board of directors. The indentures governing our Senior Notes and our credit facilities limit our ability to pay dividends or make other distributions on capital stock. See Item 1. “Business – Description of Certain Indebtedness”.

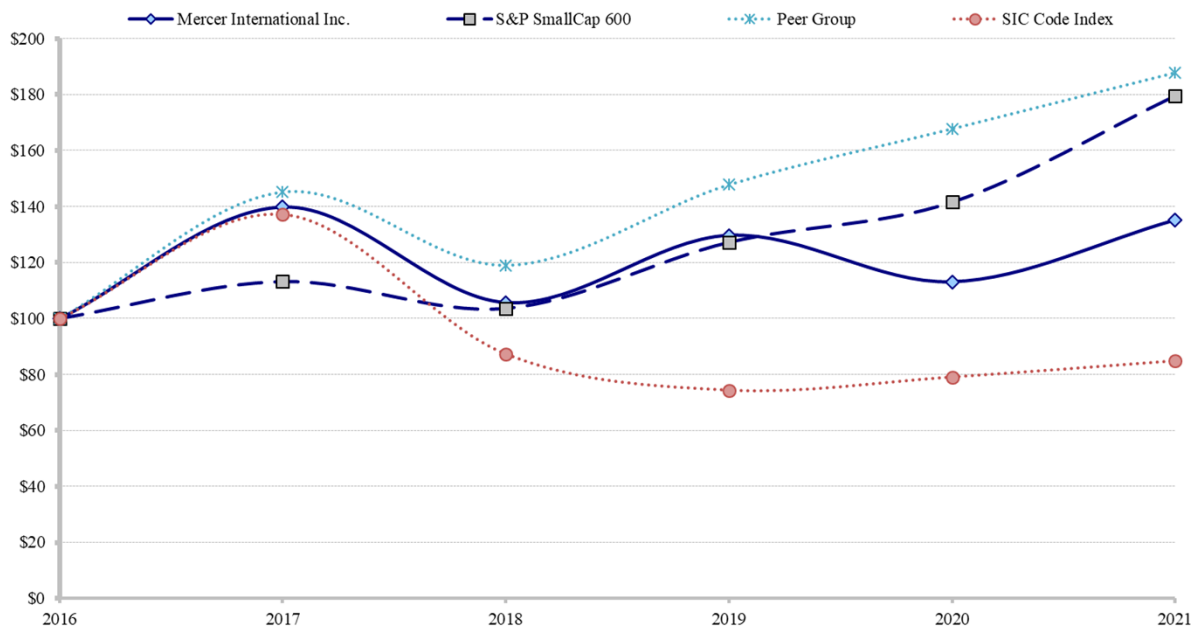
- (d) *Equity Compensation Plans.* The following table sets forth information as of December 31, 2021 with respect to the shares of our common stock that may be issued under our existing equity compensation plans:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by shareholders	—	(1) \$ —	1,188,303 (2)
Equity compensation plans not approved by shareholders	—	\$ —	—

- (1) Excludes 49,195 outstanding restricted shares which vest in 2022 and 2,754,472 outstanding performance share units, 626,550 of which had vested as of December 31, 2021. The underlying shares of common stock relating to the vested performance share units were issued in February 2022. Of the remaining 2,127,922 performance share units, 1,120,010 will vest in 2022 and 1,007,912 will vest in 2023. The actual number of shares of common stock issued in respect of unvested performance share units will vary from 0% to 200% of performance share units granted, based upon achievement of performance objectives established for such awards.
- (2) Represents the number of shares of our common stock remaining available for issuance under the 2010 Stock Incentive Plan, which replaced two previous plans, as of December 31, 2021. The plan provides for options, restricted stock rights, restricted shares, performance shares, performance share units and stock appreciation rights to be awarded to employees, consultants and non-employee directors.

- (e) *Performance Graph.* The following graph shows a five-year comparison of cumulative total shareholder return, calculated on an assumed dividend reinvested basis, for our common stock, the S&P SmallCap 600 Index, a group of peer companies, referred to as the “Peer Group”, and Standard Industrial Classification Code Index or “SIC” (SIC Code 2611 - pulp mills), referred to as the “SIC Code Index”. The graph assumes \$100 was invested in each of our common stock, the S&P SmallCap 600 Index, the Peer Group and the SIC Code Index on December 31, 2016. Data points on the graph are annual.

Comparison of Cumulative Total Return



Assumes \$100 Invested December 31, 2016
Assumes Dividends Reinvested
Fiscal Year Ending December 31, 2021

	2016	2017	2018	2019	2020	2021
Mercer International Inc.	\$ 100.00	\$ 139.74	\$ 105.69	\$ 129.67	\$ 113.13	\$ 135.10
S&P SmallCap 600 Index	\$ 100.00	\$ 113.23	\$ 103.63	\$ 127.24	\$ 141.60	\$ 179.58
Peer Group ⁽¹⁾	\$ 100.00	\$ 145.19	\$ 119.02	\$ 147.79	\$ 167.78	\$ 187.82
SIC Code Index	\$ 100.00	\$ 137.27	\$ 87.26	\$ 74.36	\$ 79.05	\$ 84.85

- (1) The Peer Group is comprised of Borregard ASA, Canfor Pulp Products Inc., Domtar Corporation, ENCE Energia y Cellulosa SA, Resolute Forest Products Inc., Rottneros RROS, Stora Enso Oyj, UPM-Kymmene Oyj, and West Fraser Timber Co. Ltd.

NON-GAAP FINANCIAL MEASURES

This annual report on Form 10-K contains “non-GAAP financial measures”, that is, financial measures that either exclude or include amounts that are not excluded or included in the most directly comparable measure calculated and presented in accordance with the generally accepted accounting principles in the United States, referred to as “GAAP”. Specifically, we make use of the non-GAAP measures “Operating EBITDA” and “Operating EBITDA margin”.

Operating EBITDA is defined as operating income (loss) plus depreciation and amortization and non-recurring capital asset impairment charges. Operating EBITDA margin is Operating EBITDA expressed as a percentage of revenues. We use Operating EBITDA and Operating EBITDA margin as benchmark measurements of our own operating results and as benchmarks relative to our competitors. We consider them to be meaningful supplements to operating income as performance measures primarily because depreciation expense and non-recurring capital asset impairment charges are not actual cash costs, and depreciation expense varies widely from company to company in a manner that we consider largely independent of the underlying cost efficiency of our operating facilities. In addition, we believe Operating EBITDA is commonly used by securities analysts, investors and other interested parties to evaluate our financial performance.

Operating EBITDA does not reflect the impact of a number of items that affect our net income (loss), including financing costs and the effect of derivative instruments. Operating EBITDA is not a measure of financial performance under GAAP, and should not be considered as an alternative to net income (loss) or operating income as a measure of performance, or as an alternative to net cash from (used in) operating activities as a measure of liquidity. Operating EBITDA and Operating EBITDA margin are internal measures and therefore may not be comparable to other companies.

Operating EBITDA has significant limitations as an analytical tool, and should not be considered in isolation, or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are that Operating EBITDA does not reflect: (i) our cash expenditures, or future requirements, for capital expenditures or contractual commitments; (ii) changes in, or cash requirements for, working capital needs; (iii) the significant interest expense, or the cash requirements necessary to service interest or principal payments, on our outstanding debt; (iv) the impact of realized or marked to market changes in our derivative positions, which can be substantial; and (v) the impact of non-recurring impairment charges against our investments or assets. Because of these limitations, Operating EBITDA should only be considered as a supplemental performance measure and should not be considered as a measure of liquidity or cash available to us to invest in the growth of our business. Because all companies do not calculate Operating EBITDA in the same manner, Operating EBITDA as calculated by us may differ from Operating EBITDA or EBITDA as calculated by other companies. We compensate for these limitations by using Operating EBITDA as a supplemental measure of our performance and by relying primarily on our GAAP financial statements.

ITEM 6. [RESERVED]

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

The following discussion and analysis of our financial condition and results of our operations for the years ended December 31, 2021 and 2020 is based upon and should be read in conjunction with the consolidated financial statements and related notes included elsewhere in this annual report. Please refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our annual report on Form 10-K for the year ended December 31, 2020 for a discussion of our results of operations for 2019 and financial position as of December 31, 2019. This annual report contains forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those indicated in forward-looking statements. See "Cautionary Note Regarding Forward-Looking Statements" and Item 1A. "Risk Factors".

Results of Operations

General

We have two reportable operating segments:

- **Pulp** – consists of the manufacture, sale and distribution of pulp, electricity and other by-products at our pulp mills.
- **Wood Products** – consists of the manufacture, sale and distribution of lumber, electricity and other wood residuals at the Friesau mill.

Each segment offers primarily different products and requires different manufacturing processes, technology and sales and marketing.

Markets for kraft pulp are global, cyclical and commodity based. Our financial performance depends on a number of variables that impact sales and production costs. Sales and production results for kraft pulp are influenced largely by the market price for kraft pulp, fiber costs and foreign currency exchange rates. Kraft pulp prices are highly cyclical and primarily determined by the balance between supply and demand. Pricing and demand are influenced by global macro-economic conditions, changes in consumption and industry capacity, the level of customer and producer inventories and fluctuations in exchange rates. The third party industry quoted average European list prices for NBSK pulp between 2012 and 2021 have fluctuated between a low of \$760 per ADMT in 2012 to a high of \$1,345 per ADMT in 2021. In the same period, third party industry quoted average North American list prices for NBHK pulp have fluctuated between a low of \$700 per ADMT in 2012 to a high of \$1,350 per ADMT in 2021.

Our pulp sales realizations are third party industry quoted list prices, net of customer discounts, rebates and other selling concessions. Our sales to China are closer to a net price with significantly lower or little discounts and rebates.

European and U.S. lumber markets differ. In the European market, lumber is generally customized in terms of dimensions and finishing, whereas the U.S. market is driven primarily by demand from new housing starts and home renovation activities and dimensions and finishing are generally standardized.

Energy and chemical production and sales are key revenue sources for us. Further initiatives to increase our generation and sales of renewable energy, chemicals and other by-products will continue to be a key focus for us. Such further initiatives may require additional capital spending.

Energy and chemicals are by-products of our pulp and lumber production and the volumes generated and sold are primarily related to the rate of production. Prices for our energy and chemical sales are generally stable and unrelated to cyclical changes in pulp or lumber prices.

Our financial performance is also impacted by changes in the dollar to euro and Canadian dollar exchange rates. Changes in currency rates affect our operating results because most of our operating costs at our German mills are incurred in euros and those at our Canadian mills are in Canadian dollars. These costs do not fluctuate with the

dollar to euro or Canadian dollar exchange rates. Thus, an increase in the strength of the dollar versus the euro and the Canadian dollar decreases our operating costs and increases our operating margins and income from operations. Conversely, a weakening of the dollar against the euro and the Canadian dollar tends to increase our operating costs and decrease our operating margins and income from operations. Our energy, chemical and European lumber sales are made in local currencies and, as a result, decline in dollar terms when the dollar strengthens and increase when the dollar weakens.

As a corollary to changes in exchange rates between the dollar and the euro and Canadian dollar, a stronger dollar generally increases costs to our customers and results in downward pressure on pulp and lumber prices. Conversely, a weakening dollar generally supports higher pulp and lumber pricing. However, there is invariably a time lag between changes in currency exchange rates and prices. This lag can vary and is not predictable with any precision.

Our production costs are influenced by the availability and cost of raw materials, energy and labor, and our plant efficiencies and productivity. Our main raw material is fiber in the form of wood chips, pulp logs and sawlogs. Wood chip, pulp log and sawlog costs are primarily affected by the supply of, and demand for, lumber and pulp, which are both highly cyclical. Higher fiber costs could affect producer profit margins if they are unable to pass along price increases to pulp and lumber customers or purchasers of surplus energy.

Production costs also depend on the total volume of production. High operating rates and production efficiencies permit us to lower our average per unit cost by spreading fixed costs over more units. Higher operating rates also permit us to increase our generation and sales of surplus renewable energy and chemicals. Our production levels are also dependent on, among other things, the number of days of maintenance downtime at our mills.

Unexpected maintenance downtime can be particularly disruptive in our industry.

Selected 2021 Highlights

In 2021, we:

- achieved record net income of \$171.0 million and Operating EBITDA* of \$478.8 million driven by higher pulp and lumber sales realizations;
- completed significant capital projects including projects which will increase our pulp capacity at the Stendal mill by 80,000 ADMTs and the rebuild of a boiler at Peace River;
- expanded our product offerings with the acquisition of a CLT facility; and
- maintained our crisis management plan and COVID-19 exposure control plans, risk assessments and protocols, which helped result in no material disruptions to our operations since the pandemic was declared in March 2020.

*See “– Summary Financial Highlights” for a reconciliation of net income (loss) to Operating EBITDA.

Current Market Environment

Although there is continued economic uncertainty as a result of the ongoing COVID-19 pandemic, we currently expect relatively strong NBSK markets and pricing in the first half of 2022 as a result of improving demand and supply interruptions in Canada and Scandinavia. For NBHK pulp we currently expect demand and prices to remain steady.

In our wood products segment, we currently expect steady lumber demand in all markets with modest price improvements in the U.S. market in the first half of 2022.

Summary Financial Highlights

	Year Ended December 31,	
	2021	2020
	(in thousands, other than percent and per share amounts)	
Statement of Operations Data		
Pulp segment revenues	\$ 1,483,093	\$ 1,220,644
Wood products segment revenues	311,081	197,649
Corporate and other revenues	9,081	4,847
Total revenues	\$ 1,803,255	\$ 1,423,140
Pulp segment operating income	\$ 251,724	\$ 37,952
Wood products segment operating income	108,466	34,704
Corporate and other operating loss	(13,607)	(8,927)
Total operating income	\$ 346,583	\$ 63,729
Pulp segment depreciation and amortization	\$ 115,293	\$ 115,945
Wood products segment depreciation and amortization	14,858	12,212
Corporate and other depreciation and amortization	2,048	764
Total depreciation and amortization	\$ 132,199	\$ 128,921
Operating EBITDA ⁽¹⁾	\$ 478,782	\$ 192,650
Operating EBITDA margin ⁽¹⁾	27%	14%
Loss on early extinguishment of debt	\$ (30,368) ⁽²⁾	\$ —
Income tax provision	\$ (89,579)	\$ (6,096)
Net income (loss)	\$ 170,988	\$ (17,235)
Net income (loss) per common share		
Basic	\$ 2.59	\$ (0.26)
Diluted	\$ 2.58	\$ (0.26)
Common shares outstanding at period end	66,037	65,868

(1) See “Non-GAAP Financial Measures” for a description of Operating EBITDA and Operating EBITDA margin, their limitations and why we consider them to be useful measures.

The following table provides a reconciliation of net income (loss) to operating income and Operating EBITDA for the years indicated:

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Net income (loss)	\$ 170,988	\$ (17,235)
Income tax provision	89,579	6,096
Interest expense	70,047	80,746
Loss on early extinguishment of debt	30,368	—
Other income	(14,399)	(5,878)
Operating income	346,583	63,729
Add: Depreciation and amortization	132,199	128,921
Operating EBITDA	\$ 478,782	\$ 192,650

(2) Redemption of the 2024 Senior Notes and 2025 Senior Notes.

Selected Production, Sales and Other Data

	Year Ended December 31,	
	2021	2020
Pulp Segment		
Pulp production ('000 ADMTs)		
NBSK	1,671.2	1,716.1
NBHK	192.7	335.0
Annual maintenance downtime ('000 ADMTs)	253.7	50.1
Annual maintenance downtime (days)	188	43
Pulp sales ('000 ADMTs)		
NBSK	1,616.9	1,700.4
NBHK	195.8	329.0
Average NBSK pulp prices (\$/ADMT) ⁽¹⁾		
Europe	1,243	851
China	850	588
North America	1,478	1,139
Average NBHK pulp prices (\$/ADMT) ⁽¹⁾		
China	661	462
North America	1,225	881
Average pulp sales realizations (\$/ADMT) ⁽²⁾		
NBSK	779	572
NBHK	615	452
Energy production ('000 MWh) ⁽³⁾	1,826.5	2,238.6
Energy sales ('000 MWh) ⁽³⁾	702.0	894.5
Average energy sales realizations (\$/MWh) ⁽³⁾	123	93
Wood Products Segment		
Lumber production (MMfbm)	447.9	438.0
Lumber sales (MMfbm)	419.7	449.2
Average lumber sales realizations (\$/Mfbm)	699	402
Energy production and sales ('000 MWh)	74.6	89.0
Average energy sales realizations (\$/MWh)	155	119
Average Spot Currency Exchange Rates		
\$ / € ⁽⁴⁾	1.1830	1.1410
\$ / C\$ ⁽⁴⁾	0.7981	0.7457

- (1) Source: RISI pricing report. Europe and North America are list prices. China are net prices which include discounts, allowances and rebates. Effective January 2020, the RISI pricing report does not provide list prices for China.
- (2) Sales realizations after customer discounts, rebates and other selling concessions. Incorporates the effect of pulp price variations occurring between the order and shipment dates.
- (3) Does not include our 50% joint venture interest in the Cariboo mill, which is accounted for using the equity method.
- (4) Average Federal Reserve Bank of New York Noon Buying Rates over the reporting period.

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

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

Total revenues in 2021 increased by approximately 27% to a record \$1,803.3 million from \$1,423.1 million in 2020 primarily due to higher sales realizations partially offset by lower sales volumes.

Costs and expenses in 2021 increased by approximately 7% to \$1,456.7 million from \$1,359.4 million in 2020 primarily due to higher energy costs, the negative impact of a weaker dollar on our Canadian dollar and euro denominated costs and expenses, higher maintenance costs and higher per unit fiber costs for our wood products segment partially offset by lower sales volumes. Our maintenance costs were partially offset by the recovery of about \$36.1 million business interruption insurance claims primarily related to the Peace River mill boiler rebuild in 2021.

In 2021, the dollar was 7% weaker against the Canadian dollar and 4% weaker against the euro compared to 2020, which increased our Canadian dollar and euro denominated costs and expenses.

In 2021, cost of sales depreciation and amortization increased to \$132.1 million from \$128.8 million in 2020 due to the negative impact of a weaker dollar.

Selling, general and administrative expenses increased by approximately 18% to \$78.9 million in 2021 from \$66.9 million in 2020 primarily due to higher employee compensation and the negative impact of a weaker dollar.

In 2021, our operating income increased to a record \$346.6 million from \$63.7 million in 2020 primarily due to higher sales realizations partially offset by higher energy costs, higher maintenance downtime, the negative impact of a weaker dollar and higher per unit fiber costs for our wood products segment.

In January 2021, we refinanced a significant portion of our debt, referred to as the “Refinancing”, by issuing \$875.0 million of 5.125% 2029 Senior Notes and used the proceeds to redeem and/or repurchase all of our 6.5% 2024 Senior Notes and 7.375% 2025 Senior Notes, referred to as the “Redemption”, at a cost including premium of \$824.6 million. We recorded a loss on such Redemption of \$30.4 million (\$0.46 per share). The Refinancing reduced our annual interest expense going forward by approximately \$12.0 million.

Interest expense in 2021 decreased to \$70.0 million from \$80.7 million in 2020 primarily as a result of a lower interest rate for our 2029 Senior Notes.

Other income in 2021 was \$14.4 million compared to \$5.9 million in 2020. Other income in 2021 was primarily due to foreign exchange gains on the translation of dollar denominated cash held at the mills. Other income in 2020 was primarily due to a \$17.5 million realized gain on the sale of investments partially offset by a \$13.8 million foreign exchange loss primarily on the translation of dollar denominated cash held at the mills.

In 2021, income tax expense was \$89.6 million or an effective tax rate of approximately 34%. In 2020, income tax expense was \$6.1 million primarily due to the tax provision for our German entities only partially offset by tax recoveries for our Canadian entities.

In 2021, our net income was a record \$171.0 million, or \$2.59 per basic share and \$2.58 per diluted share, compared to a net loss of \$17.2 million, or \$0.26 per share in 2020.

In 2021, Operating EBITDA increased to a record \$478.8 million from \$192.7 million in 2020 as higher sales realizations were only partially offset by higher energy costs, higher maintenance downtime, the negative impact of a weaker dollar and higher per unit fiber costs for our wood products segment.

Pulp Segment – Year Ended December 31, 2021 Compared to Year Ended December 31, 2020

Selected Financial Information

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Pulp revenues	\$ 1,389,439	\$ 1,130,302
Energy and chemical revenues	\$ 93,654	\$ 90,342
Depreciation and amortization	\$ 115,293	\$ 115,945
Operating income	\$ 251,724	\$ 37,952

Pulp revenues in 2021 increased by approximately 23% to a record \$1,389.4 million from \$1,130.3 million in 2020 due to higher sales realizations partially offset by lower sales volumes.

Energy and chemical revenues increased by approximately 4% to \$93.7 million in 2021 from \$90.3 million in 2020 primarily due to higher sales realizations and the positive impact of a weaker dollar on our euro and Canadian dollar denominated energy and chemical revenues partially offset by lower energy sales volumes due to lower energy production as a result of annual maintenance downtime and required repairs on our Rosenthal mill's turbine.

Total pulp production decreased by approximately 9% to 1,863,893 ADMTs in 2021 from 2,051,084 ADMTs in 2020. In 2021, our pulp mills had 188 days of annual maintenance downtime (approximately 253,700 ADMTs) including our 50% owned Cariboo mill. Approximately 88 days of such downtime was at our Peace River mill and primarily related to boiler work which was deferred from last year. In 2021, we finalized our insurance claims and recorded a recovery of \$28.0 million in connection with the costs of the Peace River mill boiler work and \$36.1 million for business interruption claims primarily related to its extended 2021 downtime.

We estimate that such maintenance downtime in 2021 adversely impacted our operating income by approximately \$125.3 million, comprised of approximately \$75.4 million in direct out-of-pocket expenses and the balance in reduced production (exclusive of business interruption insurance proceeds of approximately \$36.1 million). Many of our competitors that report their financial results using International Financial Reporting Standards, referred to as "IFRS", capitalize their direct costs of maintenance downtime.

In 2022, we currently have scheduled maintenance downtime for our pulp mills of an aggregate of 67 days, or approximately 94,800 ADMTs which will be comprised of 39 days in the second quarter, 14 days in the third quarter and 14 days in the final quarter.

Total pulp sales volumes decreased by approximately 11% to 1,812,689 ADMTs in 2021 compared to 2,029,409 ADMTs in 2020 primarily due to lower production. In 2021, third party industry quoted average list prices for NBSK pulp increased by approximately 46% in Europe and 30% in North America compared to 2020. In 2021, average net prices for NBSK pulp in China increased by approximately 45% compared to 2020. Such increases in prices principally resulted from steady demand and low customer inventory levels. In 2021, low customer inventory levels resulted from the pandemic and other factors creating logistics issues which reduced shipments to China and Europe and storms and winter conditions in Western Canada which reduced supply.

Third party industry quoted average list prices for NBSK pulp in Europe and North America were approximately \$1,243 per ADMT and \$1,478 per ADMT, respectively, in 2021 compared to approximately \$851 per ADMT and \$1,139 per ADMT, respectively, in 2020. Average net prices for NBSK pulp in China were approximately \$850 per ADMT in 2021 compared to approximately \$588 per ADMT in 2020. Third party industry quoted average list prices for NBHK pulp in North America were approximately \$1,225 per ADMT in 2021 compared to approximately \$881 per ADMT in 2020. Average net prices for NBHK pulp in China were approximately \$661 per ADMT in 2021 compared to approximately \$462 per ADMT in 2020.

Average NBSK pulp sales realizations increased by approximately 36% to \$779 per ADMT in 2021 from \$572 per ADMT in 2020 due to both higher list and net prices. In 2021, NBHK pulp sales realizations increased by approximately 36% to \$615 per ADMT in 2021 from \$452 per ADMT in 2020.

In 2021, the net negative impact on operating income due to foreign exchange was \$50.2 million primarily due to the effect of a weaker dollar on average compared to the Canadian dollar and euro which increased the dollar cost of our Canadian dollar and euro denominated costs and expenses compared to 2020.

Costs and expenses in 2021 increased by approximately 4% to \$1,231.7 million from \$1,183.2 million in 2020 primarily due to higher energy costs, the negative impact of a weaker dollar and higher maintenance costs net of the business interruption insurance claims partially offset by lower pulp sales volumes.

On average, in 2021, overall per unit fiber costs increased by approximately 2% from 2020. For our Canadian mills, per unit fiber costs increased due to the negative impact of a weaker dollar. In 2021, per unit fiber costs for our German mills decreased due to the availability of beetle damaged wood and strong sawmill production. In 2022, we currently expect modestly higher per unit fiber costs due to strong demand.

Transportation costs decreased by approximately 6% to \$136.3 million in 2021 from \$144.4 million in 2020 due to lower sales volumes partially offset by higher freight rates caused by weather related disruptions.

In 2021, depreciation and amortization decreased to \$115.3 million from \$115.9 million in 2020.

In 2021, pulp segment operating income increased to \$251.7 million from \$38.0 million in 2020 because of higher sales realizations only partially offset by higher energy costs, higher maintenance downtime and the negative impact of a weaker dollar.

Wood Products Segment – Year Ended December 31, 2021 Compared to Year Ended December 31, 2020

Selected Financial Information

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Lumber revenues	\$ 293,166	\$ 180,769
Energy revenues	\$ 11,547	\$ 10,619
Wood residual revenues	\$ 6,368	\$ 6,261
Depreciation and amortization	\$ 14,858	\$ 12,212
Operating income	\$ 108,466	\$ 34,704

In 2021, lumber revenues increased by approximately 62% to a record \$293.2 million from \$180.8 million, primarily due to higher sales realizations partially offset by a lower sales volume. Overall, in 2021, U.S. markets were strong with approximately 53% of our lumber revenues and 42% of sales volumes to such market. The majority of the balance of our lumber sales were to Europe.

Energy and wood residual revenues increased by approximately 6% to \$17.9 million in 2021 from \$16.9 million in 2020 primarily due to a higher realized energy price.

Lumber production increased by approximately 2% to a record 447.9 MMfbm in 2021 from 438.0 MMfbm in 2020 primarily due to capital improvements.

Lumber sales volumes decreased by approximately 7% to 419.7 MMfbm in 2021 from 449.2 MMfbm in 2020 due to the timing of sales resulting from shipment delays due to global logistics issues.

Average lumber sales realizations increased by approximately 74% to \$699 per Mfbm in 2021 from \$402 per Mfbm in 2020 primarily due to higher pricing in the U.S. and European markets. U.S. lumber pricing increased due to strong housing and home renovation demand. European lumber pricing increased due to steady demand and reduced supply as producers shifted product to the U.S. market.

Fiber costs were approximately 75% of our lumber cash production costs in 2021. In the comparative period of 2020, per unit fiber costs were very low as a result of a large supply of beetle damaged wood. As producers have been working through such wood, more green wood is being harvested. In 2021 per unit fiber costs increased by approximately 47% from the same period of 2020 as a result of using more green wood, continued strong demand for sawlogs and the negative impact of a weaker dollar on our euro denominated fiber costs. We currently expect modestly increasing per unit fiber costs in 2022 as a result of increased use of green wood.

Transportation costs increased by approximately 16% to \$34.0 million in 2021 from \$29.2 million in 2020 primarily due to higher freight rates and the negative impact of a weaker dollar being only partially offset by lower sales volumes.

In 2021, depreciation and amortization for our wood products segment increased to \$14.9 million from \$12.2 million in 2020 primarily due to the completion of capital projects.

In 2021, our wood products segment had record operating income of \$108.5 million compared to \$34.7 million in 2020 primarily due to higher lumber sales realizations partially offset by higher per unit fiber costs.

Sensitivities

The following sensitivity analysis provides only a limited point-in-time view of the pulp price, lumber price, fiber costs and foreign exchange rates discussed. The actual impact of the underlying price and rate changes may differ materially from that shown in the sensitivity analysis.

Our earnings are sensitive to, among other things, fluctuations in:

Pulp Price. Pulp is a global commodity that is priced in dollars, whose markets are highly competitive and cyclical in nature. As a result, our earnings are sensitive to pulp price changes. Based upon our 2021 sales volume and assuming all other factors remained constant, each \$10.00 per tonne change in pulp third party industry quoted list prices yields a change in pulp revenues of approximately \$13.2 million.

Lumber Price. Lumber markets are highly competitive and cyclical in nature. As a result, our earnings are sensitive to lumber price changes. Based upon our 2021 sales volume and assuming all other factors remain constant, each \$10.00 per Mfbm change in lumber price yields a change in lumber revenues of approximately \$4.2 million.

Fiber Costs. Our main raw material is fiber in the form of wood chips, pulp logs and sawlogs. Fiber is a commodity and both prices and supply are cyclical. As a result, our operating costs are sensitive to fiber cost changes. For our pulp segment, based upon our 2021 fiber costs and assuming all other factors remained constant, each 1% change in per unit fiber cost yields a change in annual operating costs of approximately \$3.9 million. For our wood products segment, based upon our 2021 fiber costs and assuming all other factors remained constant, each 1% change in per unit fiber cost yields a change in annual operating costs of approximately \$1.2 million.

Foreign Exchange. Our operating costs are in euros for our German mills and Canadian dollars for our Canadian mills. As a result, our operating costs will fluctuate with changes in the value of the dollar relative to the euro and Canadian dollar. Based on our 2021 operating costs and assuming all other factors remained constant, each \$0.01 change in the value of the dollar relative to the Canadian dollar yields a total change in annual operating costs of approximately \$7.5 million. Based on our 2021 operating costs and assuming all other factors remained constant, each \$0.01 change in the value of the dollar relative to the euro yields a total change in annual operating costs of approximately \$7.1 million.

Our energy, chemical and European lumber sales are made in local currencies and, as a result, decline in dollar terms when the dollar strengthens. Based on our 2021 energy, chemical and European lumber revenues and assuming all other factors remained constant, each \$0.01 change in the value of the dollar relative to the euro yields a total change in energy, chemical and European lumber revenues of approximately \$1.5 million. Based on our 2021 energy and chemical revenues and assuming all other factors remained constant, each \$0.01 change in the value of the dollar relative to the Canadian dollar yields a total change in energy and chemical revenues of approximately \$0.2 million.

Seasonal Influences. We are exposed to fluctuations in quarterly sales volumes and expenses due to seasonal factors. These factors are common in the pulp and lumber industries. We generally have weaker pulp demand in Europe during the summer holiday months and in China in the period relating to the lunar new year. We typically have a seasonal build-up in raw material inventories in the early winter months as the mills build up their fiber supply for the winter when there is reduced availability.

Inflation. While inflationary increases in certain input costs, such as energy, fiber and chemical costs, have an impact on our operating results, changes in general inflation have had minimal impact on our operating results in each of the last three years. Sales prices and volumes are more strongly influenced by economic supply and demand factors in specific markets and by exchange rate fluctuations than by inflationary factors.

Liquidity and Capital Resources

Summary of Cash Flows

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Net cash from operating activities	\$ 182,214	\$ 41,565
Net cash used in investing activities	(187,127)	(59,827)
Net cash from (used in) financing activities	(9,504)	26,317
Effect of exchange rate changes on cash and cash equivalents	(1,071)	1,958
Net increase (decrease) in cash and cash equivalents	<u>\$ (15,488)</u>	<u>\$ 10,013</u>

We operate in a cyclical industry and our operating cash flows vary accordingly. Our principal operating cash expenditures are for fiber, labor, chemicals and debt service.

Working capital levels fluctuate throughout the year and are affected by maintenance downtime, changing sales patterns, seasonality and the timing of receivables and the payment of payables and expenses. Generally, finished goods inventories are increased prior to scheduled maintenance downtime to maintain sales volume while production is stopped. Our fiber inventories exhibit seasonal swings as we increase pulp log, sawlog and wood chip inventories to ensure adequate supply of fiber to our mills during the winter months. Changes in sales volume can affect the level of receivables and influence overall working capital levels. We believe our management practices with respect to working capital conform to common business practices.

Cash Flows from Operating Activities

Cash from operations includes:

- cash received from customers;
- cash paid to employees and suppliers;
- cash paid for interest on our debt; and
- cash paid or received for taxes.

Cash provided by operating activities in 2021 increased to \$182.2 million from \$41.6 million in 2020 due to higher operating income. In 2021, an increase in accounts receivable used cash of \$121.6 million compared to \$6.3 million in 2020. In 2021, an increase in inventories used cash of \$96.4 million compared to \$11.4 million in 2020. In 2021, the increase in accounts receivable primarily related to higher prices for product sales and approximately \$38.0 million for receivables for insurance proceeds related to our Peace River mill, which were collected in 2022. In 2021, the increase in inventories primarily related to higher prices and volumes for finished goods, delays in shipments, which we expect to work through in the first quarter of 2022 and higher raw material inventories. In 2021, an increase in accounts payable and accrued expenses provided cash of \$75.6 million and in 2020, a decrease in accounts payable and accrued expenses used cash of \$53.7 million.

Cash Flows from Investing Activities

Cash from investing activities includes:

- acquisitions of property, plant and equipment and businesses;
- proceeds from the sale of assets; and
- purchases and sales of short-term investments.

Investing activities in 2021 used cash of \$187.1 million comprised primarily of capital expenditures of \$159.4 million and \$51.3 million for the acquisition of our CLT Facility. Investing activities in 2020 used cash of \$59.8 million primarily related to capital expenditures of \$78.5 million and \$9.4 million for other investments partially offset by proceeds of \$26.9 million from the sale of such investments.

In 2021, capital expenditures related primarily to the Peace River recovery boiler rebuild, which was financed with insurance proceeds of \$21.5 million, capacity expansion projects at the Stendal mill, upgrades to the woodrooms at our Canadian pulp mills and the completion of the expansion and optimization projects at our Friesau sawmill. In 2020, capital expenditures included the expansion and optimization projects at our Friesau sawmill, pulp capacity expansion projects and additional land for fiber storage at the Stendal mill and other small maintenance and optimization projects.

Cash Flows from Financing Activities

Cash from financing activities includes:

- issuances and payments of debt;
- borrowings and payments under revolving lines of credit;
- proceeds from issuances of stock; and
- payments of cash dividends and repurchases of stock.

In 2021, financing activities used cash of \$9.5 million. In 2021, we repaid \$33.4 million of our revolving credit facilities, received net proceeds from the Refinancing after giving effect to the Redemption of \$50.4 million, paid note issuance costs of \$14.5 million in respect of the 2029 Senior Notes and paid \$17.2 million of dividends. In 2021, we received \$9.3 million in government grants to partially finance innovation and greenhouse gas emission reduction capital projects at our Canadian mills. In 2020, financing activities provided cash of \$26.3 million primarily from \$52.7 million of borrowings under our revolving credit facilities. In 2020, we paid dividends of \$21.9 million and used \$0.2 million to repurchase common shares.

Balance Sheet Data

The following table is a summary of selected financial information for the dates indicated:

	December 31,	
	2021	2020
	(in thousands)	
Financial Position		
Cash and cash equivalents	\$ 345,610	\$ 361,098
Working capital	\$ 781,181	\$ 663,056
Total assets	\$ 2,351,232	\$ 2,129,126
Long-term liabilities	\$ 1,374,084	\$ 1,316,303
Total shareholders' equity	\$ 694,024	\$ 601,027

Sources and Uses of Funds

Our principal sources of funds are cash flows from operations and cash and cash equivalents on hand. Our principal uses of funds consist of operating expenditures, capital expenditures and interest payments on our Senior Notes.

The following table sets out our total capital expenditures and interest expense for the periods indicated:

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Capital expenditures	\$ 159,440 ⁽¹⁾	\$ 78,518
Cash paid for interest expense ⁽²⁾	\$ 73,088	\$ 78,151
Interest expense ⁽³⁾	\$ 70,047	\$ 80,746

- (1) Includes expenditures for the recovery boiler rebuild at the Peace River mill which was financed with insurance proceeds of \$21.5 million.
- (2) Amounts differ from interest expense which includes non-cash items. See supplemental disclosure of cash flow information from our Consolidated Statements of Cash Flows included in this report.
- (3) Interest on our 2024 Senior Notes was paid semi-annually in February and August of each year and interest on our 2025 Senior Notes was paid semi-annually in January and July of each year. In January 2021, we redeemed our 2024 Senior Notes and 2025 Senior Notes. Interest on our 2026 Senior Notes is paid semi-annually in January and July of each year. Interest on our 2029 Senior Notes is paid semi-annually in February and August of each year, commencing August 2021.

As of December 31, 2021, we had cash and cash equivalents of \$345.6 million and approximately \$285.3 million available under our revolving credit facilities providing us with aggregate liquidity of about \$630.9 million.

As of December 31, 2021, we had no material commitments to acquire assets or operating businesses.

In 2022, excluding amounts being financed through government grants, we currently expect capital expenditures to be approximately \$175.0 million to \$200.0 million.

We currently consider the majority of undistributed earnings of our foreign subsidiaries to be indefinitely reinvested and, accordingly, no U.S. income tax has been provided on such earnings. However, if we were required to repatriate funds to the United States, we believe that we currently could repatriate the majority thereof without incurring any material amount of taxes as a result of our shareholder advances and U.S. tax reform. However, it is currently not practical to estimate the income tax liability that might be incurred if such earnings were remitted to the United States. Substantially all of our undistributed earnings are held by our foreign subsidiaries outside of the United States.

Based upon the current level of operations and our current expectations for future periods in light of the current economic environment, and in particular, current and expected pulp and lumber pricing and foreign exchange rates, we believe that cash flow from operations and available cash, together with available borrowings under our revolving credit facilities, will be adequate to finance the capital requirements for our business including the payment of our quarterly dividend during the next 12 months.

In the future we may make acquisitions of businesses or assets or commitments to additional capital projects. To achieve the long-term goals of expanding our assets and earnings, including through acquisitions, capital resources will be required. Depending on the size of a transaction, the capital resources that will be required can be substantial. The necessary resources will be generated from cash flow from operations, cash on hand, borrowing against our assets or the issuance of securities.

Credit Facilities and Debt Covenants

We had the following principal amounts outstanding under our credit facilities and Senior Notes as of the dates indicated:

	December 31,	
	2021	2020
	(in thousands)	
German Facility	\$ —	\$ —
Rosenthal €2.6 million loan	\$ —	\$ —
Celgar Working Capital Facility ⁽¹⁾	\$ —	\$ 32,988
Peace River Working Capital Facility ⁽¹⁾	\$ 22,874	\$ 21,992
2024 Senior Notes ⁽²⁾	\$ —	\$ 250,000
2025 Senior Notes ⁽²⁾	\$ —	\$ 550,000
2026 Senior Notes	\$ 300,000	\$ 300,000
2029 Senior Notes ⁽²⁾	\$ 875,000	\$ —

(1) In January 2022, discharged and replaced with the Canadian Revolving Facility.

(2) In January 2021, we issued \$875.0 million in 2029 Senior Notes and used a portion of the net proceeds to refinance and discharge in full the 2024 Senior Notes and 2025 Senior Notes.

For a description of such indebtedness, see Item 1. “Business – Description of Certain Indebtedness”.

Certain of our long-term obligations contain various financial tests and covenants customary to these types of arrangements.

Under the German Facility, the Obligors must not exceed a ratio of net debt to EBITDA of 3.50:1 in any 12-month period and maintain defined capital of not less than €400.0 million.

The Canadian Revolving Facility includes a covenant that so long as the excess amount under the facility is less than the greater of 10% of the line cap thereunder and C\$14.0 million, in either case, for five consecutive days or less than the greater of 7.5% of the line cap and C\$10.0 million, at any time, and which requires the borrowers to comply, on a combined basis, with a 1.00:1.00 fixed charge coverage ratio.

The German Facility is provided by a syndicate of six financial institutions and the Canadian Revolving Facility is provided by three financial institutions. To date we have not experienced any reductions in credit availability with respect to these credit facilities. However, if any of these financial institutions were to default on their commitment to fund, we could be adversely affected.

The indentures governing the Senior Notes do not contain any financial maintenance covenants and there are no scheduled principal payments until maturity. Interest on our 2026 Senior Notes is payable semi-annually in arrears on January 15 and July 15, at the rate of 5.50% and they mature in January 2026. Interest on our 2029 Senior Notes is payable semi-annually in arrears on February 1 and August 1, at the rate of 5.125% and they mature in February 2029.

As of December 31, 2021, we were in full compliance with all of the covenants of our indebtedness.

Foreign Currency

Our reporting currency is the dollar. However, we hold certain assets and liabilities in euros and Canadian dollars and the majority of our expenditures are denominated in euros or Canadian dollars. Accordingly, our consolidated financial results are subject to foreign currency exchange rate fluctuations.

We translate foreign denominated assets and liabilities into dollars at the rate of exchange on the balance sheet date. Equity accounts are translated using historical exchange rates. Unrealized gains or losses from these translations are recorded in our other comprehensive income (loss) and do not affect our net earnings.

In 2021, accumulated other comprehensive loss increased by \$63.2 million to a loss of \$90.8 million, primarily due to the foreign currency translation adjustment.

Based upon the exchange rate as of December 31, 2021, the dollar was approximately 8% stronger against the euro and was flat against the Canadian dollar since December 31, 2020. See Item 7A. “Quantitative and Qualitative Disclosures about Market Risk”.

Credit Ratings of Senior Notes

We and our Senior Notes are rated by Standard & Poor’s Rating Services, referred to as “S&P”, and Moody’s Investors Service, Inc., referred to as “Moody’s”.

S&P and Moody’s base their assessment of the credit risk on our Senior Notes on the business and financial profile of Mercer Inc. and our restricted subsidiaries under the indentures governing the Senior Notes. As of December 31, 2021, all of our subsidiaries are restricted subsidiaries. Factors that may affect our credit rating include changes in our operating performance and liquidity. Credit rating downgrades can adversely impact, among other things, future borrowing costs and access to capital markets.

In June 2021 S&P revised its outlook to stable from negative and confirmed its rating on our Senior Notes is B+. Its recovery rating remained unchanged as “3”. In January 2021 Moody’s confirmed its rating on our Senior Notes is Ba3 and its outlook is stable.

Credit ratings are not recommendations to buy, sell or hold securities and may be subject to revision or withdrawal by the assigning rating organization. Each rating should be evaluated independently of any other rating.

Critical Accounting Policies

The preparation of financial statements and related disclosures in conformity with GAAP requires management to make estimates and assumptions that affect both the amount and the timing of recording of assets, liabilities, revenues and expenses in the consolidated financial statements and accompanying note disclosures. Our management routinely makes judgments and estimates about the effects of matters that are inherently uncertain. As the number of variables and assumptions affecting the probable future resolution of the uncertainties increase, these judgments become even more subjective and complex.

Our significant accounting policies are disclosed in Note 1 to our audited annual consolidated financial statements included in Part IV of this annual report. While all of the significant accounting policies are important to the consolidated financial statements, some of these policies may be viewed as having a high degree of judgment. On an ongoing basis using currently available information, management reviews its estimates, including those related to accounting for, among other things, pension and other post-retirement benefit obligations, deferred income taxes (valuation allowance and permanent reinvestment), depreciation and amortization, future cash flows associated with impairment testing for long-lived assets, the allocation of the purchase price in a business combination to the assets acquired and liabilities assumed, legal liabilities and contingencies. Actual results could differ materially from these estimates, and changes in these estimates are recorded when known.

The following accounting policies require management’s most difficult, subjective and complex judgments, and are subject to a fair degree of measurement uncertainty.

Pension and Other Post-Retirement Benefit Obligations

We maintain defined benefit pension plans and an other post-retirement benefit plan for certain employees of our Peace River mill and our Celgar mill which are funded based on actuarial estimates and requirements and are non-contributory. We recognize the net funded status of the plans and we record net periodic benefit costs associated with these net obligations. As of December 31, 2021, we had pension and other post-retirement benefit obligations aggregating \$139.3 million and accumulated pension plan assets with a fair value of \$121.4 million. Our 2021 net periodic pension and other post-retirement benefit costs were \$2.8 million. The amounts recorded for the net pension and other post-retirement obligations include various judgments and uncertainties.

The following inputs are used to determine our net obligations and our net periodic benefit costs each year and the determination of these inputs requires judgment:

- discount rate – used to determine the net present value of our pension and other post-retirement benefit obligations and to determine the interest cost component of our net periodic pension and other post-retirement benefit costs;
- return on assets – used to estimate the growth in the value of invested assets that are available to satisfy pension obligations and to determine the expected return on the plan assets component of our net periodic pension costs;
- mortality rate – used to estimate the impact of mortality on pension and other post-retirement benefit obligations;
- rate of compensation increase – used to calculate the impact future pay increases will have on pension benefit obligations; and
- health care cost trend rate – used to calculate the impact of future health care costs on other post-retirement benefit obligations.

For the discount rate, we use the rates available on high-quality corporate bonds with a duration that is expected to match the timing of expected pension and other post-retirement benefit obligations. High-quality corporate bonds are those with a rating of “AA” or better.

In determining the expected return on assets, we consider the historical long-term returns, expected asset mix and the active management premium.

For the mortality rate we use actuarially-determined mortality tables that are consistent with our historical mortality experience and future expectations for mortality of the employees who participate in our pension and other post-retirement benefit plans.

In determining the rate of compensation increase, we review historical compensation increases and promotions, while considering current industry conditions, the terms of collective bargaining agreements with employees and the outlook for the industry.

For the health care cost trend rate, we consider historical trends for these costs, as well as recently enacted health care legislation. We also compare our health care rate to those of our industry.

Variations in assumptions described above could have a significant effect on the pension and other post-retirement benefits net periodic benefit cost and obligation reported in our consolidated financial statements. For example, a one-percentage point change in any one of the following assumptions would have increased (decreased) our 2021 net periodic benefit cost and our accrued benefit obligation as follows:

Assumption	Net periodic benefit cost		Accrued benefit obligation	
	1% increase	1% decrease	1% increase	1% decrease
	(in thousands)			
Discount rate	\$ (47)	\$ 263	\$ (18,034)	\$ 22,052
Return on assets	\$ (974)	\$ 975	\$ —	\$ —
Rate of compensation	\$ 523	\$ (487)	\$ 4,155	\$ (3,912)
Health care cost trend rate	\$ (27)	\$ 25	\$ 517	\$ (545)

Deferred Taxes

As of December 31, 2021, we had \$1.2 million in deferred tax assets and \$95.1 million in deferred tax liabilities, resulting in a net deferred tax liability of \$93.9 million. Our tax assets are net of a \$43.2 million valuation allowance. Our deferred tax assets are comprised primarily of tax loss and interest carryforwards and deductible temporary differences, all of which will reduce taxable income in the future. We assess the realization of these deferred tax assets at each reporting period to determine whether it is more likely than not that the deferred tax

assets will be realized. Our assessment includes a review of all available positive and negative evidence, including, but not limited to, the following:

- the history of the tax loss carryforwards and their expiry dates;
- future reversals of temporary differences;
- our historical and projected earnings; and
- tax planning opportunities.

Significant judgment is required when evaluating the positive and negative evidence, specifically the Company's estimates of future earnings. The weight given to negative and positive evidence is commensurate with the extent to which it can be objectively verified. Operating results during the most recent three-year period are generally given more weight than expectations of future profitability, which are inherently uncertain. A cumulative loss position during the most recent three-year period is considered significant negative evidence in assessing the realizability of deferred income tax assets that is difficult to overcome.

Once our evaluation of the evidence is complete, if we believe that it is more likely than not that some of the deferred tax assets will not be realized, based on currently available information, an income tax valuation allowance is recorded against the deferred tax assets.

If market conditions improve or tax planning opportunities arise in the future, we may reduce our valuation allowance, resulting in future tax benefits. If market conditions deteriorate in the future, we may increase our valuation allowance, resulting in future tax expenses. Any change in tax laws may change the valuation allowances in future periods.

Long-Lived Assets

As of December 31, 2021, we had long-lived assets recorded in our Consolidated Balance Sheet of \$1,183.5 million. These long-lived assets include property, plant and equipment, net and amortizable intangible assets, net. In 2021, we recorded depreciation and amortization of \$132.2 million and no impairment charges. Depreciation and amortization and impairment charges are based on accounting estimates.

The calculation of depreciation and amortization of long-lived assets requires us to apply judgment in selecting the remaining useful lives of the assets. The remaining useful life of an asset must address both physical and economic considerations. The remaining economic life of a long-lived asset may be shorter than its physical life. The pulp industry has historically been characterized by considerable uncertainty in business conditions. Estimates of future economic conditions for our long-lived assets and therefore, their remaining useful economic life, require considerable judgment.

If our estimate of the remaining useful life changes, such a change is accounted for prospectively in our determination of depreciation and amortization. Actual depreciation and amortization charges for an individual asset may therefore be significantly accelerated if the outlook for its remaining useful life is shortened considerably.

The unit of accounting for impairment testing for long-lived assets is its "Asset Group", which includes property, plant and equipment, net, amortizable intangible assets, net and liabilities directly related to those assets. We evaluate an Asset Group for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable, such as continuing operating losses. When an indicator that the carrying value of an Asset Group may not be recoverable is triggered, we compare the carrying value of the Asset Group to its forecasted undiscounted future cash flows. If the carrying value of the Asset Group is greater than the undiscounted future cash flows an impairment charge is recorded based on the excess of the Asset Group's carrying value over its fair value.

Impairment testing for long-lived assets requires us to apply judgment in estimating the future cash flows of the Asset Group. The significant estimates in the future cash flows include periods of operation, projections of product pricing, production levels, fiber and other production costs and maintenance spending. When performing impairment tests, we estimate the fair values of the assets using management's best assumptions, which we believe would be consistent with the assumptions that a hypothetical marketplace participant would use. Estimates and assumptions used in these tests are evaluated and updated each period an impairment indicator is triggered.

Actual asset impairment losses could vary considerably from estimated impairment losses if actual results are not consistent with the assumptions and judgments used in estimating future cash flows.

Business Combination

We allocate the total purchase of the assets acquired and liabilities assumed based on their estimated fair values as of the business combination date. In developing estimates of fair values for long-lived assets, including identifiable intangible assets, we utilize a variety of inputs including forecasted cash flows, discount rates, estimated replacement costs and depreciation and obsolescence factors. Determining the fair value for specifically identified intangible assets, such as contracts, involves judgment. We may refine our estimates and make adjustments to the assets acquired and liabilities assumed over a measurement period, not to exceed one year. Upon the conclusion of the measurement period or the final determination of the values of assets acquired and liabilities assumed, whichever comes first, any subsequent adjustments are charged to earnings. Subsequent actual results of the underlying business activity supporting the specifically identified intangible assets could change, requiring us to record impairment charges or accelerate the remaining useful life.

Contingent Liabilities

We are subject to lawsuits, investigations and other claims related to environmental, product and other matters, and are required to assess the likelihood of any adverse judgments or outcomes to these matters, as well as potential ranges of probable losses. We disclose contingent liabilities when there is a reasonable possibility that an ultimate loss may occur and we record contingent liabilities when it becomes probable that we will have to make payments and the amount of loss can be reasonably estimated.

Assessing probability of loss and estimating probable losses requires analysis of multiple factors, including, but not limited to, the following:

- historical experience;
- judgments about the potential actions of third-party claimants and courts; and
- recommendations of legal counsel.

Contingent liabilities are based on the best information available and actual losses in any future period are inherently uncertain. If estimated probable future losses or actual losses exceed our recorded liability for such claims, we would record additional charges. These exposures and proceedings can be significant and the ultimate negative outcomes could be material to our operating results or liquidity in any given quarter or year.

New Accounting Standards

See Note 1 to our consolidated financial statements included in Item 15 of this annual report on Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to risks associated with fluctuations in:

- foreign currency exchange rates;
- prices for the products we manufacture;
- fiber costs;
- credit risk; and
- interest rates.

For a discussion of our earnings sensitivities to foreign exchange rates, pulp and lumber prices and fiber costs, see Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Sensitivities” on page 51 hereof.

Foreign Currency Exchange Risk

We compete with producers from around the world, particularly Europe and North America, in our product lines. We sell our principal product, pulp, mainly in transactions denominated in dollars but sell certain other products including energy, chemicals and European lumber in local currencies, being euros and Canadian dollars. Changes in the relative strength or weakness of the dollar versus the euro and the Canadian dollar affect our operating costs and margins. A stronger dollar lowers our operating costs but can in turn increase the cost of pulp to our customers and thereby create downward pressure on prices. On the other hand, a weaker dollar tends to increase our operating costs but tends to support higher pulp prices.

We are particularly sensitive to changes in the value of the dollar versus the euro and Canadian dollar. We expect exchange rate fluctuations to continue to impact costs and revenues, but we cannot predict the magnitude or direction of this effect for any period, and there can be no assurance of any future effects.

Furthermore, certain of our assets and liabilities are denominated in euros and Canadian dollars. A depreciation of these currencies against the dollar will decrease the fair value of such financial instrument assets and an appreciation of these currencies against the dollar will increase the fair value of such financial instrument liabilities, thereby decreasing our fair value. An appreciation of these currencies against the dollar will increase the fair value of such financial instrument assets and a depreciation of these currencies against the dollar will decrease the fair value of financial instrument liabilities, thereby increasing our fair value. As a result, our earnings can be subject to the potentially significant effect of foreign currency translation gains or losses in respect of these euros and Canadian dollar items.

The following table provides information about our exposure to foreign currency exchange rate fluctuations for the carrying amount of financial instruments sensitive to such fluctuations as of December 31, 2021 and expected cash flows from these instruments:

As of December 31, 2021								
Carrying Value	Fair Value	Expected maturity date						
		2022	2023	2024	2025	2026	Thereafter	
(in thousands)								
Financial Instruments								
in euros								
Cash and cash equivalents	10,974	10,974	10,974	—	—	—	—	—
Accounts receivable, net	95,349	95,349	95,349	—	—	—	—	—
Accounts payable and other	149,089	149,089	149,089	—	—	—	—	—
Finance lease liabilities	49,395	49,395	5,756	5,990	5,449	5,228	5,382	21,590
Operating lease liabilities	1,243	1,243	774	382	59	13	3	12
in Canadian dollars								
Cash and cash equivalents	27,634	27,634	27,634	—	—	—	—	—
Accounts receivable, net	65,862	65,862	65,862	—	—	—	—	—
Accounts payable and other	84,871	84,871	84,871	—	—	—	—	—
Finance lease liabilities	10,265	10,265	2,181	1,835	1,850	1,384	862	2,153
Operating lease liabilities	2,510	2,510	892	633	312	209	209	255
Long-term debt	29,000	29,000	—	—	29,000	—	—	—
in Australian dollars								
Cash and cash equivalents	2,919	2,919	2,919	—	—	—	—	—
Accounts receivable, net	1,159	1,159	1,159	—	—	—	—	—
Accounts payable and other	1,547	1,547	1,547	—	—	—	—	—
Operating lease liabilities	8,786	8,786	2,245	1,951	1,382	695	478	2,035

Product Price Risk

Historically, economic and market shifts, fluctuations in capacity and changes in foreign currency exchange rates have created cyclical changes in prices, sales volume and margins for our principal products, being kraft pulp and lumber. In general, our products are commodities that are widely available from other producers and, because these products have few distinguishing qualities from producer to producer, competition is based primarily on price which is determined by supply relative to demand. The overall levels of demand for the products we manufacture, and consequently our sales and profitability, reflect fluctuations in end user demand.

Fiber Price Risk

Fiber in the form of wood chips, pulp logs and sawlogs represents our largest operating cost. Fiber is a market-priced commodity and, as such, is subject to fluctuations in prices based on supply and demand. Increases in the prices of fiber will tend to increase our operating costs and reduce our operating margins.

Interest Rate Risk

Fluctuations in interest rates may affect the fair value of fixed interest rate financial instruments which are sensitive to such fluctuations. A decrease in interest rates may increase the fair value of such fixed interest rate financial instrument assets and an increase in interest rates may decrease the fair value of such fixed interest rate financial instrument liabilities, thereby increasing our fair value. An increase in interest rates may decrease the fair value of such fixed interest rate financial instrument assets and a decrease in interest rates may increase the fair value of such fixed interest rate financial instrument liabilities, thereby decreasing our fair value. We may seek to manage our interest rate risks through the use of interest rate derivatives.

The following tables provide information about our exposure to interest rate fluctuations for the financial instruments sensitive to such fluctuations as of December 31, 2021 and expected cash flows from these instruments:

		As of December 31, 2021						
Total	Fair Value	Expected maturity date						
		2022	2023	2024	2025	2026	Thereafter	
(in thousands other than percentages)								
Liabilities								
Long-term debt:								
Fixed rate (\$) ⁽¹⁾⁽²⁾	1,175,000	1,197,449	—	—	—	—	300,000	875,000
Average interest rate	5.221%	5.221%					5.500%	5.125%
Variable rate (\$) ⁽³⁾	22,874	22,874	—	—	22,874	—	—	—
Average interest rate	2.450%	2.450%			2.450%			

(1) 2026 Senior Notes bearing interest at 5.50%, principal amount \$300.0 million.

(2) 2029 Senior Notes bearing interest at 5.125%, principal amount \$875.0 million

(3) The Peace River mill revolving credit facility bearing interest by way of: (i) Canadian denominated advances, which bear interest at a designated prime rate per annum; (ii) banker's acceptance equivalent loans, which bear interest at the applicable Canadian dollar banker's acceptance plus 1.25% to 1.50% per annum; (iii) dollar denominated base rate advances at the greater of the federal funds rate plus 0.50%, a designated LIBOR rate plus 1.00% and the bank's applicable reference rate for U.S. dollar loans; and (iv) dollar LIBOR advances, which bear interest at LIBOR plus 1.25% to 1.50% per annum.

Credit Risk

Our credit risk is primarily attributable to cash held in bank accounts and accounts receivable. We maintain cash balances in foreign financial institutions in excess of insured limits. We limit our credit exposure on cash held in bank accounts by periodically investing cash in excess of short-term operating requirements and debt obligations in low risk government bonds, or similar debt instruments. Our credit risk associated with the sale of pulp, lumber and other wood residuals is managed through setting credit limits, the purchase of credit insurance and for certain customers a letter of credit is received prior to shipping the product. We review new customers' credit history before granting credit and conducts regular reviews of existing customers' credit. Concentrations of credit risk on the sale of pulp, lumber and other wood residuals are with customers and agents based primarily in Germany, China and the U.S.

Risk Management and Derivatives

We seek to manage these risks through internal risk management policies as well as, from time to time, through the periodic use of derivatives. We may also from time to time use derivatives to reduce or limit our exposure to interest rate and currency risks. We may also use derivatives to reduce or limit our exposure to fluctuations in pulp and lumber prices. We may use derivatives to reduce our potential losses or to augment our potential gains, depending on our management's perception of future economic events and developments. These types of derivatives are generally highly speculative in nature. They are also very volatile as they are highly leveraged given that margin requirements are relatively low in proportion to notional amounts.

The principal derivatives we have periodically previously used are interest rate derivatives, pulp price derivatives, energy derivatives and foreign exchange derivatives.

Many of our strategies, including the use of derivatives, and the types of derivatives selected by us, are based on historical trading patterns and correlations and our management's expectations of future events. However, these strategies may not be effective in all market environments or against all types of risks. Unexpected market developments may affect our risk management strategies during this time, and unanticipated developments could impact our risk management strategies in the future. If any of the variety of instruments and strategies we utilize is not effective, we may incur significant losses.

As of each of December 31, 2021 and 2020, we had no outstanding derivatives.

However, in the future, we may from time to time use foreign exchange derivatives to convert some of our costs (including currency swaps relating to our long-term indebtedness) from euros or Canadian dollars to dollars as our principal product is priced in dollars. We have also converted some of our costs to dollars by issuing long-term dollar-denominated debt in the form of our Senior Notes. We may also from time to time use pulp or lumber derivatives to fix price realizations and interest rate derivatives to fix the rate of interest on indebtedness.

We record unrealized gains and losses on our outstanding derivatives when they are marked to market at the end of each reporting period and realized gains or losses on them when they are settled. We determine market valuations based primarily upon valuations provided by our counterparties.

We are exposed to modest credit related risks in the event of non-performance by counterparties to derivative contracts.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The consolidated financial statements required with respect to this Item 8, and as listed in Item 15 of this annual report on Form 10-K, are included in this annual report on Form 10-K commencing on page 80.

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

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this annual report on Form 10-K. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Based on such evaluation, our principal executive officer and principal financial officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by us in the reports that we file or submit under the Exchange Act.

It should be noted that any system of controls is based in part upon certain assumptions designed to obtain reasonable (and not absolute) assurance as to its effectiveness, and there can be no assurance that any design will succeed in achieving its stated goals.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Mercer's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

Our internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Mercer;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of 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.

Management assessed the effectiveness of Mercer's internal control over financial reporting as of December 31, 2021. In making this assessment, management used the criteria set forth in *Internal Control-Integrated Framework*, as issued in 2013 by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on our assessment and those criteria, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2021.

The effectiveness of our internal control over financial reporting as of December 31, 2021 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their attestation report which appears in this annual report on Form 10-K.

Changes in Internal Controls

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the period that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Executive Chairman, Chief Executive Officer and Directors

We are governed by a board of directors, referred to as the “Board”, each member of which is elected annually. The following sets forth information relating to our directors and executive officers.

Jimmy S.H. Lee, Executive Chairman and Director, age 64, has served as a director since May 1985, as Executive Chairman since July 2015 and as President and Chief Executive Officer from 1992 to 2015. Mr. Lee was a director of Golden Valley Mines Ltd. from 2016 to 2021. Previously, during the period when MFC Bancorp Ltd. was our affiliate, he served as a director from 1986 and President from 1988 to December 1996 when it was spun out. During Mr. Lee’s tenure with Mercer, we acquired the Rosenthal mill and converted it to the production of kraft pulp, constructed and commenced operations at the Stendal mill and acquired the Celgar mill, the Friesau mill and Peace River. He holds a Bachelor of Science degree in Chemical Engineering from the University of British Columbia, Canada. Mr. Lee possesses particular knowledge and experience in our business as a “founder” and as our Chief Executive Officer for over 25 years. He also has broad knowledge and experience in finance and banking, credit markets, international pulp markets, derivative risk management and capital allocation.

David M. Gandossi, Chief Executive Officer, President and Director, age 64, has served as a director and as Chief Executive Officer and President since July 2015 and served as Executive Vice-President, Chief Financial Officer and Secretary from August 2003 to July 2015. His previous roles included Chief Financial Officer and other senior executive positions with Formation Forest Products and Pacifica Papers Inc. Mr. Gandossi has previously chaired a number of industry working committees or groups including the BC Pulp and Paper Task Force, the BC Bio-economy Transformation Council and the FPI National Research Advisory Committee. He also participated in the Pulp and Paper Advisory Committee to the BC Competition Council and was a member of BC’s Working Roundtable on Forestry. He is currently a director of The Forest Products Association of Canada (FPAC) and The Council of Forest Industries (COFI). Mr. Gandossi holds a Bachelor of Commerce degree from the University of British Columbia and is a Fellow of the Chartered Professional Accountants of British Columbia (CPABC).

William D. McCartney, age 66, has served as a director since January 2003 and Lead Director since May 28, 2021. He has been the President and Chief Executive Officer of Pemcorp Management Inc., a corporate finance and management consulting firm, since its inception in 1990. From 1984 to 1990, he was a founding partner of Davidson & Company, Chartered Accountants, where he specialized in business advisory services. He has been involved with numerous capital restructuring and financing events involving several public companies and brings substantial knowledge relating to the financial accounting and auditing processes. He is a chartered professional accountant and has been a member of the Chartered Professional Accountants of Canada since 1980. He holds a Bachelor of Arts degree in Business Administration from Simon Fraser University. Mr. McCartney has extensive experience in accounting, financial and capital markets.

James Shepherd, age 69, has served as a director since June 2011. Mr. Shepherd was President and Chief Executive Officer of Canfor Corporation from 2004 to 2007 and Slocan Forest Products Ltd. from 1999 to 2004. He is also the former President of Crestbrook Forest Industries Ltd. and Finlay Forest Industries Limited and the former Chairman of the Forest Products Association of Canada. Mr. Shepherd has previously served as a director of Conifex Timber Inc., Canfor Corporation and Canfor Pulp Income Fund (now Canfor Pulp Products Inc.). Mr. Shepherd holds a degree in Mechanical Engineering from Queen’s University. Mr. Shepherd has also held several chief executive officer leadership and other senior positions in the forest industry.

R. Keith Purchase, age 77, has served as a director since June 2012. Mr. Purchase was Executive Vice-President and Chief Operating Officer for MacMillan Bloedel Ltd. from 1998 to 1999, President and Chief Executive Officer of TimberWest Forest Ltd. from 1994 to 1998 and Managing Director of Tasman Pulp and Paper from 1990 to 1994. Mr. Purchase was previously a director of Catalyst Paper Corporation and Chair of its board of directors. Mr. Purchase has held several very senior positions in significant companies involved in the forestry industry, including internationally.

Alan Wallace, age 62, has served as a director since June 2018. Mr. Wallace is currently the Chief Executive Officer of Peloton Advisors Inc., a corporate financial advisory firm. He is based in Vancouver, British Columbia. Mr. Wallace was the Vice Chairman, Investment Banking, CIBC World Markets Inc. from 1987 to 2013 where he was also the Co-Head of its Paper and Forest Products Group from 1995 to 2013. Mr. Wallace holds a Master of

Business Administration from the University of Chicago and a Bachelor of Applied Science (Mech) from the University of Toronto. Mr. Wallace has significant capital markets and mergers and acquisitions experience, including relating to debt and equity financings, corporate credit facilities and financial advisory assignments. He also has extensive forest products experience relating to financings and strategic transactions in the industry.

Linda Welty, age 66, has served as a director since June 2018. Ms. Welty is currently an independent director of Huber Engineered Materials, a global manufacturer of engineered specialty ingredients, a portfolio company of J.M. Huber Corporation and has served in that role since 2014. In 2020, Ms. Welty was also elected as a director of GCP Applied Technologies Inc. which is a global provider of construction products technologies. She is the President and Chief Executive Officer of Welty Strategic Consulting, LLC, an advisory firm focused on the development and execution of value creation strategies. She formerly served as chairman and a director of the Atlanta Chapter of the National Association of Corporate Directors, whose mission is to advance excellence in corporate governance. From 2010 to 2011 she served as a director and member of the special committee of Massey Energy Company. She served as an independent director of Vertellus Specialties, Inc. from 2007 to 2016. Ms. Welty was President and Chief Operating Officer of Flint Ink Corp., a global producer of printing inks for packaging and publication from 2003 to 2005. From 1998 to 2003, she served as President of the Specialty Group of H.B. Fuller Company, a global manufacturer of adhesives, sealants and coatings. She also served for over twenty years in global leadership roles for Hoechst AG and its former U.S. subsidiary, Celanese. She holds a Bachelor of Science in Chemical Engineering from the University of Kansas.

Rainer Rettig, age 62, has served as a director since February 2020. Mr. Rettig has served as head of the Circular Economy Program at Covestro AG (formerly known as Bayer Material Science, a subgroup of Bayer AG), one of the world's leading manufacturers of high-tech polymer materials. Mr. Rettig brings significant experience in sales, marketing and strategy development in the field of chemicals and plastics. He had several senior leadership roles in Germany, Japan, Hong Kong and China. He holds a Ph.D in polymer chemistry and polymer processing from the Technical University of Darmstadt in Germany. Mr. Rettig serves as a member of Mercer's Compensation Committee and the Environmental, Health and Safety Committee.

Alice Laberge, age 65, has served as a director since February 2021. Ms. Laberge is currently a director of Nutrien Ltd., a Canadian fertilizer company, and Russel Metals Inc., a metal distribution company, and has served in such roles since 2018 and 2007, respectively. Ms. Laberge is also a director of the BC Cancer Foundation and the Canadian Public Accountability Board. She most recently retired from the board of the Royal Bank of Canada in January 2021, on which she served for over 15 years. She formerly served as President and Chief Executive Officer of Fincentric Corporation, a global provider of software solutions to financial institutions, until 2005, and was previously Chief Financial Officer and Senior Vice-President, Finance for MacMillan Bloedel Ltd. Ms. Laberge is a Fellow of the Institute of Corporate Directors, and holds an MBA from the University of British Columbia and a Bachelor of Science from the University of Alberta. Ms. Laberge brings to the Board extensive senior executive experience relevant to our operations and an understanding of the forest products business. She also brings significant corporate governance and public company board experience from a wide variety of companies. Ms. Laberge also has extensive knowledge in financial and accounting matters.

Janine North, age 61, has served as a director since February 2021. Ms. North is currently a director of Conifex Timber Inc., a forest products company, and Imperial Metals Corporation, a Canadian mining company. She is also a director of the BC Ferry Services Corp. and the Fraser Basin Council. Ms. North retired from the Northern Development Initiative Trust in 2016 after serving 11 years as the founding Chief Executive Officer. Ms. North holds a Diploma in Management Studies from the Executive MBA Program at Simon Fraser University and a Bachelor of Science from the University of Alberta. Ms. North brings with her significant public company board experience, and in particular, with companies involved in the resource sector. In particular, she has extensive knowledge and experience relevant to the Company's operations in the forest products industry, including financings and strategic transactions in the industry, as well as corporate governance and talent management.

Other Executive Officers

David K. Ure, age 54, has been our Chief Financial Officer and Secretary from July 2015. He has also served as Vice President, Finance from 2013 to 2015 and was our Vice President, Controller from 2006 to 2010. Mr. Ure also served as Vice President, Finance of Sierra Wireless Inc. and as Controller at various companies including Catalyst Paper Corp., Pacifica Papers Inc. and Trojan Lithograph Corporation, as well as Chief Financial Officer and Secretary of Finlay Forest Industries Inc. Mr. Ure has over 15 years' experience in the forest products industry. He is currently a director of FPInnovations and has also served on various non-profit boards in the neuro developmental research, child disability and family support spaces and currently sits on the boards of Kids Brain Health Network Inc., Semiahmoo House Society and Peninsula Estates Housing Society. He holds a Bachelor of Commerce in Finance from the University of British Columbia, Canada and is a member of the Chartered Professional Accountants of Canada.

Adolf Koppensteiner, age 60, has been Chief Operating Officer since January 1, 2018 and has served as Managing Director, Operations and Technical of the Stendal mill since October 2013. Previously, he served as Mill Manager at the Rosenthal mill since joining Mercer in 2007. In the past, Mr. Koppensteiner was Managing Director of Kvaerner Central Europe, where he was responsible for sales and service for fifteen years. His whole career has been in the pulp and paper industry, where he has held a variety of positions building up significant experience in engineering, project work, and pulp mill start-ups, as well as the development and optimization of operating processes.

Leonhard Nossol, age 64, has served as our Group Controller for Europe since August 2005. He has also been Managing Director of Rosenthal since 1997 and the sole Managing Director of Rosenthal from 2005 to February 2020. Before joining Mercer, Mr. Nossol was Director, Finance and Administration for a German household appliance producer from 1992 to 1997. Prior to this, he was Operations Controller at Grundig AG (consumer electronics) in Nürnberg. Mr. Nossol has been a member of the board of directors of the Pulp and Paper Association of Germany since 2014 and was elected as the speaker of the forest and wood unit of such association from 2014 to 2020. He has been a member of the German Industry Federation's (BDI) Tax Committee since 2003. He was elected President of the German Wood Users Association (AGR) in 2013. He is also a member of the Scientific Advisory Board of Germany's Thünen Institute, the Federal research institute for forestry, fishery and agriculture. Mr. Nossol holds a Political Science degree from Freie Universität Berlin and a degree in Business Management from the University of Applied Sciences in Berlin.

Richard Short, age 54, has served as Vice President, Controller since February 2014 and as Controller from November 2010 to February 2014, prior to which he served as Controller and Director, Corporate Finance since joining Mercer in 2007. Previous roles include Controller, Financial Reporting from 2006 to 2007 and Director, Corporate Finance from 2004 to 2006 with Catalyst Paper Corporation and Assistant Controller at The Alderwoods Group Inc. Mr. Short holds a Bachelor of Arts in Psychology from the University of British Columbia and has been a member of the Chartered Professional Accountants of Canada since 1993.

Wolfram Ridder, age 60, has served as Vice President of Business Development since 2005, prior to which he served as Managing Director at Mercer's Stendal mill from 2001 to 2005. Mr. Ridder also served as Vice President Pulp Operations, Assistant to CEO from 1999 to 2005 and Assistant Managing Director at the Rosenthal mill from 1995 to 1998. Prior to joining Mercer, Mr. Ridder worked as a Scientist for pulping technology development at the German Federal Research Center for Wood Science and Technology in Hamburg from 1988 to 1995. Mr. Ridder has a Master of Business Administration and a Master of Wood Science and Forest Product Technology from Hamburg University.

Genevieve Stannus, age 51, has served as Vice President, Treasurer since February 2021 and as Treasurer from July 2005 to February 2021, prior to which she served as Senior Financial Analyst since joining Mercer in August 2003. Prior to her role at Mercer, Ms. Stannus held Senior Treasury Analyst positions with Catalyst Paper Corporation and Pacifica Papers Inc. Ms. Stannus has over twenty years of experience in the forest products industry. She is a member of the Chartered Professional Accountants of Canada.

Eric X. Heine, age 58, has served as Vice President, Sales, Marketing and Logistics for Asia and North America since June 2005. Mr. Heine was previously Vice President Pulp and International Paper Sales and Marketing for Domtar Inc. from 1999 to 2005. Mr. Heine has over twenty-five years of experience in the pulp and paper industry, including developing strategic sales channels and market partners to build corporate brands. He holds a Bachelor of Science in Forestry (Wood Science) from the University of Toronto, Canada.

Brian Merwin, age 48, has served as Vice President, Corporate Development, since February 2019 and was previously Vice President, Strategic Initiatives since February 2009. Mr. Merwin previously held roles within Mercer such as Director, Strategic and Business Initiatives, and Business Analyst. Mr. Merwin has a Master of Business Administration from the Richard Ivey School of Business in Ontario, Canada and a Bachelor of Commerce degree from the University of British Columbia, Canada. He has over 15 years of industry experience, including M&A, corporate development, strategy, capital projects, innovation and business integration.

We also have experienced mill managers at all of our mills who have operated through multiple business cycles in the pulp industry.

Code of Business Conduct and Ethics and Anti-Corruption Policy

The Board has adopted a Code of Business Conduct and Ethics that applies to our directors, employees and executive officers and an Anti-Corruption Policy. The code and the policy are available on our website at www.mercerint.com/our-company/governance/#openMercer. Copies of the code and the policy may also be obtained without charge upon request to Investor Relations, Mercer International Inc., Suite 1120, 700 West Pender Street, Vancouver, British Columbia, Canada V6C 1G8 (Telephone: (604) 684-1099).

The remaining information required by this Item 10 is incorporated herein by reference to the sections entitled “Proposal 1 - Election of Directors”, “Share Ownership of Certain Beneficial Owners”, “Corporate Governance and Board Matters” and “Corporate Governance and Board Matters – Delinquent Section 16(a) Insider Reports” of our proxy statement relating to our annual meeting to be held in 2022.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 is incorporated by reference from the proxy statement relating to our annual meeting to be held in 2022.

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

The information required by this Item 12 is incorporated by reference from the proxy statement relating to our annual meeting to be held in 2022.

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

The information required by this Item 13 is incorporated herein by reference to the section entitled “Corporate Governance and Board Matters – Review and Approval of Related Party Transactions” of our proxy statement relating to our annual meeting to be held in 2022.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this Item 14 is incorporated by reference from the section entitled “Independent Registered Public Accounting Firm – Fees of Independent Registered Public Accounting Firm” of our proxy statement relating to our annual meeting to be held in 2022.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) (1) Financial Statements

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(a)(2) Financial Statement Schedules

All schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

(a)(3) Exhibits

Exhibits that are not filed herewith have been previously filed with the SEC and are incorporated herein by reference.

- 3.1 Articles of Incorporation of Mercer International Inc., as amended. Incorporated by reference from Form 8-A filed March 2, 2006.
- 3.2* Bylaws of Mercer International Inc.
- 4.1 Indenture dated December 20, 2017 between Mercer International Inc. and Wells Fargo Bank, National Association, as trustee, relating to the 2026 Senior Notes. Incorporated by reference from Form 8-K filed December 20, 2017.
- 4.2 Description of Securities. Incorporated by reference from Form 10-K filed February 13, 2020.
- 4.3 Indenture dated January 26, 2021 between Mercer International Inc. and Wells Fargo Bank, National Association, as trustee, relating to the 2029 Senior Notes. Incorporated by reference from Form 8-K filed January 26, 2021.
- 10.1 Revolving Credit Facility Agreement dated December 19, 2018 among Zellstoff-und Papierfabrik Rosenthal GmbH, Mercer Timber Products GmbH, Zellstoff Stendal GmbH, Mercer Holz GmbH, Stendal Pulp Holding GmbH, D&Z Holding GmbH, Zellstoff Stendal Transport GmbH, Mercer Pulp Sales GmbH, UniCredit Bank AG, Commerzbank AG, Luxembourg Branch, Credit Suisse AG, London Branch, Landesbank Baden-Württemberg and Royal Bank of Canada. Incorporated by reference from Form 10-K filed February 14, 2019.
- 10.2* Revolving Credit Facility Agreement dated January 21, 2022 among Mercer Peace River Pulp Ltd., Mercer Celgar Limited Partnership and Mercer Forestry Services Ltd. et al. and Royal Bank of Canada, as Agent and the other Lenders thereto.
- 10.3 Form of Trustee's Indemnity Agreement between Mercer International Inc. and its Trustees. Incorporated by reference from Form 10-K filed March 31, 2003.
- 10.4† Mercer International Inc. 2010 Stock Incentive Plan, as amended. Incorporated by reference from Appendix A to Mercer International Inc.'s definitive proxy statement on Schedule 14A filed April 13, 2017.
- 10.5† Employment Agreement dated October 2, 2006 between Stendal Pulp Holding GmbH and Wolfram Ridder. Incorporated by reference from Form 8-K filed October 3, 2006.

- 10.6 Share Purchase Agreement by and among Marubeni Corporation, Nippon Paper Industries Co., Ltd. and Daishowa North America Corporation and Mercer International Inc. dated as of October 3, 2018. Incorporated by reference from Form 8-K filed October 9, 2018.
- 10.7† Employment Agreement between Mercer International Inc. and David Ure dated August 12, 2013. Incorporated by reference from Form 8-K filed on July 20, 2015.
- 10.8† Amendment to Employment Agreement between Mercer International Inc. and David Ure, dated July 17, 2015. Incorporated by reference from Form 8-K filed July 20, 2015.
- 10.9† Second Amended and Restated Employment Agreement between Mercer International Inc. and Jimmy S.H. Lee, dated for reference September 29, 2015. Incorporated by reference from Form 8-K filed September 29, 2015.
- 10.10† Amended and Restated Employment Agreement between Mercer International Inc. and David M. Gandossi, dated for reference September 29, 2015. Incorporated by reference from Form 8-K filed September 29, 2015.
- 10.11† Chief Operating Officer and Managing Director Service Agreement, as amended, dated June 1, 2019 between Stendal Pulp Holding GmbH and Adolf Koppensteiner. Incorporated by reference from Form 10-K filed February 13, 2020.
- 21.1* List of Subsidiaries of Registrant.
- 23.1* Consent of PricewaterhouseCoopers LLP.
- 31.1* Section 302 Certificate of Chief Executive Officer.
- 31.2* Section 302 Certificate of Chief Financial Officer.
- 32.1* Section 906 Certificate of Chief Executive Officer.
- 32.2* Section 906 Certificate of Chief Financial Officer.
- 101* The following financial statements from the Company's annual report on Form 10-K for the year ended December 31, 2021, filed with the SEC on February 17, 2022, formatted in inline Extensible Business Reporting Language (iXBRL): (i) Consolidated Statements of Operations; (ii) Consolidated Statements of Comprehensive Income; (iii) Consolidated Balance Sheets; (iv) Consolidated Statements of Changes in Shareholders' Equity; (v) Consolidated Statements of Cash Flows; and (vi) Notes to the Consolidated Financial Statements.
- 104* The cover page from the Company's Annual Report on Form 10-K for the year ended December 31, 2021, has been formatted in Inline XBRL.

* Filed herewith.

† Denotes management contract or compensatory plan or arrangement.

ITEM 16. FORM 10-K SUMMARY

None.

Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors of Mercer International Inc.

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Mercer International Inc. and its subsidiaries (together, the Company) as of December 31, 2021 and 2020, and the related consolidated statements of operations, comprehensive income, changes in shareholders' equity and cash flows for each of the three years in the period ended December 31, 2021, including the related notes (collectively referred to as the consolidated financial statements). We also have audited the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework* (2013) issued by the COSO.

Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A of the 2021 Annual Report on Form 10-K. Our responsibility is to express opinions on the Company's consolidated financial statements and on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated 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 consolidated 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 consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

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 (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) 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 (iii) 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.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters 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 accounts or disclosures to which it relates.

Pulp and lumber revenue recognition

As described in Notes 1 and 18 to the consolidated financial statements, management recognizes pulp and lumber revenue when obligations under the terms of a contract with its customer are satisfied; generally, this occurs with the transfer of control of the products sold. Transfer of control to the customer is based on the standardized shipping terms in the contract. The standardized shipping terms are such that (i) for European sales sent by truck or train from the mills directly to the customer, control transfers once the truck or train leaves the mill; (ii) for orders sent by ocean freighter, control transfers at the time the product passes the ship's rail; and (iii) for North American sales shipped by truck or train, control transfers once the truck or train has arrived at the customer's specified location. The transaction price is included in the sales contract and is net of customer discounts, rebates and other selling concessions. Pulp revenue amounted to \$1,389 million and lumber revenue amounted to \$296 million from external customers for the year ended December 31, 2021.

The principal considerations for our determination that performing procedures relating to pulp and lumber revenue recognition is a critical audit matter are the magnitude of the balance and the significant audit effort in performing procedures and evaluating audit evidence related to revenue recognition for pulp and lumber sales.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the pulp and lumber revenue recognition process, including controls over accuracy, occurrence and cut-off of revenue recognized. These procedures also included, among others, (i) evaluating the accuracy and occurrence of pulp and lumber revenue for a sample of pulp and lumber revenue transactions by obtaining and inspecting source documents, including invoices, sales contracts, shipping and/or delivery documents and cash receipts, as applicable and (ii) testing the cutoff for a sample of pulp and lumber revenue transactions by comparing the date on which revenue was recognized to the actual shipment or delivery date as relevant based on the applicable shipping terms.

/s/PricewaterhouseCoopers LLP

Chartered Professional Accountants

Vancouver, Canada
February 17, 2022

We have served as the Company's auditor since 2007.

MERCER INTERNATIONAL INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands of U.S. dollars, except per share data)

	For the Year Ended December 31,		
	2021	2020	2019
Revenues	\$ 1,803,255	\$ 1,423,140	\$ 1,624,411
Costs and expenses			
Cost of sales, excluding depreciation and amortization	1,245,622	1,163,727	1,340,380
Cost of sales depreciation and amortization	132,117	128,817	125,801
Selling, general and administrative expenses	78,933	66,867	74,227
Operating income	346,583	63,729	84,003
Other income (expenses)			
Interest expense	(70,047)	(80,746)	(75,750)
Loss on early extinguishment of debt	(30,368)	—	(4,750)
Other income	14,399	5,878	6,084
Total other expenses, net	(86,016)	(74,868)	(74,416)
Income (loss) before income taxes	260,567	(11,139)	9,587
Income tax provision	(89,579)	(6,096)	(19,226)
Net income (loss)	<u>\$ 170,988</u>	<u>\$ (17,235)</u>	<u>\$ (9,639)</u>
Net income (loss) per common share			
Basic	\$ 2.59	\$ (0.26)	\$ (0.15)
Diluted	\$ 2.58	\$ (0.26)	\$ (0.15)
Dividends declared per common share	\$ 0.2600	\$ 0.3325	\$ 0.5375

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands of U.S. dollars)

	For the Year Ended December 31,		
	2021	2020	2019
Net income (loss)	\$ 170,988	\$ (17,235)	\$ (9,639)
Other comprehensive income (loss)			
Gain (loss) related to defined benefit pension plans	19,206	(8,530)	(1,582)
Income tax recovery (provision)	(4,485)	2,384	901
Gain (loss) related to defined benefit pension plans, net of tax	14,721	(6,146)	(681)
Foreign currency translation adjustment	(77,939)	95,131	12,291
Other comprehensive income (loss), net of taxes	(63,218)	88,985	11,610
Total comprehensive income	<u>\$ 107,770</u>	<u>\$ 71,750</u>	<u>\$ 1,971</u>

See accompanying Notes to the Consolidated Financial Statements.

MERCER INTERNATIONAL INC.
CONSOLIDATED BALANCE SHEETS
(In thousands of U.S. dollars, except share and per share data)

	December 31,	
	2021	2020
ASSETS		
Current assets		
Cash and cash equivalents	\$ 345,610	\$ 361,098
Accounts receivable, net	345,345	227,055
Inventories	356,731	271,696
Prepaid expenses and other	16,619	15,003
Total current assets	1,064,305	874,852
Property, plant and equipment, net	1,135,631	1,109,740
Investment in joint ventures	49,651	46,429
Amortizable intangible assets, net	47,902	51,571
Operating lease right-of-use assets	9,712	13,251
Pension asset	4,136	—
Other long-term assets	38,718	31,928
Deferred income tax	1,177	1,355
Total assets	<u>\$ 2,351,232</u>	<u>\$ 2,129,126</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities		
Accounts payable and other	\$ 282,307	\$ 210,994
Pension and other post-retirement benefit obligations	817	802
Total current liabilities	283,124	211,796
Long-term debt	1,237,545	1,186,623
Pension and other post-retirement benefit obligations	21,252	31,810
Operating lease liabilities	6,574	9,933
Other long-term liabilities	13,590	10,909
Deferred income tax	95,123	77,028
Total liabilities	<u>1,657,208</u>	<u>1,528,099</u>
Shareholders' equity		
Common shares \$1 par value; 200,000,000 authorized; 66,037,000 issued and outstanding (2020 – 65,868,000)	65,988	65,800
Additional paid-in capital	347,902	345,696
Retained earnings	370,927	217,106
Accumulated other comprehensive loss	(90,793)	(27,575)
Total shareholders' equity	<u>694,024</u>	<u>601,027</u>
Total liabilities and shareholders' equity	<u>\$ 2,351,232</u>	<u>\$ 2,129,126</u>

Commitments and contingencies (Note 21)

Subsequent events (Note 11(c), 14)

See accompanying Notes to the Consolidated Financial Statements.

MERCER INTERNATIONAL INC.
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(In thousands of U.S. dollars)

	<u>Common shares</u>				Accumulated Other Comprehensive Loss	Total Shareholders' Equity
	Number (thousands of shares)	Amount, at Par Value	Additional Paid-in Capital	Retained Earnings		
Balance as of December 31, 2018	65,202	\$ 65,171	\$ 342,438	\$ 301,990	\$ (128,170)	\$ 581,429
Shares issued on grants of restricted shares	31	31	(31)	—	—	—
Shares issued on grants of performance share units	449	449	(449)	—	—	—
Stock compensation expense	—	—	3,036	—	—	3,036
Net loss	—	—	—	(9,639)	—	(9,639)
Dividends declared	—	—	—	(35,279)	—	(35,279)
Repurchase of common shares	(53)	(53)	—	(701)	—	(754)
Other comprehensive income	—	—	—	—	11,610	11,610
Balance as of December 31, 2019	65,629	65,598	344,994	256,371	(116,560)	550,403
Shares issued on grants of restricted shares	68	31	(31)	—	—	—
Shares issued on grants of performance share units	195	195	(195)	—	—	—
Stock compensation expense	—	—	928	—	—	928
Net loss	—	—	—	(17,235)	—	(17,235)
Dividends declared	—	—	—	(21,892)	—	(21,892)
Repurchase of common shares	(24)	(24)	—	(138)	—	(162)
Other comprehensive income	—	—	—	—	88,985	88,985
Balance as of December 31, 2020	65,868	65,800	345,696	217,106	(27,575)	601,027
Shares issued on grants of restricted shares	49	68	(68)	—	—	—
Shares issued on grants of performance share units	120	120	(120)	—	—	—
Stock compensation expense	—	—	2,394	—	—	2,394
Net income	—	—	—	170,988	—	170,988
Dividends declared	—	—	—	(17,167)	—	(17,167)
Other comprehensive loss	—	—	—	—	(63,218)	(63,218)
Balance as of December 31, 2021	<u>66,037</u>	<u>\$ 65,988</u>	<u>\$ 347,902</u>	<u>\$ 370,927</u>	<u>\$ (90,793)</u>	<u>\$ 694,024</u>

See accompanying Notes to the Consolidated Financial Statements.

MERCER INTERNATIONAL INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands of U.S. dollars)

	For the Year Ended December 31,		
	2021	2020	2019
Cash flows from (used in) operating activities			
Net income (loss)	\$ 170,988	\$ (17,235)	\$ (9,639)
Adjustments to reconcile net income (loss) to cash flows from operating activities			
Depreciation and amortization	132,199	128,921	126,394
Deferred income tax provision (recovery)	18,791	(15,249)	(7,873)
Inventory impairment	—	25,998	9,200
Loss on early extinguishment of debt	30,368	—	4,750
Defined benefit pension plans and other post-retirement benefit plan expense	2,831	3,053	3,449
Stock compensation expense	2,394	928	3,036
Gain on sale of investments	—	(17,540)	—
Foreign exchange transaction losses (gains)	(16,597)	13,272	7,116
Other	384	543	5,834
Defined benefit pension plans and other post-retirement benefit plan contributions	(4,258)	(4,164)	(4,467)
Changes in working capital			
Accounts receivable	(121,579)	(6,269)	41,369
Inventories	(96,442)	(11,430)	24,683
Accounts payable and accrued expenses	75,589	(53,744)	45,256
Other	(12,454)	(5,519)	(4,825)
Net cash from (used in) operating activities	<u>182,214</u>	<u>41,565</u>	<u>244,283</u>
Cash flows from (used in) investing activities			
Purchase of property, plant and equipment	(159,440)	(78,518)	(132,034)
Acquisitions (Note 2)	(51,258)	—	(6,380)
Insurance proceeds	21,540	—	—
Purchase of amortizable intangible assets	(1,385)	(647)	(623)
Purchase of investments	—	(9,370)	—
Proceeds from sale of investments	—	26,910	—
Other	3,416	1,798	(321)
Net cash from (used in) investing activities	<u>(187,127)</u>	<u>(59,827)</u>	<u>(139,358)</u>
Cash flows from (used in) financing activities			
Redemption of senior notes	(824,557)	—	(103,875)
Proceeds from issuance of senior notes	875,000	—	205,500
Proceeds from (repayment of) revolving credit facilities, net	(33,396)	52,651	(58,404)
Dividend payments	(17,167)	(21,892)	(35,279)
Payment of debt issuance costs	(14,483)	—	(4,213)
Proceeds from government grants	9,333	362	6,467
Repurchase of common shares	—	(162)	(754)
Other	(4,234)	(4,642)	(3,344)
Net cash from (used in) financing activities	<u>(9,504)</u>	<u>26,317</u>	<u>6,098</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(1,071)</u>	<u>1,958</u>	<u>(429)</u>
Net increase (decrease) in cash and cash equivalents	(15,488)	10,013	110,594
Cash and cash equivalents, beginning of year	361,098	351,085	240,491
Cash and cash equivalents, end of year	<u>\$ 345,610</u>	<u>\$ 361,098</u>	<u>\$ 351,085</u>
Supplemental cash flow disclosure:			
Cash paid for interest	\$ 73,088	\$ 78,151	\$ 59,707
Cash paid for income taxes	\$ 22,950	\$ 19,331	\$ 52,877
Supplemental schedule of non-cash investing and financing activities:			
Leased production and other equipment	\$ 29,344	\$ 13,121	\$ 8,739

See accompanying Notes to the Consolidated Financial Statements.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 1. The Company and Summary of Significant Accounting Policies

Background

Mercer International Inc. (“Mercer Inc.”) is a Washington corporation and its shares of common stock are quoted and listed for trading on the NASDAQ Global Select Market.

Mercer Inc. owns and operates four pulp manufacturing facilities, two in Canada and two in Germany, has a 50% joint venture interest in a northern bleached softwood kraft (“NBSK”) pulp mill in Canada and owns and operates one sawmill in Germany.

In August 2021, Mercer Inc. acquired a cross-laminated timber (“CLT”) facility located in Spokane Washington.

In these consolidated financial statements, unless otherwise indicated, all amounts are expressed in U.S. dollars (“\$”). The symbol “€” refers to euros and the symbol “C\$” refers to Canadian dollars.

Basis of Presentation

These consolidated financial statements contained herein include the accounts of Mercer Inc. and all of its subsidiaries (collectively, the “Company”). The Company’s consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. (“GAAP”). All significant intercompany balances and transactions have been eliminated upon consolidation.

Mercer Inc. owns 100% of its subsidiaries with the exception of the 50% joint venture interest in the Cariboo Pulp & Paper Company (“CPP”) with West Fraser Mills Ltd., which is accounted for using the equity method.

Use of Estimates

Preparation of financial statements and related disclosures in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant management judgment is required in determining the accounting for, among other things, pension and other post-retirement benefit obligations, deferred income taxes (valuation allowance and permanent reinvestment), depreciation and amortization, future cash flows associated with impairment testing for long-lived assets, the allocation of the purchase price in a business combination to the assets acquired and liabilities assumed, legal liabilities and contingencies. Actual results could differ materially from these estimates, and changes in these estimates are recorded when known.

Significant Accounting Policies

Cash and Cash Equivalents

Cash and cash equivalents include cash held in bank accounts and highly liquid investments with original maturities of three months or less.

Investments

Investments in equity securities in which the Company does not exercise significant influence are measured at fair value through earnings. These securities are reported at fair values, based upon quoted market prices, with the unrealized and realized gains or losses included in “Other income” in the Consolidated Statements of Operations.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 1. The Company and Summary of Significant Accounting Policies (continued)

Accounts Receivable

Accounts receivable are recorded at cost, net of an allowance for doubtful accounts. The Company reviews the collectability of accounts receivable at each reporting date and maintains an allowance for doubtful accounts at an amount estimated to cover the expected losses on uninsured accounts receivable. Any amounts that are determined to be uncollectible and uninsured are offset against the allowance. The allowance is based on the Company's evaluation of numerous factors, including the payment history, financial position of the debtors and current market conditions.

The Company's credit risk associated with its sales is currently managed through the purchase of credit insurance, obtaining letters of credit and setting credit limits prior to the sale. The Company reviews new customers' credit history before granting credit and conducts regular reviews of existing customers' credit.

Inventories

Inventories of raw materials, finished goods and work in progress are valued at the lower of cost, using the weighted-average cost method, or net realizable value and are released from inventory on the same basis. Spare parts and other materials are valued at the lower of cost and replacement cost. Cost includes labor, materials and production overhead and is determined by using the weighted average cost method. Raw materials inventories include pulp logs, sawlogs and wood chips. These inventories are located both at the mills and at various offsite locations. In accordance with industry practice, physical inventory counts utilize standardized techniques to estimate quantities of pulp logs, sawlogs and wood chip inventory volumes. These techniques historically have provided reasonable estimates of such inventories.

Property, Plant and Equipment

Property, plant and equipment is stated at cost less accumulated depreciation. Depreciation of buildings and production equipment is based on the estimated useful lives of the assets and is computed using the straight-line method. The amortization periods have been provided in the Property, Plant and Equipment, Net Note.

The costs of major rebuilds, replacements and those expenditures that substantially increase the useful lives of existing property, plant and equipment are capitalized. The Company capitalizes interest on borrowings during the construction period of major capital projects as part of the related asset. The cost of repairs and maintenance as well as planned shutdown maintenance performed on manufacturing facilities, composed of labor, materials and other incremental costs, is recognized as an expense in the Consolidated Statements of Operations as incurred.

The Company provides for asset retirement obligations when there is a legislated or contractual basis for those obligations. An obligation is recorded as a liability at fair value in the period in which the Company incurs a legal obligation associated with the retirement of an asset. The associated costs are capitalized as part of the carrying value of the related asset and amortized over its remaining useful life. The liability is accreted using a credit adjusted risk-free interest rate.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 1. The Company and Summary of Significant Accounting Policies (continued)

Impairment of Long-Lived Assets

Long-lived assets include property, plant and equipment, net and amortizable intangible assets, net. The unit of accounting for impairment testing for long-lived assets is its "Asset Group", which includes property, plant and equipment, net, amortizable intangible assets, net and liabilities directly related to those assets. The Company evaluates an Asset Group for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable, such as continuing operating losses. When an indicator that the carrying value of an Asset Group may not be recoverable is triggered, the Company compares the carrying value of the Asset Group to its forecasted undiscounted future cash flows. If the carrying value of the Asset Group is greater than the undiscounted future cash flows an impairment charge is recorded based on the excess of the Asset Group's carrying value over its fair value.

Leases

The Company determines if a contract contains a lease at inception. Leases are classified as either operating or finance leases. Leases with a term of less than 12 months are not recorded in the Consolidated Balance Sheets, and are expensed over the term of the lease in the Consolidated Statements of Operations.

Operating and finance lease right-of-use assets and the related liabilities are recognized at the lease commencement date based on the present value of the future lease payments over the term of the lease. Renewal and termination options are included in the lease terms when it is reasonably certain that they will be exercised. In determining the present value of lease payments, the Company uses the implicit rate when readily determinable, or the Company's estimated incremental borrowing rate, which is based on information available at the lease commencement date. Lease payments are expensed in the Consolidated Statements of Operations on a straight-line basis over the term of the lease.

Government Grants

The Company records grants from federal, provincial and state governments when the conditions of their receipt are complied with and there is reasonable assurance that the grants will be received. Grants related to assets are government grants whose primary condition is that the company qualifying for them should purchase, construct or otherwise acquire long-term assets. Secondary conditions may also be attached, including restricting the type or location of the assets and/or other conditions that must be met. Grants related to assets are deducted from the cost of the assets in the Consolidated Balance Sheets and amortized over the same period as the related asset in "Cost of sales depreciation and amortization" in the Consolidated Statements of Operations. Grants related to income are government grants which are either unconditional, related to reduced environmental emissions or related to the Company's normal business operations, and are reported as a reduction of related expenses in the Consolidated Statements of Operations.

The Company is required to pay certain fees based on wastewater emissions at its German mills. Accrued fees can be reduced upon the mills' demonstration of reduced wastewater emissions. The fees are expensed as incurred and the fee reduction is recognized once the Company has reasonable assurance that the German regulators will accept the reduced level of wastewater emissions. Both the fees and the fee reduction are recorded to "Cost of sales, excluding depreciation and amortization" in the Consolidated Statements of Operations. There may be a significant period of time between recognition of the wastewater expense and recognition of the wastewater fee reduction.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
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Note 1. The Company and Summary of Significant Accounting Policies (continued)

Amortizable Intangible Assets

Amortizable intangible assets are stated at cost less accumulated amortization. Amortization is provided on a straight-line basis over the estimated useful lives of the assets. The amortization periods have been provided in the Amortizable Intangible Assets, Net Note.

Sandalwood Tree Plantations

Sandalwood tree plantations are measured at the lower of cost, which includes both the direct and indirect costs of growing and harvesting the sandalwood trees, and net realizable value. The cost of the sandalwood plantations is recorded in "Other long-term assets" and the cost of the harvested sandalwood is recorded in "Inventories" in the Consolidated Balance Sheets.

The sandalwood tree plantations are carried at historical cost and are evaluated for impairment whenever events or changes in circumstances indicate the carrying value may be higher than the net realizable value, such as a sustained drop in sales price.

Pension Plans

The Company maintains defined benefit pension plans for its Peace River employees and its salaried employees at the Celgar mill which are funded and non-contributory. The cost of the benefits earned by the employees is determined using the projected unit credit benefit method prorated on years of service. The pension expense reflects the current service cost, the interest on the unfunded liability and the amortization over the estimated average remaining service life of the employees of: (i) prior service costs, and (ii) the net actuarial gain or loss that exceeds 10% of the greater of the accrued benefit obligation and the fair value of plan assets as of the beginning of the year. The Company recognizes the net funded status of the plan.

The Company also has a multiemployer pension plan and defined contribution plans for which contributions are expensed in the Consolidated Statements of Operations.

Foreign Operations and Currency Translation

The Company determines its foreign subsidiaries' functional currency by reviewing the currency of the primary economic environment in which the foreign subsidiaries operate, which is normally the currency of the environment in which the foreign subsidiaries generate and expend cash. The Company translates assets and liabilities of its non-U.S. dollar functional currency subsidiaries into U.S. dollars using the rate in effect at the balance sheet date and revenues and expenses are translated at the average rate of exchange throughout the period. Foreign currency translation gains and losses are recognized within "Accumulated other comprehensive loss" in the Consolidated Balance Sheets.

Transactions in foreign currencies are translated to the respective functional currencies of each operation using exchange rates at the dates of the transactions. Monetary assets and liabilities denominated in foreign currencies at the reporting date are translated to the functional currency using the exchange rate at that date. Non-monetary assets and liabilities denominated in foreign currencies are translated to the functional currency using historical exchange rates. Gains and losses resulting from foreign currency transactions related to operating activities are included in "Cost of sales, excluding depreciation and amortization" while those related to non-operating activities are included in "Other income" in the Consolidated Statements of Operations.

Where intercompany loans are of a long-term investment nature, exchange rate changes are included as a foreign currency translation adjustment within "Accumulated other comprehensive loss" in the Consolidated Balance Sheets.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 1. The Company and Summary of Significant Accounting Policies (continued)

Revenue Recognition

The Company recognizes revenue when obligations under the terms of a contract with its customer are satisfied; generally this occurs with the transfer of control of the products sold. Transfer of control to the customer is based on the standardized shipping terms in the contract as this determines when the Company has the right to payment, the customer has legal title to the asset and the customer has the risks of ownership. Payment is due, and a receivable is recognized after control has transferred to the customer and revenue is recognized. Payment terms are defined in the contract as typically due within three months after control has transferred to the customer, and as such, the contracts do not have a significant financing component.

The Company has elected to exclude value added, sales and other taxes it collects concurrent with revenue-producing activities from revenues.

The Company may arrange shipping and handling activities as part of the sale of its products. The Company has elected to account for shipping and handling activities that occur after the customer has obtained control of the product as a fulfillment cost rather than as an additional promised service.

The following is a description of the principal activities from which the Company generates its revenues. For a breakdown of revenues by product and geographic location see the Segment Information Note.

Pulp and Lumber Revenues

For European sales sent by truck or train from the mills directly to the customer, the contracted sales terms are such that control transfers once the truck or train leaves the mill. For orders sent by ocean freighter, the contract terms state that control transfers at the time the product passes the ship's rail. For North American sales shipped by truck or train, the contracts state that control transfers once the truck or train has arrived at the customer's specified location.

The transaction price is included in the sales contract and is net of customer discounts, rebates and other selling concessions.

The Company's pulp sales are to tissue and paper producers and the Company's lumber sales are to manufacturers and retailers. The Company's sales in Europe and North America are direct to the customer. The Company's pulp sales to overseas customers are primarily through third party sales agents and the Company's lumber sales to overseas customers are either direct to the customer or through third party sales agents. The Company is the principal in all of the arrangements with third party sales agents.

By-Product Revenues

Energy sales are to utility companies in Canada and Germany. Sales of energy are recognized as the electricity is consumed by the customer and is based on contractual usage rates and meter readings that measure electricity consumption.

Chemicals and wood residuals from the German mills are sold into the European market direct to the customer and have shipping terms where control transfers once the chemicals or wood residuals are loaded onto the truck at the mill.

Shipping and Handling Costs

Amounts charged to customers for shipping and handling costs are recognized in "Revenues" in the Consolidated Statements of Operations. Shipping and handling costs incurred by the Company are included in "Cost of sales, excluding depreciation and amortization" in the Consolidated Statements of Operations at the time the related revenue is recognized.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
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Note 1. The Company and Summary of Significant Accounting Policies (continued)

Insurance Claims

The Company records business interruption insurance proceeds once the insurance provider acknowledges that the claim is covered and agrees in writing to the amount to be paid for the claim. The Company reports business interruption insurance proceeds in “Cost of sales, excluding depreciation and amortization” in the Consolidated Statements of Operations.

The Company records insurance proceeds related to property up to the amount of the related impairment when it is probable they will be received. Proceeds in excess of the impairment are recorded once the insurance provider acknowledges that the claim is covered and agrees in writing to the amount to be paid for the claim. The Company reports property insurance proceeds in the same line item in which the related impairment was recognized in the Consolidated Statements of Operations.

Stock-Based Compensation

The Company recognizes stock-based compensation expense over an award’s requisite service period based on the award’s fair value in “Selling, general, and administrative expenses” in the Consolidated Statements of Operations. The Company issues new shares upon the exercise of stock-based compensation awards.

For performance share units (“PSUs”) which have the same grant and service inception date, the fair value is based upon the targeted number of shares to be awarded and the quoted market price of the Company’s shares at that date. For PSUs where the service inception date precedes the grant date, the fair value is based upon the targeted number of shares awarded and the quoted price of the Company’s shares at each reporting date up to the grant date. The target number of shares is determined using management’s best estimate. The final determination of the number of shares to be granted is made by the Company’s board of directors. The Company estimates forfeitures of PSUs based on management’s expectations and recognizes compensation cost only for those awards expected to vest. Estimated forfeitures are adjusted to actual experience at each balance sheet date.

The fair value of restricted shares is determined based upon the number of shares granted and the quoted price of the Company’s shares on the date of grant.

Deferred Income Taxes

Deferred income taxes are recognized using the asset and liability method, whereby deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis, and operating loss and tax credit carryforwards. Valuation allowances are provided if, after considering both positive and negative available evidence, it is more likely than not that some or all of the net deferred tax assets will not be realized.

Deferred income taxes are determined separately for each tax-paying component of the Company. For each tax-paying component, all deferred tax liabilities and assets are offset and presented as a single net amount.

Derivative Financial Instruments

The Company occasionally enters into derivative financial instruments to manage certain market risks. These derivative instruments are not designated as hedging instruments and accordingly, are recorded at fair value in the Consolidated Balance Sheets with the changes in fair value recognized in “Other income” in the Consolidated Statements of Operations. Periodically, the Company enters into derivative contracts to supply materials for its own use and as such are exempt from mark-to-market accounting.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 1. The Company and Summary of Significant Accounting Policies (continued)

Fair Value Measurements

The fair value methodologies and, as a result, the fair value of the Company's financial instruments are determined based on the fair value hierarchy provided in the Fair Value Measurements and Disclosures topic of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification, and are as follows:

Level 1 – Valuations based on quoted prices in active markets for identical assets and liabilities.

Level 2 – Valuations based on observable inputs in active markets for similar assets and liabilities, other than Level 1 prices, such as quoted commodity prices or interest or currency exchange rates.

Level 3 – Valuations based on significant unobservable inputs that are supported by little or no market activity, such as discounted cash flow methodologies based on internal cash flow forecasts.

The financial instrument's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

Net Income (Loss) Per Common Share

Basic net income (loss) per common share is computed by dividing net income (loss) by the weighted average number of common shares outstanding in the period. Diluted net income (loss) per common share is calculated to give effect to all potentially dilutive common shares outstanding by applying the "Treasury Stock" and "If-Converted" methods. Instruments that could have a potentially dilutive effect on the Company's weighted average shares outstanding include all or a portion of outstanding stock options, restricted shares, restricted share units, performance shares and PSUs.

Business Combinations

The Company uses the acquisition method in accounting for a business combination that meets the definition of a business. Under this approach, identifiable assets acquired and liabilities assumed are recorded at their respective fair market values at the date of acquisition. In developing estimates of fair market values for long-lived assets, including identifiable intangible assets, the Company utilizes a variety of inputs including forecasted cash flows, discount rates, estimated replacement costs and depreciation and obsolescence factors. Valuations are performed by management or independent valuation specialists under management's supervision, where appropriate. Acquisition costs, as well as costs to integrate acquired companies, are expensed as incurred in the Consolidated Statements of Operations.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 1. The Company and Summary of Significant Accounting Policies (continued)

Impact of the COVID-19 Pandemic

The Company is subject to risks and uncertainties as a result of the COVID-19 pandemic. During the pandemic, there have been several “waves” or periods during which there has been a significant widespread increase in reported infections and the emergence and rapid spread of new variants of the COVID-19 virus. In response to such waves, various countries have from time to time re-imposed various restrictions on social, business, travel and other activities. Such economic disruption could have a material adverse effect on the Company’s business.

As of the date of issuance of these consolidated financial statements, the Company has not had significant downtime or closures at its mills or disruptions to raw material supplies or access to logistics networks due to the COVID-19 pandemic, but the extent to which the COVID-19 pandemic may materially impact the Company's future financial condition, liquidity, or results of operations remains uncertain.

The Company’s future results of operations and liquidity, however, could be adversely impacted by economic factors arising from the pandemic that affect our business and customers. For instance, we may experience delays in payments of outstanding receivable amounts beyond normal payment terms, supply chain disruptions and uncertain demand, and the impact of any initiatives or programs that the Company may undertake to address financial and operational challenges faced by its customers.

New Accounting Pronouncements

Accounting Pronouncements Adopted

Government Assistance - Disclosures by Business Entities about Government Assistance

In November 2021, the FASB issued Accounting Standards Update (“ASU”) 2021-10 Government Assistance (Topic 832) - Disclosures by Business Entities about Government Assistance. The amendments in this update require disclosures about transactions with a government that have been accounted for by analogizing to a grant or contribution accounting model to increase transparency about (1) the nature of the transactions, (2) the accounting for the transactions, (3) the line items affected by the transactions in an entity’s financial statements, and (4) the significant terms and conditions of the transactions. This update is effective for annual financial statements issued for fiscal years beginning after December 15, 2021, with early adoption permitted. The disclosure required by the update has been included in the Government Grants accounting policy, the Property, Plant and Equipment, Net Note and the Accounts Payable and Other Note.

Business Combinations - Accounting for Contract Assets and Contract Liabilities from Contracts with Customers

In October 2021, the FASB issued ASU 2021-08 Business Combinations (Topic 805) - Accounting for Contract Assets and Contract Liabilities from Contracts with Customers, which address diversity and inconsistency related to the recognition and measurement of contract assets and contract liabilities acquired in a business combination. The amendments in this update require that an acquirer recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606, Revenue from Contracts with Customers. This update is effective for financial statements issued for fiscal years beginning after December 15, 2022, with early adoption permitted. The Company will apply the amendments prospectively to business combinations occurring on or after January 1, 2022.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
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Note 2. Acquisitions

2021 Asset Acquisition

Mercer Mass Timber

On August 5, 2021, the Company acquired a CLT facility in Spokane Washington for \$51,258 cash, including \$1,258 of acquisition costs. The acquired facility is called Mercer Mass Timber LLC (“MMT”).

The transaction is accounted for as an acquisition of a group of assets as management determined it does not qualify as an acquisition of a business under GAAP. Substantially all of the fair value of the gross assets acquired was concentrated in a group of similar identifiable assets, being the land, building and production equipment acquired.

2019 Acquisition

Mercer Forestry Services

On October 31, 2019, the Company acquired a log harvesting, road building and trucking services business for \$6,938 cash. The acquired business is called Mercer Forestry Services Ltd. (“MFS”).

Significantly all of the purchase price was allocated to the fair value of logging equipment. MFS qualified as a business under GAAP and accordingly, the Company began consolidating its results of operations, financial position and cash flows in the consolidated financial statements as of the acquisition date. In the year ended December 31, 2019, \$265 of acquisition related costs were recognized in “Selling, general and administrative expenses” in the Consolidated Statements of Operations.

Pro forma information related to the acquisition of MFS has not been provided as it does not have a material effect on the Company’s Consolidated Statements of Operations.

Note 3. Business Interruption Insurance

In 2021, the Company replaced the lower furnace of a boiler at the Peace River mill as a result of an incident that occurred in 2017. In 2021, the Company received written confirmation from the insurance provider that the business interruption insurance claim related to the boiler repair is covered and the amount of the settlement is C\$43.0 million (\$34,303). As of December 31, 2021, C\$40.0 million (\$31,551) of this payment was receivable. The business interruption insurance proceeds have been recorded in “Cost of sales, excluding depreciation and amortization” in the Consolidated Statements of Operations. Subsequent to year end, the insurance claim receivable was settled in full.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
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Note 4. Other Income

Other income for the years ended December 31, 2021, 2020 and 2019 was comprised of the following:

	For the Year Ended December 31,		
	2021	2020	2019
Foreign exchange gain (loss)	\$ 12,674	\$ (13,797)	\$ 1,080
Gain on sale of investments (a)	—	17,540	—
Other	1,725	2,135	5,004
Other income	<u>\$ 14,399</u>	<u>\$ 5,878</u>	<u>\$ 6,084</u>

- (a) In 2020, the Company purchased certain equity security investments for \$9,370 and sold them for \$26,910 which resulted in a realized gain of \$17,540. These investments were Level 1 investments and were held at fair value with gains and losses included in earnings. As of December 31, 2021 and December 31, 2020, the Company held no such investments.

Note 5. Accounts Receivable, Net

Accounts receivable, net as of December 31, 2021 and December 31, 2020, was comprised of the following:

	December 31,	
	2021	2020
Trade, net of allowance of \$845 (2020 — \$552)	\$ 293,498	\$ 210,963
Insurance claims (a)	37,953	—
Other	13,894	16,092
	<u>\$ 345,345</u>	<u>\$ 227,055</u>

- (a) Insurance claims receivable are for the final settlement of the 2021 Peace River boiler claims and include the remaining business interruption claim of C\$40.0 million (\$31,551) and the remaining property claim of C\$8.1 million (\$6,402). Subsequent to year end, the insurance claims receivable were settled in full.

Note 6. Inventories

Inventories as of December 31, 2021 and December 31, 2020, were comprised of the following:

	December 31,	
	2021	2020
Raw materials	\$ 106,434	\$ 74,526
Finished goods	140,829	88,256
Spare parts and other	109,468	108,914
	<u>\$ 356,731</u>	<u>\$ 271,696</u>

In 2021, the Company did not have any inventory impairment charges. In 2020, as a result of low pulp prices and high fiber costs for the Canadian mills, the Company recorded inventory impairment charges of \$25,998. These charges were recorded in “Cost of sales, excluding depreciation and amortization” in the Consolidated Statements of Operations. As of December 31, 2020, there was no impairment provision related to inventories.

MERCER INTERNATIONAL INC.
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Note 7. Property, Plant and Equipment, Net

Property, plant and equipment, net as of December 31, 2021 and December 31, 2020, was comprised of the following:

	Estimated Useful Lives (Years)	December 31,	
		2021	2020
Land		\$ 61,067	\$ 63,610
Buildings	10 - 50	309,039	290,150
Production and other equipment	5 - 25	2,079,801	2,037,050
		2,449,907	2,390,810
Less: accumulated depreciation		(1,314,276)	(1,281,070)
		<u>\$ 1,135,631</u>	<u>\$ 1,109,740</u>

In 2021, the Company received proceeds from an insurer of \$21,540 related to the property damage claim for the replacement of the lower furnace of a boiler at the Peace River mill.

In 2021, the Company received government grants of \$9,333 to partially finance innovation and greenhouse gas reduction projects at the Canadian mills. These grants were netted against “Property, plant and equipment, net” in the Consolidated Balance Sheets. As of December 31, 2021, property, plant and equipment was net of \$164,439 of unamortized government grants (2020 – \$186,330). Amortization expense related to government grants for the year ended December 31, 2021 was \$19,855 (2020 – \$18,369; 2019 – \$19,084).

The Company maintains industrial landfills on its premises for the disposal of waste, primarily from the mills’ pulp processing activities. The mills have obligations under their landfill permits to decommission these disposal facilities pursuant to certain regulations. As of December 31, 2021, the Company had recorded \$12,529 (2020 – \$10,005) of asset retirement obligations in “Other long-term liabilities” in the Consolidated Balance Sheets.

Note 8. Amortizable Intangible Assets, Net

Amortizable intangible assets, net as of December 31, 2021 and December 31, 2020, were comprised of the following:

	Estimated Useful Lives (Years)	December 31, 2021			December 31, 2020		
		Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
Energy sales agreement	11	\$ 17,047	\$ (7,327)	\$ 9,720	\$ 18,470	\$ (6,253)	\$ 12,217
Timber cutting rights	30	39,714	(4,051)	35,663	39,546	(2,714)	36,832
Software and other intangible assets	5	27,376	(24,857)	2,519	27,851	(25,329)	2,522
		<u>\$ 84,137</u>	<u>\$ (36,235)</u>	<u>\$ 47,902</u>	<u>\$ 85,867</u>	<u>\$ (34,296)</u>	<u>\$ 51,571</u>

Amortization expense related to intangible assets for the year ended December 31, 2021 was \$4,767 (2020 – \$4,414; 2019 – \$5,930).

Amortization expense for the next five years related to intangible assets as of December 31, 2021 is expected to be as follows:

	2022	2023	2024	2025	2026
Amortization expense	\$ 3,934	\$ 3,563	\$ 3,324	\$ 3,076	\$ 2,933

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
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Note 9. Other Long-Term Assets

Other long-term assets as of December 31, 2021 and December 31, 2020, were comprised of the following:

	December 31,	
	2021	2020
Sandalwood tree plantations	\$ 30,731	\$ 28,600
Other	7,987	3,328
	<u>\$ 38,718</u>	<u>\$ 31,928</u>

Note 10. Accounts Payable and Other

Accounts payable and other as of December 31, 2021 and December 31, 2020, was comprised of the following:

	December 31,	
	2021	2020
Trade payables	\$ 58,451	\$ 42,730
Accrued expenses	76,409	60,622
Interest payable	26,506	33,241
Income tax payable	56,241	23,256
Payroll-related accruals	20,707	18,993
Wastewater fee (a)	19,248	13,407
Finance lease liability	8,467	5,364
Operating lease liability	3,192	3,318
Government grants (b)	7,302	7,161
Other	5,784	2,902
	<u>\$ 282,307</u>	<u>\$ 210,994</u>

- (a) The Company is required to pay certain fees based on wastewater emissions at its German mills. Accrued fees can be reduced upon the mills' demonstration of reduced wastewater emissions. Reductions to the wastewater fees for the year ended December 31, 2021 were \$nil (2020 – \$nil; 2019 – \$20,859).
- (b) The Canadian mills have a liability for unspent government grants which are required to be used to partially finance greenhouse gas emission reduction and innovation capital projects. The grants are recorded in "Cash and cash equivalents" in the Consolidated Balance Sheets, however, they are considered to be restricted as they are repayable if the mills do not spend the funds on approved projects.

MERCER INTERNATIONAL INC.
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Note 11. Debt

Debt as of December 31, 2021 and December 31, 2020, was comprised of the following:

	Maturity	December 31,	
		2021	2020
Senior notes (a)			
5.500% senior notes	2026	\$ 300,000	\$ 300,000
5.125% senior notes	2029	875,000	—
6.500% senior notes	2024	—	250,000
7.375% senior notes	2025	—	550,000
Credit arrangements			
€200 million joint revolving credit facility (b)	2023	—	—
C\$60 million revolving credit facility (c), (d)	2024	22,874	21,992
C\$60 million revolving credit facility (c), (e)	2023	—	32,988
€2.6 million demand loan (f)		—	—
Finance lease liability		64,041	46,693
		1,261,915	1,201,673
Less: unamortized premium and issuance costs, net		(15,903)	(9,686)
Less: finance lease liability due within one year		(8,467)	(5,364)
		<u>\$ 1,237,545</u>	<u>\$ 1,186,623</u>

The maturities of the principal portion of debt as of December 31, 2021 were as follows:

	Senior Notes and Credit	
	Arrangements	Finance Leases
2022	\$ —	\$ 9,861
2023	—	9,620
2024	22,874	8,787
2025	—	7,943
2026	300,000	7,489
Thereafter	875,000	27,161
	1,197,874	70,861
Less imputed interest	—	(6,820)
Total payments	<u>\$ 1,197,874</u>	<u>\$ 64,041</u>

Certain of the Company's debt instruments were issued under agreements which, among other things, may limit its ability and the ability of its subsidiaries to make certain payments, including dividends. These limitations are subject to specific exceptions. As of December 31, 2021, the Company was in compliance with the terms of its debt agreements.

- (a) In January 2021, the Company issued \$875,000 in aggregate principal amount of 5.125% senior notes which mature on February 1, 2029 (the "2029 Senior Notes"). The net proceeds from the 2029 Senior Notes issuance were \$860,517 after deducting the underwriter's discount and offering expenses. The net proceeds were used to redeem the outstanding senior notes which were to mature in 2024 and 2025 and for general corporate purposes. In connection with the redemption, the Company recorded a loss on early extinguishment of debt of \$30,368 in the Consolidated Statements of Operations.

MERCER INTERNATIONAL INC.
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Note 11. Debt (continued)

The 2029 Senior Notes and the senior notes which mature on January 15, 2026 (the “2026 Senior Notes” and collectively with the 2029 Senior Notes, the “Senior Notes”) are general unsecured senior obligations of the Company. The Company may redeem all or a part of the Senior Notes, upon not less than 10 days’ or more than 60 days’ notice at the redemption price plus accrued and unpaid interest to (but not including) the applicable redemption date.

The following table presents the redemption prices (expressed as percentages of principal amount) and the redemption periods of the Senior Notes:

2026 Senior Notes		2029 Senior Notes	
12 Month Period Beginning	Percentage	12 Month Period Beginning	Percentage
January 15, 2021	102.750%	February 1, 2024	102.563%
January 15, 2022	101.375%	February 1, 2025	101.281%
January 15, 2023 and thereafter	100.000%	February 1, 2026 and thereafter	100.000%

- (b) A €200.0 million joint revolving credit facility with all of the Company’s German mills that matures in December 2023. Borrowings under the facility are unsecured and bear interest at Euribor plus a variable margin ranging from 1.05% to 2.00% dependent on conditions including but not limited to a prescribed leverage ratio. As of December 31, 2021, approximately €10.5 million (\$11,906) of this facility was supporting bank guarantees and approximately €189.5 million (\$214,614) was available.
- (c) In January 2022, the Company entered into a new C\$160.0 million joint revolving credit facility for the Celgar mill, Peace River mill and MFS. The new facility has a five year term and replaces the C\$60.0 million revolving credit facility for the Peace River mill and the C\$60.0 million revolving credit facility for the Celgar mill. The facility is available by way of: (i) Canadian denominated advances, which bear interest at a designated prime rate per annum; (ii) banker’s acceptance equivalent loans, which bear interest at the applicable Canadian dollar banker’s acceptance plus 1.20% to 1.45% per annum; (iii) dollar denominated base rate advances at the greater of the federal funds rate plus 0.50%, an Adjusted Term SOFR for a one month tenor plus 1.00% and the bank’s applicable reference rate for U.S. dollar loans; and (iv) dollar SOFR advances, which bear interest at Adjusted Term SOFR plus 1.20% to 1.45% per annum.
- (d) A C\$60.0 million revolving credit facility for Peace River. The facility was available by way of: (i) Canadian dollar denominated advances, which bear interest at a designated prime rate per annum; (ii) banker’s acceptance equivalent loans, which bear interest at the applicable Canadian dollar banker’s acceptance plus 1.25% to 1.50% per annum; (iii) dollar denominated base rate advances at the greater of the federal funds rate plus 0.50%, a designated LIBOR rate plus 1.00% and the bank’s applicable reference rate for U.S. dollar loans; and (iv) dollar LIBOR advances, which bear interest at LIBOR plus 1.25% to 1.50% per annum. Borrowings under the facility were collateralized by, among other things, the mill’s inventories and accounts receivable. As of December 31, 2021, approximately C\$29.0 million (\$22,874) of this facility was drawn and accruing interest at a rate of 2.45%, approximately C\$0.9 million (\$722) was supporting letters of credit and approximately C\$30.1 million (\$23,730) was available.
- (e) A C\$60.0 million revolving credit facility for Celgar. Borrowings under the facility were collateralized by the mill’s inventories, accounts receivable, general intangibles and capital assets and were restricted by a borrowing base calculated on the mill’s inventories and accounts receivable. The facility was available by way of: (i) Canadian and U.S. dollar denominated advances, which bear interest at a designated prime rate less 0.125% to plus 0.125% per annum; (ii) banker’s acceptance equivalent loans, which bear interest at the applicable Canadian dollar banker’s acceptance plus 1.25% to 1.625% per annum; and (iii) dollar LIBOR advances, which bear interest at LIBOR plus 1.25% to 1.625% per annum. As of December 31, 2021, approximately C\$0.5 million (\$356) was supporting letters of credit and approximately C\$59.5 million (\$46,970) was available.

MERCER INTERNATIONAL INC.
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Note 11. Debt (continued)

- (f) A €2.6 million demand loan for Rosenthal that does not have a maturity date. Borrowings under this facility are unsecured and bear interest at the rate of the three-month Euribor plus 2.50%. As of December 31, 2021, approximately €2.6 million (\$2,890) of this facility was supporting bank guarantees and approximately \$nil was available.

Note 12. Pension and Other Post-Retirement Benefit Obligations

Defined Benefit Plans

Pension benefits are based on employees' earnings and years of service. The defined benefit plans are funded by contributions from the Company based on actuarial estimates and statutory requirements. Information about the Celgar and Peace River defined benefit plans, in aggregate for the year ended December 31, 2021 was as follows:

	2021		
	Pension	Other Post-Retirement Benefits	Total
Change in benefit obligation			
Benefit obligation, December 31, 2020	\$ 128,854	\$ 14,234	\$ 143,088
Service cost	3,942	303	4,245
Interest cost	3,524	391	3,915
Benefit payments, net	(4,231)	(531)	(4,762)
Actuarial gains	(6,701)	(1,130)	(7,831)
Foreign currency exchange rate changes	587	72	659
Benefit obligation, December 31, 2021	125,975	13,339	139,314
Reconciliation of fair value of plan assets			
Fair value of plan assets, December 31, 2020	110,476	—	110,476
Actual returns	9,315	—	9,315
Contributions	4,258	—	4,258
Benefit payments	(4,098)	—	(4,098)
Foreign currency exchange rate changes	1,430	—	1,430
Fair value of plan assets, December 31, 2021	121,381	—	121,381
Funded status, December 31, 2021	<u>\$ (4,594)</u>	<u>\$ (13,339)</u>	<u>\$ (17,933)</u>
Components of the net benefit cost recognized			
Service cost	\$ 3,942	\$ 303	\$ 4,245
Interest cost	3,524	391	3,915
Expected return on plan assets	(5,216)	—	(5,216)
Amortization of unrecognized items	678	(791)	(113)
Net benefit cost	<u>\$ 2,928</u>	<u>\$ (97)</u>	<u>\$ 2,831</u>

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Note 12. Pension and Other Post-Retirement Benefit Obligations (continued)

Information about the Celgar and Peace River defined benefit plans, in aggregate for the year ended December 31, 2020 was as follows:

	2020		
	Pension	Other Post-Retirement Benefits	Total
Change in benefit obligation			
Benefit obligation, December 31, 2019	\$ 112,996	\$ 13,252	\$ 126,248
Service cost	3,404	258	3,662
Interest cost	3,367	385	3,752
Benefit payments	(4,346)	(479)	(4,825)
Actuarial losses	10,469	514	10,983
Foreign currency exchange rate changes	2,964	304	3,268
Benefit obligation, December 31, 2020	128,854	14,234	143,088
Reconciliation of fair value of plan assets			
Fair value of plan assets, December 31, 2019	99,991	—	99,991
Actual returns	8,704	—	8,704
Contributions	3,685	479	4,164
Benefit payments	(4,346)	(479)	(4,825)
Foreign currency exchange rate changes	2,442	—	2,442
Fair value of plan assets, December 31, 2020	110,476	—	110,476
Funded status, December 31, 2020	<u>\$ (18,378)</u>	<u>\$ (14,234)</u>	<u>\$ (32,612)</u>
Components of the net benefit cost recognized			
Service cost	\$ 3,404	\$ 258	\$ 3,662
Interest cost	3,367	385	3,752
Expected return on plan assets	(4,329)	—	(4,329)
Amortization of unrecognized items	860	(892)	(32)
Net benefit cost	<u>\$ 3,302</u>	<u>\$ (249)</u>	<u>\$ 3,053</u>

The components of the net benefit cost other than service cost are recorded in “Other income” in the Consolidated Statements of Operations. The amortization of unrecognized items relates to net actuarial losses (gains) and prior service costs.

The Company anticipates that it will make contributions to the defined benefit plans of approximately \$4,034 in 2022. Estimated future benefit payments under these plans as of December 31, 2021 were as follows:

	Pension	Other Post-Retirement Benefits
2022	\$ 4,985	\$ 577
2023	\$ 5,145	\$ 603
2024	\$ 5,389	\$ 629
2025	\$ 5,668	\$ 652
2026	\$ 5,882	\$ 675
2027-2031	\$ 31,931	\$ 3,730

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Note 12. Pension and Other Post-Retirement Benefit Obligations (continued)

Weighted Average Assumptions

The weighted-average assumptions used to determine the benefit obligations at the measurement dates and the net benefit costs for the years ended December 31, 2021, 2020 and 2019 were as follows for Celgar's defined benefit plan:

	December 31,		
	2021	2020	2019
Benefit obligations			
Discount rate	3.10%	2.55%	3.00%
Rate of compensation increase	2.50%	2.50%	2.50%
Net benefit cost for year ended			
Discount rate	2.70%	3.00%	3.14%
Rate of compensation increase	2.50%	2.50%	2.50%
Expected rate of return on plan assets	4.00%	4.10%	3.90%

The weighted-average assumptions used to determine the benefit obligations at the measurement dates and the net benefit costs for the years ended December 31, 2021, 2020 and 2019 were as follows for Peace River's defined benefit plan:

	December 31,		
	2021	2020	2019
Benefit obligations			
Discount rate	3.10%	2.70%	3.20%
Rate of compensation increase	2.75%	2.75%	2.75%
Net benefit cost for year ended			
Discount rate	2.70%	3.20%	3.90%
Rate of compensation increase	2.75%	2.75%	2.75%
Expected rate of return on plan assets	4.93%	4.68%	5.12%

The discount rate assumption is adjusted annually to reflect the rates available on high-quality debt instruments, with a duration that is expected to match the timing and amount of expected pension and other post-retirement benefit payments. High-quality debt instruments are corporate bonds with a rating of "AA" or better.

The expected rate of return on plan assets is a management estimate based on, among other factors, historical long-term returns, expected asset mix and an active management premium.

The expected rate of compensation increase is a management estimate based on, among other factors, historical compensation increases and promotions, while considering current industry conditions, the terms of collective bargaining agreements with employees and the outlook for the industry.

The assumed health care cost trend rates used to determine the other post-retirement benefit obligations as of December 31, 2021 and December 31, 2020 were as follows:

	December 31,	
	2021	2020
Health care cost trend rate assumed for next year	4.50%	5.00%
Rate to which the cost trend is assumed to decline (ultimate trend rate)	4.50%	4.50%
Year that the rate reaches the ultimate trend rate	2022	2022

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Note 12. Pension and Other Post-Retirement Benefit Obligations (continued)

The expected health care cost trend rates are based on historical trends for these costs, as well as recently enacted health care legislation. The Company also compares health care cost trend rates to those of the industry.

Investment Objective and Asset Allocation

The investment objective for the defined benefit pension plans is to sufficiently diversify invested plan assets to maintain a reasonable level of risk without imprudently sacrificing the return on the invested funds, and ultimately to achieve a long-term total rate of return, net of fees and expenses, at least equal to the long-term interest rate assumptions used for funding actuarial valuations. To achieve this objective, the Company's overall investment strategy is to maintain an investment allocation mix of long-term growth investments (equities) and fixed income investments (debt securities). Investment allocation targets have been established by asset class after considering the nature of the liabilities, long-term return expectations, the risks associated with key asset classes, funded position, inflation and interest rates and related management fees and expenses. In addition, the defined benefit pension plan's investment strategy seeks to minimize risk beyond legislated requirements by constraining the investment managers' investment options. There are a number of specific constraints based on investment type, but they all have the general purpose of ensuring that the investments are fully diversified and that risk is appropriately managed. For example, there are constraints on the book value of assets that can be invested in any one entity or group, and all equity holdings must be listed on a public exchange. Reviews of the investment objectives, key assumptions and the independent investment managers are performed periodically.

Pension De-Risking Actions

During 2017, the Company initiated a pension de-risking strategy for Celgar's defined benefit plan. The first step of the strategy resulted in changing the target investment mix to 80% debt securities, to more effectively hedge the plan liabilities for inactive members, and 20% equity securities, to consider the inflationary effect of future salary increases for the remaining active members.

In 2018, the Company used the debt security investments in Celgar's defined benefit plan to purchase buy-in annuities for all inactive members. This transaction fully hedges the plan liabilities for the majority of inactive members.

Concentrations of Risk in the Defined Benefit Pension Plan's Assets

The Company has reviewed the defined benefit pension plan's equity investments and determined that they are allocated based on the specific investment managers' stated investment strategies with only slight over- or under-weightings within any specific category, and that those investments are within the constraints that have been set by the Company. Those constraints include a limitation on the value that can be invested in any one entity or investment category. The Company has concluded that there are no significant concentrations of risk.

The following table presents the Celgar and Peace River defined benefit pension plans' assets fair value measurements as of December 31, 2021 under the fair value hierarchy:

Asset Category	Fair value measurements as of December 31, 2021 using:			
	Level 1	Level 2	Level 3	Total
Equity securities	\$ —	\$ 64,057	\$ —	\$ 64,057
Debt securities	—	31,125	—	31,125
Buy-in annuity	—	—	24,458	24,458
Other	—	1,741	—	1,741
Total assets	\$ —	\$ 96,923	\$ 24,458	\$ 121,381

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Note 12. Pension and Other Post-Retirement Benefit Obligations (continued)

The following table presents the Celgar and Peace River defined benefit pension plans' assets fair value measurements as of December 31, 2020 under the fair value hierarchy:

Asset Category	Fair value measurements as of December 31, 2020 using:			
	Level 1	Level 2	Level 3	Total
Equity securities	\$ —	\$ 49,485	\$ —	\$ 49,485
Debt securities	—	34,603	—	34,603
Buy-in annuity	—	—	26,017	26,017
Cash and other short-term assets	—	13	—	13
Other	—	358	—	358
Total assets	\$ —	\$ 84,459	\$ 26,017	\$ 110,476

The change in Level 3 fair value measurements of plan assets for the years ended December 31, 2021 and 2020 was as follows:

	Buy-in Annuity
Balance as of December 31, 2019	\$ 25,343
Actual return on plan assets	710
Benefit payments	(1,724)
Actuarial losses	1,170
Effect of foreign currency exchange rate changes	518
Balance as of December 31, 2020	26,017
Actual return on plan assets	645
Benefit payments	(1,789)
Actuarial gains	(545)
Effect of foreign currency exchange rate changes	130
Balance as of December 31, 2021	\$ 24,458

Defined Contribution Plan

Effective December 31, 2008, the defined benefit plans at the Celgar mill were closed to new members. In addition, the related defined benefit service accrual ceased on December 31, 2008, and members began to receive pension benefits, at a fixed contractual rate, under a new defined contribution plan effective January 1, 2009. The Company's head office employees also participate in a defined contribution plan. During the year ended December 31, 2021, the Company made contributions of \$1,768 to these plans (2020 – \$1,634; 2019 – \$1,400).

Multiemployer Plan

The Company participates in a multiemployer plan for the hourly-paid employees at the Celgar mill. The contributions to the plan are determined based on a percentage of pensionable earnings pursuant to a collective bargaining agreement. The Company has no current or future contribution obligations in excess of the contractual contributions. During the year ended December 31, 2021, the Company made contributions of \$2,370 to this plan (2020 – \$1,933; 2019 – \$2,203).

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Note 12. Pension and Other Post-Retirement Benefit Obligations (continued)

Plan details for the years ended December 31, 2021, 2020 and 2019 were as follows:

Legal name	Provincially Registered Plan Number	Expiration Date of Collective Bargaining Agreement	Are the Company's Contributions Greater Than 5% of Total Contributions		
			2021	2020	2019
The Pulp and Paper Industry Pension Plan	P085324	April 30, 2021	Yes	No	Yes

Celgar's hourly employees are currently working under the expired collective bargaining agreement during the period in which the new agreement is being negotiated.

Note 13. Income Taxes

The components of income (loss) before income taxes for the years ended December 31, 2021, 2020 and 2019 were as follows:

	Year Ended December 31,		
	2021	2020	2019
U.S.	\$ (75,955)	\$ (22,284)	\$ (43,408)
Foreign	336,522	11,145	52,995
	<u>\$ 260,567</u>	<u>\$ (11,139)</u>	<u>\$ 9,587</u>

Provision for income taxes recognized in the Consolidated Statements of Operations for the years ended December 31, 2021, 2020 and 2019 was comprised of the following:

	Year Ended December 31,		
	2021	2020	2019
U.S. Federal and State current income tax provision	\$ 156	\$ 1,782	\$ 342
Foreign current income tax provision	70,632	19,563	26,757
Total current income tax provision	70,788	21,345	27,099
Foreign deferred income tax provision (recovery)	18,791	(15,249)	(7,873)
Total income tax provision	<u>\$ 89,579</u>	<u>\$ 6,096</u>	<u>\$ 19,226</u>

During the year ended December 31, 2021, the foreign current income tax provision is primarily for the German entities.

The Company's effective income tax rate can be affected by many factors, including but not limited to, changes in the mix of earnings in tax jurisdictions with differing statutory rates, changes in corporate structure, changes in the valuation of deferred tax assets and liabilities, the result of audit examinations of previously filed tax returns and changes in tax laws and rates. The asset and liability approach is used to recognize deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities.

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Note 13. Income Taxes (continued)

The Company and/or one or more of its subsidiaries file income tax returns in the U.S., Germany, Canada and Australia. Currently, the Company does not anticipate that the expiration of the statute of limitations or the completion of audits in the next fiscal year will result in liabilities for uncertain income tax positions that are materially different than the amounts accrued or disclosed as of December 31, 2021. However, this could change as tax years are examined by taxing authorities, the timing of which are uncertain at this time. The German tax authorities have completed examinations up to and including the 2017 tax year for all but three German entities. For these three entities the German tax authorities have completed examinations up to and including the 2013 tax year. The Company is generally not subject to U.S. or Canadian income tax examinations for tax years before 2018 and 2017, respectively. The Company believes that it has adequately provided for any reasonable foreseeable outcomes related to its tax audits and that any settlement will not have a material adverse effect on its consolidated results.

The liability in the Consolidated Balance Sheets related to unrecognized tax benefits was \$nil as of December 31, 2021 (2020 – \$nil). The Company recognizes interest and penalties related to unrecognized tax benefits in “Income tax provision” in the Consolidated Statements of Operations. During the years ended December 31, 2021, 2020 and 2019 the Company did not record any interest and penalties related to unrecognized tax benefits.

Differences between the U.S. Federal statutory and the Company’s effective rates for the years ended December 31, 2021, 2020 and 2019 were as follows:

	Year Ended December 31,		
	2021	2020	2019
U.S. Federal statutory rate	21%	21%	21%
U.S. Federal statutory rate on income (loss) before income taxes	\$ (54,724)	\$ 2,339	\$ (2,013)
Tax differential on foreign income	(25,361)	(1,982)	(5,368)
Effect of foreign earnings (a)	(7,524)	(3,002)	(13,747)
Valuation allowance	(12,048)	(8,383)	(11,643)
Tax benefit of partnership structure	3,132	3,740	3,841
Non-taxable foreign subsidiaries	2,936	2,851	3,200
True-up of prior year taxes	5,616	(1,863)	6,031
Other	(1,606)	204	473
Income tax provision	<u>\$ (89,579)</u>	<u>\$ (6,096)</u>	<u>\$ (19,226)</u>

(a) Primarily due to the impact of the global intangible low-taxed income provision in the Tax Cuts and Jobs Act of 2017.

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Note 13. Income Taxes (continued)

Deferred income tax assets and liabilities as of December 31, 2021 and December 31, 2020 were comprised of the following:

	December 31,	
	2021	2020
German tax loss carryforwards	\$ 9,500	\$ 29,378
U.S. tax loss carryforwards and credits	22,168	6,964
Canadian tax loss carryforwards	40,363	44,256
Australian tax loss carryforwards	5,090	3,783
Basis difference between income tax and financial reporting with respect to operating pulp mills	(146,000)	(145,858)
Amortizable intangible assets	(9,449)	(10,504)
Other long-term assets	(5,646)	(4,926)
Debt	(5,691)	(6,553)
Accounts payable and accrued expenses	5,382	1,621
Deferred pension liability	6,341	16,278
Finance leases	17,245	12,895
Scientific research and experimental development investment tax credit and expenditure pool	4,552	4,433
Other	5,389	3,702
	(50,756)	(44,531)
Valuation allowance	(43,190)	(31,142)
Net deferred income tax liability	<u>\$ (93,946)</u>	<u>\$ (75,673)</u>
Comprised of:		
Deferred income tax asset	\$ 1,177	\$ 1,355
Deferred income tax liability	(95,123)	(77,028)
Net deferred income tax liability	<u>\$ (93,946)</u>	<u>\$ (75,673)</u>

The following table details the scheduled expiration dates of the Company's net operating loss, interest, investment tax credit and other tax attributes carryforwards as of December 31, 2021:

	Amount	Expiration
U.S.		
Interest	\$ 105,200	Indefinite
Germany		
Net operating loss	\$ 8,100	Indefinite
Interest	\$ 29,644	Indefinite
Canada		
Net operating loss	\$ 152,700	2036 – 2041
Scientific research and experimental development investment tax credit	\$ 5,200	2030 – 2039
Scientific research and experimental development expenditure pool	\$ 3,000	Indefinite
Australia		
Net operating loss	\$ 17,000	Indefinite

At each reporting period, the Company assesses whether it is more likely than not that the deferred tax assets will be realized, based on the review of all available positive and negative evidence, including future reversals of existing taxable temporary differences, estimates of future taxable income, past operating results and prudent and feasible tax planning strategies. The carrying value of the Company's deferred tax assets reflects its expected ability to generate sufficient future taxable income in certain tax jurisdictions to utilize these deferred income tax benefits. Significant judgment is required when evaluating this positive and negative evidence.

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Note 13. Income Taxes (continued)

Changes in valuation allowances related to net deferred tax assets for the years ended December 31, 2021 and 2020 were as follows:

	December 31,	
	2021	2020
Balance as of January 1	\$ 31,142	\$ 22,759
Additions (reversals)		
U.S.	14,770	1,734
Canada	(2,851)	6,017
The impact of changes in foreign exchange rates	129	632
Balance as of December 31	<u>\$ 43,190</u>	<u>\$ 31,142</u>

As of December 31, 2021, the Company has recognized the deferred tax assets of its German entities and has a full valuation allowance against the net deferred tax assets of its U.S. and Canadian entities.

The Company has not recognized a tax liability on the undistributed earnings of foreign subsidiaries as of December 31, 2021 because these earnings are expected to be permanently reinvested outside the U.S. or repatriated without incurring a tax liability. As of December 31, 2021, the cumulative amount of undistributed earnings upon which U.S. income taxes have not been provided was approximately \$364,316.

Note 14. Shareholders' Equity

Dividends

The Company's board of directors declared quarterly dividends during the years ended December 31, 2021 and 2020 as follows:

Date Declared	Dividend Per Common Share	Amount
February 16, 2021	\$ 0.065	\$ 4,289
April 29, 2021	0.065	4,293
July 29, 2021	0.065	4,292
October 28, 2021	0.065	4,293
	<u>\$ 0.2600</u>	<u>\$ 17,167</u>

Date Declared	Dividend Per Common Share	Amount
February 13, 2020	\$ 0.1375	\$ 9,047
April 30, 2020	0.0650	4,282
July 30, 2020	0.0650	4,281
October 29, 2020	0.0650	4,282
	<u>\$ 0.3325</u>	<u>\$ 21,892</u>

On February 17, 2022, the Company's board of directors declared a quarterly dividend of \$0.0750 per common share. Payment of the dividend will be on April 6, 2022 to all shareholders of record on March 30, 2022. Future dividends are subject to approval by the board of directors and may be adjusted as business and industry conditions warrant.

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Note 14. Shareholders' Equity (continued)

Share Capital

Preferred shares

The Company has authorized 50,000,000 preferred shares (2020 – 50,000,000) with \$1 par value issuable in series, of which 2,000,000 shares have been designated as Series A. The preferred shares may be issued in one or more series. Designations and preferences for each series shall be stated in the resolutions providing for the designation and issuance of each such series adopted by the Company's board of directors. The board of directors is authorized by the Company's articles of incorporation to determine the voting, dividend, redemption and liquidation preferences pertaining to each such series. As of December 31, 2021, no preferred shares had been issued by the Company.

Share Repurchase Program

In May 2019, the Company's board of directors authorized a common stock repurchase program, under which the Company may repurchase up to \$50,000 of its shares, which expired in May 2020.

For the year ended December 31, 2020, prior to the expiration, the Company paid \$162 to acquire 23,584 common shares at an average repurchase price of \$6.84. For the year ended December 31, 2019 the Company paid \$754 to acquire 52,879 common shares at an average repurchase price of \$14.25. The shares acquired for the years ended December 31, 2020 and 2019 were retired upon repurchase.

Stock Based Compensation

In June 2010, the Company adopted a stock incentive plan which provides for options, restricted stock rights, restricted shares, performance shares, PSUs and stock appreciation rights to be awarded to employees, consultants and non-employee directors. During the year ended December 31, 2021, there were no issued and outstanding options, restricted stock rights, performance shares or stock appreciation rights. As of December 31, 2021, after factoring in all allocated shares, there remain approximately 1.2 million common shares available for grant.

PSUs

PSUs comprise rights to receive common shares at a future date that are contingent on the Company and the grantee achieving certain performance objectives. The performance objective period is generally three years.

For the year ended December 31, 2021, the Company recognized an expense of \$1,739 related to PSUs (2020 – \$420; 2019 – \$2,557).

PSU activity during the year ended December 31, 2021 was as follows:

	Number of PSUs	Weighted Average Grant Date Fair Value Per Unit
Outstanding as of January 1, 2021	2,364,848	\$ 12.61
Granted	1,007,912	13.72
Vested and issued	(120,271)	12.75
Forfeited	(498,017)	12.75
Outstanding as of December 31, 2021	<u>2,754,472</u>	<u>\$ 12.98</u>

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Note 14. Shareholders' Equity (continued)

The weighted-average grant date fair value per unit of all PSUs granted in 2020 and 2019 was \$11.00 and \$15.34, respectively. The total fair value of PSUs vested and issued in 2021, 2020 and 2019 was \$1,642, \$2,101 and \$6,754, respectively.

Restricted Shares

Restricted shares generally vest at the end of one year.

Expense recognized for the year ended December 31, 2021 was \$655 (2020 – \$508; 2019 – \$479). As of December 31, 2021, the total remaining unrecognized compensation cost related to restricted shares amounted to approximately \$304 which will be amortized over the remaining vesting periods.

Restricted share activity during the year ended December 31, 2021 was as follows:

	Number of Restricted Shares	Weighted Average Grant Date Fair Value Per Share
Outstanding as of January 1, 2021	68,140	\$ 8.07
Granted	49,195	14.84
Vested	(68,140)	8.07
Outstanding as of December 31, 2021	49,195	\$ 14.84

The weighted-average grant date fair value per share of all restricted shares granted in 2020 and 2019 was \$8.07 and \$14.33, respectively. The total fair value of restricted shares vested and issued in 2021, 2020 and 2019 was \$1,011, \$248 and \$466, respectively.

Note 15. Net Income (Loss) Per Common Share

The reconciliation of basic and diluted net income (loss) per common share for the years ended December 31, 2021, 2020 and 2019 was as follows:

	For the Year Ended December 31,		
	2021	2020	2019
Net income (loss)			
Basic and diluted	\$ 170,988	\$ (17,235)	\$ (9,639)
Net income (loss) per common share			
Basic	\$ 2.59	\$ (0.26)	\$ (0.15)
Diluted	\$ 2.58	\$ (0.26)	\$ (0.15)
Weighted average number of common shares outstanding:			
Basic (a)	65,944,494	65,768,485	65,553,196
Effect of dilutive instruments:			
PSUs	312,455	—	—
Restricted shares	27,054	—	—
Diluted	66,284,003	65,768,485	65,553,196

(a) For the year ended December 31, 2021, the basic weighted average number of common shares outstanding excludes 49,195 restricted shares which have been issued, but have not vested as of December 31, 2021 (2020 – 68,140 restricted shares; 2019 – 31,405 restricted shares).

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 15. Net Income (Loss) Per Common Share (continued)

The calculation of diluted net income (loss) per common share does not assume the exercise of any instruments that would have an anti-dilutive effect on net income (loss) per common share. Instruments excluded from the calculation of net income (loss) per common share because they were anti-dilutive for the years ended December 31, 2021, 2020 and 2019 were as follows:

	For the Year Ended December 31,		
	2021	2020	2019
PSUs	—	2,364,848	1,764,976
Restricted shares	—	68,140	31,405

Note 16. Accumulated Other Comprehensive Loss

The change in accumulated other comprehensive loss by component (net of tax) for the years ended December 31, 2021 and 2020 was as follows:

	Foreign Currency Translation Adjustment	Defined Benefit Pension and Other Post- Retirement Benefit Items	Total
Balance as of December 31, 2019	\$ (114,709)	\$ (1,851)	\$ (116,560)
Other comprehensive income (loss) before reclassifications	95,131	(6,114)	89,017
Amounts reclassified from accumulated other comprehensive loss	—	(32)	(32)
Other comprehensive income (loss), net of taxes	95,131	(6,146)	88,985
Balance as of December 31, 2020	(19,578)	(7,997)	(27,575)
Other comprehensive income (loss) before reclassifications	(77,939)	14,834	(63,105)
Amounts reclassified from accumulated other comprehensive loss	—	(113)	(113)
Other comprehensive income (loss), net of taxes	(77,939)	14,721	(63,218)
Balance as of December 31, 2021	<u>\$ (97,517)</u>	<u>\$ 6,724</u>	<u>\$ (90,793)</u>

Note 17. Related Party Transactions

The Company enters into related party transactions with its joint ventures. For the year ended December 31, 2021, pulp purchases from the Company's 50% owned CPP mill, which are transacted at the CPP mill's cost, were \$88,073 (2020 – \$76,875; 2019 – \$96,763) and as of December 31, 2021 the Company had a receivable balance from the CPP mill of \$5,688 (December 31, 2020 – \$3,518). For the year ended December 31, 2021, services from the Company's 50% owned logging and chipping operation, which are transacted at arm's length negotiated prices, were \$12,775 (2020 – \$15,118; 2019 – \$16,681) and as of December 31, 2021 the Company had a payable balance to the operation of \$2,400 (December 31, 2020 – \$1,953).

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 18. Segment Information

The Company is managed based on the primary products it manufactures: pulp and wood products. Accordingly, the Company's four pulp mills and its 50% interest in the CPP mill are aggregated into the pulp segment, and the Friesau mill is a separate reportable segment, wood products. The Company's sandalwood business and MMT are included in Corporate and Other as they do not meet the criteria to be reported as separate reportable segments.

None of the income or loss items following operating income in the Company's Consolidated Statements of Operations are allocated to the segments, as those items are reviewed separately by management.

Information about certain segment data for the years ended December 31, 2021, 2020 and 2019, was as follows:

December 31, 2021	Pulp	Wood Products	Corporate and Other	Consolidated
Revenues from external customers	\$ 1,483,093	\$ 311,081	\$ 9,081	\$ 1,803,255
Operating income (loss)	\$ 251,724	\$ 108,466	\$ (13,607)	\$ 346,583
Depreciation and amortization	\$ 115,293	\$ 14,858	\$ 2,048	\$ 132,199
Purchase of property, plant and equipment	\$ 139,312	\$ 18,002	\$ 2,126	\$ 159,440
Total assets (a)	\$ 1,882,078	\$ 258,965	\$ 210,189	\$ 2,351,232
Revenues by major products				
Pulp	\$ 1,389,439	\$ —	\$ —	\$ 1,389,439
Lumber	—	293,166	2,391	295,557
Energy and chemicals	93,654	11,547	6,690	111,891
Wood residuals	—	6,368	—	6,368
Total revenues	<u>\$ 1,483,093</u>	<u>\$ 311,081</u>	<u>\$ 9,081</u>	<u>\$ 1,803,255</u>
Revenues by geographical markets (b)				
U.S.	<u>\$ 183,198</u>	<u>\$ 156,762</u>	<u>\$ 5,227</u>	<u>\$ 345,187</u>
Foreign countries				
Germany	459,725	62,986	—	522,711
China	375,891	1,245	—	377,136
Other countries	464,279	90,088	3,854	558,221
	1,299,895	154,319	3,854	1,458,068
Total revenues	<u>\$ 1,483,093</u>	<u>\$ 311,081</u>	<u>\$ 9,081</u>	<u>\$ 1,803,255</u>

- (a) Total assets for the pulp segment includes the Company's \$49,651 investment in joint ventures, primarily for the CPP mill.
- (b) Sales are attributed to countries based on the ship-to location provided by the customer.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 18. Segment Information (continued)

December 31, 2020	Pulp	Wood Products	Corporate and Other	Consolidated
Revenues from external customers	\$ 1,220,644	\$ 197,649	\$ 4,847	\$ 1,423,140
Operating income (loss)	\$ 37,952	\$ 34,704	\$ (8,927)	\$ 63,729
Depreciation and amortization	\$ 115,945	\$ 12,212	\$ 764	\$ 128,921
Purchase of property, plant and equipment	\$ 53,734	\$ 23,788	\$ 996	\$ 78,518
Total assets (a)	\$ 1,740,233	\$ 112,267	\$ 276,626	\$ 2,129,126
Revenues by major products				
Pulp	\$ 1,130,302	\$ —	\$ —	\$ 1,130,302
Lumber	—	180,769	—	180,769
Energy and chemicals	90,342	10,619	4,847	105,808
Wood residuals	—	6,261	—	6,261
Total revenues	<u>\$ 1,220,644</u>	<u>\$ 197,649</u>	<u>\$ 4,847</u>	<u>\$ 1,423,140</u>
Revenues by geographical markets (b)				
U.S.	\$ 149,816	\$ 93,802	\$ 1,734	\$ 245,352
Foreign countries				
Germany	336,346	50,945	—	387,291
China	364,527	3,037	—	367,564
Other countries	369,955	49,865	3,113	422,933
	<u>1,070,828</u>	<u>103,847</u>	<u>3,113</u>	<u>1,177,788</u>
Total revenues	<u>\$ 1,220,644</u>	<u>\$ 197,649</u>	<u>\$ 4,847</u>	<u>\$ 1,423,140</u>

(a) Total assets for the pulp segment includes the Company's \$46,429 investment in joint ventures, primarily for the CPP mill.

(b) Sales are attributed to countries based on the ship-to location provided by the customer.

December 31, 2019	Pulp	Wood Products	Corporate and Other	Consolidated
Revenues from external customers	\$ 1,457,123	\$ 159,937	\$ 7,351	\$ 1,624,411
Operating income (loss)	\$ 90,583	\$ 7,349	\$ (13,929)	\$ 84,003
Depreciation and amortization	\$ 117,108	\$ 7,966	\$ 1,320	\$ 126,394
Purchase of property, plant and equipment	\$ 103,066	\$ 28,425	\$ 543	\$ 132,034
Total assets (a)	\$ 1,782,105	\$ 83,102	\$ 200,513	\$ 2,065,720
Revenues by major products				
Pulp	\$ 1,370,742	\$ —	\$ —	\$ 1,370,742
Lumber	—	142,243	—	142,243
Energy and chemicals	86,381	9,721	7,351	103,453
Wood residuals	—	7,973	—	7,973
Total revenues	<u>\$ 1,457,123</u>	<u>\$ 159,937</u>	<u>\$ 7,351</u>	<u>\$ 1,624,411</u>
Revenues by geographical markets (b)				
U.S.	\$ 168,197	\$ 54,098	\$ —	\$ 222,295
Foreign countries				
Germany	419,472	53,734	—	473,206
China	430,508	—	—	430,508
Other countries	438,946	52,105	7,351	498,402
	<u>1,288,926</u>	<u>105,839</u>	<u>7,351</u>	<u>1,402,116</u>
Total revenues	<u>\$ 1,457,123</u>	<u>\$ 159,937</u>	<u>\$ 7,351</u>	<u>\$ 1,624,411</u>

(a) Total assets for the pulp segment includes the Company's \$53,122 investment in joint ventures, primarily for the CPP mill.

(b) Sales are attributed to countries based on the ship-to location provided by the customer.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 18. Segment Information (continued)

Revenues between segments are accounted for at prices that approximate fair value. These include revenues from the sale of residual fiber from the wood products segment to the pulp segment for use in the pulp production process and from the sale of residual fuel from the pulp segment to the wood products segment for use in energy production. For the year ended December 31, 2021, the pulp segment sold \$336 of residual fuel to the wood products segment (2020 – \$459; 2019 – \$531) and the wood products segment sold \$12,661 of residual fiber to the pulp segment (2020 – \$12,040; 2019 – \$15,190).

The Company's long-lived assets by geographic area based on location of the asset as of December 31, 2021 and December 31, 2020 were as follows:

	December 31,	
	2021	2020
U.S.	\$ 51,136	\$ —
Foreign countries		
Germany	660,745	699,408
Canada	406,985	390,542
Australia	16,765	19,790
	<u>1,084,495</u>	<u>1,109,740</u>
	<u>\$ 1,135,631</u>	<u>\$ 1,109,740</u>

In 2021, no single customer accounted for greater than 10% of the Company's total revenues (2020 – no customer; 2019 – no customer).

Note 19. Financial Instruments and Fair Value Measurement

Due to their short-term maturity, the carrying amounts of cash and cash equivalents, accounts receivable and accounts payable and other, approximates their fair value.

The estimated fair values of the Company's outstanding debt under the fair value hierarchy as of December 31, 2021 and December 31, 2020 were as follows:

Description	Fair value measurements as of December 31, 2021 using:			
	Level 1	Level 2	Level 3	Total
Revolving credit facilities	\$ —	\$ 22,874	\$ —	\$ 22,874
Senior notes	—	1,197,449	—	1,197,449
	<u>\$ —</u>	<u>\$ 1,220,323</u>	<u>\$ —</u>	<u>\$ 1,220,323</u>

Description	Fair value measurements as of December 31, 2020 using:			
	Level 1	Level 2	Level 3	Total
Revolving credit facilities	\$ —	\$ 54,980	\$ —	\$ 54,980
Senior notes	—	1,131,229	—	1,131,229
	<u>\$ —</u>	<u>\$ 1,186,209</u>	<u>\$ —</u>	<u>\$ 1,186,209</u>

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 19. Financial Instruments and Fair Value Measurement (continued)

The carrying value of the revolving credit facilities classified as Level 2 approximates the fair value as the variable interest rates reflect current interest rates for financial instruments with similar characteristics and maturities.

The fair value of the senior notes classified as Level 2 was determined using quoted prices in a dealer market, or using recent market transactions. The Company's senior notes are not carried at fair value on the Consolidated Balance Sheets as of December 31, 2021 and December 31, 2020. However, fair value disclosure is required. The carrying value of the Company's senior notes, net of note issuance costs is \$1,159,097 as of December 31, 2021 (December 31, 2020 – \$1,090,314).

Credit Risk

The Company's credit risk is primarily attributable to cash held in bank accounts and accounts receivable. The Company maintains cash balances in foreign financial institutions in excess of insured limits. The Company limits its credit exposure on cash held in bank accounts by periodically investing cash in excess of short-term operating requirements and debt obligations in low risk government bonds, or similar debt instruments. The Company's credit risk associated with the sale of pulp, lumber and other wood residuals is managed through setting credit limits, the purchase of credit insurance and for certain customers a letter of credit is received prior to shipping the product. The Company reviews new customers' credit history before granting credit and conducts regular reviews of existing customers' credit. Concentrations of credit risk on the sale of pulp, lumber and other wood residuals are with customers and agents based primarily in Germany, China and the U.S.

The Company's exposure to credit losses may increase if its customers are adversely affected by the COVID-19 pandemic. Although the Company has historically not experienced significant credit losses, it is possible that there could be a material adverse impact from potential adjustments of the carrying amount of trade receivables if the cash flows of the Company's customers are adversely impacted by the COVID-19 pandemic. As of December 31, 2021 the Company has not had significant credit losses due to the COVID-19 pandemic.

The carrying amount of cash and cash equivalents as of December 31, 2021 of \$345,610 and accounts receivable as of December 31, 2021 of \$345,345 recorded in the Consolidated Balance Sheet, net of any allowances for losses, represents the Company's maximum exposure to credit risk.

Note 20. Lease Commitments

The Company has finance leases primarily for rail cars and production equipment. The rail cars primarily have a remaining lease term of seven to 12 years with annual renewal options thereafter. The production equipment has a weighted average remaining lease term of eight years. The Company has operating leases primarily for land to support the sandalwood tree plantations and for offices. The land leases have remaining terms of three to 10 years with options to renew for up to six years. The office leases have remaining terms of two to six years with options to renew primarily for an additional five years. A majority of the operating leases are subject to annual changes to the Consumer Price Index ("CPI"). Changes to the CPI are treated as variable lease payments and recognized in the period in which the obligation for those payments was incurred. A 100-basis-point increase in CPI would not have a material impact on lease costs.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 20. Lease Commitments (continued)

The components of lease expense for the years ended December 31, 2021, 2020 and 2019 were as follows:

	Year Ended December 31,		
	2021	2020	2019
Lease cost:			
Operating lease cost	\$ 4,086	\$ 3,712	\$ 3,322
Finance lease cost:			
Amortization of right-of-use assets	7,481	4,963	3,768
Interest on lease liabilities	1,635	1,460	1,370
Total lease cost	\$ 13,202	\$ 10,135	\$ 8,460

Supplemental cash flow information related to leases for the years ended December 31, 2021, 2020 and 2019 was as follows:

	Year Ended December 31,		
	2021	2020	2019
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flow payments for operating leases	\$ 4,086	\$ 3,712	\$ 3,322
Operating cash flow payments for finance leases	\$ 1,635	\$ 1,460	\$ 1,370
Financing cash flow payments for finance leases	\$ 7,850	\$ 4,636	\$ 3,344

Other information related to leases for the years ended December 31, 2021, 2020 and 2019 was as follows:

	Year Ended December 31,		
	2021	2020	2019
Weighted average remaining lease term:			
Operating leases	5 years	6 years	7 years
Finance leases	8 years	9 years	10 years
Weighted average discount rate:			
Operating leases	6%	6%	7%
Finance leases	3%	3%	4%

The discount rate used to calculate the present value of the minimum lease payments is the incremental borrowing rate that the subsidiary entering into the lease would have to pay to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment.

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 20. Lease Commitments (continued)

Supplemental balance sheet information related to leases as of December 31, 2021 and December 31, 2020 was as follows:

	December 31,	
	2021	2020
Operating Leases		
Operating lease right-of-use assets	\$ 9,712	\$ 13,251
Other current liabilities	\$ 3,192	\$ 3,318
Operating lease liabilities	6,574	9,933
Total operating lease liabilities	<u>\$ 9,766</u>	<u>\$ 13,251</u>
Finance Leases		
Property and equipment, gross	\$ 87,719	\$ 65,418
Accumulated depreciation	(24,850)	(19,353)
Property and equipment, net	<u>\$ 62,869</u>	<u>\$ 46,065</u>
Other current liabilities	\$ 8,467	\$ 5,364
Long-term debt	55,574	41,329
Total finance lease liabilities	<u>\$ 64,041</u>	<u>\$ 46,693</u>

Maturities of operating lease liabilities as of December 31, 2021 were as follows:

	Operating Leases
2022	\$ 3,732
2023	2,725
2024	1,575
2025	879
2026	662
Thereafter	1,986
Total lease payments	11,559
Less: imputed interest	(1,793)
Total lease liability	<u>\$ 9,766</u>

MERCER INTERNATIONAL INC.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(In thousands of U.S. dollars, except share and per share data)

Note 21. Commitments and Contingencies

- (a) The Company has purchase obligations relating to take-or-pay contracts, primarily for purchases of fiber, made in the ordinary course of business. As of December 31, 2021, commitments under these contracts were approximately \$283,834.
- (b) The Company is involved in legal actions and claims arising in the ordinary course of business. While the outcome of any legal actions and claims cannot be predicted with certainty, it is the opinion of management that the outcome of any such claims which are pending or threatened, either individually or on a combined basis, will not have a material adverse effect on the consolidated financial condition, results of operations or liquidity of the Company.
- (c) The Company is subject to regulations that require the handling and disposal of asbestos in a prescribed manner if a property undergoes a major renovation or demolition. Otherwise, the Company is not required to remove asbestos from its facilities. Generally asbestos is found on steam and condensate piping systems as well as certain cladding on buildings and in building insulation throughout older facilities. The Company's obligation for the proper removal and disposal of asbestos products from the Company's mills is a conditional asset retirement obligation. As a result of the longevity of the Company's mills, due in part to the maintenance procedures and the fact that the Company does not have plans for major changes that require the removal of asbestos, the timing of the asbestos removal is indeterminate. As a result, the Company is currently unable to reasonably estimate the fair value of its asbestos removal and disposal obligation. The Company will recognize a liability in the period in which sufficient information is available to reasonably estimate its fair value.
- (d) In 2021, the European Commission opened a cartel investigation into the wood pulp sector in Europe to investigate if there was an infringement of European Union competition law. In October 2021, the Commission conducted inspections of major European pulp producers including the Company's German operations. The Company is cooperating with the investigation. As the matter is currently in the investigation stage, the Company cannot predict the timing of the same and what further actions, if any, the European Commission may pursue or what the outcome of any such actions may be.

EXHIBIT INDEX

Exhibit No.	Description of Exhibit
3.1	Articles of Incorporation of Mercer International Inc., as amended. Incorporated by reference from Form 8-A filed March 2, 2006.
3.2*	Bylaws of Mercer International Inc.
4.1	Indenture dated December 20, 2017 between Mercer International Inc. and Wells Fargo Bank, National Association, as trustee, relating to the 2026 Senior Notes. Incorporated by reference from Form 8-K filed December 20, 2017.
4.2	Description of Securities. Incorporated by reference from Form 10-K filed February 13, 2020.
4.3	Indenture dated January 26, 2021 between Mercer International Inc. and Wells Fargo Bank, National Association, as trustee, relating to the 2029 Senior Notes. Incorporated by reference from Form 8-K filed January 26, 2021.
10.1	Revolving Credit Facility Agreement dated December 19, 2018 among Zellstoff-und Papierfabrik Rosenthal GmbH, Mercer Timber Products GmbH, Zellstoff Stendal GmbH, Mercer Holz GmbH, Stendal Pulp Holding GmbH, D&Z Holding GmbH, Zellstoff Stendal Transport GmbH, Mercer Pulp Sales GmbH, UniCredit Bank AG, Commerzbank AG, Luxembourg Branch, Credit Suisse AG, London Branch, Landesbank Baden-Württemberg and Royal Bank of Canada. Incorporated by reference from Form 10-K filed February 14, 2019.
10.2*	Revolving Credit Facility Agreement dated January 21, 2022 among Mercer Peace River Pulp Ltd., Mercer Celgar Limited Partnership and Mercer Forestry Services Ltd. et al. and Royal Bank of Canada, as Agent and the other Lenders thereto.
10.3†	Form of Trustee's Indemnity Agreement between Mercer International Inc. and its Trustees. Incorporated by reference from Form 10-K filed March 31, 2003.
10.4†	Mercer International Inc. 2010 Stock Incentive Plan, as amended. Incorporated by reference from Appendix A to Mercer International Inc.'s definitive proxy statement on Schedule 14A filed April 13, 2017.
10.5	Employment Agreement dated October 2, 2006 between Stendal Pulp Holding GmbH and Wolfram Ridder. Incorporated by reference from Form 8-K filed October 3, 2006.
10.6†	Share Purchase Agreement by and among Marubeni Corporation, Nippon Paper Industries Co., Ltd. and Daishowa North America Corporation and Mercer International Inc. dated as of October 3, 2018. Incorporated by reference from Form 8-K filed October 9, 2018.
10.7†	Employment Agreement between Mercer International Inc. and David Ure dated August 12, 2013. Incorporated by reference from Form 8-K filed on July 20, 2015.
10.8†	Amendment to Employment Agreement between Mercer International Inc. and David Ure, dated July 17, 2015. Incorporated by reference from Form 8-K filed July 20, 2015.
10.9†	Second Amended and Restated Employment Agreement between Mercer International Inc. and Jimmy S.H. Lee, dated for reference September 29, 2015. Incorporated by reference from Form 8-K filed September 29, 2015.
10.10†	Amended and Restated Employment Agreement between Mercer International Inc. and David M. Gandossi, dated for reference September 29, 2015. Incorporated by reference from Form 8-K filed September 29, 2015.
10.11	Chief Operating Officer and Managing Director Service Agreement, as amended, dated June 1, 2019 between Stendal Pulp Holding GmbH and Adolf Koppensteiner. Incorporated by reference from Form 10-K filed February 13, 2020.
21.1*	List of Subsidiaries of Registrant.
23.1*	Consent of PricewaterhouseCoopers LLP.

- 31.1* [Section 302 Certificate of Chief Executive Officer.](#)
- 31.2* [Section 302 Certificate of Chief Financial Officer.](#)
- 32.1* [Section 906 Certificate of Chief Executive Officer.](#)
- 32.2* [Section 906 Certificate of Chief Financial Officer.](#)
- 101* The following financial statements from the Company's annual report on Form 10-K for the year ended December 31, 2021, filed with the SEC on February 17, 2022, formatted in inline Extensible Business Reporting Language (iXBRL): (i) Consolidated Statements of Operations; (ii) Consolidated Statements of Comprehensive Income; (iii) Consolidated Balance Sheets; (iv) Consolidated Statements of Changes in Shareholders' Equity; (v) Consolidated Statements of Cash Flows; and (vi) Notes to the Consolidated Financial Statements.
- 104* The cover page from the Company's Annual Report on Form 10-K for the year ended December 31, 2021, has been formatted in Inline XBRL.

* Filed herewith.

† Denotes management contract or compensatory plan or arrangement.

SIGNATURES

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.

MERCER INTERNATIONAL INC.

Dated: February 17, 2022

By: /s/ JIMMY S.H. LEE
Jimmy S.H. Lee
Executive Chairman

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

/s/ JIMMY S.H. LEE Date: February 17, 2022
Jimmy S.H. Lee
Executive Chairman and Director

/s/ DAVID M. GANDOSI Date: February 17, 2022
David M. Gandossi
Chief Executive Officer, Principal Executive Officer and
Director

/s/ DAVID K. URE Date: February 17, 2022
David K. Ure
Executive Vice President,
Chief Financial Officer, Principal Financial
Officer and Principal Accounting Officer

/s/ WILLIAM D. MCCARTNEY Date: February 17, 2022
William D. McCartney
Director

/s/ JAMES SHEPHERD Date: February 17, 2022
James Shepherd
Director

/s/ KEITH PURCHASE Date: February 17, 2022
Keith Purchase
Director

/s/ ALAN WALLACE Date: February 17, 2022
Alan Wallace
Director

/s/ LINDA WELTY Date: February 17, 2022
Linda Welty
Director

/s/ RAINER RETTIG Date: February 17, 2022
Rainer Rettig
Director

/s/ ALICE LABERGE

Date: February 17, 2022

Alice Laberge
Director

/s/ JANINE NORTH

Date: February 17, 2022

Janine North
Director

**BYLAWS OF
MERCER INTERNATIONAL INC.
(as Amended thru May 15, 2020)**

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**BYLAWS OF
MERCER INTERNATIONAL INC.**

These Bylaws (the "Bylaws") are promulgated pursuant to the Washington Business Corporation Act, as set forth in Title 23B of the Revised Code of Washington.

**ARTICLE 1.
OFFICES**

1.1 Principal Office. The principal office of the Corporation shall be located at the principal place of business or such other place as the Board of Directors may designate.

1.2 Registered Office and Registered Agent. The registered office of the Corporation shall be located in the State of Washington at such place as may be fixed from time to time by the Board of Directors upon filing of such notices as may be required by law, and the registered agent shall have a business office identical with such registered office. Any change in the registered agent or registered office shall be effective upon filing such change with the office of the Secretary of State of the State of Washington.

1.3 Other Offices. The Corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Washington, as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE 2.
SHAREHOLDERS**

2.1 Annual Meeting

(a) The annual meeting of the shareholders of the Corporation for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year on a date and at a time and place to be set by the Board of Directors.

(b) Only persons who are nominated in accordance with the procedures set forth in this Section 2.1(b) shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 2.1(b). Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the secretary of the Corporation. Stockholders may bring other business before the annual meeting, provided that timely notice is provided to the secretary of the Corporation in accordance with this section, and provided further that such business is a proper matter for stockholder action under the Washington Business Corporation Act. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the prior year's meeting; provided, however, that in the event that (i) the date of the annual meeting is more than thirty (30) days prior to or more than sixty (60) days after such anniversary date, and (ii) less than sixty (60) days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate

for election or reelection as a directors, (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) the class and number of shares of the Corporation which are beneficially owned by such person and (iv) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934 (including, without limitation, such person's written consent to being name in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (i) the name and address of the stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation which are owned of record by such stockholder and beneficially by such beneficial owner. At the request of the Board of Directors any person nominated by the Board of Directors for election as a director shall furnish to the secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.1(b). The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by the Bylaws, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.

Notwithstanding the foregoing provisions of this Section 2.1(b), a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder with respect to matters set forth in this Section 2.1(b).

2.2 Special Meetings. Special meetings of the shareholders for any purpose or purposes may be called at any time by a majority of the Board of Directors or by the Chairperson of the Board (if one be elected) or by the Chief Executive Officer or by one or more shareholders holding shares in the aggregate entitled to cast not less than 20% of the votes at that meeting. The Board of Directors may designate any place as the place of any special meeting called by the Chairperson, the Chief Executive Officer, the Board or by shareholders as provided in this Section 2.2.

If a special meeting is called by any shareholder or group of shareholders, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or delivered by first-class mail to the Secretary of the Corporation. No business shall be transacted at such special meeting other than as specified in such notice. Upon receiving such notice, the Secretary shall cause notice to be given to the shareholders, in accordance with Section 2.3, that a meeting will be held at the time requested by the shareholder or shareholders calling the special meeting. Such notice shall be sent not less than 35 nor more than 60 days after the receipt of the request. Nothing contained in this paragraph of this Section 2.2 shall be construed as limiting, fixing or affecting the time when a meeting of shareholders called by action of the Board of Directors, Chairperson of the Board or by the Chief Executive Officer may be held.

2.3 Notice of Meetings. Except as otherwise provided in Subsections 2.3(b) and 2.3(c) below, the Secretary, Assistant Secretary, or any transfer agent of the Corporation shall deliver, either personally or by mail, private carrier, telegraph or teletype, or telephone, wire or wireless equipment which transmits a facsimile of the notice, not less than ten (10) nor more than sixty (60) days before the date of any meeting of shareholders, written notice stating the place, day, and time of the meeting to each shareholder of record entitled to vote at such meeting. If mailed in the United States, such notice shall be deemed to be delivered when deposited in the United States mail, with first-class postage thereon prepaid, addressed to the shareholder at his address as it appears on the Corporation's

record of shareholders. If mailed outside the United States, such notice shall be deemed to be delivered five (5) days after being deposited in the mail, with first-class airmail postage thereon, return receipt requested, addressed to the shareholder at the shareholder's address as it appears on the Corporation's record of shareholders.

(a) **Notice of Special Meeting.** In the case of a special meeting, the written notice shall also state with reasonable clarity the purpose or purposes for which the meeting is called and the actions sought to be approved at the meeting. No business other than that specified in the notice may be transacted at a special meeting.

(b) **Proposed Articles of Amendment or Dissolution.** If the business to be conducted at any meeting includes any proposed amendment to the Articles of Incorporation or the proposed voluntary dissolution of the Corporation, then the written notice shall be given not less than twenty (20) nor more than sixty (60) days before the meeting date and shall state that the purpose or one of the purposes is to consider the advisability thereof, and, in the case of a proposed amendment, shall be accompanied by a copy of the amendment.

(c) **Proposed Merger, Consolidation, Exchange, Sale, Lease or Disposition.** If the business to be conducted at any meeting includes any proposed plan of merger or share exchange, or any sale, lease, exchange, or other disposition of all or substantially all of the Corporation's property otherwise than in the usual or regular course of its business, then the written notice shall state that the purpose or one of the purposes is to consider the proposed plan of merger or share exchange, sale, lease, or disposition, as the case may be, shall describe the proposed action with reasonable clarity, and, if required by law, shall be accompanied by a copy or a detailed summary thereof; and written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty (20) nor more than sixty (60) days before such meeting, in the manner provided in Section 2.3 above.

(d) **Declaration of Mailing.** A declaration of the mailing or other means of giving any notice of any shareholders' meeting, executed by the Secretary, Assistant Secretary, or any transfer agent of the Corporation giving the notice, shall be prima facie evidence of the giving of such notice.

(e) **Waiver of Notice.** Notice of any shareholders' meeting may be waived in writing by any shareholder at any time, either before or after the meeting. Except as provided below, the waiver must be signed by the shareholder entitled to the notice, and be delivered to the Corporation for inclusion in the minutes or filing with the corporate records. A shareholder's attendance at a meeting waives objection to lack of notice, or defective notice, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

2.4 Quorum. A quorum shall exist at any meeting of shareholders if one-third of the shares entitled to vote is represented in person or by proxy. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. The shareholders present at a duly organized meeting may continue to transact business at such meeting and at any adjournment of such meeting (unless a new record date is or must be set for the adjourned meeting), notwithstanding the withdrawal of enough shareholders from either meeting to leave less than a quorum. Once a share is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for the adjourned meeting.

2.5 Voting of Shares. Except as otherwise provided in the Articles of Incorporation or these Bylaws, every shareholder of record shall have the right at every shareholders' meeting to one vote for every share standing in his name on the books of the Corporation. If a quorum exists, action on a matter, other than the election of directors,

is approved by a voting group if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless a greater number is required by the Articles of Incorporation or the Washington Business Corporation Act.

2.6 Adjourned Meetings. One-half of the shares represented at a meeting, even if less than a quorum, may adjourn the meeting from time to time without further notice. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. However, if a new record date for the adjourned meeting is or must be fixed in accordance with the Washington Business Corporation Act, notice of the adjourned meeting must be given to persons who are shareholders as of the new record date. At any adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

2.7 Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or any adjournment thereof, or entitled to receive payment of any dividend, the Board of Directors may fix in advance a record date for any such determination of shareholders, such date to be not more than seventy (70) days and, in the case of a meeting of shareholders, not less than ten (10) days prior to the meeting or action requiring such determination of shareholders. If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the day before the date on which notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date, which it must do if the meeting is adjourned more than one hundred twenty (120) days after the date is fixed for the original meeting.

2.8 Record of Shareholders Entitled to Vote. After fixing a record date for a shareholders' meeting, the Corporation shall prepare an alphabetical list of the names of all shareholders on the record date who are entitled to notice of the shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder. A shareholder, shareholder's agent, or a shareholder's attorney may inspect the shareholders list, beginning ten days prior to the shareholders' meeting and continuing through the meeting, at the Corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held during regular business hours and at the shareholder's expense. The shareholders list shall be kept open for inspection during such meeting or any adjournment. Failure to comply with the requirements of this Section shall not affect the validity of any action taken at such meeting.

2.9 Virtual Meetings. Shareholders may participate in a meeting by means of a conference telephone or other electronic means or remote communication, including, without limitation, the internet, by which all shareholders or proxy holders participating in the meeting has a reasonable opportunity to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings, and participation by such means shall constitute presence in person at a meeting.

2.10 Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. Such proxy shall be filed with the secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

2.11 Organization

(a) At every meeting of shareholders, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, a chairman of the meeting chosen by a majority in interest of the shareholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the Chief Executive Officer, shall act as secretary of the meeting.

(b) The Board of Directors of the Corporation shall be entitled to make such rules or regulations for the conduct of meetings of shareholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to shareholders of record of the Corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of shareholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE 3. BOARD OF DIRECTORS

3.1 Management Responsibility. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors, except as may be otherwise provided in the Articles of Incorporation or the Washington Business Corporation Act.

3.2 Number of Directors, Qualification. The authorized number of directors of the Corporation shall be not less than three (3) nor more than thirteen (13), the specific number to be set by resolution of the Board of Directors. Directors need not be shareholders. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Election.

(a) Except as provided in this Section 3.3(b), Section 3.4 and 3.5, and unless provided in the Articles of Incorporation, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. If, for any reason, the directors shall not have been elected at an annual meeting, they may be elected at a special meeting of shareholders called for that purpose in accordance with these Bylaws. Subject to Section 3.3(b), despite the expiration of a director's term, the director shall continue to serve until the director's successor shall have been elected and qualified or until there is a decrease in the number of directors.

(b) Except as provided in this Section 3.3(b), a nominee for director shall be elected if the votes cast for such nominee's election exceed the votes cast against such nominee's election. The following shall not be votes cast: (i) a share whose ballot is marked as abstain; (ii) a share otherwise present at the meeting but for which there is an abstention; and (iii) a share otherwise present at the

meeting as to which a shareholder gives no authority or direction. Notwithstanding the foregoing, the directors shall be elected by a plurality of the votes cast in a "contested election" at any meeting of shareholders. A nominee for director in an election, other than a contested election, who does not receive the requisite votes for election, but who was a director at the time of the election, shall continue to serve as a director for a term that shall terminate on the date that is the earliest of: (A) ninety (90) days from the date on which the voting results of the election are certified, (B) the date on which an individual is selected by the Board of Directors to fill the office held by such director (which selection shall be deemed to constitute the filling of a vacancy by the Board of Directors), or (C) the date the director resigns. A "contested election" is one in which (i) on the last day for delivery of a notice under Section 2.1(b), a stockholder that has provided notice in accordance with Section 2.1(b) to nominate a person to stand for election as a director and has complied with the requirements of Section 2.1(b) with respect to one or more nominees; and (ii) there is a bona fide election contest, as evidenced by an affirmative determination of the Board of Directors to that effect (the failure by the Board of Directors to make any determination to the contrary being deemed an affirmative determination). This bylaw is intended to implement RCW 23B.10.205 of the Washington Business Corporation Act. For purposes of clarity and to resolve any ambiguity under RCW 23B.10.205, it is assumed that for purposes of determining the number of director nominees, on the last day for delivery of a notice under Section 2.1(b), there is a candidate nominated by the Board of Directors for each of the director positions to be voted on at the meeting. Nothing in this bylaws is intended to limit the authority of the Board of Directors to determine that a bona fide election contest does not exist, in which event it shall disclose the applicable voting regime in the notice of meeting or, if such determination occurs after such notice has been sent, send a new notice which shall include disclosure of the applicable voting regime.

3.4 Vacancies. Any vacancy occurring in the Board of Directors (whether caused by resignation, death, an increase in the number of directors, or otherwise) may be filled the Board of Directors or the shareholders if not filled by the Board. If the directors in office constitute fewer than a quorum of the Board, they may fill the vacancy by the affirmative vote of a majority of all the directors in office. A director elected to fill any vacancy shall hold office until the next shareholders meeting at which directors are elected.

3.5 Resignation. Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

3.6 Removal. One or more members of the Board of Directors (including the entire Board) may be removed, with cause, at a meeting of shareholders called expressly for that purpose. A director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director. Neither the Board of Directors nor any individual director may be removed without cause.

3.7 Annual Meeting. The first meeting of each newly elected Board of Directors shall be known as the annual meeting thereof and shall be held without notice immediately after the annual shareholders' meeting or any special shareholders' meeting at which a Board is elected. Said meeting shall be held at the same place as such shareholders' meeting unless some other place shall be specified by resolution of the Board of Directors.

3.8 Regular Meetings. Regular meetings of the Board of Directors or of any committee designated by the Board may be held at such place and such day and hour as shall from time to time be fixed by resolution of the Board or committee, without other notice than the delivery of such resolution as provided in Section 3.10 below.

3.9 Special Meetings. Special meetings of the Board of Directors or any committee designated by the Board may be called by the Chief Executive Officer or the Chairperson of the Board (if one be elected) or any director or committee member, to be held at such place and such day and hour as specified by the person or persons calling the meeting.

3.10 Notice of Meeting. Notice of the date, time, and place of all special meetings of the Board of Directors or any committee designated by the Board shall be given by the Secretary, or by the person calling the meeting, by mail, private carrier, telegram, facsimile transmission, or personal communication over the telephone or otherwise, provided such notice is received at least one (1) day prior to the day upon which the meeting is to be held.

No notice of any regular meeting need be given if the time and place thereof shall have been fixed by resolution of the Board of Directors or any committee designated by the Board and a copy of such resolution has been delivered by mail, private carrier, telegram or facsimile transmission to every director or committee member and is received at least one (1) day before the first meeting held in pursuance thereof.

Notice of any meeting of the Board of Directors or any committee designated by the Board need not be given to any director or committee member if it is waived in a writing signed by the director entitled to the notice, whether before or after such meeting is held.

A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors or any committee designated by the Board need be specified in the notice or waiver of notice of such meeting unless required by the Articles of Incorporation or these Bylaws.

Any meeting of the Board of Directors or any committee designated by the Board shall be a legal meeting without any notice thereof having been given if all of the directors or committee members have received valid notice thereof, are present without objecting, or waive notice thereof in a writing signed by the director and delivered to the Corporation for inclusion in the minutes or filing with the corporate records, or any combination thereof.

3.11 Quorum of Directors. A majority of the number of directors fixed by or in the manner provided by these Bylaws shall constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors unless the Articles of Incorporation or these Bylaws require the vote of a greater number of director's.

A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. If the meeting is adjourned for more than forty-eight (48) hours, then notice of the time and place of the adjourned meeting shall be given before the adjourned meeting takes place, in the manner specified in Section 3.10 of these Bylaws, to the directors who were not present at the time of the adjournment.

3.12 Presumption of Assent. Any director who is present at any meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless (a) the director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting business at the meeting; (b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) the director delivers written notice of dissent or abstention to the presiding officer of

the meeting before the adjournment thereof or to the Corporation within a reasonable time after adjournment of the meeting. Such right to dissent or abstain shall not be available to any director who voted in favor of such action.

3.13 Action by Directors Without a Meeting. Any action required by law to be taken or which may be taken at a meeting of the Board of Directors or of a committee thereof may be taken without a meeting if one or more written consents, setting forth the action so taken, shall be signed by all of the directors or all of the members of the committee, as the case may be, either before or after the action taken and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. Such consent shall have the same effect as a unanimous vote at a meeting duly held upon proper notice on the date of the last signature thereto, unless the consent specifies a later effective date.

3.14 Telephonic Meetings. Members of the Board of Directors or any committee designated by the Board may participate in a meeting of the Board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other during the meeting. Participation by such means shall constitute presence in person at a meeting.

3.15 Compensation. By resolution of the Board of Directors, the directors and committee members may be paid their expenses, if any, or a fixed sum or a stated salary as a director or committee member for attendance at each meeting of the Board or of such committee as the case may be. No such payment shall preclude any director or committee member from serving the Corporation in any other capacity and receiving compensation therefor.

3.16 Committees. The Board of Directors, by resolution adopted by a majority of the full Board, may from time to time designate from among its members one or more committees, each of which must have two (2) or more members and, to the extent provided in such resolution, shall have and may exercise all the authority of the Board of Directors, except that no such committee shall have the authority to:

- (a) authorize or approve a distribution except according to a general formula or method prescribed by the Board of Directors;
- (b) approve or propose to shareholders action that the Washington Business Corporation Act requires to be approved by shareholders;
- (c) fill vacancies on the Board of Directors or on any of its committees;
- (d) adopt any amendment to the Articles of Incorporation;
- (e) adopt, amend or repeal these Bylaws;
- (f) approve a plan of merger; or
- (g) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the Board of Directors may authorize a committee, or a senior executive officer of the Corporation, to do so within limits specifically prescribed by the Board of Directors.

Meetings of such committees shall be governed by the same procedures as govern the meetings of the Board of Directors. All committees so appointed shall keep regular minutes of their meetings and shall cause them to be recorded in books kept for that purpose at the office of the Corporation.

ARTICLE 4. OFFICERS

4.1 Appointment. The officers of the Corporation shall be appointed annually by the Board of Directors at its annual meeting held after the annual meeting of the shareholders. If the appointment of officers is not held at such meeting, such appointment shall be held as soon thereafter as a Board meeting conveniently may be held. Except in the case of death, resignation or removal, each officer shall hold office at the pleasure of the Board of Directors until the next annual meeting of the Board and until his successor is appointed and qualified.

4.2 Qualification. None of the officers of the Corporation need be a director, except as specified below.

Any two or more of the corporate offices may be held by the same person.

4.3 Officers Designated. The officers of the Corporation shall include, if and when designated by the Board of Directors, a Chief Executive Officer, a President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Chief Financial Officer and a Treasurer. The Board of Directors may also appoint such other officers and assistant officers as it may deem necessary.

The Board of Directors may, in its discretion, appoint a Chairperson of the Board of Directors; and, if a Chairperson has been appointed, the Chairperson shall, when present, preside at all meetings of the Board of Directors and the shareholders and shall have such other powers commonly incident to his office and as the Board may prescribe.

(a) **Chief Executive Officer.** The Chief Executive Officer shall be the chief executive officer of the corporation and, subject to the direction and control of the Board, shall supervise and control all of the assets, business, and affairs of the corporation. The Chief Executive Officer shall vote the shares owned by the corporation in other corporations, domestic or foreign, unless otherwise prescribed by resolution of the Board. In general, the Chief Executive Officer shall perform all duties incident to the office of Chief Executive Officer and such other duties as may be prescribed by the Board from time to time.

The Chief Executive Officer shall, unless a Chairperson of the Board of Directors has been appointed and is present, preside at all meetings of the shareholders and the Board of Directors.

(b) **President.** The President shall report to the Chief Executive Officer. In the absence of the Chief Executive Officer or his inability to act, the President, if any, shall perform all the duties of the Chief Executive Officer and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Chief Executive Officer; provided that no such President shall assume the authority to preside as Chairperson of meetings of the Board unless such President is a member of the Board. In general, the President shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

(c) **Vice Presidents.** In the absence of the President or his inability to act, the Vice Presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked a Vice President designated by the Board shall perform all the duties of the President and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President; provided that no such Vice President shall assume the authority to preside as Chairperson of meetings of the Board unless such Vice President is a member of the Board. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be respectively prescribed for them by the Board, these Bylaws or the President.

(d) **Secretary.** The Secretary shall attend all meetings of the shareholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the Corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the shareholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given him in these Bylaws and other duties commonly incident to his office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) **Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) **Treasurer.** Subject to the direction and control of the Board of Directors, the Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation; and, at the expiration of his term of office, he shall turn over to his successor all property of the Corporation in his possession.

In the absence of the Treasurer, an Assistant Treasurer may perform the duties of the Treasurer.

4.4 Delegation. In case of the absence or inability to act of any officer of the Corporation and of any person herein authorized to act in his place, the Board of Directors may from time to time delegate the powers or duties of such officer to any other officer or director or other person whom it may select.

4.5 Resignation. Any officer may resign at any time by delivering written notice to the Corporation. Any such resignation shall take effect when the notice is delivered unless the notice specifies a later date. Unless otherwise specified in the notice, acceptance of such resignation by the Corporation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

4.6 Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board at any time with or without cause. Election or appointment of an officer or agent shall not of itself create contract rights.

4.7 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, creation of a new office, or any other cause may be filled by the Board of Directors for the unexpired portion of the term or for a new term established by the Board.

4.8 Compensation. Compensation, if any, for officers and other agents and employees of the Corporation shall be determined by the Board of Directors, or by the Chief Executive Officer to the extent such authority may be delegated to him by the Board. No officer shall be prevented from receiving compensation in such capacity by reason of the fact that he is also a director of the Corporation.

**ARTICLE 5.
EXECUTION OF CORPORATION INSTRUMENTS AND VOTING
OF SECURITIES OWNED BY THE CORPORATION**

5.1 Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the Corporation any corporate instrument or document, or to sign on behalf of the Corporation the corporate name without limitation, or to enter into contracts on behalf of the Corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the Corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the Corporation or in special accounts of the Corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

5.2 Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the Corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or any Vice President.

**ARTICLE 6.
STOCK**

6.1 Form and Execution of Certificates. Certificates for the shares of stock of the Corporation shall be in such form as is consistent with the Articles of Incorporation and applicable law. Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the Corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the Corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section or otherwise required by law or with respect to this Section a statement that the Corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences

and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.2 Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to agree to indemnify the Corporation in such manner as it shall require or to give the Corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

6.3 Transfers

(a) Transfers of record of shares of stock of the Corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of shareholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such shareholders in any manner not prohibited by the Act.

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

6.5 Execution of Other Securities. All bonds, debentures and other corporate securities of the Corporation, other than stock certificates (covered in Section 6.1), may be signed by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the Corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the Corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the Corporation.

Except as otherwise specifically provided in these Bylaws, no shares of stock shall be transferred on the books of the Corporation until the outstanding certificate therefor has been surrendered to the Corporation. All certificates surrendered to the Corporation for transfer shall be cancelled, and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a

lost, destroyed, or mutilated certificate a new one may be issued therefor upon such terms (including indemnity to the Corporation) as the Board of Directors may prescribe.

ARTICLE 7. BOOKS AND RECORDS

7.1 Books of Accounts, Minutes and Share Register. The corporation shall keep as permanent records minutes of all meetings of its shareholders and Board of Directors, a record of all actions taken by the shareholders or Board of Directors without a meeting, and a record of all actions taken by a committee of the Board of Directors exercising the authority of the Board of Directors on behalf of the Corporation. The corporation shall maintain appropriate accounting records. The corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each. The corporation shall keep a copy of the following records at its principal office: the Articles or Restated Articles of Incorporation and all amendments to them currently in effect; the Bylaws or Restated Bylaws and all amendments to them currently in effect; the minutes of all shareholders' meetings, and records of all actions taken by shareholders without a meeting, for the past three years; its financial statements for the past three years, including balance sheets showing in reasonable detail the financial condition of the Corporation as of the close of each fiscal year, and an income statement showing the results of its operations during each fiscal year prepared on the basis of generally accepted accounting principles or, if not, prepared on a basis explained therein; all written communications to shareholders generally within the past three years; a list of the names and business addresses of its current directors and officers; and its most recent annual report delivered to the Secretary of State of Washington.

7.2 Copies of Resolutions. Any person dealing with the Corporation may rely upon a copy of any of the records of the proceedings, resolutions, or votes of the Board of Directors or shareholders, when certified by the Chief Executive Officer, the President or Secretary.

ARTICLE 8. FISCAL YEAR

The fiscal year of the Corporation shall be set by resolution of the Board of Directors.

ARTICLE 9. CORPORATE SEAL

The Board of Directors may adopt a corporate seal for the Corporation which shall have inscribed thereon the name of the Corporation, the year and state of incorporation and the words "corporate seal".

ARTICLE 10. INDEMNIFICATION

10.1 Right to Indemnification. Each individual (hereinafter an "indemnitee") who was or is made a party or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or that, while serving as a director or officer of the Corporation, he or she is or was also serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation or of a foreign or domestic partnership, joint venture, trust, employee benefit plan or other enterprise, whether the basis of the proceeding is alleged action in an official capacity as such a director, officer, employee, partner, trustee, or agent or in any other capacity while serving as such director, officer, employee, partner, trustee, or agent, shall be indemnified and held harmless by the Corporation to the full extent permitted by

applicable law as then in effect, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts to be paid in settlement) incurred or suffered by such indemnitee in connection therewith, and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee, partner, trustee, or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that no indemnification shall be provided to any such indemnitee if the Corporation is prohibited by the Washington Business Corporation Act or other applicable law as then in effect from paying such indemnification; and provided, further, that except as provided in Section 10.2 of this Article with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized or ratified by the Board of Directors. The right to indemnification conferred in this Section 10.1 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"). Any advancement of expenses shall be made only upon delivery to the Corporation of a written undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 10.1 and upon delivery to the Corporation of a written affirmation (hereinafter an "affirmation") by the indemnitee of his or her good faith belief that such indemnitee has met the standard of conduct necessary for indemnification by the Corporation pursuant to this Article.

10.2 Right of Indemnitee to Bring Suit. If a written claim for indemnification under Section 10.1 of this Article is not paid in full by the Corporation within ninety (90) days after the Corporation's receipt thereof, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful, in whole or in part, in any such suit or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expenses of prosecuting or defending such suit. The indemnitee shall be presumed to be entitled to indemnification under this Article upon submission of a written claim (and, in an action brought to enforce a claim for an advancement of expenses, where the required undertaking and affirmation have been tendered to the Corporation) and thereafter the Corporation shall have the burden of proof to overcome the presumption that the indemnitee is so entitled. Neither the failure of the Corporation (including the Board of Directors, independent legal counsel or the shareholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances nor an actual determination by the Corporation (including the Board of Directors, independent legal counsel or the shareholders) that the indemnitee is not entitled to indemnification shall be a defense to the suit or create a presumption that the indemnitee is not so entitled.

10.3 Nonexclusivity of Rights. The right to indemnification and the advancement of expenses conferred in this Article X shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation or Bylaws of the Corporation, general or specific action of the Board of Directors, contract or otherwise.

10.4 Insurance, Contracts and Funding. The corporation may maintain insurance, at its expense, to protect itself and any individual who is or was a director, officer, employee or agent of the Corporation or who, while a director, officer, employee or agent of the Corporation, is or was serving at the request of the Corporation as an agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any expense, liability or loss asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee or agent, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Washington Business Corporation Act. The corporation may enter into contracts with any director, officer, employee or agent of the Corporation in furtherance of the provisions of this Article and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article.

10.5 Indemnification of Employees and Agents of the Corporation. The corporation may, by action of the Board of Directors, grant rights to indemnification and advancement of expenses to employees and agents of the Corporation with the same scope and effect as the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation or pursuant to rights granted pursuant to, or provided by, the Washington Business Corporation Act or otherwise.

10.6 Persons Serving Other Entities. Any individual who is or was a director, officer or employee of the Corporation who, while a director, officer or employee of the Corporation, is or was serving (a) as a director or officer of another foreign or domestic corporation of which a majority of the shares entitled to vote in the election of its directors is held by the Corporation, (b) as a trustee of an employee benefit plan and the duties of the director or officer to the Corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan or (c) in an executive or management capacity in a foreign or domestic partnership, joint venture, trust or other enterprise of which the Corporation or a wholly owned subsidiary of the Corporation is a general partner or has a majority ownership or interest shall be deemed to be so serving at the request of the Corporation and entitled to indemnification and advancement of expenses under this Article.

ARTICLE 11. AMENDMENT OF BYLAWS

11.1 These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board, except that the Board may not repeal or amend any Bylaw that the shareholders have expressly provided, in amending or repealing such Bylaw, may not be amended or repealed by the Board. The shareholders may also alter, amend and repeal these Bylaws or adopt new Bylaws. All Bylaws made by the Board may be amended, repealed, altered or modified by the shareholders.

ADOPTION AND AMENDMENTS

Date of Adoption / Amendment	Section(s)	Effect of Amendment	Date of Shareholder Approval (if applicable)
Adoption by Board on July 14, 2005	—	—	January 25, 2006
Amendment adopted by Board on January 25, 2006	2.2	Amended Section 2.2 to permit shareholders to call a special meeting	January 25, 2006
Amendment adopted by Board on December 14, 2005		Amended name of Corporation to Mercer International Inc. (effective upon merger of the Corporation and Mercer Delaware Inc. on March 1, 2006)	February 17, 2006
Amendment adopted by Board on April 16, 2019	3.3	Amended Election of Directors to the Board	—
Amendment adopted by Board on May 15, 2020	2.9	Amended to permit virtual shareholder meetings	—

Execution Version

CREDIT AGREEMENT

Dated as of January 21, 2022

Among

MERCER PEACE RIVER PULP LTD.,
MERCER CELGAR LIMITED PARTNERSHIP, and
MERCER FORESTRY SERVICES LTD.

as Borrowers,

and

EACH OTHER PERSON FROM TIME TO TIME PARTY HERETO
as Guarantors,

THE FINANCIAL INSTITUTIONS NAMED HEREIN
as Lenders,

ROYAL BANK OF CANADA
as Administrative Agent and Collateral Agent,

and

RBC CAPITAL MARKETS¹
as Lead Arranger and Bookrunner

¹ RBC Capital Markets is a brand name for the capital markets business of Royal Bank of Canada and its affiliates.

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SCHEDULE 6.16	ENVIRONMENTAL MATTERS
SCHEDULE 6.19	PENSION PLANS
SCHEDULE 6.23	MATERIAL AGREEMENTS
SCHEDULE 6.25	INSURANCE
SCHEDULE 7.11	EXISTING INVESTMENTS
SCHEDULE 7.14	DEBT AND LIENS
SCHEDULE 7.16	TRANSACTIONS WITH AFFILIATES
SCHEDULE 7.20	EXISTING EQUIPMENT SUBJECT TO CAPITAL LEASE
SCHEDULE 7.31	POST CLOSING UNDERTAKINGS

CREDIT AGREEMENT

This Credit Agreement, dated as of January 21, 2022 (this “**Agreement**”), among the financial institutions from time to time parties hereto (such financial institutions, together with their respective successors and assigns, are referred to hereinafter each individually as a “**Lender**” and collectively as the “**Lenders**”), Royal Bank of Canada, as a Lender and as administrative agent and collateral agent for the Secured Parties (in its capacity as administrative agent and collateral agent, together with any successor administrative agent and collateral agent (the “**Agent**”), Royal Bank of Canada, as bookrunner and lead arranger (in such capacity, the “**Arranger**”), Mercer Peace River Pulp Ltd., a British Columbia corporation (“**Mercer Peace River**”), Mercer Celgar Limited Partnership, a British Columbia limited partnership (“**Mercer Celgar**”) and Mercer Forestry Services Ltd., a British Columbia corporation (together with Mercer Peace River and Mercer Celgar, the “**Borrowers**” and each a “**Borrower**”), and each of the Borrowers’ Subsidiaries from time to time party hereto as guarantors (collectively with the Borrowers, the “**Guarantors**”).

WITNESSETH:

WHEREAS the Borrowers have requested that the Lenders make available and provide to the Borrowers the revolving credit facilities by way of loans and letters of credit not exceeding \$160,000,000 to, in part, refinance certain existing indebtedness of the Borrowers, fund certain upfront fees and provide for the ongoing working capital and other general corporate purpose requirements of the Loan Parties;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1 - DEFINED TERMS, LOANS AND LETTERS OF CREDIT

1.1 Defined Terms.

Capitalized terms used in the Loan Documents shall have the following respective meanings and all section references in the following definitions shall refer to sections of this Agreement:

“**Accordion Fee**” has the meaning specified in Section 2.8.

“**Account**” or “**Accounts**” shall mean (exclusive of any debts or liabilities owing by any directors, officers or employees of the Loan Parties) any and all of any Loan Party’s now existing and future: (a) accounts (as defined in the PPSA), and any and all other receivables (whether or not specifically listed on schedules furnished to the Agent), including, without limitation, all accounts created by, or arising from, any Loan Party’s sales, leases, rentals of goods or renditions of services to its customers, including, but not limited to, those accounts arising under any Loan Party’s trade names or styles, or through any Loan Party’s divisions; (b) any and all instruments, documents, chattel paper (including electronic chattel paper); (c) indemnification rights and tax refunds and road and silviculture credits owing by any Governmental Authority; (d) the proceeds or royalties of any and all licensing agreements or

arrangements between any Loan Party and any licensee of any of such Loan Party's general intangibles; (e) reserves and credit balances arising in connection with or pursuant hereto; (f) guarantees, supporting obligations, payment intangibles and letter of credit rights given to any Loan Party on behalf of a customer of such Loan Party in support of any "Accounts"; (g) insurance policies or rights relating to any of the foregoing; (h) general intangibles pertaining to any and all of the foregoing (including, without limitation, all rights to payment, including, without limitation, those arising in connection with bank and non-bank credit cards) and including, without limitation, books and records and any electronic media and software thereto; (i) notes, deposits or property of account debtors securing the obligations of any such account debtors to any Loan Party; (j) cash and non-cash proceeds (as defined in the PPSA) of any and all of the foregoing; and (k) all monies and claims for monies now or hereafter due and payable in connection with any and all of the foregoing or otherwise.

"Account Debtor" means each Person obligated in any way on or in connection with an Account or Chattel Paper.

"Accounting Changes" has the meaning specified in Section 14.24.

"Acquisition" means any direct or indirect acquisition or other transaction (or series of related transactions) after the Effective Date by any Loan Party, by any means (including by way of merger, consolidation or amalgamation), resulting in the acquisition of all or substantially all of the assets of, or a Controlling interest in the Capital Stock (including as an Investment in, or purchase of a Controlling interest in, such Capital Stock), or of an operating division, line of business or a business unit, of any Person.

"Adjusted Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

"Affiliate" means, as to any Person, (i) any other Person which, directly or indirectly, is in Control of, is Controlled by, or is under common control with, such Person, (ii) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (iii) any other Person directly or indirectly holding 20% or more of any class of the equity interests of that Person, and (iv) any other Person 20% or more of any class of whose equity interests is held directly or indirectly by that Person; provided that no Lender as of the Effective Date shall be deemed to be an Affiliate of the Loan Parties.

"Agent", **"Administrative Agent"** and **"Collateral Agent"** means Royal Bank, solely in its capacity as administrative agent and collateral agent for the Secured Parties, and any successor agent.

"Agent Advances" has the meaning specified in Section 1.4(i).

"Agent's Liens" means the Liens on the Collateral granted to the Collateral Agent, for the benefit of the Secured Parties, pursuant to this Agreement and the other Loan Documents.

"Agent-Related Persons" means the Agent, together with its Affiliates, and the officers, directors, employees, counsel, representatives, agents and attorneys in fact of the Agent and such Affiliates.

“**Aggregate Revolver Outstandings**” means, at any date of determination, without duplication: the sum of (a) the aggregate unpaid principal balance of all Revolving Loans, plus (b) one hundred percent (100%) of the aggregate undrawn amount of all outstanding Letters of Credit issued under the LC Accommodation, plus (c) the aggregate amount of any unpaid reimbursement obligations in respect of all Letters of Credit issued under the LC Accommodation.

“**Agreement**” means this Credit Agreement, as from time to time amended, modified, restated, supplemented or replaced in writing.

“**Allocable Amount**” has the meaning specified in Section 13.6.

“**AML Legislation**” has the meaning specified in Section 14.23.

“**Anti-Terrorism and Sanctions Laws**” means (i) any laws relating to terrorism or money laundering, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and the *Patriot Act* and (ii) any Canadian laws, regulations or orders governing transactions in controlled goods or technologies or dealings with countries, entities, organizations, or individuals subject to economic sanctions and similar measures, including the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), Part II.1 of the *Criminal Code* (Canada) and the *Export and Import Permits Act* (Canada), and any related regulations.

“**Applicable Margin**” means, for purposes of calculating the applicable interest rate for any day for any Revolving Loan or other Obligations, and the applicable rate of the Letter of Credit Fees for any day under Section 2.6, the percentage corresponding to the Average Excess Availability for the Applicable Margin Test Period ending on the last day of the most recent fiscal month for which Responsible Officer’s Certificates (in the form of Exhibit G) have been delivered to the Agent pursuant to Section 5.2 (subject to the immediately succeeding sentence):

Applicable Margin			
Pricing Level	Average Excess Availability	BA Equivalent Revolving Loans, SOFR Revolving Loans and Letter of Credit Fees	Prime Rate Revolving Loans and Base Rate Revolving Loans
I	An amount less than 33.33% of the Line Cap	1.450%	0.00%
II	An amount less than 66.66% but greater than or equal to 33.33% of the Line Cap	1.325%	0.00%
III	An amount greater than or equal to 66.66% of the Line Cap	1.200%	0.00%

The Applicable Margins shall be adjusted (up or down) prospectively, determined by reference to the pricing grid set forth above, on a monthly basis on the date (each a “**Calculation Date**”) that is the first day of the first calendar month following the calendar month in which

Responsible Officer's Certificates (in the form of Exhibit G) are delivered to the Agent pursuant to Section 5.2 as at and for the fiscal month just ended, as the case may be, based upon the Average Excess Availability for the Applicable Margin Test Period ending on the last day of such fiscal month; provided, however, that the initial Applicable Margin shall be based on Pricing Level I (as shown above) with all such initial Applicable Margins remaining at such levels as and from the Effective Date until the Calculation Date based upon the delivery of the Borrowing Base Certificate and Responsible Officers' Certificate pursuant to Section 5.2 for the first full fiscal month completed after the Effective Date. Notwithstanding any term to the contrary, if an Event of Default has occurred and is continuing, the Applicable Margins shall, whether or not any default rates also apply, upon notice of such Event of Default by the Agent, revert to Pricing Level I and during the continuance of any Default or Event of Default no reduction may occur until the first day of the first calendar month following the date on which such Default or Event of Default is waived or cured by the Required Lenders or the Supermajority Lenders, as the case may be. If the Responsible Officer's Certificate is not delivered in accordance with Section 5.2, the Applicable Margin shall revert to Pricing Level I and no reduction may occur until the Business Day following the date on which such Responsible Officer's Certificate is delivered.

"Applicable Margin Test Period" means a period of one fiscal month.

"Appraisal" means, at any particular time, the most recent appraisal of Inventory or Machinery & Equipment, as applicable, conducted (a) by or on behalf of the Agent or its representatives or (b) by an arm's length third party retained by the Borrowers and acceptable to the Agent, acting reasonably, which third party engages in inventory or machinery and equipment appraisals in the normal course of its business for cash remuneration.

"Approved Fund" means any Person (other than a natural Person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" has the meaning specified in the preamble hereto.

"Assignee" has the meaning specified in Section 11.2(a).

"Assignment and Acceptance" has the meaning specified in Section 11.2(a).

"Attorney Costs" means all reasonable and documented legal fees, expenses and disbursements of any law firm or other legal counsel engaged by the Agent in accordance with the terms hereof.

"Average Excess Availability" means, for any period of determination, the daily average Excess Availability for such period, as calculated by the Agent.

"BA Equivalent Interest Payment Date" means, with respect to a BA Equivalent Revolving Loan, (i) the last day of each BA Equivalent Interest Period applicable to such BA Equivalent Revolving Loan, and (ii) the Termination Date.

“BA Equivalent Interest Period” means, with respect to each BA Equivalent Revolving Loan, the period selected by a Borrower hereunder and being of one, two, or three months’ duration (or, if agreed to by all applicable Lenders, a longer or shorter period), in each case commencing on the Funding Date of such BA Equivalent Revolving Loan or on the Continuation/Conversion Date on which the Revolving Loan is converted into or continued as a BA Equivalent Revolving Loan; provided that in any case the last day of each BA Equivalent Interest Period shall be the day immediately prior to the first day of the next BA Equivalent Interest Period and further provided that the last day of each BA Equivalent Interest Period shall be a Business Day and if the last day of a BA Equivalent Interest Period selected by the Borrower is not a Business Day, the Borrower shall be deemed to have selected a BA Equivalent Interest Period the last day of which is the Business Day next following the last day of the BA Equivalent Interest Period otherwise selected, unless such next following Business Day falls in the next calendar month in which event the Borrower shall be deemed to have selected a BA Equivalent Interest Period the last day of which is the Business Day next preceding the last day of the BA Equivalent Interest Period otherwise selected and further provided that the last BA Equivalent Interest Period hereunder shall expire on or prior to the Stated Termination Date.

“BA Equivalent Revolving Loan” means a Revolving Loan during any period in which it bears interest based on the BA Rate.

“BA Rate” means, for the BA Equivalent Interest Period of each BA Equivalent Revolving Loan, the rate of interest per annum equal to the average annual rate applicable to Canadian dollar bankers’ acceptances having such specified term and face amount (or a term and face amount as closely as possible comparable to such specified term and face amount or principal amount) quoted daily by the banks listed in Schedule 1 of the Bank Act (Canada) that appears on the Refinitiv Screen CDOR page at approximately 10:00 a.m. EST on such day (or, if such day is not a Business Day, as of approximately 10:00 a.m. EST on the preceding Business Day), provided that, if any such rate is below zero, then the BA Rate shall be deemed to be zero.

“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 Financial Institution.

“Bail-In Legislation” means, 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.

“Bank Product Amount” has the meaning ascribed thereto under the definition of “Bank Products”.

“Bank Product Exposure” means, the sum of the amount determined by the Agent (in its sole discretion with consideration given to any determinations provided to the Agent by the applicable Bank Product Provider) to be the credit risk associated with all outstanding Bank Products with respect to which the Bank Product Provider has established a Bank Product Amount. Any Bank Product Exposure denominated in U.S. Dollars shall be the Dollar equivalent thereof.

“Bank Product Provider” means a Lender or any of its Affiliates (or an entity that was at the time such arrangement was entered into a Lender or an Affiliate of a Lender).

“**Bank Product Reserve**” means all reserves which the Agent from time to time establishes in its Permitted Discretion for Bank Products then provided or outstanding which shall, at all times, be at least an amount that is equal to all Bank Product Exposure in respect to such Bank Products outstanding and which for the avoidance of doubt may not exceed the Bank Product Amount with respect thereto.

“**Bank Products**” means any of the following products, services or facilities extended to a Borrower or any other Loan Party (for the account of the Borrowers, it being agreed that each Borrower shall be jointly and severally liable with such Loan Party in respect of such Bank Products) by a Bank Product Provider: (a) cash management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts (including Overdrafts) and interstate depository network services or related services); (b) products under Hedge Agreements; (c) commercial credit card and merchant card services; and (d) other banking products or services as may be requested by a Borrower, other than Letters of Credit. For any of the foregoing Bank Products to be included in the Bank Product Reserve or to be included for purposes of a *pari passu* distribution in priority to other Bank Products amongst any Lender and a Loan Party (which were not disclosed to the Agent in accordance with (i) and (ii) below) under, and as set forth in, Section 3.7, and in accordance with Section 1.6, the relevant Bank Product Provider must have previously provided written notice to the Agent of (i) the existence of such Bank Product, and (ii) the maximum Dollar amount of Bank Product Exposure and obligations of the relevant Loan Party arising thereunder which the relevant Bank Product Provider wishes to be included for purposes of a *pari passu* distribution pursuant to Section 3.7 (the “**Bank Product Amount**”). The Bank Product Amount may be changed from time to time upon written notice to the Agent by the relevant Bank Product Provider; provided that no Bank Product Amount may be newly established or increased at any time that an Event of Default exists and the Agent shall have no obligation (but may do so in the Agent’s Permitted Discretion) to establish a Bank Product Amount, if establishing such amount would cause Excess Availability to be less than zero.

“**Bankruptcy Code**” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

“**Bankruptcy Laws**” shall mean the Bankruptcy Code, the BIA, the CCAA, the *Winding-Up and Restructuring Act* (Canada) or any other federal, provincial, state, territorial or foreign insolvency, debtor relief, bankruptcy, receivership or other debt adjustment law (including any corporate statute providing for the same or similar relief).

“**Base Rate**” means, for any day, a rate per annum equal to the greatest of (i) the rate which the principal office of Royal Bank in Toronto, Ontario announces from time to time as the reference rate of interest for loans in U.S. Dollars to its Canadian borrowers (being a rate set by the Royal Bank based upon various factors and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate), (ii) the Federal Funds Rate in effect on such day plus ½ of 1.00% and (iii) Adjusted Term SOFR for a one-month tenor in effect for such day plus 1.00%; provided that to the extent such highest rate as calculated above shall, at any time, be less than the Floor, such rate shall be deemed to be Floor for all purposes herein. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR shall be effective on the opening of business on the day specified in the public announcement of such change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR, respectively.

“Base Rate Revolving Loan” means a Revolving Loan during any period in which it bears interest based on the Base Rate.

“Benchmark” means, initially, Adjusted Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Adjusted Term SOFR 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 clause (a) of Section 2.9.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, 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:

- (i) Daily Simple SOFR; or;
- (ii) the sum of: (i) the alternate benchmark rate that has been selected by the Agent and the Borrowers giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment;

provided that, if the Benchmark Replacement as determined pursuant to clause (i) or (ii) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, 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 Agent and the Borrowers giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to the then-current Benchmark:

- (i) in the case of clause (i) or (ii) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation

thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

- (ii) in the case of clause (iii) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the IOSCO Principles; provided, that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (iii) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (i) or (ii) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

- (i) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (ii) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, the Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to

provide any Available Tenor of such Benchmark (or such component thereof); or

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

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

“**Benchmark Unavailability Period**” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.9 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.9.

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada) (or any successor statute), as amended from time to time, and includes all regulations thereunder.

“**Blocked Account**” means each bank account (including all funds on deposit therein) that is the subject of an effective Blocked Account Agreement and that is maintained by any Loan Party with a financial institution approved by the Agent.

“**Blocked Account Agreement**” means an agreement among a Loan Party, the Agent and the Clearing Bank, in form and substance reasonably satisfactory to the Agent, concerning the collection of payments which represent the proceeds of Accounts or of any other Collateral of a Loan Party and the establishment of “control” of the Agent therein.

“**Boiler Claims**” means, collectively, (i) the outstanding insurance claim by the Borrower in connection with certain expenses incurred and losses suffered in 2017 related to the incident in the recovery boiler located at the Borrower's Peace River pulp mill in September 2017 and incidents in 2021, including business interruption losses in the aggregate amount of up to \$61,500,000 (the “**Business Interruption Proceeds**”), and (ii) the outstanding claim by the Borrowers for property damage expected to be incurred by the Borrower in 2019 related to the foregoing incident; provided that any proceeds of clauses (i) and (ii) shall not be received by a Loan Party and will be collected directly by the Parent.

“**Borrower**” has the meaning specified in the preamble hereto.

“**Borrower Materials**” has the meaning specified in Section 12.22.

“Borrowing” means a borrowing hereunder consisting of Revolving Loans made on the same day by the Lenders to a Borrower or by the Royal Bank in the case of a Borrowing to a Borrower funded by a Swingline Loan or by the Agent in the case of a Borrowing to a Borrower consisting of an Agent Advance or the issuance of a Letter of Credit hereunder.

“Borrowing Base” means, at any time, an amount equal to:

- (a) the sum of (i) eighty-five percent (85%) of the Net Amount of Eligible Accounts of the Loan Parties that are not Eligible Accounts set forth in (a)(ii) and (a)(iii) of this definition, (ii) ninety percent (90%) of the Net Amount of Eligible Accounts of the Loan Parties that are Eligible Accounts insured on terms, and by insurance providers, satisfactory to the Agent in its Permitted Discretion, and which are not Investment Grade Eligible Accounts, and (iii) ninety percent (90%) of the Net Amount of Eligible Accounts of the Loan Parties that are Investment Grade Eligible Accounts; plus
- (b) the lesser of (i) eighty five percent (85%) (increased to 92.5% during a Seasonal Advance Rate Period) of the Net Orderly Liquidation Value of Eligible Inventory of the Loan Parties, and (ii) seventy-five percent (75%) of the value of Eligible Inventory of the Loan Parties valued at cost (on a first in, first out basis); plus
- (c) the lesser of (i) eighty five percent (85%) of the Net Orderly Liquidation Value of Eligible Machinery & Equipment, and (ii) \$20,000,000; minus
- (d) Reserves from time to time established by the Agent in its Permitted Discretion. At any time, the Borrowing Base shall be determined based on the Borrowing Base Certificate last delivered, as may be adjusted from time to time in the Agent’s Permitted Discretion if a Borrowing Base Certificate is not delivered when required.

provided, however, that until such time as the first Inventory Appraisal, Machinery & Equipment Appraisal and Field Exam are completed after the Effective Date and pursuant to the terms of this Agreement, the Borrowing Base shall not in any event exceed the amount of \$160,000,000, and provided further, that should the Inventory Appraisal, Machinery & Equipment Appraisal and Field Exam not be completed within 90 days following the Effective Date (or such late date as may be agreed to in writing by the Agent in its Permitted Discretion), the Borrowers may not request any further Revolving Loans and the Agent may, in its Permitted Discretion, further reduce any of the advance rates, impose additional Reserves and otherwise reduce Excess Availability, in each case, until the Inventory Appraisal, Machinery & Equipment Appraisal and Field Exam shall have been completed.

“Borrowing Base Certificate” means a certificate by a Responsible Officer of the Borrowers, substantially in the form of Exhibit B (or another form acceptable to the Agent) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including, to the extent the Borrowers have received notice of any Reserve from the Agent, any of such Reserves included in the calculations), all in such detail as shall be reasonably satisfactory to the Agent. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate shall be certified to the Agent; provided, that

the Agent shall have the right to review and adjust, in the exercise of its Permitted Discretion, any such calculation to the extent that such calculation is not in accordance with this Agreement.

“Business Day” means any day other than a Saturday or a Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in Toronto, Ontario, Edmonton, Alberta and/or Vancouver, British Columbia; provided, that, when used in connection with a SOFR Revolving Loan, or any other calculation or determination involving SOFR, the term “Business Day” means any day that is only a U.S. Government Securities Business Day.

“Business Interruption Proceeds” has the meaning ascribed thereto in the definition of “Boiler Claims”.

“Canadian Dollars” or **“CDN Dollars”** or **“CDN\$”** or **“\$”** or **“Dollars”** means lawful money of Canada. Unless otherwise specified, all payments under this Agreement shall be made in Dollars.

“Capital Adequacy Regulation” means any guideline, request or directive of any central bank or other Governmental Authority or any other law, rule or regulation in each case regarding capital adequacy or liquidity of any bank or of any corporation controlling a bank.

“Capital Expenditures” means, for any Person, for any period, any expenditures or costs made by such Person for the acquisition, maintenance or repair of fixed or capital assets that are required to be capitalized on the balance sheet of such Person in accordance with GAAP, including, without limitation, the incurrence or assumption of any Debt (including, without limitation, Debt under Capital Leases) in respect of such fixed or capital asset, and, without double counting, any principal payment made in respect of such incurrence or assumption; provided that Capital Expenditures shall not include (a) capital expenditures made to restore, replace or rebuild assets to the condition of such assets immediately prior to any casualty or other insured damage to, or any taking under power of expropriation, eminent domain or by condemnation or similar proceeding of, such assets to the extent such expenditures are made with insurance proceeds, expropriation or condemnation awards or damage recovery proceeds relating to any such casualty, damage, taking, expropriation, condemnation or similar proceeding or (b) a Permitted Investment, other than Investments pursuant to clause (s) of the definition thereof (but shall, for the avoidance of doubt, include any Capital Expenditure made with the proceeds of such Investment by a Loan Party that is the recipient thereof).

“Capital Lease” means any lease of property which, in accordance with GAAP, should be reflected as a capital lease on the balance sheet of a Person (other than any liability in respect of a lease which would have, in accordance with GAAP in force prior to January 1, 2019, been treated as an operating lease).

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, contingent share issuances, participations or other equivalents of or interests in (however designated) equity (including partnership and unlimited liability company interests) of such Person, including any Preferred Stock, but excluding any debt securities convertible into or exchangeable for such equity.

“Cash Equivalents” means:

- (a) direct obligations of Canada or the United States of America or any agency thereof or obligations guaranteed by Canada or the United States of America, provided that such obligations mature within one year from the date of acquisition thereof;
- (b) certificates of deposit maturing within one year from the date of acquisition, bankers' acceptances, Eurodollar bank deposits or overnight bank deposits, in each case issued by, created by or with any Lender or any bank or trust company organized under the laws of Canada or the United States of America or any state thereof having capital and surplus aggregating at least \$1,000,000,000;
- (c) acquisitions of commercial paper given a rating of "A-1" or better by Standard & Poor's Corporation or "P-1" or better by Moody's Investors Service, Inc. and maturing not more than 90 days from the date of creation thereof; and
- (d) shares of money market mutual or similar funds which invest at least 95% of their assets in assets satisfying the requirements of clauses (a) through (c) of this definition.

“CCAA” means *Companies' Creditors Arrangement Act* (Canada), (or any successor statute), as amended from time to time, and includes all regulations thereunder.

“Change of Control” means (a) the Parent (directly or indirectly) failing to beneficially own at least 50.1% of the outstanding Voting Stock and 50.1% of the economic interests of each of the Borrowers; (b) any Person or Persons “acting jointly or in concert” (as determined pursuant Section 90 of the Securities Act) becomes the “beneficial owner” (as determined under Section 1(5) of the Securities Act), directly or indirectly, of 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Voting Stock or 50% or more of the economic interests of the Parent; (c) the acquisition or possession by any Person or group of Persons acting in concert (other than the Parent), directly or indirectly, of the power to direct or cause the direction of the management or policies of the Loan Parties, whether through the ability to exercise voting power, by contract or otherwise; (d) occupation of a majority of the seats (other than vacant seats) on the board of directors of a Borrower by Persons who were neither (i) nominated by the Parent, a wholly-owned Subsidiary of the Parent, or the board of directors of such Borrower nor (ii) appointed by directors so nominated; or (e) all or substantially all of the Loan Parties' assets taken as a whole are sold or transferred to a Person that is not a Loan Party.

“Chattel Paper” means, with respect to a Loan Party, all of such Loan Party's now owned or hereafter acquired chattel paper, as defined in the PPSA, including electronic chattel paper.

“Clearing Bank” means Royal Bank or any other banking institution, acceptable to the Agent, with whom a Receipt Account has been established.

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

“**Collateral**” means the “Collateral” as defined in the Security Agreement and all other property or assets subject to Liens in favour of the Agent for the benefit of the Secured Parties; provided, for greater certainty, that no Excluded Assets shall constitute Collateral.

“**Combined Net Income**” means, as of any date of determination, the net income of the Loan Parties for the most recently completed measurement period, all as determined on a combined basis in accordance with GAAP; provided, however, that without duplication, (i) any net income (or loss) of any non-combined Subsidiary or Joint Venture of the Loans Parties shall be excluded, except that any Loan Party’s equity in the net income of any such Person for such period shall be included in such Combined Net Income up to the aggregate amount of cash actually distributed by such Person during such period to a Loan Party as a dividend or other Distribution; (ii) any non-cash goodwill impairment or any asset impairment changes will be excluded; and (iii) all intercompany deferred financing costs written off will be excluded.

“**Combined Total Assets**” means, as of any date of determination, the amount that would, in conformity with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a combined balance sheet of the Loan Parties at such date.

“**Commitment**” means, at any time with respect to a Lender, the Revolving Credit Commitment of such Lender, and “**Commitments**” means, at any time, the sum of the aggregate Commitments of all Lenders at such time.

“**Concentration Account**” has the meaning specified in Section 7.29(b).

“**Conforming Changes**” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “SOFR Interest Period” or any similar or analogous definition (or the addition of a concept 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 Section 2.9 and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the 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 Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Contaminant**” means any waste, pollutant, hazardous substance, toxic substance, hazardous waste, special waste, petroleum or petroleum derived substance or waste, asbestos in any form or condition, polychlorinated biphenyls or any constituent of any such substance or waste that is regulated or otherwise gives rise to liability under any Environmental Law.

“**Continuation/Conversion Date**” means the date on which a Revolving Loan is converted into or continued as a BA Equivalent Revolving Loan or a SOFR Revolving Loan.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“**CRA**” means the Canada Revenue Agency and any Governmental Authority succeeding to any of its principal functions under the *Income Tax Act* (Canada) and other Canadian taxing statutes.

“**Daily Simple SOFR**” means, for any day (a “**SOFR Rate Day**”), a rate per annum equal to SOFR for the day (such day, the “**SOFR Determination Date**”), with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its discretion.

“**Debt**” means, with respect to any Person, without duplication, all liabilities, obligations and indebtedness of such Person to any other Person, of any kind or nature, now or hereafter owing, arising, due or payable, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, in each case consisting of indebtedness for borrowed money or the deferred purchase price of property, excluding (x) trade payables and (y) earn-out and similar obligations until such obligations are or are required to be reflected as a liability on the balance sheet of the applicable Person, but including in any event: (a) all Obligations; (b) all obligations and liabilities of any Person secured by any Lien on the property of any Person, including any Loan Party; (c) all obligations or liabilities created or arising under any Capital Lease or other purchase money obligation or conditional sale or other title retention agreement with respect to property used or acquired by any Person, including any Loan Party, even if the rights and remedies of the lessor, seller or lender thereunder are limited to repossession of such property; provided, however, that all such obligations and liabilities which are limited in recourse to such property shall be included in Debt only to the extent of the book value of such property as would be shown on a balance sheet of such Person, including any Loan Party, as the case may be, prepared in accordance with GAAP; (d) all obligations and liabilities under Guarantees; (e) the present value of lease payments due under any synthetic leases under which any Loan Party is treated as the owner of the property leased for tax purposes but which would have, in accordance with GAAP in force prior to January 1, 2019, treated as an operating lease; (f) net obligations of such Person under Hedge Agreements (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligations that would be payable by such Person at such time); (g) Disqualified Stock; and (h) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments. For all purposes hereof, the Debt of any Person shall exclude the Debt of any partnership or joint venture in which such Person is a general partner or a joint venturer, unless such Debt is expressly enforceable against such Person.

“**Default**” means any event or circumstance which, with the giving of notice, the lapse of time or both, would (if not cured, waived or otherwise remedied during such time) constitute an Event of Default.

“Default Rate” means a fluctuating per annum interest rate at all times equal to the sum of (a) the otherwise applicable Interest Rate plus (b) two percentage points per annum. Each Default Rate shall be adjusted simultaneously with any change in the applicable Interest Rate. In addition, the Default Rate shall result in an increase in the Letter of Credit Fee by two percentage points per annum.

“Defaulting Lender” means any Lender, as determined by the Agent, (a) that has failed or refused to abide by its obligations under this Agreement, including without limitation, its obligation to make available to Agent its Pro Rata Share of any Revolving Loans, expenses or setoff or purchase its Pro Rata Share of a participation interest in Letters of Credit and Agent Advances, (b) that has otherwise failed to pay over to the Agent any other amount required to be paid by it hereunder within two (2) days of receipt from the Agent of written notice thereof, (c) that has notified the Borrowers, the Agent, any Letter of Credit Issuer or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (d) as to which the Agent, any other Lender or Letter of Credit Issuer has a good faith belief that such Lender has defaulted in fulfilling its obligations under one or more other syndicated credit facilities, or (e) which has (i) become or is insolvent or a Person that controls such Lender has become or is insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, interim receiver, receiver and manager, administrator, liquidator, conservator, requestor trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or a Person that controls such Lender has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, interim receiver, receiver and manager, administrator, liquidator, conservator, requestor trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

“Defined Benefit Pension Plan” means a pension plan for the purposes of any applicable pension benefits standards, statute or regulation in Canada, which contains a “defined benefit provision,” as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

“Designated Account” has the meaning specified in Section 1.4(c).

“Disqualified Stock” means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of such Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of such Capital Stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the Stated Termination Date. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of such Capital Stock have the right to require any Loan Party to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Loan Party may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption is permitted under Section 7.11.

“**Distribution**” means, in respect of any Person:

- (a) the payment or making of any dividend or other distribution of property in respect of Capital Stock or other equity or partnership interests (or any options or warrants for or other rights with respect to, such stock or other equity or partnership interests) of such Person, other than distributions in Capital Stock or other equity or partnership interests (or any options or warrants for such stock or other equity or partnership interests) of the same class (except Disqualified Stock);
- (b) the redemption, purchase, retirement or other acquisition by such Person of any Capital Stock or other equity or partnership interests (or any options or warrants for such stock or other equity or partnership interests) of such Person; or
- (c) the payment or making of any distribution of property in respect of any Subordinated Debt (including the Parent Initial Loan) held by any direct or indirect holder of Capital Stock of such Person.

“**EBITDA**” means, for any period, the Combined Net Income of the Loan Parties for such period *plus*, without duplication, (i) interest expense, (ii) income tax expense, (iii) depreciation and amortization expense, (iv) any expenses or charges related to the Transactions, (v) non-recurring extraordinary expenses, to the extent such amounts were deducted in computing Combined Net Income; and (vi) finance costs, *plus* non-cash losses *less* non-cash gains, and *minus* non-recurring extraordinary gains, to the extent such amounts were added in computing Combined Net Income. For greater certainty, the calculation of EBITDA shall not include any Excluded Insurance Proceeds.

“**EEA Financial Institution**” means (a) any institution 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 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 delegee) having responsibility for the resolution of any EEA Financial Institution

“**Effective Date**” means the date of this Agreement.

“**Effective Date Parent Initial Loan Repayment**” means a onetime payment to be made not later than 21 days after the Effective Date to partially repay the Parent Initial Loan in an amount not to exceed \$60,000,000.

“**Effective Date Parent Initial Loan Repayment Conditions**” means that (a) no Event of Default has occurred and is continuing or would result from the payment, (b) Excess

Availability would be at least twenty percent (20%) of the Line Cap on a pro forma basis after giving effect to the payment, and (c) such payment is made within 21 days after the Effective Date.

“Eligible Accounts” means all Accounts arising in the ordinary course of, and originated by, the Loan Party’s business, but excluding interest, late charges, penalties, collection costs and other similar sums due or payable in respect thereof, upon which the Agent’s Liens constitute a first-ranking, duly registered, published and perfected Lien ranking in priority to all other Liens (except Permitted Liens and Liens for Priority Payables) and that are not ineligible as the basis for Revolving Loans and/or Letters of Credit, based on the following criteria. Eligible Accounts of the Loan Parties shall not include, without duplication, any Account of the Loan Parties:

- (a) which has been outstanding for more than ninety (90) days (or (i) one hundred twenty (120) days in the case of Eligible Accounts that are insured on terms, and by insurance providers, satisfactory to the Agent in its Permitted Discretion, or which are Investment Grade Eligible Accounts, or (ii) one hundred fifty (150) days in the case of Eligible Accounts from Kimberly-Clark Corp, Georgia-Pacific, and Procter and Gamble) past the invoice date or with respect to which more than sixty (60) days have elapsed since the due date;
- (b) with respect to which any of the representations, warranties, covenants, or agreements contained in this Agreement are incorrect or have been breached in any material respect;
- (c) with respect to which Account (or any other Account due from such Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance, Chattel Paper or other instrument for the payment of money has been received, presented for payment and returned uncollected for any reason;
- (d) which represents a progress billing (as hereinafter defined) or as to which a Loan Party has extended the time for payment outside the ordinary course of business without the consent of the Agent; for the purposes hereof, “progress billing” means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor’s obligation to pay such invoice is conditioned upon a Loan Party’s completion of any further performance under the contract or agreement;
- (e) as to which any one or more of the following events has occurred with respect to the Account Debtor on such Account: death or judicial declaration of incompetence of an Account Debtor who is an individual; the filing by or against the Account Debtor of a request, proposal, notice of intent to file a proposal, proceeding, action or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, winding-up, or other relief under the bankruptcy, insolvency, restructuring, liquidation, winding up, corporate or similar laws of Canada or the United States, any province, state or territory thereof, or any foreign jurisdiction, now or hereafter in effect; the making of any general assignment by the Account Debtor for the benefit of creditors; the appointment of a receiver, trustee, monitor, custodian, liquidator, administrator, interim receiver, monitor or trustee or other official for the Account Debtor or for

any of the assets of the Account Debtor, including, without limitation, the appointment of or taking possession by a “custodian” as defined in the *Bankruptcy Code* or a “trustee” under the BIA; the institution by or against the Account Debtor of any other type of insolvency, liquidation, bankruptcy, winding up or reorganization proceeding (under the laws of Canada, the United States or otherwise, including applicable corporate statutes, the BIA and the CCAA) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of, the Account Debtor; the sale, assignment, or transfer of all or any material part of the assets of the Account Debtor; the non-payment generally by the Account Debtor of its debts as they become due; or the cessation of the business of the Account Debtor as a going concern;

- (f) owed by an Account Debtor if fifty percent (50%) or more of the aggregate Dollar amount (with any Account payable in a foreign currency being converted to Dollars for this purpose) of outstanding Accounts owed at such time by such Account Debtor thereon is classified as ineligible under clause (a) above;
- (g) owed by an Account Debtor (i) located outside of Canada or the United States of America or its territories or protectorates, except in respect of Accounts which (A) are owed by Marubeni Corporation, provided that the aggregate unpaid balance of such Accounts (eligible for the Borrowing Base) shall not exceed the Equivalent Amount of (i) 10.0% of the Total Facility so long as such Accounts are Investment Grade Eligible Accounts, or (ii) 5.0% of the Total Facility if such Accounts are not Investment Grade Eligible Accounts, (B) are credit insured pursuant to insurance policies maintained by a Loan Party with export insurers acceptable to the Agent, acting reasonably, and all terms thereof, including risks and amounts of coverage, and all such policies and any proceeds payable thereunder have been validly assigned to the Agent on terms acceptable to the Agent, or (C) are supported by an irrevocable letter of credit reasonably satisfactory to the Agent (as to form, substance, and issuer or domestic confirming bank) which letter of credit is assigned to the Agent for benefit of the Secured Parties (with such assignment acknowledged by the issuing or domestic confirming bank) or, if requested by the Agent, that has been delivered to the Agent and is directly drawable by the Agent; or (ii) that is the government of any country or sovereign state (other than, but subject to clause (l) of this definition, Canada or the United States of America), or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, except to the extent that the Agent otherwise determines in its Permitted Discretion the Account to be eligible on an account-by-account basis based on, among other things, compliance with all Requirements of Law in order to obtain a valid and enforceable assignment thereof or Lien thereon (in the case of clause (ii));
- (h) owed by an Account Debtor which is a director, officer or an employee of a Loan Party, or by an Affiliate of a Loan Party or which is an Intercompany Account;

- (i) owed by an Account Debtor but only to the extent to which any Loan Party is indebted in any way, or to the extent to which the Account Debtor has made or asserted, or a Loan Party has otherwise reported, any right of set off, compensation, counterclaim, offset, discount (including accruals related thereto), allowance, charge-back, rebate payable, contra claim or any other dilutive factors by the Account Debtor, unless the Account Debtor has entered into an agreement acceptable to the Agent to waive all such rights; or if the Account Debtor thereunder has disputed liability or made any claim with respect to any other Account due from such Account Debtor; but in each such case only to the extent of such indebtedness, setoff, charge-back, counterclaim, offset, compensation, discount, allowance, rebate, dispute, claim or any other dilutive factors; or any Accounts to the extent of any unapplied credits or credits in prior;
- (j) which represents a cash sale or cash on delivery sale;
- (k) which represents a re-billed (unless the previous account has been cancelled and replaced and the re-bill is dated the date of the replaced Account for aging purposes) or redated account;
- (l) owed by the government of the United States of America or Canada, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public or Crown corporation, or other instrumentality thereof, unless, (i) owed by the government of Canada or any department agency, public or Crown corporation or other instrumentality thereof, and all provisions under the *Financial Administration Act* (Canada), for the assignment thereof, have been complied with, (ii) owed by the government of the United States or any department, agency, public corporation or other instrumentality thereof, and all provisions under the *Federal Assignment of Claims Act* of 1940, as amended (31 U.S.C. § 3727 et seq.), for the assignment thereof, have been complied with, or (iii) owed by any state, province, municipality, or other political subdivision of Canada or the United States of America, or of any department, agency, public or crown corporation, or other instrumentality thereof, and all steps necessary to perfect the Agent's Liens therein, have been complied with to the Agent's reasonable satisfaction with respect to such Account;
- (m) which represents, in whole or in part, a sale on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis;
- (n) in respect of which a Loan Party is not the sole payee and remittance party, with sole lawful and absolute title thereto;
- (o) which is payable in a currency other than Canadian Dollars, U.S. Dollars, Japanese yen or Chinese renminbi, provided that the aggregate amount of Eligible Accounts (denominated in Japanese yen and Chinese renminbi) permitted in the Borrowing Base at any one time shall not exceed the Equivalent Amount of 5.0% of the Total Facility;

- (p) which Account (or any other Account due from such Account Debtor) is evidenced by a promissory note or other instrument or by Chattel Paper;
- (q) which is owed by a customer, or affiliated group of customers, which is obligated to the Loan Parties respecting Accounts, the aggregate unpaid balance of which exceeds twenty five percent (25%) (seventy five percent (75%) in the case of Central National Gottesman Inc.) of the aggregate unpaid balance of all otherwise Eligible Accounts owed to the Loan Parties at such time but only to the extent of such excess;
- (r) for goods not shipped and delivered or otherwise not representing a final sale or otherwise representing a pre-billed Account or Accounts for unshipped or incomplete goods or services and, if required to create a valid Account, delivered to the Account Debtor or the services giving rise to such Account have not been performed by a Loan Party and, if applicable, accepted by the Account Debtor, or the Account Debtor revokes its acceptance of such goods or services or such Account otherwise arises from an incomplete sale or service;
- (s) if the sale giving rise thereto was not made in compliance in all material respects with all Requirements of Law;
- (t) if not representing a trade receivable;
- (u) which arises out of an enforceable contract or order which, by its terms, forbids, restricts or makes void or unenforceable the granting of a Lien by a Loan Party to the Agent with respect to such Account;
- (v) which represents any unapplied cash or credits;
- (w) if the Agent believes, in the exercise of its Permitted Discretion, that the prospect of collection of such Account is impaired, or that the Account is uncollectible or otherwise doubtful or that the Account may not be paid by reason of the Account Debtor's financial inability to pay;
- (x) with respect to which the Account Debtor is located in any state of the United States or province of Canada which requires the filing of a Notice of Business Activities Report or registration or licensing to carry on business or similar report, registration or licensing in order to permit a Loan Party to seek judicial enforcement in such state of the United States or province of Canada of payment of such Account, unless the applicable Borrower has qualified to do business in such state or province or has filed a Notice of Business Activities Report or registration or licensing to carry on business or equivalent report, registration or licensing for the then current year;
- (y) with respect to which an invoice, in form and substance consistent with the Loan Parties' usual practices, has not been sent to the applicable Account Debtor; and
- (z) the Agent in the exercise of its Permitted Discretion determines to be ineligible.

“**Eligible Assignee**” means (a) a commercial bank, commercial finance company or other asset based lender, having total assets in excess of \$1,000,000,000, (b) any Lender, (c) any Approved Fund, (d) any Affiliate of any Lender, or (e) any Person (other than a natural person) approved by the Agent and the Borrowers (such approval not to be unreasonable withheld); provided, however, that an Eligible Assignee shall in all cases (so long as no Event of Default is continuing) be a financial institution that (i) is a Qualified Lender, and (ii) is not a Loan Party or an Affiliate of a Loan Party. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, any Person (other than a natural person) reasonably acceptable to the Agent may be an Eligible Assignee.

“**Eligible Inventory**” shall mean the gross amount of the Inventory of a Loan Party, in each case valued (for purposes of the caps and thresholds set forth below) in Dollars at cost (determined using GAAP), that is subject to Agent’s Liens constituting a first-ranking, duly registered, published and perfected Lien ranking in priority to all other Liens (except Permitted Liens and Liens for Priority Payables). Eligible Inventory shall not include any:

- (a) packaging materials and supplies; any mill stores, operating and maintenance supplies, spare parts or chemicals, provided that, the Agent in its Permitted Discretion may consider chemicals to be Eligible Inventory up to a maximum aggregate amount at any one time of \$5,000,000;
- (b) slow moving, unmerchantable/unsaleable (including due to damage or poor condition) or obsolete Inventory (obsolete Inventory being Inventory not sold within one year of purchase/completion);
- (c) Inventory in which any Person other than such Loan Party shall (i) have any ownership, interest or title to such Inventory or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;
- (d) Inventory not located in Canada, Inventory not located at locations owned by a Loan Party or Inventory located at any other location leased or contracted by a Loan Party and not subject to a landlord or similar waiver in form and substance satisfactory to the Agent in its Permitted Discretion or in respect of which Agent has agreed to appropriate Reserves; provided that the eligibility criteria in this clause (d) shall not apply to Inventory described in any of clauses (g) and (h) hereof;
- (e) Inventory at any location where the aggregate book value of such Inventory is less than \$100,000;
- (f) Inventory returned or rejected by a Loan Party’s customer (other than goods that are undamaged and resalable in the normal course of business), including, without limitation, goods to be returned to a Loan Party’s suppliers;
- (g) Inventory in transit to or from third parties other than, Inventory that (i) is the subject of valid sale documentation acceptable to the Agent (including, commercial invoices, packing lists, bills of lading etc.) and that have been issued and accepted by an Account Debtor of a Loan Party with respect to the sale of

such Inventory, (ii) is being shipped (with no right of any Person, other than the Agent, to divert shipment, repossess, stop delivery or otherwise assert Lien rights against such Inventory) with a common carrier (that is not an Affiliate of any Loan Party) for delivery to the applicable Account Debtor of such Loan Party (F.O.B. delivery), with title passing to such Account Debtor upon such delivery, and upon which an Eligible Account shall be due and owing by such Account Debtor in respect of such Inventory with such Inventory ceasing to be Eligible Inventory under the Borrowing Base; provided that no more than a maximum of fifteen percent (15%) of the Borrowing Base may be comprised of such Inventory in transit;

- (h) Inventory in the possession of a warehouseman, bailee or processor, unless all applicable warehousemen, bailees, processors or third parties have executed a waiver and notice of security interest agreement in favour of the Agent (in form and substance satisfactory to the Agent) or in respect of which Agent has agreed to appropriate Reserves, and the Agent shall otherwise be satisfied that Agent has a Lien and perfected security interest on such Inventory, or
- (i) Inventory consisting of: (i) standing timber or timber not cut; or (ii) inventory having been harvested from a forest but has not been transported to a location of a Loan Party unless such Inventory constitutes Off-Site Inventory, provided that no more than a maximum of twenty percent (20%) of the Borrowing Base may be comprised of Off-Site Inventory;
- (j) Inventory (i) held by a Loan Party on consignment, or (ii) of a Loan Party held by an Account Debtor on consignment;
- (k) Inventory which consists of special order goods or bill and hold (deferred shipment) and consignment sales;
- (l) that does not meet all standards imposed by any Governmental Authority, having regulatory authority over such goods, their use or sale;
- (m) work in process Inventory; provided that the Agent in its Permitted Discretion may consider work in process Inventory to be Eligible Inventory up to a maximum aggregate amount at any one time of \$1,000,000; or
- (n) Inventory not acceptable to the Agent for any other reasons deemed necessary by the Agent in its Permitted Discretion.

“Eligible Machinery & Equipment” means shall mean the gross amount of the Machinery & Equipment of a Loan Party, in each case valued (for purposes of the caps and thresholds set forth below) in Dollars at cost (determined using GAAP), that is subject to Agent’s Liens constituting a first-ranking, duly registered, published and perfected Lien ranking in priority to all other Liens (except Permitted Liens and Liens for Priority Payables). Eligible Machinery & Equipment shall not include any:

- (a) Machinery & Equipment for which a Loan Party does not have good, valid, and marketable title thereto;

- (b) Machinery & Equipment for which a Loan Party does not have actual and exclusive possession thereof (either directly or through a bailee or agent of a Loan Party), including as a result of the lease thereof by a Loan Party;
- (c) Machinery & Equipment that is not located at locations owned by a Loan Party or at any other location leased or contracted by a Loan Party and not subject to a landlord or similar waiver in form and substance satisfactory to the Agent in its Permitted Discretion, or in respect of which Agent has agreed to appropriate Reserves; provided that Machinery & Equipment that is in transit between Loan Parties may be considered Eligible Machinery & Equipment if upon arrival at its destination will otherwise be in compliance with this sub-clause and each other clause of this definition;
- (d) Machinery & Equipment that is subject to any certificate of title (or comparable) under any Requirement of Law (unless Agent has a first priority, perfected Lien under such Requirement of Law and Agent has possession and custody of such certificate);
- (e) Machinery & Equipment that does not meet, or is not under repair or held for repair less than 30 days for the purpose of meeting, in each case in all material respects, all applicable safety or regulatory requirements applicable to it by law for the use for which it is intended or for which it is being used;
- (f) Machinery & Equipment that is not used or usable in the ordinary course of the Loan Parties' business due to a damaged or inoperable condition (other than Machinery & Equipment under repair or held for repair less than 30 days for such purpose);
- (g) Machinery & Equipment that does not meet, or is not under repair or held for repair less than 30 days for the purpose of meeting, in each case in all material respects, all applicable requirements of all motor vehicle laws or other statutes and regulations established by any Governmental Authority then applicable to such Machinery & Equipment, or is subject to any licensing or similar requirement;
- (h) Machinery & Equipment for which its use or operation requires proprietary software that is not freely assignable to Agent;
- (i) Machinery & Equipment for which an Appraisal has not been completed; and
- (j) Machinery & Equipment not acceptable to the Agent for any other reasons deemed necessary by the Agent in its Permitted Discretion.

“Environmental Laws” means as to any Person all federal, provincial, state, municipal, local or foreign laws, statutes, rules, regulations, ordinances and codes, together with all administrative orders, binding and applicable directives, decisions, directed duties, licenses, authorizations, decrees, orders and permits of, and agreements with, any Governmental Authority, in each case relating to environmental or health and safety (as it relates to exposure to

Contaminants) matters binding on such Person or any of its assets or to which the Person or its assets is subject.

“**Environmental Lien**” means a Lien in favour of any Governmental Authority or any other Person for (a) any liability under Environmental Laws or (b) damages arising from, or costs incurred by such Governmental Authority or other Person in response to, a Release or threatened Release of a Contaminant into the environment.

“**EPPA**” means the *Employment Pension Plans Act* (Alberta) and all regulations thereunder as amended from time to time and any successor legislation.

“**Equipment**” means, with respect to a Loan Party, all of such Loan Party’s now owned and hereafter acquired machinery, equipment, furniture, furnishings, fixtures and other tangible personal property (except Inventory and fixtures and improvements on Real Estate), including embedded software, motor vehicles, aircraft, dies, tools, jigs, molds and office equipment, as well as all of such types of property leased by such Loan Party and all of such Loan Party’s rights and interests with respect thereto under such leases (including, without limitation, options to purchase); together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto; wherever any of the foregoing is located and includes “equipment” as defined in the PPSA.

“**Equivalent Amount**” means, on any date, the amount of Dollars into which an amount of any other currency may be converted or the amount of such other currency into which an amount of Dollars may be converted, in either case, at the Agent’s spot buying rate in Toronto, Canada on such date, as determined by the Agent.

“**ERISA**” means the *Employee Retirement Income Security Act* of 1974, as amended, and regulations promulgated thereunder.

“**Erroneous Payment Return Deficiency**” has the meaning assigned to it in Section 12.24(d).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“**Event of Default**” has the meaning specified in Section 9.1.

“**Excess Availability**” means, at any date of determination (a) the Line Cap, minus (b) the Aggregate Revolver Outstandings at such time (or, in the case of Pending Revolving Loans, to be made to or for the account of the Borrowers).

“**Exchange Rate**” means, as of any date in respect of the conversion of an amount on such date denominated in a particular currency (the “**specified currency**”) into an amount specified in another currency (the “**alternative currency**”) or in respect of the calculation on such date of the amount of the alternative currency which is equivalent to an amount of the

specified currency, the Spot Rate for the exchange of the specified currency for the alternative currency.

“Excluded Assets” means:

- (a) any lease, permit, license or other agreement entered into by or for the benefit of a Loan Party to the extent that a grant of a security interest therein would;
 - (i) violate or invalidate such lease, permit, license or agreement or create a right of termination in favour of any other party thereto (other than a Loan Party) and such violation, invalidation or right has not been waived,
 - (ii) require the consent of any other party to such lease, permit, license or other agreement (other than a Loan Party) and such consent has not been obtained,
 - (iii) be prohibited by any Requirement of Law applicable thereto, or
 - (iv) result in triggering a right of first refusal sale to any other joint venture party and such right has not been waived, for so long as and to the extent any such violation, invalidation or right described in clause (i), (ii), (iii) or (iv) is not deemed ineffective after giving effect to applicable anti-assignment provisions of the PPSA or other Requirement of Law;
- (b) the last day of any lease of real property in Canada (outside Québec);
- (c) property owned by a Loan Party that is subject to a purchase money Lien or a Capital Lease permitted under this Agreement if the agreement pursuant to which such Lien is granted (or in the document providing for such Capital Lease) would (x) prohibit a grant of a security interest on such property and such prohibition has not been waived or (y) require the consent of any Person other than a Loan Party and such consent has not been obtained, for so long as and to the extent any such prohibition described in this clause (c) is not deemed ineffective after giving effect to applicable anti-assignment provisions of the PPSA or other Requirement of Law; provided, however, “Excluded Assets” shall not include any proceeds, products, substitutions or replacements of Excluded Assets (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets);
- (d) consumer goods (as such term is defined in the PPSA);
- (e) any direct or indirect equity interest of any Loan Party in the Excluded Entities and any Joint Venture (whether by way of ownership of Capital Stock, limited partnership units or other rights of ownership); and
- (f) any loans owed by any of the Excluded Entities to any Loan Party, provided such loans or other amounts were not advanced to an Excluded Entity by a Loan Party in breach or violation of the terms hereof.

“Excluded Entities” means each of PR Corporation, PR Partnership, Cariboo Pulp & Paper Company Limited and the Cariboo J.V., PRT and PRT LP and any direct or indirect Subsidiary or Joint Venture of the foregoing and all assets thereof.

“Excluded Insurance Proceeds” means any insurance proceeds received by the Borrower in connection with, or in respect of, the Boiler Claims including Business Interruption Proceeds.

“Excluded Subsidiary” means (a) any Subsidiary that is prohibited or restricted (including requiring consent of third parties in the case of any non-Wholly-Owned Subsidiary), but only for so long as such Subsidiary is prohibited or restricted, by applicable Requirement of Law or by contractual obligation existing as of the Effective Date or existing at the time of formation or acquisition thereof (so long as such prohibition or restriction was not included in contemplation of this exclusion), in each case from providing a Guarantee or if such Guarantee would require governmental (including regulatory) or third party consent, approval, license or authorization to provide a Guarantee (unless such consent, approval, license or authorization has been received) to the extent that the Loan Parties have used commercially reasonable efforts (not involving expending money in excess of a *de minimis* amount) to obtain such consent, approval, license or authorization, (b) any other Subsidiary with respect to which the cost, difficulty, burden or consequences of providing the Guarantee is excessive in relation to the value afforded thereby, as reasonably determined by the Agent and the Borrowers, (c) any Subsidiary with respect to which providing the Guarantee would reasonably be expected to result in material adverse tax consequences to the Borrowers or one or more of their Subsidiaries, as reasonably determined by the Borrowers and the Agent, and (d) any Subsidiary that has total assets determined in accordance with GAAP of less than \$1,000,000, provided that the total assets so determined of all Subsidiaries pursuant to this clause (d) shall not exceed \$2,250,000.

“Excluded Taxes” means, in relation to any Lender, (a) Taxes imposed or levied by any jurisdiction or political subdivision or taxation authority thereof on or measured by the income or profit (however calculated in such jurisdiction by such authority) of such Lender or any of its applicable lending offices, (b) franchise Taxes, Taxes on doing business or Taxes measured by capital or net worth imposed or levied by any jurisdiction or political subdivision or taxation authority thereof on such Lender or any of its applicable lending offices as a result of such Lender (i) carrying on a trade or business therein or having a permanent establishment therein, (ii) being organized, licensed or registered under the laws of such jurisdiction or any political subdivision thereof, (iii) being or being deemed to be resident in such jurisdiction for income tax purposes, or (iv) having any other present or former connection with such jurisdiction (other than a connection arising solely from such Lender or its applicable lending office having executed, delivered or performed its obligations under the Loan Documents or received a payment under a Loan Document or enforced its rights under a Loan Document), or which would not have been imposed had such Lender satisfied a relevant authority that such Lender was not a person mentioned in clauses (b)(i), (b)(ii), (b)(iii) or (b)(iv) above, (c) any United States or Canadian (including state, provincial or other local) withholding taxes imposed on amounts payable to or for the account of such Lender pursuant to a law in effect on the date on which such Lender became a party under this Agreement, except in each case to the extent that such Lender is an assignee of any other Lender that was entitled, at the time the assignment to such party became effective, to receive additional amounts under Section 4.1, (d) any United States federal withholding Taxes imposed under FATCA.

“**Executive Order**” has the meaning specified in Section 14.22.

“**Existing DB Plan**” means the Canadian Defined Benefit Pension Plans listed in and described as such in Schedule 6.19.

“**Existing Excluded Entity Agreements**” means, collectively, (i) the Joint Venture Agreement between Mercer Peace River and Weldwood of Canada Limited dated December 9, 1969, as amended; (ii) the Shareholders’ Agreement among Mercer Peace River, Woodland and PR Corporation dated May 19, 2004, as amended; (iii) the Limited Partnership Agreement among Mercer Peace River, Woodland and PR Corporation dated June 15, 2004; (iv) the Economic Benefits, Consultation and Cooperation Agreement among Mercer Peace River, Woodland and Peace River Partnership dated August 28, 2015; (v) the Logging, Chipping, Hogging and Hauling Services Agreement between Mercer Peace River and PR Corporation as general partner of PR Partnership dated July 1, 2017; (vi) in respect of PRT LP, its limited partnership agreement and any shareholders' agreement in respect of PRT and/or PRT LP as the same may be amended, restated or otherwise changed from time to time including, without limitation, adding new or replacing any other parties thereto; and (vii) any trucking transportation or ancillary services agreements between or among PRT LP or PRT and one or more of the Borrowers.

“**Existing Letters of Credit**” means each of the letters of credit issued under the Existing Credit Agreement that are more fully described on Schedule 1.5 hereto.

“**FATCA**” means 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), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreements pursuant to any of the foregoing and any laws, rules or practice adopted pursuant to any such intergovernmental agreement.

“**FCCR Trigger**” means any time that Excess Availability is either (a) less than the greater of (i) ten percent (10%) of the Line Cap, and (ii) \$14,000,000 for five (5) consecutive Business Days, or (b) less than the greater of (i) seven and one half percent (7.5%) of the Line Cap, and (ii) \$10,000,000, at any time.

“**Federal Funds Rate**” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Royal Bank on such day on such transactions as determined by the Agent; provided that, if any such rate is below zero, then the Federal Funds Rate shall be deemed to be zero.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System or any successor thereto.

“**Fee Letter**” has the meaning specified in Section 2.4.

“**Field Exam**” means any visit, inspection or audit of the properties, assets and records of any Loan Party during the term of this Agreement, which shall include access to such properties, assets and records sufficient to permit the Agent or its representatives to examine, audit and make extracts from any Loan Party’s books and records, make examinations and audits of any Loan Party’s other financial matters and Collateral as Agent deems necessary and appropriate in its Permitted Discretion, and discussions with its officers (and other employees as coordinated by its officers), agents, advisors and independent accountants regarding such Loan Party’s business, financial condition, assets and results of operations.

“**Financial Statements**” means the combined financial statements of the Borrowers, prepared in accordance with GAAP, and any other financial statements required to be given to the Agent and Lenders pursuant to this Agreement.

“**Fiscal Year**” means each of the Loan Party’s fiscal year for financial accounting purposes, which will end on December 31 of each year.

“**Fixed Assets**” means, with respect to any Loan Party, the Equipment and Real Estate of such Loan Party.

“**Fixed Charge Coverage Ratio**” means, with respect to any fiscal period of the Loan Parties on a combined basis the ratio of (a) EBITDA for such fiscal period minus unfinanced Capital Expenditures of the Borrowers paid in cash during such fiscal period to (b) Fixed Charges for such fiscal period.

“**Fixed Charges**” means, with respect to any fiscal period of the Loan Parties on a combined basis, without duplication, the sum of (a) cash interest expense of the Loan Parties paid or payable for such fiscal period for Funded Debt, (b) all scheduled payments or prepayments of Funded Debt (including Capital Leases) of the Loan Parties made or required to be made during such fiscal period; (c) cash taxes and tax distributions paid for such fiscal period; and (d) the aggregate amount of Distributions (other than the Effective Date Parent Initial Loan Repayment as permitted by this Agreement) made by the Borrowers during such fiscal period.

“**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 Term SOFR. For the avoidance of doubt, the initial Floor for Term SOFR shall be 0.00%.

“**Forest Licences**” means any forest licences, timber sale licences, timber licences, tree farm licences, pulpwood agreements, woodlot licences, free use permits, licences to cut, road permits, road use permits, cutting permits and special use permits granted pursuant to the *Forests Act* (Alberta) or the *Forest Act* (British Columbia) and all other timber tenures or entitlements of a Loan Party in respect of timber now owned or hereafter acquired by a Loan Party together with all rights, authorizations and benefits connected therewith or appurtenant thereto and all renewals, replacements, amendments, subdivisions, consolidations, partitions, conversions or substitutions thereof or therefor.

“Funded Debt” means the sum, without duplication, of (a) the aggregate amount of Debt (including the Obligations) of the Loan Parties consisting of or relating to (i) the borrowing of money or the obtaining of credit (other than trade payables incurred in the ordinary course of business), or (ii) Capital Leases, plus (b) Debt of the type referred to in clause (a) of another Person guaranteed by a Loan Party, in each case on a combined basis for the Loan Parties, but excluding, for all purposes, Shareholder Loans.

“Funding Date” means, with respect to a Borrowing, the date on which such Borrowing occurs.

“GAAP” means at any particular time with respect to any Loan Party, generally accepted accounting principles as in effect at such time in the United States, consistently applied.

“Governmental Authority” means any nation or government, any state, province, municipality or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any department, agency, board, commission, tribunal, committee or instrumentality of any of the foregoing.

“Guarantee” or **“Guaranty”** means, with respect to any Person, (i) all obligations of such Person which in any manner directly or indirectly guarantee or assure, or in effect guarantee or assure, the payment or performance of any Debt of any other Person (the “guaranteed obligations”), or assure or in effect assure the holder of the guaranteed obligations against loss in respect thereof, including any such obligations incurred through an agreement, contingent or otherwise: (a) to purchase the guaranteed obligations or any property constituting security therefor; (b) to advance or supply funds for the purchase or payment of the guaranteed obligations or to maintain a working capital or other balance sheet condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt (c) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt of the payment or performance of payment obligations or to protect such obligee against loss in respect thereof (in whole or in part), (ii) any Lien on any assets of such Person securing any Debt of any other Person, whether or not such Debt is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien), or (iii) as an account party in respect of any letter of credit or letter of credit guaranty issued to support such Debt. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Guaranteed Obligations” has the meaning specified in Section 13.1.

“Guarantor Payment” has the meaning specified in Section 13.6(b).

“Guarantors” has the meaning specified in the preamble.

“Hedge Agreement” means any and all transactions (whether under an ISDA or otherwise), agreements or documents (including ISDAs), which provides for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, derivative, currency swap, cross currency rate swap, currency option, or any combination of, or

option with respect to, these or similar transactions, for the purpose of hedging a Person's exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices.

"IOSCO Principles" shall have the meaning set forth in Section 2.9(d).

"Increase Notice" has the meaning specified in Section 1.7.

"Indemnified Taxes" means Taxes other than Excluded Taxes and Other Taxes.

"Instruments" means, with respect to a Loan Party, all instruments as such term is defined in the PPSA, now owned or hereafter acquired by such Loan Party.

"Intercompany Account" means all assets and liabilities, however arising, which are due to any Loan Party from, which are due from any Loan Party to, or which otherwise arise from any transaction by any Loan Party with, any Affiliate.

"Interest Rate" means each or any of the interest rates, including the Default Rate, set forth in Section 2.1.

"Inventory" means, with respect to a Loan Party, all of such Loan Party's now owned and hereafter acquired "inventory" (as defined in the PPSA), including, without limitation, goods and merchandise, wherever located, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work in process, finished goods (including embedded software), other materials and supplies of any kind, nature or description which are used or consumed in such Loan Party's business or used in connection with the manufacture, packing, shipping, advertising, selling or finishing of such goods, merchandise and all documents of title or other documents representing them.

"Inventory Appraisal" means with respect to the Loan Parties (a) until the first Appraisal on Inventory is delivered to the Agent pursuant to Section 7.4(c), the most recent Appraisal of Inventory delivered to the Agent, and (b) thereafter, each Appraisal of Inventory of such Loan Party delivered to the Agent pursuant to Section 7.4(c).

"Investment" means, in any Person by any other Person, any direct or indirect advance, loan or other extension of credit or investment or capital contribution (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) to, or any purchase or acquisition of Capital Stock, Debt or other similar instruments issued by, such Person, including Acquisitions.

"Investment Grade Eligible Accounts" means Eligible Accounts that are owing by an Account Debtor who has a credit rating of "BBB-" or better by Standard & Poor's Corporation or "Baa3" or better by Moody's Investor Services.

"IRS" means the Internal Revenue Service and any Governmental Authority succeeding to any of its principal functions under the Code.

"Joint Venture" shall mean any Person other than (a) an individual or (b) a direct or indirect Subsidiary of the Parent or Borrowers (i) in which the Parent or a Borrower holds or

acquires an ownership interest (by way of ownership of Capital Stock or other evidence of ownership) and (ii) which is engaged in a business permitted by Section 7.18.

“Latest Projections” means (a) on the Effective Date and thereafter until the Agent receives new projections pursuant to Section 5.2(e), the projections of the Loan Parties most recently delivered to the Agent on or before the Effective Date, and (b) thereafter, the projections most recently received by the Agent pursuant to Section 5.2(e).

“LC Accommodation” has the meaning specified in Section 1.5(a).

“Lender” and **“Lenders”** have the meanings specified in the preamble hereto and shall include the Agent to the extent of any Agent Advance outstanding; provided that no such Agent Advance shall be taken into account in determining any Lender’s Pro Rata Share. Unless an Event of Default has occurred and is continuing, each Lender shall be a Qualified Lender

“Letter of Credit” has the meaning specified in Section 1.5(a) and includes the Existing Letters of Credit.

“Letter of Credit Fee” has the meaning specified in Section 2.6.

“Letter of Credit Issuer” means Royal Bank, Canadian Imperial Bank of Commerce or any Affiliate thereof.

“Letter of Credit Subfacility” means, in respect of the LC Accommodation, \$15,000,000 (or the Equivalent Amount in U.S. Dollars).

“Lien” means:

- (a) any interest in property securing an obligation owed to, or a claim by, a Person, whether such interest is based on the common law, statute or contract, and including without limitation, a security interest, hypothec, prior claim, charge, claim or lien arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, agreement, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes;
- (b) to the extent not included under clause (a), (i) any rights of repossession or similar rights of unpaid suppliers, (ii) any reservation, exception, encroachment, easement, servitude, right of way, covenant, condition, restriction, lease or other title exception or encumbrance affecting property and (iii) any other lien, charge, privilege, secured claim, title retention, garnishment right, deemed trust, encumbrance or other right affecting property, choate or inchoate, whether or not crystallized or fixed, whether or not for amounts due or accruing due, arising by any statute, act of law of any jurisdiction at common law or in equity or by agreement; and
- (c) any contingent or other agreement to provide any of the foregoing.

“Line Cap” means, at any date of determination, the lesser of (i) the Maximum Revolver Amount, and (ii) the Borrowing Base.

“Liquidity Event” means (a) the failure of the Borrowers to maintain Excess Availability of at least the greater of (i) ten percent (10%) of the Line Cap, and (ii) \$14,000,000, for five (5) consecutive Business Days; provided that, a Liquidity Event shall be deemed continuing until Excess Availability shall have been equal to at least the greater of (A) ten percent (10%) of the Line Cap, and (B) \$14,000,000, for thirty (30) consecutive calendar days, or (b) the occurrence of any Event of Default; provided that, a Liquidity Event shall be deemed continuing only for so long as such Liquidity Event is continuing.

“Loan Account” means, with respect to the Borrowers, the loan account of the Borrowers, which account shall be maintained by the Agent.

“Loan Documents” means this Agreement, the Security Documents, the Parent Subordination Agreement, the Blocked Account Agreement, the Fee Letter, Hedge Agreements entered into with a Lender or an Affiliate of a Lender or a Person that was a Lender or an Affiliate of a Lender at the time entered into, and any other agreements, instruments, and documents heretofore, now or hereafter evidencing, securing, guaranteeing or otherwise relating to any or all of the Obligations, the Collateral or any other aspect of the transactions contemplated by this Agreement.

“Loan Parties” means a collective reference to the Borrowers and the Guarantors, and **“Loan Party”** means any one of them.

“Machinery & Equipment” means all Equipment that constitutes excavators, wheel loaders, forklifts, dozers, processors, feller/bunchers, motor graders, log loaders, chip trailers, trucks, tractors, skid steers, log trailers, logging trucks, pickups, service trucks and scissor lifts (in each case, other than (i) fixtures (unless otherwise agreed by the Agent), or (ii) rolling stock or any Equipment subject to special perfection requirements under any Requirement of Law unless such special perfection requirements are complied with to the Agent’s reasonable satisfaction).

“Machinery & Equipment Appraisal” means with respect to the Loan Parties (a) until the first Appraisal on Machinery & Equipment is delivered to the Agent pursuant to Section 7.4(c), the most recent Appraisal of Machinery & Equipment delivered to the Agent, and (b) thereafter, each Appraisal of Machinery & Equipment of such Loan Party delivered to the Agent pursuant to Section 7.4(c).

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Loan Parties taken as a whole or the Collateral; (b) a material legal impairment of the ability of the Borrowers to perform under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Maximum Incremental Increase Amount” means an amount equal to (i) \$25,000,000, plus (ii) the amount of voluntary permanent reductions in the Maximum Revolver Amount

pursuant to Section 3.2(a), but only to the extent that any prepayments of the Revolving Loans in connection with such reduction was not funded with the proceeds of Debt.

“**Maximum Rate**” has the meaning specified in Section 2.3.

“**Maximum Revolver Amount**” means \$160,000,000 (or the Equivalent Amount thereof in U.S. Dollars) as such amount may be increased from time to time in accordance with Section 1.7 or reduced from time to time in accordance with Section 3.2(a); provided, however, that notwithstanding any other provision, the Maximum Revolver Amount shall not at any time exceed \$185,000,000 (or the Equivalent Amount thereof in U.S. Dollars).

“**Net Amount of Eligible Accounts**” means, at any time, the gross amount of Eligible Accounts of the Loan Parties less sales, excise or similar taxes, and less (without duplication for any amounts excluded in the determination of Eligible Accounts of the Loan Parties) returns, discounts, claims, credits (applied or unapplied), adjustments, allowances, accrued rebates, offsets, deductions, counterclaims, disputes and other defences of any nature at any time issued, owing, granted, outstanding, available or claimed.

“**Net Orderly Liquidation Percentage**” means, with respect to the Inventory or Machinery & Equipment of the Loan Parties at any time, the ratio (expressed as a percentage) computed by dividing (a) (i) if such percentage is being determined on the Effective Date or on any date prior to the first delivery of an Inventory Appraisal or a Machinery & Equipment Appraisal required pursuant to Section 7.4(c), the net recovery value of the Inventory or Machinery & Equipment, as applicable, of the Loan Parties (which in any event shall give effect to all costs and expenses of liquidation), as set forth in the Inventory Appraisal or Machinery & Equipment Appraisal, as applicable, delivered to the Agent prior to the Effective Date and (ii) if such percentage is being determined on or after the date of the first delivery of an Inventory Appraisal or Machinery & Equipment Appraisal, as applicable, required pursuant to Section 7.4(c), the net recovery value of the Inventory or Machinery & Equipment of the Loan Parties (which in any event shall give effect to all costs and expenses of liquidation), as set forth in the Inventory Appraisal or Machinery & Equipment Appraisal, as applicable, most recently delivered to the Agent pursuant to Section 7.4(c) by (b) the value of the Inventory of the Loan Parties or the Machinery & Equipment of the Loan Parties, as applicable, valued at cost, as set forth in the corresponding Inventory Appraisal or Machinery & Equipment Appraisal, as applicable.

“**Net Orderly Liquidation Value**” means, with respect to the Inventory or Machinery & Equipment of the Loan Parties at any time, an amount equal to the product of (a) the value of the Inventory or Machinery & Equipment of the Loan Parties at such time valued at the lower of cost (determined under the accounting principles used in the Loan Parties audited financial statements) or market, multiplied by (b) the Net Orderly Liquidation Percentage for the Loan Parties in effect at such time.

“**Net Proceeds**” has the meaning specified in Section 3.3(a).

“**Non-Consenting Lender**” has the meaning specified in Section 11.1(b).

“**Notice of Borrowing**” has the meaning specified in Section 1.4(b)(i).

“Notice of Continuation/Conversion” has the meaning specified in Section 2.2(ii).

“Obligations” means all present and future loans, advances, liabilities, obligations, covenants, duties and debts owing by the Loan Parties to the Agent and/or any Lender (or any other Person required to be indemnified), arising under or pursuant to this Agreement or any of the other Loan Documents, whether or not evidenced by any note or other instrument or document, whether arising from an extension of credit, opening of a letter of credit, acceptance, loan, guaranty, guarantee, indemnification or otherwise, whether direct or indirect, absolute, matured or contingent, due or to become due, now existing or hereafter arising, created or incurred, primary or secondary, as principal or guarantor and including without limitation all principal, interest, (including all obligations incurred during the pendency and any interest that accrues after the commencement of any case or proceeding by or against a Loan Party under any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case proceeding), premiums, charges, expenses, fees, costs, attorneys’ fees, indemnities, filing fees and any other sums, in each case, documented, reasonable and chargeable to any of the Loan Parties hereunder or under any of the other Loan Documents. “Obligations” also includes, without limitation and in any event, (a) all debts, liabilities and obligations now or hereafter arising from or in connection with Letters of Credit, (b) all debts, liabilities and obligations now or hereafter arising from or in connection with Bank Products, and (c) the Guaranteed Obligations.

“OFAC” means The Office of Foreign Assets Control of the United States Department of the Treasury.”

“Off-Site Inventory” means, at any time, (i) logs or wood chips exclusively available to the Borrowers (subject to the payment of applicable fees due to a Governmental Authority in connection with harvesting of such logs), unless the Agent, in the exercise of its Permitted Discretion, deems such logs or wood chips not to be Off-Site Inventory, and (ii) which would be Eligible Inventory if the same were in the possession of a Borrower or at one of its locations (not giving effect to clause (d) of the definition thereof). Without limiting the foregoing, no logs or wood chips, as applicable, shall be Off-Site Inventory unless (x) such logs are harvested from land in an area available to a Borrower (directly or from a third party), and which harvesting occurs under a license, permit or similar authorization issued by a Governmental Authority, (y) such logs or wood chips are held on public yards prior to their delivery to a location of a Borrower, and (z) such logs or wood chips have been transported from such land to a road or other satellite location which allows such trees or wood chips to be transported to a mill or other processing facility.

“Other Taxes” means any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under any other Loan Document or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Documents excluding Excluded Taxes.

“Overdrafts” means the amounts, if any, by which any individual bank account maintained by the Loan Parties with Royal Bank is overdrawn or otherwise has a negative cash balance, whether in consequence of any electronic transfer or otherwise.

“**Parent**” means Mercer International Inc., and any other entity (or entities) that holds all of the issued and outstanding Capital Stock of a Borrower in accordance with the terms of this Agreement.

“**Parent Initial Loan**” means the outstanding loans in the aggregate principal amount of US\$281,393,801 from the Parent to the Borrowers pursuant to the Parent Initial Loan Agreement.

“**Parent Initial Loan Agreement**” means an amended and restated unsecured subordinated loan agreement made between the Parent and the Borrowers dated January 21, 2022.

“**Parent Subordination Agreement**” means a subordination agreement in form and substance reasonably satisfactory to the Agent by and among Agent, the Borrowers and Parent in respect of the Parent Initial Loan Agreement.

“**Participant**” means any Person who shall have been granted the right by any Lender to participate in the financing provided by such Lender under this Agreement, and who shall have entered into a participation agreement in form and substance satisfactory to such Lender.

“**PATRIOT Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).”

“**Payment Conditions**” means that (a) no Event of Default has occurred and is continuing or would result from any applicable action, and (b) either (i) Excess Availability would be at least the greater of twelve and one half percent (12.5%) of the Line Cap on each of the thirty (30) consecutive calendar days immediately prior to such action on a pro forma basis after giving effect to the applicable action, and the Fixed Charge Coverage Ratio calculated on a trailing twelve month basis would be at least 1.0:1.0 on a pro forma basis as of the most recent fiscal month for which Financial Statements have been delivered in accordance with Section 5.2, or (ii) Excess Availability would be at least the greater of twenty percent (20%) of the Line Cap on each of the thirty (30) consecutive calendar days immediately prior to such action on a pro forma basis after giving effect to the applicable action, and for all matters involving payments greater than \$25,000,000 in the aggregate, the Borrowers shall have delivered a customary officer’s certificate certifying as to compliance with the foregoing conditions and setting forth the calculations thereof.

“**Payment Notice**” has the meaning assigned to it in Section 12.24(b).

“**Payment Recipient**” has the meaning assigned to it in Section 12.24(a).

“**PBA**” means, as applicable, the *Pension Benefits Standards Act* (British Columbia) and all regulations thereunder, or any other Canadian federal, provincial, territorial or local counterparts or equivalents thereto (including, without limitation, the EPPA), in each case as amended from time to time and any successor legislation.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any Governmental Authority succeeding to the functions thereof.

“**Pending Revolving Loans**” means, at any time, the aggregate principal amount of all Revolving Loans requested in any Notice of Borrowing received by the Agent which have not yet been advanced.

“**Pension Plan**” means any pension plan (including any Defined Benefit Pension Plan) that is subject to or registered under the PBA, or subject to or registered under other Canadian or provincial pension legislation including the *Income Tax Act* (Canada), or any pension plan maintained in any non-Canadian jurisdiction, in each case, which any Loan Party, sponsors, maintains or to which it makes, is making or is obligated to make contributions, or has made contributions at any time during the immediately preceding five (5) plan years.

“**Permitted Acquisition**” means any Acquisition after the Effective Date, so long as prior to the effective date of such Acquisition each of the following conditions has been satisfied:

- (a)
 - (i) such Acquisition shall have been approved, if required by Requirement of Law, by the board of directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition (unless such was withdrawn) or shall not have commenced any action which alleges that such Acquisition will violate any Requirement of Law; and
 - (ii) if the Acquisition is an Acquisition of Capital Stock, a Loan Party shall acquire and own, directly or indirectly, 50.1% of the Capital Stock in the Person being acquired;
- (b) no Default or Event of Default is in existence at the time of such Acquisition or would be caused thereby after giving effect thereto;
- (c) all representations and warranties shall be true and correct in all material respects as if restated immediately following the consummation of such Acquisition, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects, as of such earlier date;
- (d) substantially all of such business, assets and operations so acquired, or of the Person so acquired are located in Canada or the United States, and substantially all of such business, assets and operations so acquired, or of the Person so acquired consists of a line of business that is related, ancillary or complementary to the lines of business the Loan Parties were engaged in immediately prior to the Acquisition;
- (e) the Payment Conditions shall be satisfied;
- (f) for any Acquisition in which the purchase price exceeds \$25,000,000, the Agent has received a pro forma one (1) year projection with respect to the Acquisition, acceptable to the Agent in its Permitted Discretion, including balance sheets, and income statements, cash flow statements and changes in stockholders' equity of the Loan Parties factoring in the Acquisition, reflecting the reasonable good faith

estimate at the time delivered of the future financial performance of the Loan Parties after the Acquisition for the periods set forth therein;

- (g) the Agent has received a certificate from a Borrower's chief financial officer or chief operating officer or other financial officer (in such Person's capacity as such) certifying that all of the applicable conditions contained herein to treating such acquisition as a Permitted Acquisition have been satisfied; and
- (h) such Acquisition is consummated in compliance with all material Requirements of Law. In addition to all other eligibility criteria provided for under this Agreement, it is agreed and understood that in no event shall any Accounts, Inventory or Machinery & Equipment acquired in connection with a Permitted Acquisition be deemed eligible for advance hereunder unless and until, the provisions of Section 7.21(b) hereof have been satisfied.

"Permitted Discretion" means the reasonable (from the perspective of a secured asset-based lender) business judgment of the Agent made in good faith and in accordance with customary business practices for comparable asset-based lending transactions and, as it relates to the establishment or increase of Reserves or the adjustment or imposition of exclusionary criteria, shall require that, (a) the contributing factors to the imposition or increase of any Reserve shall not duplicate (i) the exclusionary criteria set forth in the definitions of Eligible Accounts, Eligible Inventory or Eligible Machinery & Equipment, as applicable (and vice versa) or (ii) any reserves deducted in computing the Net Orderly Liquidation Value, and (b) any such establishment, increase, adjustment or imposition shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis therefor.

"Permitted Investments" means:

- (a) acquisitions of Fixed Assets to be used in the business of any Loan Party;
- (b) acquisitions of Inventory, supplies, other current assets and expenditures or Investments in the ordinary course of business that would be accounted for as expenses and not required to be capitalized under GAAP (provided, in the case of operating leases, GAAP as in force prior to January 1, 2019);
- (c) loans and advances made in the ordinary course of business to their respective employees so long as the aggregate principal amount thereof at any time outstanding (excluding employee credit cards for expenses relating to the business of the Loan Parties, temporary advances for payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and which are made in the ordinary course of business) shall not exceed \$2,000,000;
- (d) Investments in a Joint Venture to the extent such Investment is substantially contemporaneously repaid in full with a dividend or other distribution from such Joint Venture;
- (e) Hedge Agreements permitted under this Agreement and entered into in the ordinary course of business and not for speculative purposes;

- (f) Investments in cash and Cash Equivalents;
- (g) prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits, in each case made in the ordinary course of business by any Loan Party;
- (h) Investments in and/or otherwise constituting Permitted Acquisitions;
- (i) Investments made as a result of the receipt of non-cash consideration from a Transfer made in compliance with Section 7.10;
- (j) Investments made by any Person that becomes a Subsidiary after the date hereof; provided that such Investment exists at the time such Person becomes a Subsidiary and are not made in contemplation of or in connection with such Person becoming a Subsidiary;
- (k) Investments existing on the date hereof and identified on Schedule 7.11;
- (l) other Investments that are not Acquisitions, including any additional (after the Effective Date) Investment in the Excluded Entities, provided, however, that the Payment Conditions are satisfied;
- (m) Investments by any Loan Party in any other Loan Party;
- (n) Investments made solely with the proceeds from capital contributions made in cash or Cash Equivalents to a Borrower or net cash proceeds from the issuance or sale of Capital Stock (other than Disqualified Stock) of such Borrower, in each case received by such Borrower during the twelve-month period immediately preceding the date of such investment and not used for any other permitted purpose hereunder;
- (o) prepayments to sellers of inventory in the ordinary course of business;
- (p) Capital Stock or other securities acquired in connection with the satisfaction or replacement of Indebtedness permitted hereunder (and only in respect of payments, prepayments or re-financings thereof) or claims (permitted under this Agreement) due or owing to a Loan Party;
- (q) any Investments received in compromise or resolution of delinquent obligations of trade creditors or customers that were incurred in the ordinary course of business by a Loan Party or as a result of litigation, arbitration or other dispute resolution;
- (r) Investments made by, from or with the proceeds of the Shareholder Loans received by the Borrowers during the twelve-month period immediately preceding the date of such investment and not used for any other permitted purpose hereunder;

- (s) the Borrower (or any Loan Party) may make additional loans and advances to a Person, including the Excluded Entities and any Joint Venture, in an aggregate amount for all loans and advances made pursuant to this clause (s), not to exceed \$5,000,000; and
- (t) the Borrower (or any Loan Party) may make additional Investments in the Excluded Entities not to exceed: (i) \$25,000,000 in Fiscal Year 2022, (ii) \$20,000,000 in Fiscal Year 2023, or (iii) \$15,000,000 in Fiscal Year 2024 or any Fiscal Year thereafter, for purposes of normal course maintenance and Capital Expenditures approved by a Loan Party's board of directors, provided that such Investments are detailed in the Latest Projections provided to the Agent.

For purposes of determining compliance with this definition, the amount, as of any date of determination, of (i) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (ii) any Investment in the form of a Guarantee shall be equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof, as determined in good faith by the Borrowers, (iii) any Investment in the form of a transfer of Capital Stock or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair market value (as determined in good faith by the Borrowers) of such Capital Stock or other property as of the time of the transfer, minus any cash payments actually received by such investor representing a return of capital of, or dividends or other distributions in respect of, such Investment (to the extent such payments do not exceed, in the aggregate, the original amount of such Investment), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such investment after the date of such investment, and (iv) any Investment by a specified Person in the form of a purchase or other acquisition for value of any Capital Stock, evidences of Debt or other securities of any other Person shall be the original cost of such Investment (including any Debt assumed in connection therewith), plus (A) the cost of all additions made thereto and minus (B) the amount of any portion of such investment that has been returned or repaid to the investor in cash as a repayment of principal or a return of capital and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such Investment (to the extent the amounts referred to in clause (B) do not, in the aggregate, exceed the original cost of such Investment plus the costs of additions thereto), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment.

“Permitted Liens” means:

- (a) Liens for taxes, assessments, charges or other governmental levies not delinquent or statutory Liens for taxes, assessments, charges or other governmental levies not delinquent; provided that the payment of such taxes, assessments, charges or other governmental levies under this clause (a) which are due and payable is being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established on the applicable Loan

Party's books and records for which no enforcement action has been commenced or a stay of enforcement of any such Lien is in effect;

- (b) the Agent's Liens;
- (c) Liens consisting of pledges and deposits made in the ordinary course of business in connection with, or to secure payment of, statutory obligations including under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the obligations to a utility when required by such utility in connection with the operations of the Loan Parties, or to secure performance of bids, tenders or contracts (including leases) (other than for the repayment of Debt) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of Debt) or to secure statutory obligations (other than (i) Liens arising under Canadian federal or provincial statutes in relation to Pension Plans or any other applicable Plan under a Requirement of Law or (ii) Environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds;
- (d) Liens securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords, repairmen's and other like Persons, including without limitation arising under the *Woodworker Lien Act* (British Columbia), the *Forestry Workers Lien for Wages Act* (Ontario), the *Woodmen's Lien Act* (Alberta) and similar legislation in jurisdictions in which a Loan Party operates, in each case, incurred in the ordinary course of business and not delinquent (unless being contested by a Loan Party in good faith);
- (e) Liens constituting encumbrances in the nature of reservations, exceptions, zoning restrictions, encroachments, easements, servitudes, rights of way, covenants running with the land and other similar title exceptions or encumbrances affecting any Real Estate, and any interest or title of a lessor or sublessor under any lease permitted by this Agreement;
- (f) Liens arising from judgments and attachments in connection with court proceedings provided that the attachment or enforcement of such Liens would not result in an Event of Default hereunder and such Liens are being contested in good faith by appropriate proceedings, adequate reserves have been set aside and no material assets or property of the Borrowers or any other Loan Party is subject to a material risk of loss or forfeiture;
- (g) Liens in effect as of the Effective Date described in Schedule 7.14 securing Debt described in Schedule 7.14;
- (h) Liens on Fixed Assets (other than Real Estate) securing Capital Leases and purchase money Debt, in each instance, permitted under Section 7.14(d);
- (i) Liens arising as of a matter of law, such as bankers and other similar statutory liens and other rights of offset, in connection with deposit, securities, or commodities accounts in the ordinary course of business;

- (j) other Liens incidental to the conduct of any Loan Party's business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and which do not in the aggregate materially detract from Agent's or Lenders' right in and to the Collateral or the value of any Loan Party's property or assets or which do not materially impair the use thereof in the operation of any Loan Party's business, provided that such Liens do not encumber any assets in the Borrowing Base, or if such Liens do encumber assets in the Borrowing Base they are expressly subordinated and made junior in priority to the Agent's Liens;
- (k) Liens consisting of reclamation rights and similar statutory rights arising as a matter of Requirement of Law in favour of the seller of goods to any Loan Party so long as such Liens secure only the purchase price of and apply only to the goods or other property sold;
- (l) Liens in favour of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the ordinary course of business;
- (m) any encumbrances or restrictions (including, without limitation, put and call agreements) with respect to the Capital Stock of any Joint Venture expressly permitted by the terms of this Agreement arising pursuant to the agreement evidencing such Joint Venture;
- (n) Liens arising out of conditional sale, title retention or similar agreements for the sale of goods in the ordinary course of business and permitted by this Agreement;
- (o) Liens on insurance policies and proceeds thereof securing the financing of the premiums with respect thereto; and
- (p) Liens in connection with escrow deposits made in connection with any Permitted Acquisitions.

“Permitted Refinancing Debt” means any Debt issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to “Refinance”), the Debt being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Debt); *provided*, that (a) the aggregate principal amount (or accreted value, if applicable) of such Permitted Refinancing Debt does not exceed the principal or committed amount (or accreted value, if applicable) of the Debt so Refinanced (plus, without duplication, unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, and reasonable fees, commissions, and expenses, (b) the final maturity date of such Permitted Refinancing Debt is on or after the earlier of (x) the final maturity date of the Debt being Refinanced and (y) the Stated Termination Date then in effect, in each case, in effect at the time of incurrence, (c) if the Debt being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing Debt shall be subordinated in right of payment to such Obligations on terms in the aggregate not materially less favorable to the Lenders as those contained in the documentation governing the Debt being Refinanced, (d) the terms applicable to such Permitted Refinancing Debt, including the representations, covenants and defaults are no less favourable in any material

respect to the applicable Loan Party than those applicable to the Debt being Refinanced; (e) no Permitted Refinancing Debt shall have obligors that are not obligated with respect to the Debt so Refinanced than the Debt being Refinanced (except that a Loan Party may be added as an additional obligor to the extent the Loan Parties were permitted to be obligors on such Debt immediately prior to such refinancing) and (e) if the Debt being Refinanced is secured by Liens on any Collateral, such Permitted Refinancing Debt may be secured by such Collateral (including any Collateral pursuant to after-acquired property clauses to the extent any such Collateral secured (or would have secured) the Debt being Refinanced) so long as it complies with Section 7.19; *provided* that if any such Liens on the Collateral are junior to the Liens on the Collateral securing the Obligations, such Liens securing Permitted Refinancing Debt shall also be junior to the Liens on the Collateral securing the Obligations and subject to intercreditor agreements, as applicable.

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

“Plan” means an employee benefit plan (or employee pension benefit plan) which any Loan Party sponsors or maintains or to which any Loan Party makes, is making or is obligated to make contributions and includes any Pension Plan.

“Platform” has the meaning specified in Section 12.22.

“Post Petition Interest” has the meaning specified in Section 13.8(b).

“PPSA” means the *Personal Property Security Act* (British Columbia) or the *Personal Property Security Act* (Alberta), as applicable (or any successor statute) and similar legislation of any other jurisdiction (including, without limitation, the the Uniform Commercial Code as in effect from time to time in the State of New York), the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, validity or effect of security interests or other Liens and includes all regulations thereunder.

“PR Corporation” means Peace River Logging Corporation.

“PR Partnership” means Peace River Logging Limited Partnership.

“Preferred Stock”, as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution or wind-up of such corporation, over shares of Capital Stock of any other class of such corporation.

“Prime Rate” means, for any day, a fluctuating rate of interest per annum equal to the greater of (a) the rate of interest in effect for such day as determined by the principal office of Royal Bank in Toronto, Ontario and quotes, publishes and refers to as its “prime rate” and which is its reference rate then in effect for determining interest rated on Canadian Dollar denominated commercial loans made in Canada; and (b) the sum of (i) the BA Rate determined using Canadian Dollar bankers’ acceptances having a term of 1 month on the date of determination, as reported by Royal Bank, and (ii) 0.50%, per annum provided that, if any such rate is below zero,

then the Prime Rate shall be deemed to be zero. The “Prime Rate” is a rate set by Royal Bank based upon various factors and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the “Prime Rate” so determined by the Agent shall be adjusted automatically with each quoted or published change in such rate, all without the necessity of any notice to the Loan Parties or any other Person.

“**Prime Rate Revolving Loan**” means a Revolving Loan during any period in which it bears interest based on the Prime Rate.

“**Priority Payables**” means any amounts due and not paid for wages and vacation pay (including amounts protected by the *Wage Earner Protection Program Act* (Canada)), severance pay, amounts due and not paid under any legislation relating to workers’ compensation or to employment insurance, all amounts deducted or withheld and not paid and remitted when due under the *Income Tax Act* (Canada), sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of GST/HST input tax credits) or similar applicable provincial legislation, government royalties, amounts currently or past due and not paid for realty (immovable), municipal or similar taxes (to the extent impacting personal or movable property) and all unfunded wind-up or solvency deficiency amounts under, and all amounts currently or past due and not contributed, remitted or paid to, any Plan or under the Canada Pension Plan or the PBA, or any similar statutory or other claims that would have or would reasonably be expected to have priority over or rank *pari passu* with any Liens granted to the Agent in the future.

“**Pro Rata Share**” means, with respect to a Lender at any time, a fraction (expressed as a percentage), the numerator of which is the amount of such Lender’s Revolving Credit Commitment at such time and the denominator of which is the sum of the amounts of all of the Lenders’ Revolving Credit Commitments at such time, or if no Revolving Credit Commitments are outstanding at such time, a fraction (expressed as a percentage), the numerator of which is the amount of Obligations (other than any Obligations under Bank Products) owed to such Lender at such time and the denominator of which is the aggregate amount of the Obligations (other than any Obligations under Bank Products) owed to all Lenders at such time.

“**Proceeds of Crime Act**” means *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (or any successor statute), as amended from time to time, and includes all regulations thereunder.

“**Proprietary Rights**” means, with respect to a Loan Party, all of such Loan Party’s now owned and hereafter arising or acquired: patents, patent rights, copyrights, works which are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent, trademark and service mark applications, and all licenses (to the extent sublicenseable) and rights related to any of the foregoing, including those patents, trademarks, service marks, trade names and copyrights set forth on Schedule 6.12 hereto, and all other rights under any of the foregoing, all extensions, renewals, reissues, divisions, continuations, and continuations in part of any of the foregoing.

“**PRT**” means Peace River Transport Ltd., a limited company organized under the laws of Alberta.

“**PRT LP**” means Peace River Transport Limited Partnership, a limited partnership organized under the laws of Alberta, of which PRT is the general partner.

“**Public Lender**” has the meaning specified in Section 12.22.

“**Public Side Information**” has the meaning specified in Section 12.22.

“**Qualified Lender**” means, (a) a financial institution that is listed on Schedule I, II, or III of the *Bank Act* (Canada), (b) a foreign bank or entity associated with a foreign bank that has received an approval to have a financial establishment in Canada pursuant to Section 522.21 of the *Bank Act* (Canada) and has such an establishment, or (c) a financial institution that is not a “foreign bank” for purposes of the *Bank Act* (Canada) (other than a foreign bank described in clause (b)) and if any such financial institution or other entity described in (a), (b), or (c) is not a resident of Canada and is not deemed to be resident in Canada for purposes of the *Income Tax Act* (Canada), such financial institution or other entity deals at arm’s length with each Loan Party for purposes of the *Income Tax Act* (Canada).

“**Qualified Stock**” of any person means any equity interests of such person that are not Disqualified Stock.

“**Real Estate**” means all of each Loan Party’s now or hereafter owned or leased estates in real property or immovable property, including, without limitation, all fee simple interests, leaseholds and such future interests, together with all of each Loan Party’s now or hereafter owned or leased interests in the improvements thereon, the fixtures attached thereto and the easements appurtenant thereto.

“**Recovery Event**” means any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Loan Parties.

“**Related Party**” means, as to any Person, each of such Person’s Affiliates, and the partners, members, shareholders, controlling persons, officers, directors, employees, counsel, representatives, agents and attorneys in fact of such Person and such Person’s Affiliates.

“**Release**” means a release, spill, emission, leaking, pumping, pouring, emptying, injection, disposal, discharge, escaping, dumping or leaching of a Contaminant into the environment.

“**Relevant Governmental Body**” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“**Replacement Lender**” shall have the meaning specified in Section 11.3.

“**Report**” shall have the meaning specified in Section 12.18.

“**Requested Increase**” shall have the meaning specified in Section 1.7.

“Required Lenders” means Lenders whose Pro Rata Shares in respect of the Total Facility aggregate more than fifty percent (50%); provided, that so long as there are only two Lenders, “Required Lenders” means both of such Lenders.

“Requirement of Law” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator (on binding arbitration), court of law or of a Governmental Authority, applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“Reserves” means reserves that limit the availability of credit hereunder, consisting of reserves against the Borrowing Base, in each instance, established by the Agent from time to time in the Agent’s Permitted Discretion, without duplication, and in each case to the extent not already taken into account in the calculation of the Borrowing Base. Without limiting the generality of the foregoing, the following reserves shall be deemed to be a reasonable exercise of the Agent’s Permitted Discretion: (a) a reserve for accrued, unpaid interest then due on the Obligations, (b) reserves for rent at a leased, warehouse, bailment or processor location for which the Agent has not received a collateral access or similar agreement (i) within ninety (90) days of the Effective Date (or such longer period as the Agent may permit in its Permitted Discretion) in the case of Real Property leased by the Loan Parties on the Effective Date, and (ii) otherwise, thirty (30) days after the execution of a lease of a new Real Property of the Loan Parties (or such longer period as the Agent may permit in its Permitted Discretion); which reserve shall be in an amount equal to the lesser of (A) 3 months’ rent, and (B) applicable Excess Availability provided by the Eligible Inventory and Eligible Machinery & Equipment at such location, and reserves for other statutory Liens (including, without limitation, for liens arising from the nonpayment of claims or demands when due permitted in clause (c) of the defined term Permitted Liens), (c) Inventory shrinkage reserves and Inventory cost test reserves, (d) reserves for taxes, assessments, charges and other governmental levies which are delinquent, (e) customs reserves, (f) royalty reserves, if any, on brands or other Proprietary Rights relating to Inventory or Machinery & Equipment, (g) lease payments or similar charges to ensure unfettered access to the Collateral, (i) any claim or Lien, against any part of the Collateral which may be in priority to the Agent unless permitted hereunder, (j) any credit memos which have not yet been issued, (k) debit memos, (l) dilution of Accounts, (m) based on the Agent’s assessment based on its Permitted Discretion in respect of those suppliers the Agent has identified would be likely to exercise unpaid seller’s thirty (30) day goods rights to repossess goods or revendication rights, (n) fishermen, farmers or aquaculturists who would be likely to exercise their rights pursuant to Section 81.2 of the BIA, (o) any Inventory or Machinery & Equipment value adjustments as may be required by the Agent or the Lenders from time to time to reflect the value of the lower of cost or market in accordance with GAAP (without duplication to the calculation of the Borrowing Base), (p) of any indemnity granted by the Agent or the Lenders to any Person in connection with the depository and blocked account arrangements contemplated by the Loan Documents, (q) reserves established by the Agent for amounts payable by the Borrowers and secured by any Liens, choate or inchoate, which rank or which would reasonably be expected to rank in priority to the Agent’s and/or Lenders’ Liens and/or for amounts which represent costs relating to the enforcement of the Agent’s Liens including, without limitation, in connection with Priority Payables, (r) Bank Product Reserves, and (s) Stumpage/Royalty/Timber Reserves.

“Responsible Officer” means the chief executive officer, president, chief financial officer, chief operating officer, treasurer, assistant or secretary treasurer or a vice president of

finance, corporate controller of a Loan Party or any other authorized officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants and the preparation of the Borrowing Base Certificate of the Borrowers, the chief financial officer, the chief operating officer, the treasurer, assistant treasurer, corporate controller or a vice president of finance of such Loan Party or any other officer having substantially the same authority and responsibility.

“Revolving Credit Commitment” means, as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Letters of Credit in an aggregate principal and/or face amount not to exceed the amount set forth under the heading “Commitment” opposite such Lender’s name on Schedule 1.2 or in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof.

“Revolving Loans” has the meaning specified in Section 1.4 and includes each Swingline Loan and each Agent Advance.

“Royal Bank” means Royal Bank of Canada.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the Government of Canada, or (d) any other Governmental Authority with jurisdiction over any Lender or any Loan Party or any of their respective Subsidiaries or Affiliates.

“Seasonal Advance Rate Period” means one continuous period of ninety (90) days per Fiscal Year (so long as such periods are not successive periods) selected by the Borrowers in advance by providing one month prior notice to the Agent of the commencement of such period.

“Secured Parties” or **“Secured Party”** means (a) the Agent, (b) Royal Bank, (c) the Letter of Credit Issuer, (d) each Lender, (e) each Affiliate of a Lender who is a counterparty to a Bank Product, and (f) each former Lender and each Affiliate of such former Lender who is a counterparty to a Bank Product issued while such former Lender was a Lender hereunder.

“Securities Act” means the *Securities Act* (British Columbia) and the rules and regulations thereunder, as from time to time in effect on any replacement or successor thereof.

“Security Agreement” means collectively, the general security agreement dated as of the Effective Date among the Loan Parties and the Agent for the benefit of the Agent and the Secured Parties, together with any other general security agreement from time to time executed by a Loan Party in favour of the Agent and the Secured Parties.

“Security Documents” means the Security Agreement, and any other agreements (including *Bank Act* (Canada) security) executed by any other Person pursuant to which the Agent has been granted a Lien to secure any and all of the Obligations.

“Shareholder Loans” means, collectively, the Parent Initial Loan and any additional loans or advances to a Loan Party from time to time from the Parent or any Affiliate of the Parent that is not a Loan Party, all of which shall, at all times, be Subordinated Debt.

“**SOFR**” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Interest Payment Date**” means, with respect to a SOFR Revolving Loan, (i) the last day of each SOFR Interest Period applicable to such SOFR Revolving Loan (and at the end of each three months, in the case of interest periods longer than three months) and (ii) the Termination Date.

“**SOFR Interest Period**” means, in respect of each SOFR Revolving Loan, a period of one, three or six months, or, to the extent available from all applicable Lenders, twelve months or such shorter period (in each case, subject to the availability thereof), with respect to such SOFR Revolving Loan; provided that (i) the SOFR Interest Period shall commence on the date of an advance of or a conversion to a SOFR Revolving Loan and, in the case of immediately successive SOFR Interest Periods, each successive SOFR Interest Period shall commence on the date on which the next preceding SOFR Interest Period expires; (ii) if any SOFR Interest Period would otherwise expire on a day that is not a Business Day, such SOFR Interest Period shall expire on the next succeeding Business Day; provided, that if any SOFR Interest Period with respect to a SOFR Revolving Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such SOFR Interest Period shall expire on the next preceding Business Day; (iii) any SOFR Interest Period with respect to a SOFR Revolving Loan that begins on the last Business Day of a calendar month (or on a day for which there is not numerically corresponding day in the calendar month at the end of such SOFR Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such SOFR Interest Period; (iv) no SOFR Interest Period shall extend beyond the Stated Termination Date; and (v) no tenor that has been removed from this definition pursuant to Section 2.9 (Term SOFR Benchmark Replacement) shall be available for specification in such Notice of Borrowing or interest election.

“**SOFR Revolving Loan**” means a Revolving Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (iii) of the definition of “Base Rate”.

“**Solvent**” means, when used with respect to any Person, that at the time of determination:

- (a) the assets of such Person, at a fair valuation, are in excess of the total amount of its debts (including contingent liabilities); and
- (b) the present fair saleable value of its assets is greater than its probable liability on its existing debts as such debts become absolute and matured; and
- (c) it is then able and expects to be able to pay its debts (including contingent debts and other commitments) as they mature; and
- (d) it has capital sufficient to carry on its business as conducted and as proposed to be conducted.

For purposes of determining whether a Person is Solvent, the amount of any contingent liability shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability of such Person.

“Specified Transaction” means (a) any Transfer of all or substantially all the assets of or Capital Stock of any Loan Party or of any material business unit, line of business or division of a Loan Party, (b) any Permitted Acquisition or Permitted Investment that results in a Person becoming a Subsidiary of a Borrower or such Person is merged or amalgamated with a Loan Party, or a Loan Party acquiring all or substantially all of a business unit, line of business or division of a Person, (c) any incurrence of Debt, making of a Distribution or prepayment, repurchase or redemption of Debt, and (d) any other transaction, in each case in respect of which compliance with the Fixed Charge Coverage Ratio is by the terms of this Agreement required to be calculated on a *pro forma* basis.

“Spot Rate” means, in relation to the conversion of one currency into another currency, the spot rate of exchange for such conversion as quoted by the Bank of Canada at the close of business on the Business Day that such conversion is to be made (or, if such conversion is to be made before close of business on such Business Day, then at approximately close of business on the immediately preceding Business Day.), and, in either case, if no such rate is quoted, the spot rate of exchange quoted for wholesale transactions by the Agent on the Business Day such conversion is to be made in accordance with its normal practice.

“Stated Termination Date” means the fifth (5th) anniversary of the Effective Date

“Stumpage/Royalty/Timber Reserves” means reserves established and determined from time to time by Agent in its Permitted Discretion in such amount as the Agent may reasonably determine in respect of (i) royalties, fees and other charges in respect of the harvesting of timber (including stumpage fees) which each Loan Party has an obligation to remit to a Governmental Authority under the *Forests Act* (Alberta) all regulations promulgated under the foregoing acts, and under other Requirement of Law to the extent that the Governmental Authority's claim therefor under such Requirement of Law would rank or would be capable of ranking in priority to or *pari passu* with the Obligations, and (ii) Liens (that rank or are capable of ranking in priority to or *pari passu* with one or more of the Liens granted in the Loan Documents) arising under the *Woodworker Lien Act* (British Columbia), the *Forestry Workers Lien for Wages Act* (Ontario), the *Woodmen's Lien Act* (Alberta) and all regulations promulgated therefor or other similar Requirement of Law.

“Subordinated Debt” means unsecured Debt subordinated to the Agent and Lenders on terms and pursuant to agreements acceptable to the Agent in its reasonable discretion.

“Subordinated Obligations” has the meaning specified in Section 13.8.

“Subsidiary” of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than fifty percent (50%) of the voting stock or other voting equity interests (in the case of Persons other than corporations) is owned or controlled directly or indirectly, by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof.

“**Supermajority Lenders**” means at any time Lenders whose Pro Rata Shares in respect of the Total Facility aggregate more than sixty-six and two-thirds percent (66^{2/3}%) provided, that so long as there are only two Lenders, “Supermajority Lenders” means both of such Lenders.

“**Supporting Letter of Credit**” has the meaning specified in Section 1.5(g).

“**Swingline Lender**” means Royal Bank or any Affiliate of Royal Bank.

“**Swingline Loan**” and “**Swingline Loans**” have the meanings specified in Section 1.4(h).

“**Taxes**” means any and all present or future taxes, levies, imposts, deductions, charges or withholdings, assessments or fees and all liabilities with respect thereto (including any interest, additions to tax, or penalties applicable thereto), imposed by a Governmental Authority.

“**Term SOFR**” means, for any SOFR Interest Period for a SOFR Revolving Loan, the greater of (a) the Term SOFR Reference Rate (rounded upward to the next one-sixteenth (1/16th) of one percent (0.0625%), if necessary) for a tenor comparable to the applicable Interest Period on the day (the “**Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such SOFR Interest Period, as such rate is published by the Term SOFR Administrator and (b) the Floor; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

“**Term SOFR Adjustment**” means, with respect to Term SOFR, 0.11448% (11.448 basis points) for a SOFR Interest Period of one-month’s duration, 0.26161% (26.161 basis points) for a SOFR Interest Period of three-month’s duration, 0.42826% (42.826 basis points) for a SOFR Interest Period of six-months’ duration, and 0.71513% (71.513 basis points) for a SOFR Interest Period of twelve-months’ duration.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

“**Term SOFR Determination Day**” has the meaning assigned to it under the definition of Term SOFR.

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Termination Date**” means the earliest to occur of (a) the Stated Termination Date, (b) the date the Total Facility is terminated either by the Borrowers pursuant to Section 3.2 or by the Required Lenders pursuant to Section 9.2, and (c) the date this Agreement is otherwise terminated for any reason whatsoever pursuant to the terms of this Agreement.

“Termination Event” means (a) the whole or partial withdrawal of a Borrower or any Guarantor from a Pension Plan during a plan year; or (b) the filing of a notice of interest to terminate in whole or in part a Pension Plan or the treatment of a Pension Plan amendment as a termination of partial termination; or (c) the institution of proceedings by any Governmental Authority to terminate in whole or in part or have a trustee or administrator appointed to administer a Pension Plan; or (d) any other event or condition which is reasonably likely to constitute grounds for the termination of, winding up or partial termination of winding up or the appointment of trustee or administrator to administer, any Pension Plan.

“Test Period” means for any determination the trailing twelve months of the Borrowers (taken as one accounting period) then last ended for which the Borrowers have delivered the financial statements pursuant to Section 5.2(b).

“Total Facility” has the meaning specified in Section 1.3.

“Trading with the Enemy Act” has the meaning specified in Section 14.22.

“Transactions” means (a) the execution and delivery of this Agreement, the Loan Documents, in each case on or about the date hereof, (b) the repayment of certain existing Debt of the Borrowers and their Subsidiaries existing immediately prior to the Effective Date and (c) the payment of fees and expenses in connection herewith and therewith.

“Transfer” has the meaning specified in Section 7.10.

“U.S. Dollar” or **“U.S.\$”** mean dollars in the lawful currency of the United States.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) 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.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“United States” means the United States of America.

“Unfunded Pension Liability” means the excess of a Pension Plan’s projected benefit obligation over the market value of that Pension Plan’s assets and also includes any unfunded wind-up liability or solvency deficiency as determined for the purposes of the PBA or other Requirement of Law.

“Unused Letter of Credit Subfacility” means, at any time, an amount equal to the Letter of Credit Subfacility at such time minus the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit issued under the LC Accommodation plus, without duplication, (b) the aggregate unpaid reimbursement obligations with respect to all Letters of Credit issued under the LC Accommodation.

“Unused Line Fee” has the meaning specified in Section 2.5.

“**Voting Stock**” of a corporation means all classes of Capital Stock of such corporation then outstanding and normally entitled to vote in the election of directors.

“**Wholly-Owned Subsidiary**” of any Person means a subsidiary of such Person, all of the Capital Stock of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to Requirement of Law) are owned by such Person or another Wholly-Owned Subsidiary of such Person.

“**Woodland**” means the Woodland Cree First Nation.

“**Write-Down and Conversion Powers**” means, 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.

1.2 Construction and Interpretation.

- (a) **Accounting Terms.** Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations in this Agreement shall be computed, unless otherwise specifically provided therein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the Financial Statements.
- (b) **Interpretive Provisions.**
 - (i) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
 - (ii) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Subsection, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.
 - (iii)
 - (A) The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.
 - (B) The term “including” is not limiting and means “including without limitation.”
 - (C) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including.”

- (iv) Any reference made in this Agreement to “Agent” or “Lender” shall so be construed as to include its successors and permitted assigns.
- (v) Any reference made in this Agreement to a time of day is, unless otherwise stated, a reference to Toronto, Ontario, Canada time.
- (vi) Any reference made in this Agreement to Sections, Articles, Exhibits or Schedules is, unless otherwise indicated, a reference to Sections and Articles of this Agreement and to Exhibits and Schedules to this Agreement, as the case may be. The provisions of each Exhibit and Schedule shall constitute provisions of this Agreement as though repeated at length herein.
- (vii) Any reference made in this Agreement to a “fiscal quarter” means, in relation to a Loan Party, one of the four (4) consecutive periods in each Fiscal Year each of three (3) months duration.
- (viii) In this Agreement, (a) the singular includes the plural and vice versa, (b) “in writing” or “written” includes printing, typewriting, or any electronic means of communication capable of being visibly reproduced at the point of reception, including telex, telecopy and telegraph, (c) the headings, the table of contents, the Articles and the Sections are inserted for convenience only and are to be ignored in construing this Agreement, (d) a document, notice, note, bill of exchange or other instrument shall be deemed to have been validly signed and executed if it has been signed by either an original signature or a facsimile signature or stamp, and (e) all references to amounts of money shall, unless otherwise indicated, be references to Dollars.
- (ix) All references to parties herein shall unless otherwise expressly provided, include each such party’s successors and permitted assigns.
- (x) For the purpose of determining compliance with covenant and default limitations set forth in the Agreement, amounts expressed in Dollars shall be measured by aggregating the applicable items denominated in Dollars with the Equivalent Amounts expressed in Dollars of such items denominated in U.S. Dollars or other currencies. Where the permissibility of a transaction or a representation, warranty or covenant depends upon compliance with or is determined by reference to amounts stated in Dollars, any amount stated in another currency shall be converted to the Equivalent Amount expressed in Dollars at the applicable time of determination hereunder and the permissibility of actions taken under Article 7 shall not be affected by subsequent fluctuations in exchange rates, provided that, the terms of Section 3.11 shall not be subject to this provision. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in Dollars. For the purpose of such calculations, comparisons, measurements or other determinations, amounts or proceeds denominated in other currencies shall be converted to the Equivalent Amount of Dollars on the

date of calculation, comparison, measurement or other determination. In particular, without limitation, for purposes of valuations or computations and with respect to calculating Excess Availability, the Borrowing Base, eligibility criteria including Eligible Accounts, Eligible Inventory, Eligible Machinery & Equipment etc., where a reference is made to a currency other than Dollars, each other currency shall be converted into the Equivalent Amount thereof in Dollars.

- (xi) Unless otherwise expressly provided herein, (a) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement, and (b) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.
- (xii) In addition, (a) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), all laws in respect thereto, all interpretations and applications thereof and any compliance by a Lender with any request or directive relating thereto and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, for the purposes of this Agreement, be deemed to be adopted subsequent to the Effective Date.
- (xiii) The captions and headings of this Agreement and other Loan Documents are for convenience of reference only and shall not affect the interpretation of this Agreement.
- (xiv) This Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Agent, the Loan Parties and the other parties hereto, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Agent merely because of the Agent's or Lenders' involvement in their preparation.
- (xv) Unless otherwise expressly stated herein, wherever in this Agreement reference is made to a rate of interest or fee "per annum" or a similar expression is used, such interest or fee will be calculated on the basis of a full calendar year, namely three hundred and sixty-five (365) days or three hundred and sixty-six (366) days, as the case may be. All payments of interest to be made hereunder will be paid both before and after maturity and before and after default and/or judgment, if any, until payment thereof, and interest will accrue on overdue interest, if any.

- (xvi) in the event of a conflict between the provisions of this Agreement and any of the other Loan Documents, it is the intention of the parties that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provision of this Agreement shall be paramount and control and govern in all respects.
- (c) All Revolving Loans (other than Base Rate Revolving Loans and SOFR Revolving Loans) shall be made and denominated in Canadian Dollars and all Base Rate Revolving Loans and SOFR Revolving Loans shall be made and denominated in U.S. Dollars. For Revolving Loans (other than Base Rate Revolving Loans and SOFR Revolving Loans), interest thereon shall all be payable in Canadian Dollars. For Base Rate Revolving Loans and SOFR Revolving Loans, interest thereon shall all be payable in U.S. Dollars. However, for purposes of determining compliance with covenant and default limitations, all fees and amounts payable hereunder (other than Loan Party's payment obligations expressly payable in U.S. Dollars) and all calculations hereunder, including, without limitation, the amount of the Borrowing Base of the Borrowers, the Aggregate Revolver Outstandings, the Maximum Revolver Amount, the Letter of Credit Subfacility and each Lender's Commitment as of any date shall all be calculated and stated in Dollars, and for such purposes any items denominated in U.S. Dollars included in such calculation shall be converted into Dollars at the Exchange Rate prevailing on such date, as determined by the Agent.
- (d) The interest rate on a Loan may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.9 (Term SOFR Benchmark Replacement) and Section 2.10 (CDOR Benchmark Replacement) provide mechanisms for determining an alternative rate of interest. The Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the continuation of, the administration of, submission of, calculation of, performance of or any other matter related to any interest rate used in this Agreement (including, without limitation, the BA Rate, the Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR) or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative or successor rate thereto, or replacement rate thereof (including any Benchmark Replacement), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same value or economic equivalence of as the existing interest rate (or any component thereof) being replaced or have the same volume or liquidity as did any existing interest rate (or any component thereof) prior to its discontinuance or unavailability. The Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate (or component thereof) used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The

Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

- (e) Notwithstanding anything contained herein to the contrary, (i) where compliance with any provision herein or the other Loan Documents is determined by reference to the proceeds of any issuances of Capital Stock or capital contributions, such proceeds shall be deemed to be limited to such amount as was not previously (and is not concurrently being) applied in determining the permissibility of another transaction hereunder or under the Loan Documents, (ii) with respect to determining the permissibility of the establishment of any commitments in respect of Debt, all such commitments established at or prior to such time shall be deemed to be fully drawn and (iii) with respect to determining the permissibility of the incurrence of any Debt, the proceeds thereof shall not be counted as cash or Cash Equivalents in any “net debt” determinations relating to the incurrence thereof.

(f) **English Language.**

The Loan Parties confirm and agree that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en la langue anglaise seulement.*

(g) **Pro Forma Basis.**

Notwithstanding anything to the contrary contained herein, financial ratios and tests (including the Fixed Charge Coverage Ratio) pursuant to this Agreement shall be calculated in the manner prescribed by this Section 1.2(g).

- (i) In the event that any Loan Party incurs, assumes, guarantees, redeems, repays, repurchases, retires or extinguishes any Debt (other than Debt incurred or repaid under any revolving credit facility unless such Debt has been permanently repaid and has not been replaced) during the applicable Test Period or subsequent to the end of the Test Period for which such financial ratio or test is being calculated but prior to or simultaneously with the event for which such calculation is being made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence, assumption, guarantee, redemption, repayment, repurchase,

retirement or extinguishment of Debt, as if the same had occurred on the first day of the applicable Test Period.

- (ii) For purposes of calculating any financial ratio or test, (i) Specified Transactions and Transactions that have been made by any Loan Party during the applicable Test Period or subsequent to such Test Period and prior to or simultaneously with the event for which such calculation is being made shall be given pro forma effect assuming that all such Specified Transactions and Transactions (and the change in EBITDA resulting therefrom) had occurred on the first day of the applicable Test Period and (ii) to the extent permitted by the definition of “EBITDA”, “run-rate” cost savings and synergies that have been or are expected to be realized during the 18-month period following the consummation of such transactions shall be given pro forma effect. If since the beginning of any such Test Period any Person that subsequently became a Loan Party was merged, amalgamated or consolidated with or into any other Loan Party since the beginning of such Test Period shall have made any Specified Transaction or Transactions that would have required adjustment pursuant to this Section, then any applicable financial ratio or test shall be calculated giving pro forma effect thereto for such period as if such Specified Transaction or Transactions occurred at the beginning of the applicable Test Period.
- (iii) Whenever pro forma effect is to be given to a Specified Transaction or the Transactions, the pro forma calculations shall be made in good faith by the chief financial officer or the chief operating officer of a Borrower (including the “run-rate” cost savings and synergies resulting from such Specified Transactions or Transactions that have been or are expected to be realized (“run-rate” means the full recurring benefit for a period that is associated with any action taken (including any savings expected to result from the elimination of a public target’s compliance costs with public company requirements), net of the amount of actual benefits realized during such period from such actions); provided that such pro forma adjustments for any period shall be subject to the applicable limitations set forth in the definition of “EBITDA”).
- (iv) If any Debt bears a floating rate of interest and is being given pro forma effect, the interest on such Debt shall be calculated as if the rate in effect on the date of the event for which the applicable calculation is made had been the applicable rate for the entire period (taking into account any interest Hedge Agreement applicable to such Debt). Interest on Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as a Borrower may designate.

1.3 Total Facility.

Subject to all of the terms and conditions of this Agreement, the Lenders agree to make available a total credit facility of up to \$160,000,000 (the “**Total Facility**”) to the Borrowers from time to time during the term of this Agreement, as such amount may be increased pursuant to Section 1.7 or reduced pursuant to Section 3.2(a). The Total Facility shall be composed of a revolving line of credit consisting of Revolving Loans and Letters of Credit.

1.4 Revolving Loans.

- (a) Amounts. Subject to the satisfaction of the conditions precedent set forth in Article 8, each Lender severally, but not jointly, agrees, upon a Borrower’s request from time to time on any Business Day during the period from the Effective Date to the Termination Date, to make revolving loans in Dollars and in U.S. Dollars (the “**Revolving Loans**”) to the Borrower in amounts not to exceed such Lender’s Pro Rata Share of Excess Availability. If any Borrowing by a Borrower would exceed Excess Availability, the Lenders may refuse to make or may otherwise restrict the making of Revolving Loans until such excess has been eliminated, subject to the Agent’s authority, in its sole discretion, to make Agent Advances pursuant to the terms of Section 1.4(i).
- (b) Procedure for Borrowing.
 - (i) Each Borrowing by a Borrower shall be made upon the Borrower’s irrevocable written notice delivered to the Agent in the form of a notice of borrowing (“**Notice of Borrowing**”) in the form of Exhibit D attached hereto and made a part hereof, which must be received by the Agent prior to (i) 11:00 a.m. (Toronto time) on the requested Funding Date, in the case of a Prime Rate Revolving Loan or a Base Rate Revolving Loan that is to be made in accordance with the terms of Section 1.4(h), but, in each case, subject to the terms of Section 1.4(f); provided that if Royal Bank declines in its sole discretion to make any such Swingline Loan pursuant to Section 1.4(h), a new Notice of Borrowing shall be delivered with the requested Funding Date adjusted to the next Business day and the minimum increments adjusted in accordance with the requirements set forth in Section 1.4(b)(i)(A) below, (ii) 1:00 p.m. (Toronto time) three (3) Business Days prior to the requested Funding Date (or such shorter notice time of which the Agent has notified the Borrower), in the case of BA Equivalent Revolving Loans, (iii) 1:00 p.m. (Toronto time) one (1) Business Day prior to the requested Funding Date, in the case of Prime Rate Revolving Loans, (iv) 1:00 p.m. (Toronto time) three (3) Business Days prior to the requested Funding Date (or such shorter notice time of which the Agent has notified the Borrower), in the case of SOFR Revolving Loans and (v) 1:00 p.m. (Toronto time) one (1) Business Day prior to the requested Funding Date, in the case of Base Rate Revolving Loans, specifying:
 - (A) the amount of the Borrowing, which (i) in the case of a Prime Rate Revolving Loan must equal or exceed CDN\$500,000 and

increments of CDN\$100,000 in excess of such amount (other than to the extent comprising Swingline Loans which must equal or exceed CDN\$100,000 and increments of CDN\$50,000 in excess of such amount), (ii) in the case of a Base Rate Revolving Loan must equal or exceed U.S.\$500,000 and increments of U.S.\$100,000 in excess of such amount (other than to the extent comprising Swingline Loans which must equal or exceed U.S.\$100,000 and increments of U.S.\$50,000 in excess of such amount), (iii) in the case of a BA Equivalent Revolving Loan must equal or exceed CDN\$1,000,000 and increments of CDN\$500,000 in excess of such amount, and (vi) in the case of a SOFR Revolving Loan must equal or exceed U.S.\$1,000,000 (and increments of U.S.\$500,000 in excess of such amount);

- (B) the requested Funding Date, which must be a Business Day and may not be the Business Day immediately prior to the Stated Termination Date;
 - (C) whether the Revolving Loans requested are to be Prime Rate Revolving Loans, BA Equivalent Revolving Loans, SOFR Revolving Loans or Base Rate Revolving Loans (and if not specified, it shall be deemed a request for a Prime Rate Revolving Loan (if the currency is not specified or is specified in CDN\$) or Base Rate Revolving Loans (if the currency specified is U.S.\$)); and
 - (D) (i) the duration of the BA Equivalent Interest Period for BA Equivalent Revolving Loans (and if not specified, it shall be deemed a request for a BA Equivalent Interest Period of one month) and (ii) the duration of the SOFR Interest Period for SOFR Revolving Loans (and if not specified, it shall be deemed a request for a SOFR Interest Period of one month);
- (ii) After giving effect to any Borrowing, there may not be more than ten (10) different BA Equivalent Interest Periods in effect.
 - (iii) After giving effect to any Borrowing, there may not be more than ten (10) different SOFR Interest Periods in effect.
 - (iv) A Borrower may give the Agent electronic notice of such request for advances to the applicable Designated Account on or before the deadline set forth above, such notice shall be confirmed in writing on the same day by delivery to Agent of a Notice of Borrowing confirming same. The Agent at all times shall be entitled to rely on electronic notice in making such Revolving Loans, regardless of whether any written confirmation is received.

- (v) A Borrower shall have no right to request a BA Equivalent Revolving Loan or a SOFR Revolving Loan while an Event of Default has occurred and is continuing.
- (c) Reliance upon Authority. Prior to the Effective Date, each Borrower shall deliver to the Agent a notice setting forth two (2) accounts in Canada of the Borrower (each a “**Designated Account**”) to which the Agent is authorized to transfer the proceeds of the Revolving Loans requested hereunder by the Borrower (one Designated Account to be for transfers of proceeds of BA Equivalent Revolving Loans and Prime Rate Revolving Loans and the other Designated Account to be for transfers of proceeds of SOFR Revolving Loans and Base Rate Revolving Loans). The Borrowers may designate a replacement account for either Designated Account from time to time by written notice to the Agent in the form set out in Exhibit F duly executed by an officer of the applicable Borrower. Each Designated Account must be reasonably satisfactory to the Agent. The Agent is entitled to rely conclusively on any Person’s request for Revolving Loans on behalf of such Borrower, so long as the proceeds thereof are to be transferred to a Designated Account. The Agent has no duty to verify the identity of any individual representing himself or herself as a Person authorized by a Borrower to make requests for Revolving Loans on its behalf.
- (d) No Liability. The Agent shall not incur any liability to any Borrower as a result of acting upon any notice referred to in Sections 1.4(b) and 1.4(c) which the Agent believes in good faith to have been given by an officer or other Person duly authorized by a Borrower to request Revolving Loans on its behalf. The crediting of Revolving Loans to a Designated Account conclusively establishes the obligation of the Borrowers to repay such Revolving Loans as provided herein.
- (e) Notice Irrevocable. Any Notice of Borrowing (or telephonic or electronic notice in lieu thereof) made pursuant to Section 1.4(b) shall be irrevocable. The Borrowers shall be bound to borrow the funds requested therein in accordance therewith.
- (f) Agent’s Election. Promptly after receipt of a Notice of Borrowing (or electronic notice in lieu thereof), the Agent shall elect to have the terms of Section 1.4(g) or the terms of Section 1.4(h) apply to such requested Borrowing. If Royal Bank declines in its sole discretion to make a Swingline Loan pursuant to Section 1.4(h), the terms of Section 1.4(g) shall apply to the requested Borrowing.
- (g) Making of Revolving Loans. If the Agent elects to have the terms of this Section 1.4(g) apply to a requested Borrowing, then promptly after receipt of a Notice of Borrowing or electronic notice in lieu thereof, the Agent shall notify the Lenders by telecopy, or e-mail of the requested Borrowing. Each Lender shall transfer its Pro Rata Share of the requested Borrowing to the Agent in immediately available funds (in CDN Dollars if the requested Borrowing is a Prime Rate Revolving Loan or a BA Equivalent Revolving Loan and in U.S. Dollars if the requested Borrowing is a Base Rate Revolving Loan or a SOFR Revolving Loan), to the account in Canada from time to time designated by the

Agent, not later than 1:00 p.m. (Toronto time) on the applicable Funding Date. After the Agent receives all proceeds of such Revolving Loans, the Agent shall make the proceeds of such Revolving Loans available to the Borrower on the applicable Funding Date by transferring same day funds to the Designated Account designated by the Borrower; provided, however, that the amount of Revolving Loans so made on any date to the Borrower shall not exceed Excess Availability on such date.

(h) Making of Swingline Loans.

(i) If the Agent elects, to have the terms of this Section 1.4(h) apply to a requested Borrowing for a Prime Rate Revolving Loan or a Base Rate Revolving Loan, as applicable, the Swingline Lender shall make a Revolving Loan in the amount of that Borrowing available to the Borrower on the applicable Funding Date by transferring same day funds to the applicable Designated Account. Each Revolving Loan made solely by the Swingline Lender pursuant to this Section 1.4(h) is herein referred to as a “**Swingline Loan**”, and such Revolving Loans are collectively referred to as the “**Swingline Loans**”. Each Swingline Loan shall be subject to all the terms and conditions applicable to other Revolving Loans except that all payments thereon shall be payable to the Swingline Lender solely for its own account. The aggregate amount of Swingline Loans outstanding at any time shall not exceed \$15,000,000 (or the Equivalent Amount thereof in U.S. Dollars). The Agent shall not request the Swingline Lender to make any Swingline Loan if (1) the Agent has received written notice from any Lender that one or more of the applicable conditions precedent set forth in Article 8 will not be satisfied on the requested Funding Date for the applicable Borrowing or (2) the Agent has received written notice from any Lender or otherwise has actual knowledge that the requested Borrowing would exceed Excess Availability on that Funding Date.

(ii) The Swingline Loans shall be secured by the Agent’s Liens in and to the Collateral and shall constitute Prime Rate Revolving Loans or Base Rate Revolving Loans, as the case may be, and Obligations hereunder.

(iii) Each Swingline Loan must be repaid in full on the last Business Day of each week.

(i) Agent Advances.

(i) Subject to the limitations set forth below and provided same are not to be utilized to repay Bank Products, the Agent is authorized by each Borrower and the Lenders, from time to time in the Agent’s sole discretion, while a Default or Event of Default has occurred and is continuing, to make Prime Rate Revolving Loans to a Borrower on behalf of the Lenders in an aggregate amount outstanding at any time not to exceed ten percent (10%) of the Line Cap, but not in excess of the amount that would cause the Aggregate Revolver Outstandings to exceed the Maximum Revolver

Amount, which the Agent, in its reasonable business judgment, deems necessary or desirable (1) to maintain, preserve or protect the Collateral, or any portion thereof, or the Lenders' rights under any of the Loan Documents, (2) to enhance the likelihood of, or maximize the amount of, repayment of the Revolving Loans and other Obligations, or (3) to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including documented and reasonable costs, fees and expenses as described in Section 14.7 (any of such advances are herein referred to as "**Agent Advances**"); provided, that (A) if there are three Lenders, any two of them may at any time revoke the authorization of the Agent to make Agent Advances and (B) if there are four or more Lenders, the Required Lenders may at any time revoke the authorization of the Agent to make Agent Advances. Any such revocation must be in writing and shall become effective prospectively upon the Agent's and Royal Bank's receipt thereof.

- (i) The Agent Advances shall be secured by the Agent's Liens in and to the Collateral and shall constitute Prime Rate Revolving Loans or Base Rate Revolving Loans, as the case may be, and Obligations hereunder.

1.5 Letters of Credit.

- (a) Agreement to Issue or Cause to Issue. Subject to the terms and conditions of this Agreement, the Agent agrees to cause the Letter of Credit Issuer to issue for the account of a Borrower by way of direct application to the Agent by a Borrower (the "**LC Accommodation**"), one or more standby or documentary letters of credit or letters of guarantee (each of the foregoing, a "**Letter of Credit**").
- (b) Amounts; Outside Expiration Date. The Letter of Credit Issuer shall not have any obligation to issue or cause to be issued, nor shall any Lender have an obligation to participate in, any Letter of Credit at any time if: (i) the maximum available amount of the requested Letter of Credit is greater than the Unused Letter of Credit Subfacility at such time; (ii) the maximum available amount of the requested Letter of Credit and all commissions, fees, and charges due from the Borrowers in connection with the opening thereof (to the extent such commissions, fees and charges are not paid in cash prior to or at the time of the opening thereof) would exceed Excess Availability, at such time; or (iii) such Letter of Credit has an expiration date (inclusive of any acceptance period) on or before the fifth (5th) Business Day prior to the Stated Termination Date or more than 12 months (180 days in the case of documentary Letters of Credit) from the date of issuance (or such longer period as may be acceptable to the Letter of Credit Issuer in its discretion); for the avoidance of doubt, this provision does not apply to any "evergreen" or automatic renewal provision; provided, however, no such automatic renewal shall extend beyond the fifth (5th) Business Day prior to the Stated Termination Date. With respect to any Letter of Credit which contains any "evergreen" or automatic renewal provision, each applicable Lender shall be deemed to have consented to any such extension or renewal unless any such Lender shall have provided to the Agent written notice that it declines to consent

to any such extension or renewal at least thirty (30) days prior to the date on which the applicable Letter of Credit Issuer is entitled to decline to extend or renew such Letter of Credit. If all of the requirements of this Section 1.5 are met and no Default or Event of Default has occurred and is continuing, no applicable Lender shall decline to consent to any such extension or renewal.

- (c) Other Conditions. In addition to conditions precedent contained in Article 8, the obligation of the Agent to issue or to cause to be issued any Letter of Credit is subject to the following conditions precedent having been satisfied in a manner reasonably satisfactory to the Agent:
- (i) A Borrower shall have delivered to the Letter of Credit Issuer, at such times and in such manner as such Letter of Credit Issuer may prescribe, an application in form and substance reasonably satisfactory to such Letter of Credit Issuer and reasonably satisfactory to the Agent for the issuance of the Letter of Credit and such other documents as may be reasonably required pursuant to the terms thereof in connection with such issuance, and the form and terms of the proposed Letter of Credit shall be reasonably satisfactory to the Agent and the applicable Letter of Credit Issuer; and
 - (ii) As of the date of issuance, no order of any court, arbitrator or Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit, and no law, rule or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the proposed Letter of Credit Issuer refrain from, the issuance of letters of credit generally or the issuance of such Letters of Credit.
- (d) Issuance of Letters of Credit.
- (i) Request for Issuance. When requesting the issuance of a Letter of Credit pursuant to the LC Accommodation, a Borrower must notify the Agent of such requested Letter of Credit at least three (3) Business Days prior to the proposed issuance date. Such notice shall be irrevocable and must specify the original face amount of the Letter of Credit requested, the Business Day of issuance of such requested Letter of Credit, whether such Letter of Credit may be drawn in a single or in partial draws, the Business Day on which the requested Letter of Credit is to expire, the purpose for which such Letter of Credit is to be issued, and the beneficiary of the requested Letter of Credit. The Borrower shall attach to such notice the proposed form of the Letter of Credit.
 - (ii) Responsibilities of the Agent; Issuance. As of the Business Day immediately preceding the requested issuance date of the Letter of Credit, the Agent shall determine the amount of the applicable Unused Letter of

Credit Subfacility and the Excess Availability as of such date. If (A) the face amount of the requested Letter of Credit is less than the Unused Letter of Credit Subfacility, and (B) the amount of such requested Letter of Credit and all commissions, fees, and charges due from the Borrower in connection with the opening thereof (to the extent such commissions, fees and charges are not paid in cash prior to or at the time of the opening thereof) would not exceed applicable Excess Availability, the Agent shall cause the applicable Letter of Credit Issuer to issue the requested Letter of Credit on the requested issuance date so long as the other conditions hereof are met.

- (iii) No Extensions or Amendment. The Agent shall not be obligated to cause the applicable Letter of Credit Issuer to extend or amend any Letter of Credit issued pursuant hereto unless the requirements of this Section 1.5 are met as though a new Letter of Credit were being requested and issued.

- (e) Payments Pursuant to Letters of Credit. Each Borrower agrees to reimburse within two (2) Business Days the Letter of Credit Issuer for any draw under any Letter of Credit issued for the account of a Borrower, and to pay the Letter of Credit Issuer the amount of all other charges and fees payable to the Letter of Credit Issuer in connection with such Letter of Credit immediately when due, irrespective of any claim, setoff, defence or other right which the Borrowers may have at any time against the Letter of Credit Issuer or any other Person. Each Borrower hereby irrevocably authorizes Royal Bank, as Letter of Credit Issuer to debit the respective Canadian or U.S. or any other bank account (including any deposit, disbursement or operating account) of the Borrowers for the purpose of paying all amounts due by the Borrowers from time to time for each drawing under any Letter of Credit, including all charges and fees pursuant to such issuance or amendment. Furthermore, each Borrower hereby irrevocably authorizes the Agent, at its option, to (i) debit the Designated Account or any other bank account (including any deposit, disbursement or operating account) of the Borrowers, or (ii) charge the Loan Account for the purpose of paying all amounts due by the Borrowers from time to time to a Letter of Credit Issuer for each drawing under any Letter of Credit, including all charges and fees pursuant to such issuance or amendment of letters of Credit. Each drawing under any Letter of Credit denominated in Canadian Dollars shall constitute a request by the Borrowers to the Agent for a Borrowing of a Prime Rate Revolving Loan in the amount of such drawing. Each drawing under any Letter of Credit denominated in U.S. Dollars shall constitute a request by the Borrowers to the Agent for a Borrowing of a Base Rate Revolving Loan in the amount of such drawing. In each case, the Funding Date with respect to such Borrowing shall be the date of such drawing.

- (f) Indemnification; Exoneration; Power of Attorney.
 - (i) Indemnification. In addition to amounts payable as elsewhere provided in this Section 1.5, each Borrower agrees to protect, indemnify, pay and hold harmless the Letter of Credit Issuer, the Lenders and the Agent from and

against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) which any such indemnified Person may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit for the account of a Borrower, except to the extent they are found by a final decision of a court of competent jurisdiction to have resulted from such indemnified Person's, as the case may be, gross negligence, wilful misconduct or material breach of any Loan Document. Each Borrower's obligations under this Section 1.5 shall survive payment of all other Obligations.

- (ii) Assumption of Risk by the Borrower. As among the Borrowers, the Letter of Credit Issuer, the Lenders and the Agent, the Borrowers assume all risks of the acts and omissions of, or misuse of any of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Letter of Credit Issuer, the Lenders and the Agent shall not be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any officer or authorized signatory of a Borrower in connection with the application for and issuance of and presentation by a beneficiary of drafts with respect to any drawing of any of the Letters of Credit believed in good faith by the Letter of Credit Issuer and Agent to be a valid, sufficient and correct document, even if it should prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, believed in good faith by the Agent and the Letter of Credit Issuer to be a valid, sufficient and correct document which may prove to be invalid or ineffective for any reason; (C) the failure of the beneficiary of any Letter of Credit to comply strictly with conditions required in order to draw upon such Letter of Credit; (D) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (G) the misapplication by the beneficiary of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; (H) any consequences arising from causes beyond the control of the applicable Lenders or the Agent, including any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Authority or (I) the Letter of Credit Issuer's honour of a draw for which the draw or any certificate fails to comply, in any respect, strictly with the terms of the Letter of Credit. None of the foregoing shall affect, impair or prevent the vesting of any rights or powers of any Letter of Credit Issuer, the Agent or any Lender under this Section 1.5(f).

- (iii) Exoneration. Without limiting the foregoing, no action or omission whatsoever by the Letter of Credit Issuer, the Agent or any Lender shall result in any liability of the Letter of Credit Issuer, the Agent or any Lender to any Borrower, or relieve any Borrower of any of its obligations hereunder to any such Person, under or with respect to any Letter of Credit issued or provided for the account of any Borrower.
- (iv) Account Party. Each Borrower hereby authorizes and directs the Letter of Credit Issuer to name the Borrower as the “Account Party” therein and to deliver to the Agent all instruments, documents and other writings and property received by such Letter of Credit Issuer pursuant to the Letter of Credit issued or to be issued for the account of a Borrower, and to accept and rely upon the Agent’s instructions and agreements with respect to all matters arising in connection with such Letter of Credit or the application therefor.
- (g) Supporting Letter of Credit; Cash Collateral. If, notwithstanding the provisions of Section 1.5(b) and Section 10.1, any Letter of Credit is outstanding upon the termination of this Agreement, then upon such termination the Borrowers shall deposit with the Agent, for the ratable benefit of the Agent and the Lenders, with respect to each Letter of Credit issued for the account of a Borrower, then outstanding, either (x) a standby letter of credit (a “**Supporting Letter of Credit**”) in form and substance satisfactory to the Agent, issued by an issuer satisfactory to the Agent in an amount equal to 105% of the greatest amount for which such Letter of Credit may be drawn plus any fees and expenses associated with such Letter of Credit, under which Supporting Letter of Credit the Agent is entitled to draw amounts necessary to reimburse the Agent and the Lenders for payments to be made by the Agent and the Lenders under such Letter of Credit and any fees and expenses associated with such Letter of Credit or (y) cash collateral (subject to Lien documentation acceptable to the Agent) in an amount equal to 105% of the greatest amount for which such Letter of Credit may be drawn plus any fees and expenses associated with such Letter of Credit. Such Supporting Letter of Credit or cash collateral shall be held by the Agent, for the ratable benefit of the Agent and the Lenders, as security for, and to provide for the payment of, the aggregate undrawn amount of such Letters of Credit or remaining outstanding.
- (h) Paramourncy. In the event that any provisions of any Letter of Credit application or ancillary document under such applications contradict, are inconsistent with and are otherwise incapable of being construed in conjunction with the provisions of this Agreement, the provisions of this Agreement, as applicable, shall take precedence over those contained in such application and ancillary documentation.
- (i) Existing Letters of Credit. On and after the Effective Date, each Existing Letter of Credit shall be deemed to have been issued by the Lender that issued such Existing Letter of Credit and such Lender shall be deemed to be the “Letter of Credit Issuer” with respect to such Existing Letter of Credit pursuant to the terms of this Agreement and each Existing Letter of Credit shall constitute a Letter of

Credit for all purposes hereof and under this Agreement and the other Loan Documents. The Borrowers agree that they shall be liable with respect to any drawing made under any of the Existing Letters of Credit in accordance with this Section and the other provisions of this Agreement. Each Letter of Credit Issuer of an Existing Letter of Credit agrees that on and after the Effective Date (i) the fees applicable to each Existing Letter of Credit shall be the fees set forth in Section 2.6, and (ii) any reimbursement agreement in effect with respect to each Existing Letter of Credit shall be deemed terminated and each Existing Letter of Credit shall be governed by and subject to the terms and conditions of this Agreement.

1.6 Bank Products and Hedge Agreements.

Each Borrower may request and the Agent may, in its sole and absolute discretion, (y) arrange for a Borrower to obtain Bank Products, including Overdrafts, from Royal Bank or Royal Bank's Affiliates and/or (z) arrange for a Borrower to obtain Hedge Agreements from Royal Bank or Royal Bank's Affiliates. If Bank Products are provided by Royal Bank or an Affiliate of Royal Bank to a Borrower, and/or Hedge Agreements are provided by Lenders or their Affiliates to a Borrower, each Borrower agrees to indemnify and hold the Agent, Royal Bank and the other Lenders harmless from any and all costs and obligations now or hereafter incurred by the Agent, Royal Bank, or any other Lender which arise from any indemnity given by the Agent, Royal Bank, or such other Lender, as the case may be, to its Affiliates related to such Bank Products; provided, however, (i) the foregoing indemnity shall not extend to any costs or obligations with respect to a Bank Product or Hedge Agreement provided by an Affiliate of Royal Bank or an Affiliate of such Lender for which a Borrower would not be liable (without giving effect to the benefit of any setoff, defence or counterclaim available to such Borrower) and (ii) nothing contained herein is intended to limit the Borrowers' rights, with respect to Royal Bank or its Affiliates, or Lenders or their Affiliates, if any, which arise as a result of the execution of documents by and between the Borrowers and Royal Bank, which relate to Bank Products, or between the Borrowers and Lenders which relate to Hedge Agreements. The agreements contained in this Section 1.6 shall survive termination of this Agreement as to Bank Products outstanding on the date of such termination. Each Borrower acknowledges and agrees that the obtaining of the foregoing Bank Products from Royal Bank or any of its Affiliates or from Lenders or their Affiliates (a) is in the sole and absolute discretion of Royal Bank and its Affiliates and any such Lender and its Affiliates, (b) is subject to all rules and regulations of Royal Bank or the Affiliate of Royal Bank or Lenders or their Affiliates, as the case may be, and (c) shall be for the account of the Borrowers.

1.7 Request for Increase of Revolving Credit Commitments.

The Agent and the Lenders agree that the Borrowers may, on any single Business Day after the Effective Date and so long as (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) the Borrowers are in pro forma compliance of all covenants in Sections 7.23 after giving effect to the following, and (iii) the increased Revolving Credit Commitments provided for under this Section 1.7 are syndicated to the reasonable satisfaction of the Agent, deliver a written notice to Agent and each Lender (an "**Increase Notice**") requesting an increase in the Maximum Revolver Amount in an aggregate amount of up to the Maximum Incremental Increase Amount (the "**Requested Increase**"). If the Borrowers

deliver an Increase Notice, the Agent shall provide such Increase Notice to the Lenders and each Lender shall notify the Agent whether or not it agrees to commit to a portion of the Requested Increase and, if so, whether by an amount equal to, greater than, or less than its Pro Rata Share within thirty (30) days of receipt thereof (it being agreed and understood that such Lender shall be deemed to have elected not to participate in the Requested Increase if it does not respond to the Increase Notice within thirty (30) Business Days of its receipt thereof) provided that any Lender offered or approached to provide all or a portion of the Requested Increase shall have no obligation to provide any Requested Increase and may elect or decline, in its sole discretion, to provide such Requested Increase. If the Lenders unanimously agree to the Requested Increase within such thirty (30) day period, each Lender shall have the option to participate in the Requested Increase to the extent of its Pro Rata Share thereof. If one or more of the Lenders elect not to participate in the Requested Increase, then the Lenders participating in the Requested Increase may, at their option, elect to participate in such remaining portion of the Requested Increase (with such remaining portion to be allocated ratably among such participating Lenders based on their respective Pro Rata Share or as otherwise may be agreed by such participating Lenders). If there is less than full participation by existing Lenders in the Requested Increase after the foregoing procedures are completed, then one or more new Lenders reasonably acceptable to the Agent and the Borrowers may be added as parties to this Agreement for purposes of participating in such remaining portion. After giving effect to the procedures described in this Section 1.7, each Lender participating in the Requested Increase shall have its Revolving Credit Commitment increased to the extent of its participation. Each Borrower agrees to execute such amendments and supplements to the Security Documents as the Agent reasonably deems necessary in connection with a Requested Increase. An Increase Notice may be given only if the Requested Increase is at least \$5,000,000. No more than one Increase Notice may be delivered by the Borrowers pursuant to this Section 1.7. In connection with any increase of the Revolving Credit Commitments that occurs pursuant to this Section 1.7, the Borrowers shall pay the Accordion Fee to the Agent.

ARTICLE 2 - INTEREST AND FEES

2.1 Interest.

- (a) Interest Rates. All outstanding Obligations of a Borrower (other than Obligations with respect to Bank Products or Hedge Agreements, which shall be governed by the documents relating thereto) shall bear interest on the unpaid principal amount thereof (including, to the extent permitted by Requirement of Law, on interest thereon not paid when due) from the date made or incurred until paid in full in cash at a rate determined by reference to the Prime Rate, the BA Rate, the Base Rate or Adjusted Term SOFR plus the Applicable Margins, but not to exceed the Maximum Rate. If at any time Revolving Loans are outstanding with respect to which the Borrowers have not delivered to the Agent a notice specifying the basis for determining the interest rate applicable thereto in accordance herewith, those Revolving Loans shall bear interest at a rate determined by reference to the Prime Rate if such Revolving Loans are denominated in Dollars and by reference to the Base Rate if such Revolving Loans are denominated in U.S. Dollars, in each instance, until notice to the contrary has been given to the Agent in accordance with this Agreement and such notice has become effective. Except as otherwise provided herein, the outstanding Obligations (other than Obligations with respect

to Bank Products, which shall be governed by the documents relating thereto) shall bear interest as follows:

- (i) For all Prime Rate Revolving Loans and other Obligations of a Borrower (other than SOFR Revolving Loans, BA Equivalent Revolving Loans and Base Rate Revolving Loans) at a fluctuating per annum rate equal to the Prime Rate plus the Applicable Margin;
- (ii) For all Base Rate Revolving Loans at a fluctuating per annum rate equal to the Base Rate plus the Applicable Margin;
- (iii) For all SOFR Revolving Loans at a per annum rate equal to Adjusted Term SOFR plus the Applicable Margin; and
- (iv) For all BA Equivalent Revolving Loans at a per annum rate equal to the BA Rate plus the Applicable Margin.

Each change in the Prime Rate shall be reflected in the interest rate applicable to Prime Rate Revolving Loans and other Obligations bearing interest based on the Prime Rate as of the effective date of such change and each change in the Base Rate shall be reflected in the interest rate applicable to Base Rate Revolving Loans as of the effective date of such change. All interest charges on SOFR Revolving Loans shall be computed on the basis of a year of 360 days and actual days elapsed. All other interest charges (for instance on Prime Rate Loans, Base Rate Revolving Loans or BA Equivalent Revolving Loans) shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed. The Borrowers shall pay to the Agent, for the ratable benefit of the Lenders interest on all SOFR Revolving Loans made to the Borrowers in arrears on each SOFR Interest Payment Date. The Borrowers shall pay to the Agent, for the ratable benefit of the Lenders, (i) interest accrued on all Prime Rate Revolving Loans and all Base Rate Revolving Loans in arrears on the first (1st) day of each month hereafter and on the Termination Date and (ii) interest on all BA Equivalent Revolving Loans in arrears on each BA Equivalent Interest Payment Date.

- (b) Default Rate. If any Event of Default pursuant to Sections 9.1(a), 9.1(b), 9.1(f), 9.1(g), 9.1(h) or 9.1(i) occurs and is continuing, then, while any such Event of Default is continuing, all of the Obligations shall bear interest at the Default Rate applicable thereto.

2.2 Continuation and Conversion Elections.

Revolving Loans.

- (i) A Borrower may:
 - (A) elect, as of any Business Day, in the case of Prime Rate Revolving Loans made to the Borrower to convert any such Prime Rate Revolving Loans (or any part thereof in an amount not less than

CDN\$1,000,000 or that is in an integral multiple of CDN\$500,000 in excess thereof) into BA Equivalent Revolving Loans;

- (B) elect, as of the last day of the applicable BA Equivalent Interest Period, to continue any BA Equivalent Revolving Loans made to the Borrower having BA Equivalent Interest Periods expiring on such day (or any part thereof in an amount not less than CDN\$1,000,000 or that is in an integral multiple of CDN\$500,000 in excess thereof);
- (C) elect, as of any Business Day, in the case of Base Rate Revolving Loans made to the Borrower to convert any such Base Rate Revolving Loans (or any part thereof in an amount not less than U.S.\$1,000,000 or that is in an integral multiple of U.S.\$500,000 in excess thereof) into SOFR Revolving Loans; or
- (D) elect, as of the last day of the applicable SOFR Interest Period, to continue any SOFR Revolving Loans made to the Borrower having SOFR Interest Periods expiring on such day (or any part thereof in an amount not less than U.S.\$1,000,000 or that is in an integral multiple of U.S.\$500,000 in excess thereof);

provided, that if at any time the aggregate amount of BA Equivalent Revolving Loans or SOFR Revolving Loans in respect of any Borrowing made to the Borrower is reduced, by payment or prepayment of part thereof, to be less than CDN or U.S., as applicable, \$1,000,000, such BA Equivalent Revolving Loans shall automatically convert into Prime Rate Revolving Loans and such SOFR Revolving Loans shall automatically convert into Base Rate Revolving Loans; provided further that if the notice shall fail to specify the duration of the BA Equivalent Interest Period or the SOFR Interest Period, such BA Equivalent Interest Period or SOFR Interest Period shall be one month.

- (ii) A Borrower shall deliver a notice of continuation/ conversion (“**Notice of Continuation/Conversion**”) in the form of Exhibit E attached hereto and made a part hereof to the Agent not later than 2:00 p.m. (Toronto time) at least three (3) Business Days in advance of the Continuation/Conversion Date (or such shorter notice time of which the Agent has notified the Borrower), if the Revolving Loans of the Borrower are to be converted into or continued as BA Equivalent Revolving Loans, and at least three (3) Business Days in advance of the Continuation/Conversion Date (or such shorter notice time of which the Agent has notified the Borrower), if the Revolving Loans of the Borrower are to be converted into or continued as SOFR Revolving Loans, and specifying:
 - (A) the proposed Continuation/Conversion Date;
 - (B) the aggregate amount and type of Revolving Loans of the Borrower to be converted or renewed;

- (C) the type of Revolving Loans resulting from the proposed conversion or continuation; and
 - (D) the duration of the requested BA Equivalent Interest Period or SOFR Interest Period, provided, however, the Borrower may not select a BA Equivalent Interest Period or SOFR Interest Period that ends after the Stated Termination Date.
- (iii) If upon the expiration of any BA Equivalent Interest Period applicable to a BA Equivalent Revolving Loan of a Borrower, the Borrower has failed to select timely a new BA Equivalent Interest Period to be applicable to such BA Equivalent Revolving Loan or if any Event of Default then exists and is continuing, the Borrower shall be deemed to have elected to convert such BA Equivalent Revolving Loan into a Prime Rate Revolving Loan effective as of the expiration date of such BA Equivalent Interest Period.
 - (iv) If upon the expiration of any SOFR Interest Period applicable to a SOFR Revolving Loan of a Borrower, the Borrower has failed to select timely a new SOFR Interest Period to be applicable to such SOFR Revolving Loan or if any Event of Default then exists and is continuing, the Borrower shall be deemed to have elected to convert such SOFR Revolving Loan into a Base Rate Revolving Loan effective as of the expiration date of such SOFR Interest Period.
 - (v) The Agent will promptly notify each Lender of its receipt of a Notice of Continuation/Conversion. All conversions and continuations shall be made rateably according to the respective outstanding principal amounts of the Revolving Loans with respect to which the notice was given held by each Lender.
 - (vi) There may not be more than ten (10) different BA Equivalent Interest Periods in effect hereunder at any time.
 - (vii) There may not be more than ten (10) different SOFR Interest Periods in effect hereunder at any time.

2.3 Maximum Interest Rate.

- (a) In no event shall any interest rate provided for hereunder exceed the maximum rate legally chargeable by any Lender under Requirement of Law for such Lender with respect to loans of the type provided for hereunder by such Lender (the “**Maximum Rate**”). If, in any month, any interest rate for any Obligations, absent such limitation, would have exceeded the Maximum Rate for such Obligations, then the interest rate for such Obligations for that month shall be the Maximum Rate.
- (b) If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Revolving Loans or, if it exceeds such unpaid principal, promptly refunded to the

Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Requirement of Law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

2.4 Certain Fees.

The Borrowers agree to pay the Agent when due the fees set forth in the fee letter dated October 25, 2021 by and among Royal Bank of Canada and Parent (the “**Fee Letter**”).

2.5 Unused Line Fee.

On the first (1st) day of each month and on the Termination Date, the Borrowers agree to pay to the Agent, for the account of the Lenders, in accordance with their respective Pro Rata Shares, an unused line fee (the “**Unused Line Fee**”) at a per annum rate equal to 0.25% times the amount by which the Maximum Revolver Amount exceeded the sum of the average daily outstanding amount of Revolving Loans (deduction made of any Swingline Loans then outstanding) and the average daily undrawn amount of outstanding Letters of Credit during the immediately preceding month or shorter period if calculated for the first month hereafter or on the Termination Date. The Unused Line Fee shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed, and shall accrue daily. All principal payments received by the Agent shall be deemed to be credited to the Borrowers’ Loan Account immediately upon receipt for purposes of calculating the Unused Line Fee pursuant to this Section 2.5.

2.6 Letter of Credit Fee.

The Borrowers agree to pay (a) to the Agent, for the account of the Lenders, in accordance with their respective Pro Rata Shares, for each Letter of Credit issued for the account of a Borrower, a fee (the “**Letter of Credit Fee**”) at a per annum rate equal to the Applicable Margin on BA Equivalent Revolving Loans in effect from time to time, times the undrawn amount of such Letter of Credit from time to time, and (b) to the Letter of Credit Issuer, for its own account, for each Letter of Credit issued for the account of a Borrower, (x) a fee, when there exists more than one Lender hereunder, (the “**Letter of Credit Issuer Fee**”) at a per annum rate equal to 0.125% times the undrawn amount of such Letter of Credit from time to time plus (y) all out of pocket costs, fees and expenses incurred or charged from time to time by the Letter of Credit Issuer in connection with the application for, processing of, issuance or extension of, drawing under, or amendment to, any Letter of Credit. The Letter of Credit Fee and the Letter of Credit Issuer Fee with respect to a Letter of Credit shall be payable, and shall be paid or caused to be paid, monthly in arrears on the first Business Day following the last day of each month and on the Termination Date. The Letter of Credit Fee and the Letter of Credit Issuer Fee shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed.

2.7 Interest Act (Canada).

For purposes of the *Interest Act* (Canada), whenever any interest or fee payable by the Borrowers under this Agreement is calculated using a rate based on a year of 360 days, such rate used pursuant to such calculation, when expressed as an annual rate, is equivalent to (a) the applicable rate based on a year of 360 days, (b) multiplied by the actual number of days in the calendar year in which the period for which such interest or fee is payable (or compounded) ends, and (c) divided by 360. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement with respect to the Borrowers, and the rates of interest stipulated in this Agreement payable by the Borrowers are intended to be nominal rates and not effective rates or yields. Each Loan Party confirms that it fully understands and is able to calculate the rate of interest applicable to loans, advances, liabilities and obligations under this Agreement based on the methodology for calculating per annum rates provided for in this Agreement. Each Loan Party hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to this Agreement or any Loan Documents, that the interest payable under this Agreement and the calculation thereof has not been adequately disclosed to such Loan Party as required pursuant to Section 4 of the *Interest Act* (Canada).

2.8 Accordion Fee.

The Borrowers agree to pay an accordion closing fee (the "**Accordion Fee**") in an amount to be agreed to by the Agent and the Borrowers at the time of the Requested Increase made by the Borrowers in accordance with Section 1.7 of this Agreement. The Accordion Fee shall be due and payable to the Agent, for distribution to the Lenders participating in the Requested Increase (based on each such Lender's pro-rata portion of the Requested Increase), on the date that the Requested Increase is accepted and consented to by the Lenders. The Accordion Fee shall be fully earned by such participating Lenders on the date of such consent and acceptance.

2.9 Term SOFR Benchmark Replacement.

- (a) Benchmark Replacement. (i) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the

Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders, and (ii) No Hedge Agreement shall be deemed to be a “Loan Document” for purposes of this Section 2.9.

- (b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, 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 Loan 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 Loan Document. The Agent will promptly notify the Borrowers and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of SOFR or Term SOFR, as applicable.
- (c) Notices; Standards for Decisions and Determinations. The Agent will promptly notify the Borrowers and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will promptly notify the Borrowers of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.9(d). Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.9, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.9.
- (d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference 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 Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks (the “IOSCO Principles”), then the 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, non-representative, non-compliant or non-aligned 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 not or will not be representative or in compliance with or aligned with the IOSCO Principles for a Benchmark (including a Benchmark Replacement), then the 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 Borrower may revoke any request for a SOFR Revolving Loan of, conversion to or continuation of SOFR Revolving Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. 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 Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

2.10 CDOR Benchmark Replacement

- (a) If the Agent determines (which determination shall be conclusive absent manifest error), or the Borrowers or the Required Lenders notify the Agent that the Borrowers or Required Lenders (as applicable) have determined that:
 - (i) adequate and reasonable means do not exist for ascertaining the BA Rate, including because the Reuters “CDOR Page” (or any display substituted therefor) is not available or published on a current basis for the applicable period and such circumstances are unlikely to be temporary;
 - (ii) the administrator of the CDOR or a Governmental Authority having jurisdiction has made a public statement identifying a specific date after which CDOR will permanently or indefinitely cease to be made available or permitted to be used for determining the interest rate of loans;
 - (iii) a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which CDOR shall no longer be permitted to be used for determining the interest rate of loans (each such specific date in clause (ii) above and in this clause (iii) a “**CDOR Scheduled Unavailability Date**”); or
 - (iv) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace CDOR,

then reasonably promptly after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent and the Borrowers may mutually agree upon a successor rate to the BA Rate, and the Agent and the Borrowers may amend this Agreement to replace the BA Rate with an alternate benchmark rate

(including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar Canadian Dollars denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “**CDOR Successor Rate**”), together with any proposed CDOR Successor Rate conforming changes and any such amendment shall become effective at 5:00 p.m. (Toronto time) on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Borrowers unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders do not accept such amendment.

- (b) If no CDOR Successor Rate has been determined and the circumstances under clause (a)(i) above exist or a CDOR Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain BA Equivalent Revolving Loans, shall be suspended (to the extent of the affected BA Equivalent Revolving Loans, or applicable periods). Upon receipt of such notice, the Borrowers may revoke any pending request for an Loan of, conversion to or rollover of BA Equivalent Revolving Loans, (to the extent of the affected BA Equivalent Revolving Loans, or applicable periods) or, failing that, will be deemed to have converted such request into a request for a Prime Rate Revolving Loan in the amount specified therein.
- (c) Notwithstanding anything else herein, any definition of the CDOR Successor Rate (exclusive of any margin) shall provide that in no event shall such CDOR Successor Rate be less than zero for the purposes of this Agreement. In addition, CDOR shall not be included or referenced in the definition of Prime Rate.

ARTICLE 3 - PAYMENTS AND PREPAYMENTS

3.1 Revolving Loans.

The Borrowers shall repay the outstanding principal balance of the Revolving Loans, plus all accrued but unpaid interest thereon, on the Termination Date. The Borrowers may prepay Revolving Loans made to it at any time in accordance with Section 3.3(c), and re-borrow subject to the terms of this Agreement. In addition, and without limiting the generality of the foregoing, upon demand the Borrowers shall pay to the Agent, for the account of the Lenders, the amount, without duplication, by which the Aggregate Revolver Outstandings exceed the Line Cap.

3.2 Termination or Reduction of Revolving Credit Commitments

- (a) The Borrowers may upon irrevocable written notice to the Agent, from time to time permanently reduce the Revolving Credit Commitments, provided that: (i) any such notice shall be received by the Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, and (iii) the Borrowers shall not terminate or reduce the Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Aggregate Revolver Outstandings would exceed the aggregate Revolving Credit Commitments. The Agent will promptly notify the Revolving Lenders of any reduction of the Revolving Credit Commitments under this Section 3.2(a). Upon any reduction of the Revolving Credit Commitments, the Revolving Credit Commitment of each Lender shall be reduced by such Lender's Pro Rata Share of such reduction amount.
- (b) The Borrowers may terminate this Agreement upon at least three (3) Business Days' prior written notice to the Agent and the Lenders, upon (a) the payment in full of all outstanding Revolving Loans, together with accrued interest thereon, and the cancellation and return of all outstanding Letters of Credit (or, to the extent not so cancelled and returned, the deposit with the Agent of Supporting Letters of Credit or cash collateral for such outstanding Letters of Credit in accordance with and as required by Section 1.5(g)), (b) the payment in full in cash of all reimbursable expenses and other Obligations, and (c) with respect to any SOFR Revolving Loans and BA Equivalent Revolving Loans prepaid, payment of the amounts due under Section 4.4, if any. In connection with any such permitted termination by the Borrowers, the Agent shall provide a customary form of payoff letter setting forth all amounts due to the Agent and the Lenders hereunder, which payoff letter shall include Agent's termination of Agent's Liens and release of all Collateral and agreement to execute and deliver, at the Borrowers' sole expense, such release documents as may be reasonably necessary to reflect such termination, release and repayment.
- (c) Any termination notice may state that such notice is conditioned upon the occurrence or non-occurrence of any event specified therein, in which case such notice may be revoked by the Borrowers (by written notice to the Agent) on or prior to the proposed termination date) if such condition is not satisfied.

- (d) As a condition to the effectiveness of any such termination and, in any event, upon the Termination Date, the Loan Parties shall pledge and furnish to Agent cash collateral, other collateral or a written indemnity (from a financial institution that is acceptable to Agent), in each case acceptable to the Agent in respect of Bank Products provided by Bank Product Providers for which Bank Product Amount has been established.

3.3 Mandatory and Optional Prepayments of the Revolving Loans.

- (a) Within five (5) Business Days of receipt by any of the Loan Parties of cash proceeds of the loss, damage or destruction of any Collateral, the Borrowers shall prepay the Revolving Loans in an amount equal to all such cash proceeds, in the manner set forth in Section 3.7, net of (i) expenses of sale or recovery, including, without limitation, reasonable and documented attorneys', accountants', other advisors' and banking and investment banking fees, environmental and solvency related fees, all legal, title and recording tax expenses, commissions and other fees and expenses incurred, all federal, state, provincial, foreign and local taxes paid or reasonably estimated to be payable by a Loan Party and in each case, not by its respective members, as a consequence of such disposition or loss, (ii) the payment of principal, premium and interest of Debt (other than the Revolving Loans) secured by the asset which is the subject of the disposition or loss and required to be, and which is, repaid under the terms thereof as a result of such disposition or loss, and incremental income taxes paid or payable, (iii) any deduction of appropriate amounts to be provided by the Borrowers as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrowers after such sale or other disposition thereof, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction (provided that any such reserve established shall be reduced, to the extent such amounts are released to a Loan Party and such amounts shall be deemed to be received on such release date) and (iv) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such disposition or loss ("**Net Proceeds**"); provided, that, with respect to any loss, damage or destruction, in each instance where the Payment Conditions are satisfied at such time and, following delivery of a new Borrowing Base Certificate on a pro forma basis after giving effect to the contemplated transaction, no Liquidity Event has occurred, then, in either case, no such prepayment shall be required. Each such prepayment shall be applied in accordance with Section 3.3(c) and shall not reduce the Commitments.
- (b) After the occurrence and during the continuance of a Liquidity Event, all amounts in deposit in Blocked Accounts shall be transferred to the Agent in accordance with Section 7.29 and be applied as a prepayment on the Revolving Loans in accordance with subsection 3.3(d) and shall not reduce the Commitments
- (c) A Borrower may, at any time (i) in the case of Prime Rate Revolving Loans or Base Rate Revolving Loans, upon at least one (1) Business Day (or such shorter

period as is acceptable to the Agent) prior written notice in the form of Exhibit I attached hereto, or (ii) in the case of BA Equivalent Revolving Loans or SOFR Revolving Loans, upon three (3) Business Days' (or such shorter period as is acceptable to the Agent) prior written notice in the form of Exhibit I attached hereto, in each case by the Borrower to the Agent, prepay the Revolving Loans in whole or in part in an amount greater than or equal to CDN\$500,000 and integral multiples of CDN\$100,000 in excess thereof (in the case of Prime Rate Revolving Loans or BA Equivalent Revolving Loans) or in an amount greater than or equal to U.S.\$500,000 and integral multiples of U.S.\$100,000 in excess thereof (in the case of Base Rate Revolving Loans or SOFR Revolving Loans), in each instance, without penalty or premium except as provided in Section 4.4. Optional partial prepayments of the Revolving Loans shall be applied in the manner set forth in subsection 3.3(d) and shall not reduce the Commitments. Optional partial prepayments of the Revolving Loans in amounts less than CDN\$500,000 or U.S.\$500,000, as the case may be, shall not be permitted except where such prepayment represents all remaining outstanding amounts under a Revolving Loan. Any prepayment notice in the form of Exhibit I attached hereto may state that such notice is conditioned upon the occurrence or non-occurrence of any event specified therein, in which case such notice may be revoked by the Borrower (by written notice to the Agent on or prior to the specified prepayment date).

- (d) Prepayments in accordance with Section 3.3(a), 3.3(c) and 3.3(c) shall be applied as follows, subject to the Borrowers' ability to borrow such amounts pursuant to the terms of this Agreement, first, to accrued interest then due and owing with respect to the Revolving Loans, second, to pay the principal of the Revolving Loans, and third, to cash collateralize outstanding Letters of Credit (so long as no Event of Default is then continuing, only to the extent such cash collateralization is necessary to comply with the requirements of the third sentence of Section 3.1 without giving effect to any demand requirement thereunder); provided, that upon the occurrence and during the continuance of an Event of Default, any and all amounts held as cash collateral pursuant to clause third above and any other monies received by the Agent (or received by a Loan Party and remitted to the Agent) in respect of any such transactions shall be applied by the Agent to the payment of the Obligations in the order set forth in Section 0(ii). No such prepayments shall reduce the Commitments.
- (e) No provision contained in this Section 3.3 shall constitute a consent to an asset disposition, equity sale or issuance or Debt issuance that is otherwise not permitted by the terms of this Agreement.

3.4 SOFR Revolving Loan and BA Equivalent Revolving Loan Prepayments.

- (a) In connection with any prepayment, if any SOFR Revolving Loan is prepaid prior to the expiration date of the SOFR Interest Period applicable thereto, the Borrowers shall pay to the applicable Lenders the amounts described in Section 4.4.

- (b) In connection with any prepayment, if any BA Equivalent Revolving Loan is prepaid prior to the expiration date of the BA Equivalent Interest Period applicable thereto, the Borrowers shall pay to the Lenders the amounts described in Section 4.4.

3.5 Payments by the Borrowers.

- (a) All payments to be made by the Borrowers shall be made without set off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrowers shall be made to the Agent for the account of the Lenders at the account designated by the Agent and shall be made in Dollars or U.S. Dollars, as applicable, and in immediately available funds, no later than 2:00 p.m. (Toronto time) in the case of payments required to be made in Dollars or noon (Toronto time) in the case of payments required to be made in U.S. Dollars, in each case on the date specified herein. Any payment received by the Agent after such time shall be deemed (for purposes of calculating interest only) to have been received on the following Business Day and any applicable interest shall continue to accrue.
- (b) Subject to the provisions set forth in the definition of “SOFR Interest Period” and “BA Equivalent Interest Period”, whenever any payment is due on a day other than a Business Day, such payment shall be due on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

3.6 Payments as Revolving Loans.

At the election of the Agent, all payments of principal of Revolving Loans, interest on Revolving Loans, reimbursement obligations in connection with Letters of Credit, fees, premiums, reimbursable expenses and other sums payable hereunder or under any other Loan Document by the Borrowers may be paid from the proceeds of Revolving Loans made hereunder. Each Borrower hereby irrevocably authorizes the Agent, at its option, to (i) debit any Designated Account or any other bank account (including any deposit, disbursement or operating account) of the Borrower maintained at Royal Bank for the purpose of paying all amounts from time to time due by the Borrower hereunder or under any other Loan Document, or (ii) charge the Loan Account of the Borrower for the purpose of paying all amounts from time to time due by the Borrower hereunder or under any other Loan Document and agrees that all such amounts charged shall constitute Revolving Loans (including Swingline Loans and Agent Advances).

3.7 Apportionment, Application and Reversal of Payments.

(a) Principal and interest payments in respect of Revolving Loans shall be apportioned rateably among the Lenders (according to the unpaid principal balance of the Revolving Loans to which such payments relate held by each Lender) and payments of the fees shall, as applicable, be apportioned rateably among the Lenders, except for fees payable by the Borrowers solely to the Agent, Royal Bank or the Letter of Credit Issuer. All payments by the Borrowers in respect of Obligations (other than Obligations under Bank Products which shall be remitted directly to the Lender who is a counterparty to such Bank Product with a Borrower) shall be remitted to the Agent (except as expressly provided herein otherwise) and all such payments (to the extent not

relating to principal or interest of specific Revolving Loans, or not constituting payment of specific fees or expenses) and all proceeds of Accounts or other Collateral of the Borrowers received by the Agent, shall be applied, rateably, subject to the provisions of this Agreement:

- (i) So long as no Event of Default has occurred and is continuing: first, to pay any fees, indemnities or expense reimbursements (other than relating to Bank Products), then due to the Agent or any of its Affiliates from a Borrower; second, to pay any fees or expense reimbursements (other than relating to Bank Products) then due to the Lenders from a Borrower; third, to pay interest due in respect of all Revolving Loans, including Swingline Loans and Agent Advances; fourth, on a pro rata and *pari passu* basis (i) to pay or prepay principal of the Revolving Loans, including Swingline Loans and Agent Advances, and unpaid reimbursement obligations in respect of Letters of Credit, (ii) to pay an amount to the Agent equal to all outstanding Obligations (contingent or otherwise) with respect to Letters of Credit to be held as cash collateral for such Obligations (but only to the extent such cash collateralization is necessary to comply with the requirements of the third sentence of Section 3.1 without giving effect to any demand requirement thereunder), and (iii) to the payment (for greater certainty, rateably amongst the Persons providing Bank Products to a Borrower) of any Obligations relating to Bank Products then due to any Secured Party by the Loan Parties in a maximum amount to each such Secured Party that is equal to the Bank Product Amount previously advised to the Agent in writing; fifth, to the payment of any other Obligations (other than Bank Products) then due by the Loan Parties; sixth, to the payment (for greater certainty, rateably amongst the Persons providing Bank Products to Loan Parties) of any Obligations relating to Bank Products then due to any Secured Party by a Borrower or any other Loan Party which Obligations did not qualify under 3.7(a)(i) fourth; and seventh, to the Borrowers.
- (ii) Upon the occurrence and during the continuance of an Event of Default: first, to pay any fees, indemnities or expense reimbursements (other than any amounts relating to Bank Products) then due to the Agent from the Borrowers; second, to pay any fees, indemnities or expense reimbursements (other than amounts relating to Bank Products) then due to the Lenders from a Borrower; third, to pay interest due in respect of all Revolving Loans, including Swingline Loans and Agent Advances; fourth, on a pro rata and *pari passu* basis (i) to pay or prepay principal of the Revolving Loans, including Swingline Loans and Agent Advances, and unpaid reimbursement obligations in respect of Letters of Credit, (ii) to pay an amount to the Agent equal to all outstanding Obligations (contingent or otherwise) with respect to Letters of Credit to be held as cash collateral for such Obligations, and (iii) to the payment (for greater certainty, rateably amongst the Persons providing Bank Products to a Borrower) of any Obligations relating to Bank Products then due to any Secured Party by a Borrower in a maximum amount to each such Secured Party that is equal to the Bank Product Amount previously advised to the Agent in writing; fifth, to the payment of any other Obligations (other than Bank Products) of the Loan Parties then due; sixth, to the payment (for greater certainty, rateably amongst the Persons providing Bank Products to a Borrower) of any Obligations relating to Bank Products then due to

any such Lender or any of their Affiliates by a Borrower which Obligations did not qualify under 3.7(a)(ii) fourth; and seventh, to the Borrowers or as a court of competent jurisdiction may otherwise direct.

Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrowers, or unless an Event of Default has occurred and is continuing, neither the Agent nor any Lender shall (i) apply any payments which it receives to Obligations unless such payments received are in the same currency in which such Obligations are denominated, provided that the Borrowings shall not exceed Excess Availability as a consequence thereof, and provided further that the Agent may, in its sole discretion, nevertheless apply the Equivalent Amount of payments received in one currency to Obligations denominated in another currency, and (ii) apply any payments which it receives to any BA Equivalent Revolving Loan or SOFR Revolving Loan of a Borrower, except (a) on the expiration date of the BA Equivalent Interest Period applicable to any such BA Equivalent Revolving Loan or the SOFR Interest Period applicable to any such SOFR Revolving Loan, or (b) in the event, and only to the extent, that there are no outstanding Prime Rate Revolving Loans owing by a Borrower (in the case of BA Equivalent Revolving Loans) or Base Rate Revolving Loans (in the case of SOFR Revolving Loans) owing by a Borrower and, in any event, the Borrowers shall pay BA Equivalent and Adjusted Term SOFR breakage losses in accordance with Section 4.4. The Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply, in each instance in accordance with this Section 3.7, any and all such proceeds and payments to any portion of the Obligations. Agent shall have no obligation to calculate the amount to be distributed with respect to any Bank Products, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the Lender (or its Affiliates). In the absence of such notice, Agent may assume the amount to be distributed is the Bank Product Amount last reported to it.

3.8 Indemnity for Returned Payments.

If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Agent, any Lender, Royal Bank or any Affiliate thereof is compelled by any Requirement of Law to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Agent, such Lender, Royal Bank or such Affiliate, as the case may be, and the Borrowers shall be liable to pay to the Agent, the Lenders, Royal Bank and any Affiliate thereof, and hereby does indemnify the Agent, the Lenders, Royal Bank and any such Affiliate and hold the Agent, the Lenders, Royal Bank and any such Affiliate harmless for the amount of such actual payment or proceeds surrendered. The provisions of this Section 3.8 shall be and remain effective notwithstanding any contrary action which may have been taken by the Agent, any Lender, Royal Bank and any Affiliate thereof in reliance upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to the Agent's, the applicable Lenders', Royal Bank's and their Affiliates' rights under this Agreement and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. The provisions of this Section 3.8 shall survive the termination of this Agreement.

3.9 Agent's and Lenders' Books and Records; Monthly Statements.

The Agent shall record the principal amount of the Revolving Loans owing to each Lender, the undrawn amount of all outstanding Letters of Credit and the aggregate amount of unpaid reimbursement obligations outstanding with respect to the Letters of Credit from time to time on its books. In addition, each Lender may note the date and amount of each payment or prepayment of principal of such Lender's Revolving Loans in its books and records. Failure by the Agent or any Lender to make such notation or any error therein shall not affect the obligations of the Borrowers with respect to the Revolving Loans or the Letters of Credit. Each Borrower agrees that the Agent's and each Lender's books and records showing the Obligations and the transactions pursuant to this Agreement and the other Loan Documents shall be admissible in any action or proceeding arising therefrom, and shall constitute rebuttably presumptive proof thereof, irrespective of whether any Obligation is also evidenced by a promissory note or other instrument. The Agent will provide to the Borrowers a reasonably detailed monthly interest and fee invoice which will also reflect the balances of all outstanding Revolving Loans, payments and other transactions pursuant to this Agreement. Such statement shall be deemed correct, accurate, and binding on the Borrowers and an account stated (except for reversals and reapplications of payments made as provided in Section 3.7 and corrections of errors discovered by the Agent), unless the Borrowers notify the Agent in writing to the contrary within ninety (90) days after such statement is rendered. In the event a timely written notice of objections is given by the Borrowers, only the items to which exception is expressly made will be considered to be disputed by the Borrowers.

3.10 Currency.

All Obligations of each Loan Party shall be payable by such Loan Party to the Agent, the Letter of Credit Issuer and the applicable Lenders in the currency in which such Obligations are denominated.

3.11 Excess Resulting From Exchange Rate Change.

If at any time following one or more fluctuations in the exchange rate of the U.S. Dollar (or any other currency) against the Dollar, (a) the aggregate outstanding principal balance of Revolving Loans and Letters of Credit of the Borrowers exceeds the limit of the Borrowing Base or any other limitations hereunder based on Dollars or (b) the aggregate outstanding principal balance of Revolving Loans and/or Letters of Credit exceeds any other limit based on Dollars set forth herein for such Obligations, the Borrowers shall, within five (5) Business Days of notice from the Agent (or, if an Event of Default has occurred and is continuing, within three (3) Business Days of such notice), (i) make the necessary payments or repayments to reduce such Obligations to an amount necessary to eliminate such excess or (ii) maintain or cause to be maintained with the Agent deposits as continuing collateral security for the Obligations of the Borrowers in an amount equal to or greater than the amount of such excess, such deposits to be maintained in such form and upon such terms as are acceptable to the Agent in its reasonable commercial judgment. Without in any way limiting the foregoing provisions, the Agent shall, weekly or more frequently in the sole discretion of the Agent, make the necessary exchange rate calculations to determine whether any such excess exists on such date and advise the Borrowers if such excess exists. Notwithstanding anything to the contrary in this Agreement, no Default or Event of Default shall be deemed to have occurred as a result of such excess due to fluctuations

in exchange rates if the Borrowers shall have timely made the payments or deposits set forth in this Section 3.11.

ARTICLE 4 - TAXES, YIELD PROTECTION AND ILLEGALITY

4.1 Taxes.

- (a) Any and all payments by each Loan Party to the Letter of Credit Issuer, a Lender, Royal Bank or the Agent under this Agreement and any other Loan Document shall be made free and clear of, and without deduction or withholding for any Taxes, except as required by law. In addition, Loan Parties shall promptly pay any and all Other Taxes.
- (b) If a Loan Party shall be required by law to deduct or withhold any Indemnified Taxes or Other Taxes from or in respect of any sum payable hereunder or under any other Loan Document to a Letter of Credit Issuer, a Lender, Royal Bank or the Agent, then:
 - (i) the sum payable by such Loan Party shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 4.1) such Lender, Royal Bank or the Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made; provided, however, that no amounts shall be payable by any Loan Party pursuant to this provision to the extent that the applicable deductions or withholdings resulted from the Letter of Credit Issuer's, the Lender's, or the Agent's, as appropriate, failure to comply with Section 12.10 hereof.
 - (ii) such Loan Party shall make such deductions and withholdings as are legally required;
 - (iii) such Loan Party shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with the Requirement of Law; and
 - (iv) such Loan Party shall also pay to the Letter of Credit Issuer, the Lender or the Agent for the account of such Letter of Credit Issuer, Lender or, if applicable, the Agent for their own account, at the time interest or fees are paid, all additional amounts which the Letter of Credit Issuer, Lender or the Agent, as the case may be, reasonably specifies as necessary to preserve the actual after tax yield the Letter of Credit Issuer, Lender or Agent, as the case may be, would have received if such Indemnified Taxes or Other Taxes had not been imposed; provided, however, that no amounts shall be payable by any Loan Party to the Letter of Credit Issuer, Lender or Agent pursuant to this clause (iv) to the extent that the applicable deductions or withholdings resulted from such Person's, failure to comply with Section 12.10 hereof.

- (c) The Loan Parties agree, jointly and severally, to indemnify and hold harmless the Letter of Credit Issuer, each Lender and the Agent for the full amount of Indemnified Taxes or Other Taxes (including any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 4.1) paid by the Letter of Credit Issuer, any Lender or the Agent and any liability (including penalties, interest, additions to tax and reasonable expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted.
- (d) Payment under the indemnification provided in Section 4.1(c) shall be made within twenty (20) days after the date the Letter of Credit Issuer, Lender or Agent makes written demand therefor. Such written demand shall show in reasonable detail the amount payable and the calculations used to determine such amount and shall include reasonable supporting documentation authenticating the claim.
- (e) Each of the Letter of Credit Issuer, the Lenders, Royal Bank and the Agent agrees that, to the extent that such Lender or the Agent is entitled to claim any exemption, refund or credit in respect of all or a portion of any Indemnified Taxes or Other Taxes which are otherwise required to be paid or deducted or withheld pursuant to this Section 4.1 in respect of any payments under this Agreement, such Letter of Credit Issuer, Lender, Royal Bank or Agent, as the case may be, shall take all commercially reasonable actions necessary to obtain the benefits of such exemption, refund or credit but only so long as doing so is not materially disadvantageous to such Letter of Credit Issuer, Lender or Agent (as determined by such Person) and only at the sole cost and expense of the Loan Parties.
- (f) At the Agent's written request, within ten (10) days after the date of any payment by a Loan Party of Indemnified Taxes or Other Taxes, such Loan Party shall furnish the Agent the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to the Agent.
- (g) If the Agent or any Lender receives a refund, which is allocable to Indemnified Taxes or Other Taxes paid by any Loan Party hereunder, it shall promptly pay such allocated amount of such refund to such Loan Party, net of all reasonable, documented out-of-pocket expenses of the Agent or such Lender, as the case may be, incurred in obtaining such refund and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund), provided, however, that such Loan Party agrees to promptly return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or the applicable Lender, as applicable, if it receives notice from the Agent or applicable Lender that such Agent or Lender is required to repay such refund. In addition, the applicable Lender shall take such steps as a Loan Party shall reasonably request to recover or assist such Loan Party in recovering any Indemnified Taxes or Other Taxes paid by such Loan Party to such Lender pursuant this Section 4.1, all at the sole cost and expense of such Loan Party. The foregoing shall not be construed to require the Agent or any Lender to make available any of its tax returns (or any other information relating to its taxes which it deems confidential) to any Loan Party or any other Person.

- (h) Notwithstanding any provision contained in this Agreement, any indemnity with respect to any portion of any claim by a Lender that consists of Indemnified Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document or Other Taxes shall be governed solely by this Section 4.1.

4.2 Illegality.

- (a) If due to changes in Requirements of Law, or in the interpretation or administration of any Requirement of Law by any Governmental Authority, in any case after the Effective Date, it is unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make SOFR Revolving Loans or BA Equivalent Revolving Loans, then, on prompt notice thereof by that Lender to the Borrowers through the Agent, any obligation of that Lender to make SOFR Revolving Loans or BA Equivalent Revolving Loans shall be suspended until that Lender notifies the Agent and the Borrowers that the circumstances giving rise to such determination no longer exist (which such Lender agrees to do promptly). If any Lender has determined to provide a notice under this Section 4.2(a), then such Lender shall use reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its lending office so as to eliminate the need for such notice by such Loan Party which may thereafter accrue, if such change in the good faith judgment of such Lender is not otherwise materially disadvantageous to such Lender.
- (b) If a Lender reasonably determines, including based on the written advice of counsel, that, due to changes in Requirements of Law or in the interpretation or administration of any Requirement of Law by a Governmental Authority, in any case after the Effective Date, it is unlawful to maintain any SOFR Revolving Loan or BA Equivalent Loan, the Borrower to whom a SOFR Revolving Loan or BA Equivalent Loan has been made by such Lender shall, upon its receipt of notice of such fact and demand from such Lender (with a copy to the Agent), prepay in full such SOFR Revolving Loans or BA Equivalent Revolving Loans of that Lender owing by the Borrower then outstanding, together with interest accrued thereon and amounts required under Section 4.4, either on the last day of the SOFR Interest Period or BA Equivalent Interest Period, as applicable, thereof, if that Lender may lawfully continue to maintain such SOFR Revolving Loans or BA Equivalent Revolving Loans to such day, or promptly, if that Lender may not lawfully continue to maintain such SOFR Revolving Loans. If a Borrower is required to so prepay any SOFR Revolving Loans or BA Equivalent Revolving Loans, then concurrently with such prepayment, such Borrower shall borrow from the affected Lender, in the amount of such repayment, in the case of SOFR Revolving Loan, a Base Rate Revolving Loan and, in the case of BA Equivalent Loans, Canadian Prime Rate Loans.

4.3 Increased Costs and Reduction of Return.

- (a) If as a result of the introduction of or any change in the interpretation of any law or regulation implemented by a Governmental Authority, or such Lender's compliance therewith, in each case after the Effective Date, there shall be an actual increase in the cost (excluding in each case for purposes of this Section 4.3(a), any such increased costs resulting from Indemnified Taxes or Other Taxes, as to which Section 4.1 shall govern) to such Lender of agreeing to make or making, funding or maintaining any SOFR Revolving Loans or BA Equivalent Loans, then upon demand of such Lender (with a copy of such demand to be sent to the Agent), the Borrowers shall pay to the Agent for the account of such Lender, such additional amounts as are sufficient to compensate such Lender for such increased costs. Payment required under this Section 4.3(a) shall be made following a written demand that shows in reasonable detail the amount payable and the calculations used to determine such amount and shall include reasonable supporting documentation authenticating the claim, which written demand must be made within one hundred and eighty (180) days of the date such costs were increased.

- (b) If any Lender shall have reasonably determined that (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by such Lender or any corporation or other entity controlling such Lender with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation or other entity controlling such Lender and (taking into consideration such Lender's or such corporation's or other entity's policies with respect to capital adequacy or liquidity and such Lender's desired return on capital) determines that the amount of such capital or liquidity is increased as a consequence of its Revolving Credit Commitment, loans, credits or obligations under this Agreement, then, from time to time, the Borrowers shall pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such increase, in each case, except to the extent that such increased capital and liquidity requirements have already been taken into account in the interest rates applicable under this Agreement. Payment required under this Section 4.3(b) shall be made following a written demand that shows in reasonable detail the amount payable and the calculations used to determine such amount and shall include reasonable supporting documentation authenticating the claim.

4.4 Funding Losses.

The Borrowers shall reimburse each Lender, upon such Lender's written request (which request shall set forth the basis for requesting such amounts) for any loss or expense which such Lender sustains or incurs as a consequence of:

- (i) the failure of the Borrowers to make on a timely basis any payment of principal of (y) any SOFR Revolving Loan made to a Borrower or (z) any BA Equivalent Revolving Loan;
- (ii) the failure of the Borrowers (for a reason other than the failure of such Lender to make a Revolving Loan, in breach of its obligations under this Agreement), to prepay, borrow, continue or convert a Revolving Loan requested by or made to a Borrower after such Borrower has given a Notice of Borrowing or a Notice of Continuation/Conversion; or
- (iii) the prepayment or other payment (including after acceleration thereof) of (y) any SOFR Revolving Loan made to a Borrower on a day that is not the last day of the relevant SOFR Interest Period or (z) any BA Equivalent Revolving Loan made to a Borrower on a day that is not the last day of the relevant BA Equivalent Interest Period;

including any loss of actual profit for the period from the date of such failure or prepayment through the end of the applicable SOFR Interest Period or BA Equivalent Interest Period (calculated by comparing the interest rate in effect at the commencement of the applicable SOFR Interest Period or BA Equivalent Interest Period with the interest rate available on the date of such failure or prepayment for the remaining portion of such SOFR Interest Period or BA Equivalent Interest Period, as applicable), and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its SOFR Revolving Loans or BA Equivalent Revolving Loans requested by or made to a Borrower or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by any Lender in connection with the foregoing.

4.5 Inability to Determine Rates.

- (a) If the Agent reasonably determines that (i) for any reason adequate and reasonable means do not exist for determining the Adjusted Term SOFR for any proposed SOFR Revolving Loan, or that the Adjusted Term SOFR for any requested proposed SOFR Revolving Loan does not adequately and fairly reflect the cost to the applicable Lenders of funding such SOFR Revolving Loan, the Agent will promptly so notify the Borrower and each applicable Lender. Thereafter, the obligation of the Lenders to make or maintain SOFR Revolving Loans hereunder shall be suspended until the Agent revokes such notice in writing. Upon receipt of such notice, a Borrower may revoke any Notice of Borrowing or Notice of Continuation/Conversion then submitted by it with respect to a SOFR Revolving Loan. If the Borrower does not revoke such Notice, the Lenders shall make, convert or continue the Revolving Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Revolving Loans shall be made, converted or continued a Base Rate Revolving Loans instead of SOFR Revolving Loans.
- (b) If, by reason of circumstances affecting the money market in Canada generally, there is no market for bankers' acceptances, (i) the right of the Borrowers to

request a BA Equivalent Revolving Loan shall be suspended until the circumstances causing a suspension no longer exist, and (ii) any Notice of Borrowing or Notice of Continuation/Conversion requesting a BA Equivalent Revolving Loan which is outstanding shall be deemed to be a request for a Prime Rate Revolving Loan. The Agent shall promptly notify the Borrowers of the suspension of the Borrowers' rights to request a BA Equivalent Revolving Loan and of the termination of any suspension.

4.6 Certificates of Agent.

If any Lender or the Agent claims reimbursement or compensation under this Article 4 (excluding claims covered by Section 4.1, which shall be governed by such Section), the Agent shall determine the amount thereof and shall deliver to the Borrowers (with a copy to the affected Lender, if applicable) a certificate setting forth in reasonable detail the amount payable to the affected Lender or the Agent, as the case may be, and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

4.7 Survival.

The agreements and obligations of the Borrowers and other Loan Parties in this Article 4 shall survive the payment of all other Obligations.

ARTICLE 5 - BOOKS AND RECORDS; FINANCIAL INFORMATION; NOTICES

5.1 Books and Records.

Each Loan Party shall maintain, at all times, correct and complete books, records and accounts in which complete, correct and timely entries are made of its transactions in accordance with, to the extent GAAP is applicable, GAAP applied consistently with the audited Financial Statements required to be delivered pursuant to Section 5.2(a). Each Loan Party shall, by means of appropriate entries, reflect in such accounts and in all Financial Statements proper liabilities and reserves for all taxes and proper provision for depreciation and amortization of property and bad debts, all in accordance with GAAP. Each Loan Party shall maintain at all times reasonably detailed books and records pertaining to the Collateral in which it has an interest, including, but not limited to, records of (a) all payments received and all credits and extensions granted with respect to the Accounts of such Loan Party; (b) any return, rejection, repossession, stoppage in transit, loss, damage, or destruction of any Inventory or Equipment of such Loan Party; and (c) all other dealings affecting the Collateral in which it has an interest.

5.2 Financial Information.

The Borrowers shall promptly furnish (or cause to be furnished) to the Agent (and, unless delivered electronically in accordance with the terms hereof, in sufficient copies for distribution by the Agent to each Lender and Arranger and the Agent shall then furnish a copy to each of the Lenders and Arranger), in such detail as the Agent or the Lenders shall reasonably request, the following:

- (a) As soon as available, but in any event not later than one-hundred twenty (120) days after the close of each Fiscal Year (starting with the Fiscal Year 2021,

provided that for the Fiscal Year 2021 audited comparative statements for 2020 will not be required), combined audited balance sheets, and income statements, cash flow statements and changes in stockholders' equity for the Borrowers on a combined basis for such Fiscal Year, and the accompanying notes thereto, setting forth in each case in comparative form figures for the previous Fiscal Year, together with customary management discussion and analysis of the Parent, all in reasonable detail, fairly presenting the financial position and the results of operations of the Borrowers on a combined basis as at the date thereof and for the Fiscal Year then ended, and prepared in accordance with GAAP. Such statements shall be examined in accordance with generally accepted auditing standards and, in the case of such statements performed on a combined basis, accompanied by an unqualified opinion of independent chartered accountants selected by the Borrowers and reasonably satisfactory to the Agent, without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit (provided that such report may contain a "going concern" or like qualification or exception, if such qualification or exception is related solely to (A) the Stated Termination Date or (B) any potential inability to satisfy any financial maintenance covenant included in any indebtedness of the Loan Parties on a future date in a future period.

- (b) As soon as available, but in any event not later than (i) thirty (30) days after the end of each fiscal month except in respect of its first, second and third fiscal quarters, and (ii) forty-five (45) days after the of end its first, second and third fiscal quarters, unaudited balance sheets of the Borrowers on a combined basis as at the end of such fiscal month, and unaudited income statements and cash flow statements for the Borrowers on a combined basis for such month and for the period from the beginning of the Fiscal Year to the end of such month, fairly presenting the financial position and results of operations of the Borrowers on a combined basis as at the date thereof and for such periods, and prepared in accordance with GAAP applied consistently with the audited Financial Statements required to be delivered pursuant to Section 5.2(a). The Borrowers shall certify by a certificate signed by a Responsible Officer of the Borrowers to the best of his or her knowledge that all such statements have been prepared in accordance with GAAP and present fairly in all material respects the combined financial position of the Borrowers and their combined Subsidiaries as at the dates thereof and its results of operations for the periods then ended, subject to normal year-end adjustments and the absence of footnotes.
- (c) **[Reserved]**
- (d) With each of the Financial Statements delivered pursuant to Section 5.2(a) and Section 5.2(b) above, a certificate of the Responsible Officers of the Borrowers in the form attached hereto as Exhibit G which shall include, namely, a calculation of (i) the Excess Availability as of the last day of the period covered by such Financial Statements and the Average Excess Availability for the period covered by such Financial Statements, and (ii) the Fixed Charge Coverage Ratio as set out in Section 7.23 (whether or not such financial covenant is to be tested for the applicable period as provided in Section 7.23).

- (e) Not later than sixty (60) days following the beginning of each Fiscal Year, (i) an annual business plan (to include forecasted combined balance sheets, income statements, cash flow statements and Capital Expenditures) for the Loan Parties as at the end of and for each month of such Fiscal Year and (ii) forecasted annual Investments and Capital Expenditures in the Excluded Entities.
- (f) Upon written request by the Agent, a copy of each annual report or other filing filed with the PBGC, Financial Services Regulatory Authority of Ontario, the Canada Revenue Agency, the IRS or other Governmental Authority with respect to each Plan of any Loan Party.
- (g) Promptly after the receipt thereof by a Borrower or any other Loan Party, a copy of all management reports and management letters prepared for a Borrower or any other Loan Party by any independent chartered accountants or independent certified public accountants of the Borrowers or any other Loan Party.
- (h) **[Reserved.]**
- (i) On a monthly basis (not later than the twentieth (20th) day after the last day of the previous month with the information thereon to be as of the last day of such previous month), a Borrowing Base Certificate for the Borrowers; provided, that, if a Liquidity Event has occurred and so long as it is continuing, or if the Borrowers so elects so long as the same frequency of delivery is maintained by the Borrowers for the immediately following 60-day period, the Borrowers shall deliver a Borrowing Base Certificate weekly; provided, further, that if the Borrowers are delivering a Borrowing Base Certificate and supporting information to the Agent on a weekly basis, the same shall be delivered not later than the second (2nd) Business Day after the last Business Day of the previous week with the information thereon to be as of the last Business Day of such previous week.
- (j) Promptly after the receipt thereof by a Borrower or any other Loan Party, copies of any final actuarial report for any Pension Plan sponsored or maintained by a Borrower or any Loan Party that is required to be prepared pursuant to applicable Requirements of Law.
- (k) Such additional reasonably necessary information as the Agent and/or any Lender may from time to time request regarding the financial and business affairs of the Borrowers or any other Loan Party.

Documents required to be delivered pursuant to Section 5.2(a), (b), (d), (e) or (f) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed in Section 14.8 (or otherwise notified pursuant to Section 14.8); or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender, the Agent and the Arranger have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that the Borrower shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and upon its reasonable request, provide to the Agent by electronic mail

electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

5.3 Notices to the Agent.

The Borrowers shall notify the Agent in writing (and the Agent will distribute such information to the Lenders) of the following matters at the following times:

- (a) Promptly (but in no event later than one (1) Business Day) after a Responsible Officer of a Loan Party becomes aware of any Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrowers propose to take with respect thereto;
- (b) Promptly (but in no event later than one (1) Business Day) after a Responsible Officer of a Loan Party becomes aware of the commencement of or any material development in any litigation or governmental proceedings pending against a Borrower or any Loan Party, which would reasonably be expected to have a Material Adverse Effect;
- (c) Promptly (but in no event later than five (5) Business Days) after a Responsible Officer of a Loan Party becomes aware of the assertion in writing by the holder of any preferred stock or similar equity interests of a Borrower or of any other Loan Party or the holder of any Debt of a Borrower or any other Loan Party in a face amount in excess of \$5,000,000 that a default exists with respect thereto or that a Borrower or such Loan Party is not in compliance with the terms thereof and commencement by such holder of any enforcement action or acceleration because of such asserted default or non compliance;
- (d) Promptly (but in no event later than five (5) Business Days) after a Responsible Officer of a Loan Party becomes aware of any event or circumstance which would reasonably be expected to have a Material Adverse Effect;
- (e) Promptly (but in no event later than five (5) Business Days) after receipt by a Responsible Officer of a Loan Party of any written notice of any violation by a Loan Party of or any liability under any Environmental Law, or that any Governmental Authority has asserted in writing that a Borrower or any other Loan Party is not in compliance with any Environmental Law or is investigating a Borrower's or such Loan Party's compliance therewith which, in either case, would reasonably be expected to give rise to liability of \$5,000,000 or more;
- (f) Promptly (but in no event later than five (5) Business Days) after receipt by a Responsible Officer of a Loan Party of any written notice that any Loan Party is or may be liable to any Person as a result of the Release or threatened Release of any Contaminant or that any Loan Party is subject to investigation by any Governmental Authority evaluating whether any remedial action is needed to respond to the Release or threatened Release of any Contaminant which, in either case, would reasonably be expected to give rise to liability of \$5,000,000 or more;

- (g) Promptly (but in no event later than five (5) Business Days) after receipt by a Responsible Officer of a Loan Party of any written notice of the imposition of any Environmental Lien in an amount in excess of \$3,000,000 against any property of a Borrower or any other Loan Party;
- (h) Promptly (but in no event later than five (5) Business Days) after any change in a Loan Party's name as it appears in the province, state or other jurisdiction of its incorporation or other organization, province, state or other jurisdiction of incorporation or organization, type of entity, organizational identification number, tax identification number (if applicable), locations of any Eligible Inventory and Eligible Machinery & Equipment (other than Collateral of a Loan Party relocated to a location where the Agent has already taken all steps necessary to perfect its Lien on such Collateral);
- (i) Prompt notice of, with copies of any documentation and notices, as applicable:
 - (i) any failure by any Loan Party to make a required installment or any other required payment as required by the PBA or other Requirements of Law on or before the due date for such installment or payment;
 - (ii) a Pension Plan has been or will be terminated;
 - (iii) the administrator or plan sponsor of a Pension Plan intends to terminate a Pension Plan or any action or inaction that could lead to a Termination Event;
 - (iv) the PBGC, Pension Benefit Guaranty Fund (Ontario), the Financial Services Regulatory Authority of Ontario or other Governmental Authority has instituted proceedings to terminate a Pension Plan; or
 - (v) receipt from any Governmental Authority of (and providing the Agent a copy with) any notices of non-compliance in respect of a Pension Plan or any other any action that could lead to a Termination Event; and
- (j) Promptly (but in no event later than five (5) Business Days) after any sale or acquisition of Machinery & Equipment with a book value of over \$50,000, the details of such sale or acquired Machinery & Equipment, together with an updated list of all Machinery & Equipment owned by the Loan Parties with a book value of over \$50,000.

5.4 Collateral Reporting.

Each Loan Party shall provide the Agent with the following documents at the following times in form reasonably satisfactory to the Agent (and Agent shall provide same to a Lender upon request): (a) together with the delivery of each Borrowing Base Certificate, the Accounts created, credits given, cash collected and other adjustments to Accounts since the last such schedule, (b) together with the delivery of each Borrowing Base Certificate, an aging of such Loan Party's Accounts, together with a reconciliation to the corresponding Eligible Accounts of the Loan Party and to its general ledger; (c) promptly upon the reasonable written request of the Agent, an aging of such Loan Party's accounts payable; (d) on a monthly basis by the twentieth (20th) day of the following month (or more frequently if requested by the Agent at a time when the Borrowers are required to deliver Borrowing Base Certificates more frequently than monthly), a detailed calculation of the Eligible Accounts, Eligible Inventory and Eligible Machinery & Equipment of the Loan Parties; (e) together with the delivery of each Borrowing Base Certificate, (i) Inventory reports and managed Inventory listing in a level of detail reasonably

acceptable to the Agent, together with a reconciliation to the corresponding Eligible Inventory of the Loan Party and its general ledger, and (ii) a detailed list of any material changes (including additions or dispositions) to the Eligible Machinery & Equipment of the Loan Parties; (f) promptly upon the reasonable request of the Agent, bank statements for each bank account of all Loan Parties held at any financial institution other than the Royal Bank; (g) promptly upon the reasonable request of the Agent, copies of invoices in connection with such Loan Party's Accounts, customer statements, credit memos, remittance advices and reports, deposit slips, shipping and delivery documents in connection with such Loan Party's Accounts and for Inventory acquired by such Loan Party, purchase orders and invoices; (h) promptly upon the reasonable request of the Agent, a statement of the balance of any Intercompany Accounts; and (i) promptly, such other reports as to the Collateral of such Loan Party as the Agent shall reasonably request from time to time.

ARTICLE 6 - GENERAL WARRANTIES AND REPRESENTATIONS

Each Loan Party warrants and represents to the Agent and the Lenders that, except as hereafter disclosed to and accepted by the Agent and the applicable Lenders in writing in accordance with the terms of Section 11.1:

6.1 Authorization, Validity, and Enforceability of this Agreement and the Loan Documents.

Such Loan Party has the power and authority to execute, deliver and perform this Agreement, and the other Loan Documents to which it is a party, to incur and/or guaranty, as applicable, the Obligations, and to grant to the Agent Liens upon and security interests in the Collateral in which it has an interest. Such Loan Party has taken all necessary corporate action or other organizational action (including obtaining approval of its stockholders or other equityholders if necessary) to authorize its execution, delivery and performance of this Agreement, and the other Loan Documents to which it is a party. This Agreement, and the other Loan Documents to which it is a party, have been duly executed and delivered by such Loan Party, and constitute the legal, valid and binding obligations of such Loan Party, enforceable against it in accordance with their respective terms (except as such enforceability may be subject to bankruptcy, insolvency, moratorium, reorganization, arrangement, voidable preference, fraudulent conveyance and other similar laws relating to or affecting the rights of creditors generally and except as the same may be subject to the effect of general principles of equity) and subject to any consent under a Requirement of Law on the enforcement of any security that constitutes Capital Stock. Such Loan Party's execution, delivery and performance of this Agreement, the other Loan Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not conflict with in any material respect, or constitute a material violation or breach of, or result in the imposition of any Lien upon the property of such Loan Party (other than Permitted Liens and Liens granted by such Loan Party under any of the Loan Documents) by reason of the terms of (a) any material contract, mortgage, lease, agreement, indenture or instrument to which such Loan Party is a party or which is binding upon it, (b) any Requirement of Law applicable to such Loan Party, or (c) the certificate or notice of articles or articles of incorporation, by laws or the limited liability company or limited partnership agreement or partnership agreement or other organizational documents of such Loan Party.

6.2 Validity and Priority of Security Interest.

The provisions of this Agreement and the Security Documents to which such Loan Party is a party create legal and valid Liens on all Collateral in which it has an interest in favour of the Agent, for the ratable benefit of the Agent and the other Secured Parties, and upon the filing by the Agent of PPSA financing statements, possession by the Agent of Collateral which can be perfected by possession only and “control” by the Agent of any deposit accounts located in the United States as required under the Security Documents, such Liens shall (to the extent the applicable foregoing required action has been taken with respect to such Liens in the relevant Collateral) constitute perfected and continuing Liens on all such Collateral in which a security interest can be created and perfected under the applicable PPSA having priority over all other Liens on such Collateral, except for Permitted Liens, securing all the Obligations of such Loan Party and enforceable against such Loan Party and all third parties.

6.3 Organization and Qualification.

Such Loan Party (a) is duly formed, organized, incorporated or amalgamated, as the case may be, and validly existing in good standing under the laws of the province or state of its organization, incorporation or amalgamation, as the case may be, (b) is qualified to do business and is in good standing in the jurisdictions set forth in Schedule 6.3, which are the only jurisdictions in which qualification is necessary in order for it to own or lease its property and conduct its business and (c) has all requisite power and authority to conduct its business and to own its property and to enter and perform its obligations under the Loan Documents to which it is a party.

6.4 Corporate Name; Prior Transactions.

Except as otherwise disclosed on Schedule 6.4, such Loan Party has not, during the past five (5) years preceding the Effective Date, been known by or used any other corporate or fictitious name/trade name, or been a party to any merger, consolidation or amalgamation, or acquired all or substantially all of the assets of any Person, or, to the best of its knowledge, acquired any of its property outside of the ordinary course of business.

6.5 Subsidiaries.

Schedule 6.5 is a correct and complete list as of the Effective Date of each Subsidiary of the Loan Parties and all Persons that are non-wholly owned by the Loan Parties or in which a Loan Party holds a minority interest.

6.6 Financial Statements and Projections.

- (a) All such financial statements have been prepared in accordance with GAAP and present accurately and fairly in all material respects the financial position of the Borrowers as at the dates thereof and their results of operations for the periods then ended, subject, in the case of the interim financial statements, to normal year-end adjustments.
- (b) The Latest Projections when submitted to the Agent as required herein represent the Loan Parties' reasonable good faith estimate at the time delivered of the future

financial performance of the Loan Parties for the periods set forth therein and have been prepared on the basis of the assumptions set forth therein, which the Borrowers believed at the time submitted to the Agent are reasonable in light of current and reasonably foreseeable business and market conditions, it being recognized by the Lenders that the projections contained therein as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results.

6.7 Capitalization.

On the Effective Date, the authorized Capital Stock or other equity or partnership interests of each Loan Party are set forth on Schedule 6.7, and all such issued shares or other equity or partnership interests are validly issued and outstanding, fully paid and non-assessable and are owned beneficially and of record by the Persons listed on Schedule 6.7. On the Effective Date, other than as set forth on Schedule 6.7, such Loan Party is not a party to any agreement granting to any Person any stock appreciation or other similar right with respect to any of the shares of Capital Stock or other equity or partnership interests of such Loan Party. On the Effective Date, other than as set forth on Schedule 6.7, there are no outstanding warrants, options, rights, agreements, convertible or exchangeable securities or other commitments pursuant to which such Loan Party is or may become obligated to issue, sell, purchase, return or redeem any shares of the Capital Stock or other securities or equity or partnership interests of such Loan Party.

6.8 Solvency.

The Loan Parties are Solvent on a combined basis after giving effect to the Borrowings to be made on the Effective Date and the application of the proceeds thereof and after giving effect to the Letters of Credit to be issued on the Effective Date.

6.9 Real Property; Leases; Location of Collateral and Offices.

Schedule 6.9 hereto is a correct and complete list as of the Effective Date, of all Real Estate owned by each Loan Party, all locations where any Collateral is held or maintained, the chief executive office of each Loan Party, all leases and subleases of Real Estate or personal property by any Loan Party, as lessee or sublessee, and all leases and subleases of Real Estate or personal property by any Loan Party, as lessor or sublessor. To the knowledge of such Loan Party, each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no material default by any party to any such lease or sublease exists.

6.10 Brokers.

As of the Effective Date, except as set forth on Schedule 6.10, there are no brokerage commissions, finder's fees or investment banking fees payable in connection with any of the Loan Documents.

6.11 Governmental and Third Party Authorization.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, such Loan Party of this Agreement, or any other Loan Document except for those which have been obtained and are in full force and effect (all as set forth on Schedule 6.11) and except for recordings, registrations and filings in connection with the Liens granted to Agent. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Person other than a Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, such Loan Party of this Agreement or any other Loan Document.

6.12 Proprietary Rights.

To the knowledge of the Borrowers, except as set forth on Schedule 6.12, the Loan Parties own, or possess the right to use, all Proprietary Rights that are reasonably necessary for the operation of their respective businesses. To the knowledge of the Borrowers, none of the Proprietary Rights utilized in the manufacture of Eligible Inventory infringe upon the rights of any other Person. The manufacture and sale of Inventory of each Loan Party is not subject to material limitations thereon contained in any licensing agreement relating to Proprietary Rights.

6.13 Bank Accounts.

Schedule 6.13 contains as of the Effective Date a complete and accurate list of all bank accounts and lock box accounts maintained by such Loan Party with any bank or other financial institution. All deposit accounts and lock box accounts maintained by any Loan Party with any bank or other financial institution shall be subject to a Blocked Account Agreement required to be in place to the extent set forth in Section 7.29.

6.14 Litigation.

Except as set forth on Schedule 6.14, as of the Effective Date, there is no pending, or to the best of such Loan Party's knowledge threatened in writing, action, suit, proceeding or counterclaim by any Person that would reasonably be expected to result in liability in excess of \$3,500,000 in any single occurrence or in aggregate, or to the best of such Loan Party's knowledge, investigation by any Governmental Authority against any Loan Party.

6.15 Labour Disputes.

Except as set forth on Schedule 6.15, as of the Effective Date (a) there is no collective bargaining agreement covering employees of such Loan Party, (b) no such collective bargaining agreement is scheduled to expire during the term of this Agreement, (c) to the Loan Parties' knowledge, no union or other labour organization is seeking to organize, or to be recognized as, a collective bargaining unit of employees of such Loan Party or for any similar purpose, and (d) to the Loan Parties' knowledge, there is no pending or threatened, strike, work stoppage, material unfair labour practice claim, or other material labour dispute against or affecting such Loan Party or its employees which would be reasonably expected to have a Material Adverse Effect.

6.16 Environmental Laws.

Except as otherwise disclosed in Schedule 6.16 or as otherwise would not reasonably be expected to have a Material Adverse Effect:

- (a) The Loan Parties have complied in all material respects with all applicable Environmental Laws and no Loan Party nor any of its presently owned or leased Real Estate or presently conducted operations, is subject to any material enforcement order from or material liability agreement with any Governmental Authority or private Person respecting (i) compliance with any Environmental Law or (ii) any potential liabilities and costs or remedial action arising from the Release or threatened Release of a Contaminant.
- (b) No Loan Party has received any material summons, complaint, order or similar written notice indicating that it is not currently in compliance with, or that any Governmental Authority is investigating its compliance with, any Environmental Laws or that it is or may be liable to any other Person as a result of a Release or threatened Release of a Contaminant.
- (c) There are no material Environmental Liens affecting the Real Estate or the Collateral of any of the Loan Parties.

6.17 No Violation of Law.

Such Loan Party is not in violation of any law, statute, regulation, ordinance, judgment, order or decree applicable to it which would individually or in the aggregate reasonably result in a Material Adverse Effect.

6.18 No Default.

To the knowledge of such Loan Party, such Loan Party is not in default with respect to any note, indenture, loan agreement, mortgage, lease, deed, or other agreement to which such Loan Party is a party or by which it is bound and which would individually or in the aggregate, reasonably result in a Material Adverse Effect.

6.19 Plans.

Except as specifically disclosed in Schedule 6.19:

- (a) There are no Pension Plans subject to ERISA. Each Plan in Canada is in compliance with the applicable provisions of the PBA and other federal or provincial law, except as would not reasonably be expected to have a Material Adverse Effect. Each Borrower and each Loan Party has made all required contributions to any Plan when due, and no application for a funding waiver or an extension of any amortization period has been made with respect to any Plan, except in each case, as would not reasonably be expected to have a Material Adverse Effect.

- (b) There are no pending or, to the knowledge of such Loan Party, threatened in writing claims, actions or lawsuits or action by any Governmental Authority with respect to any Plan which has resulted or would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or would reasonably be expected to have a Material Adverse Effect.

- (c) Except as set forth on Schedule 6.19 as of the Effective Date, (i) no Termination Event has occurred or, to the Loan Parties' knowledge, is reasonably expected to occur; (ii) when aggregated together for all Pension Plans, the Pension Plans (exclusive of the Existing DB Plan) do not have any Unfunded Pension Liability; (iii) the Existing DB Plan has an Unfunded Pension Liability of approximately \$ 10,883,612 as determined pursuant actuarial valuations conducted and reported as at December 31, 2019. Regular monthly contribution amounts on the Existing DB Plan aggregate approximately \$278,000. Special 'catch up' monthly/quarterly amounts on the Existing DB Plan aggregate approximately \$95,000; (iv) none of the Loan Parties has incurred, or reasonably expects to incur, any liability under the Income Tax Act (Canada) or the applicable federal, provincial or state laws with respect to all Pension Plans; (v) no Lien has arisen in respect of any Loan Party or its property in connection with any Plan (save for contribution amounts not yet due); (vi) no Loan Party maintains, administers, contributes to or has any liability in respect of a Defined Benefit Pension Plan, other than the Existing DB Plans. As of the Effective date, where any Pension Plan has been partially or fully wound-up, all assets, including any surplus, attributable to such wind-up have been fully distributed in accordance with all Requirements of Law and any unfunded liability arising on such wind-up has been fully funded such that no Loan Party has any outstanding liabilities with respect to such wound-up or partially wound-up Pension Plan. As of the Effective Date, (i) no Pension Plan has an ongoing deficiency or solvency deficiency that would reasonably be expected to have a Material Adverse Effect, and (ii) no Loan Party has any material liability with respect to any pension plan of a non-Loan Party that would reasonably be expected to have a Material Adverse Effect.

6.20 Taxes.

Such Loan Party has (a) filed or caused to be filed all federal, provincial, state and other material Tax returns (including material foreign Tax returns) Required by Law to be filed (or extensions permitted under Requirement of Law have been timely obtained with respect thereto), and (b) has paid or caused to be paid all federal, provincial and other material Taxes (including material foreign Taxes), assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except for non-payment of any such Taxes, assessments, fees and other governmental charges as permitted by Section 7.1.

6.21 No Material Adverse Effect.

There has not occurred since September 30, 2021 any event or circumstance that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

6.22 Full Disclosure.

None of the representations or warranties made by such Loan Party in any of the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of such Loan Party in connection with any of the Loan Documents taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

6.23 Material Agreements.

Schedule 6.23 hereto sets forth as of the Effective Date all material agreements and material contracts to which such Loan Party is a party or is bound as of the Effective Date hereof that are material to the business of the Borrowers on a Combined Basis. No Loan Party has received any notice of default or termination under any such agreements and are not aware of any default upon the basis of which the other party to any such agreement could terminate such agreement.

6.24 Title to Property.

Each of the Borrowers and the Borrowers' Subsidiaries have good and valid title to all material properties owned by them and reasonably necessary in the conduct of their business, including all property reflected in the most recent combined balance sheet of the Borrowers and their Subsidiaries as referred to in Section 5.2(a), free and clear of all Liens, other than Permitted Liens.

6.25 Insurance.

Each Loan Party maintains, with financially sound and reputable insurance companies not Affiliates of any Loan Party, insurance with respect to its properties and business against loss, damage and hazards of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons. Schedule 6.25 sets forth the material insurance policies in place on and as of the Effective Date held by each of the Loan Parties.

ARTICLE 7 - AFFIRMATIVE AND NEGATIVE COVENANTS

Each Loan Party covenants to the Agent and each Lender that so long as any of the Obligations remain outstanding or this Agreement is in effect:

7.1 Taxes.

The Loan Parties shall pay and discharge as the same shall become due and payable (a) all material Taxes imposed upon it or its properties or assets and (b) all lawful claims which, if unpaid would by law become a Lien (other than a Permitted Lien) upon the Collateral, unless any such Taxes or claims are being contested in good faith by appropriate proceedings and adequate reserves to the extent required by GAAP are being maintained.

7.2 Legal Existence and Good Standing.

Each of the Loan Parties shall maintain its legal existence under the laws of such Person's jurisdiction of organization or formation and its qualification and good standing in all jurisdictions in which the failure to maintain such existence (other than with respect to any Loan Party whose assets are included in the Borrowing Base) and qualification or good standing would reasonably be expected to have a Material Adverse Effect.

7.3 Compliance with Law and Agreements; Maintenance of Licenses.

- (a) Each Loan Party shall comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including, to the extent applicable, Anti-Terrorism and Sanctions Laws). Such Loan Party shall obtain and maintain all licenses, permits, franchises and governmental authorizations necessary to own its property and to conduct its business as conducted on the Effective Date in all material respects.
- (b) Such Loan Party shall comply in all material respects with the *Woodmen's Lien Act* (Alberta), including, without limitation, in respect of any required holdbacks of payments for unpaid labourers or workers, and (ii) shall discharge, dispose of, or satisfy any claims received by such Loan Party from a person claiming a lien on any assets of such Loan Party pursuant to the *Woodmen's Lien Act* (Alberta) within thirty (30) days of the receipt of any such claim.
- (c) Each Loan Party will maintain in good standing and will not be in material breach of any of the terms or conditions of any of its Forest Licences and will forthwith upon receipt thereof, deliver to the Agent a copy of any notice from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development or other Governmental Authority, cancelling or suspending or purporting to cancel or suspend or reduce or impair in any material respect the rights of such Loan Party pursuant to any of its Forest Licences.

7.4 Maintenance of Property; Field Exams; Appraisals.

- (a) Such Loan Party shall maintain all of its material property necessary and useful in the conduct of its business, in good operating condition and repair, ordinary wear and tear and casualty excepted.
- (b) Such Loan Party shall permit representatives (including independent contractors) of the Agent to visit and inspect any of its properties and the Collateral, to examine its corporate, financial and operating records, and make relevant copies

thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers and independent chartered accountants, and to conduct Field Exams and audits at such reasonable times during normal business hours and as soon as may be reasonably desired, upon reasonable advance notice to such Loan Party; provided, that, visits in any 12-month period shall be one (1) time per year (subject to any reasonable delays outside the control of the Agent); provided further that if at any time Excess Availability is less than twelve and one-half percent (12.5%) of the Maximum Revolver Amount for a period of five (5) consecutive Business Days during such 12-month period, one (1) additional Field Exam will be permitted in such 12-months period, unless an Event of Default has occurred and is continuing, in which case the Agent may do any of the foregoing at any time and as many times in any year during normal business hours and without advance notice. The Loan Parties shall be responsible for the reasonable, documented costs and expenses of all such visits, Field Exams and audits. Such visits shall be in addition to visits for purposes of conducting appraisals permitted under Section 7.4(c).

- (c) The Agent shall, once (1) in every twelve (12) month period (subject to any reasonable delays outside the control of the Agent) engage an appraiser to conduct and deliver an Inventory Appraisal of the Inventory of the Loan Parties and an Machinery & Equipment Appraisal of the Machinery & Equipment of the Loan Parties, provided that if at any time Excess Availability is less than twelve and one-half percent (12.5%) of the Maximum Revolver Amount for a period of five (5) consecutive Business Days during such 12-month period, one (1) additional Inventory Appraisal and one (1) additional Machinery & Equipment Appraisal will be permitted in such 12-months period. Each such Inventory Appraisal and Machinery & Equipment Appraisal to be in form and scope satisfactory to the Agent and using a methodology requested by the Agent. Notwithstanding the foregoing, whenever an Event of Default exists, the Agent may engage an appraiser to conduct and deliver appraisals of any or all of the Collateral, as frequently as the Agent considers reasonably necessary, each such appraisal to be in form and scope satisfactory to the Agent and using a methodology requested by the Agent. The Borrowers agree to pay the Agent on demand all out-of-pocket costs and expenses related to each appraisal conducted pursuant to this Section 7.4(c).

7.5 Insurance.

- (a) Such Loan Party shall maintain, with financially sound and reputable insurance companies not Affiliates of any Loan Party, insurance with respect to its properties and business against loss, damage and hazards of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, and reasonably acceptable to the Agent and the Required Lenders. The Agent and the Required Lenders acknowledge that the Loan Parties' insurance in place on the Effective Date is acceptable to the Agent and the Required Lenders.

- (b) Such Loan Party shall cause the Agent, for the ratable benefit of the Agent and the Lenders, to be named as secured party and lender's first loss payee (as its or their interests may appear) and first mortgagee with respect to insurance covering the Collateral, or additional insured as to liability and umbrella insurance, in a manner reasonably acceptable to the Agent. Each such policy of insurance shall contain a clause or endorsement requiring the insurer to give not less than thirty (30) days' prior written notice to the Agent in the event of cancellation of the policy for any reason whatsoever (other than for nonpayment of premiums, in which case not less than ten (10) days' prior written notice is sufficient) and a clause or endorsement stating that the interest of the Agent shall not be impaired or invalidated by any act or neglect of any Loan Party or the owner of any Real Estate for purposes more hazardous than are permitted by such policy. All premiums for such insurance shall be paid by such Loan Party when due, and certificates of insurance and, if requested by the Agent or any Lender, photocopies of the policies, shall be delivered to the Agent, in each case in sufficient quantity for distribution by the Agent to each of the Lenders.
- (c) Unless the Borrowers provide the Agent with evidence of the insurance coverage required by this Section 7.5, the Agent may purchase casualty insurance, with prompt notice to the Borrowers at the Loan Parties' expense. This insurance may, but need not, protect the interests of the Loan Parties. The coverage that the Agent purchases may not pay any claim that any Loan Party makes or any claim that is made against any Loan Party in connection with said coverage. The Borrowers may later cancel any insurance purchased by the Agent, but only after providing the Agent with evidence that the Loan Parties have obtained insurance as required by this Section 7.5. If the Agent purchases such insurance, the Loan Parties will be responsible for the costs of that insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be added to the Obligations. The costs of the insurance may be more than the cost of insurance that the Loan Parties may be able to obtain on its own, but shall be reasonably comparable therewith.

7.6 Insurance Proceeds.

Such Loan Party shall promptly notify the Agent and the Lenders of any loss, damage or destruction to Collateral from and after the Effective Date having a value in excess of \$1,000,000 per casualty, whether or not covered by insurance. Subject to Section 3.3, and, for greater certainty, excluding the Excluded Insurance Proceeds, the Agent is hereby authorized to collect all insurance and condemnation proceeds in respect of Collateral of such Loan Party directly and (A)(i) in any casualty event exceeding \$5,000,000, unless such proceeds shall be promptly used, or committed to be used and spent within six months, by a Borrower to repair, replace or restore the Collateral or otherwise for the benefit of its business and for no other purpose; and (ii) at all times when an Event of Default is in existence and is continuing, apply them to the Obligations in a manner that is consistent with Section 3.3 and in the order set forth in Section 3.7, and (B)(i) in any casualty event not exceeding \$1,000,000 and (ii) when no Event of Default has occurred or is existing, the Agent shall return such condemnation or insurance proceeds to the applicable Loan Party. All insurance and condemnation proceeds in respect of Collateral received by a Loan Party shall immediately be deposited in a Blocked Account Agreement and, subject to

Section 3.3, such Loan Party shall promptly remit such proceeds to the Agent to be applied to the Obligations as aforesaid.

7.7 Environmental Laws.

Such Loan Party shall conduct its business in compliance in all material respects with all Environmental Laws applicable to it, including, without limitation, those relating to the generation, handling, use, storage and disposal of Contaminants. The Loan Parties shall take prompt and appropriate action to respond to any material non-compliance or alleged non-compliance with Environmental Laws. Without limiting the generality of the foregoing, whenever any Loan Party gives notice to the Agent pursuant to Subsection 5.3(d) or 5.3(e) and the Agent so requests in writing, the Loan Parties shall, at the applicable Loan Party's expense, cause an independent environmental engineer reasonably acceptable to the Agent to conduct such technical environmental assessments of the site where the non-compliance or alleged non-compliance with Environmental Laws has occurred as are appropriate to address such non-compliance, and prepare and deliver to the Agent a report setting forth the results of such assessments, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof.

7.8 Compliance with PBA, Etc.

Such Loan Party shall:

- (a) maintain each Plan which is subject to the *Income Tax Act* (Canada), the PBA or other federal or provincial law in compliance in all material respects with the applicable provisions of the *Income Tax Act* (Canada), the PBA, and other federal or provincial law, except where noncompliance would not be reasonably be expected to have a Material Adverse Effect;
- (b) have no unfunded, solvency, or deficiency on windup liability, no accumulated funding deficiency (whether or not waived) or any amount of unfunded benefit liabilities and no failure to satisfy the minimum funding standards (whether or not waived) or any amount of unfunded benefit liabilities in respect of any Plan, including any Plan to be established and administered by it or them, except, in respect of the Existing DB Plan, as would not reasonably be expected to have a Material Adverse Effect;
- (c) pay when due, all amounts required to be paid by it in respect of any Pension Plan;
- (d) not cause or permit to arise or exist any Lien on any of its property in respect of any Plan;
- (e) make all required contributions to any Plan when due;
- (f) not engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that could reasonably be expected to result in material liability;

- (g) not permit the wind-up and/or termination of any Pension Plan during the term of this Agreement without the prior written consent of the Agent in its Permitted Discretion; and
- (h) except for the Existing DB Plan or with the prior consent of the Agent, not maintain, administer, contribute or have any liability in respect of any Defined Benefit Pension Plan or acquire an interest in any Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of, any Defined Benefit Pension Plan if a solvency or wind-up deficiency in excess of \$1,000,000 in the aggregate exists with respect to such Deferred Benefit Pension Plan.

7.9 [Reserved]

7.10 Mergers, Consolidations or Sales.

- (a) No Loan Party shall enter into any transaction of merger, amalgamation, reorganization or consolidation, or transfer, sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of related transactions) all or substantially all of its assets (whether now owned or hereafter acquired), or issue or otherwise sell or transfer (whether in one transaction or in a series of related transactions) all or substantially all of its equity interests in such Loan Party, or wind up, liquidate or dissolve, or agree to do any of the foregoing, except, provided no Event of Default exists or is continuing, (A) the amalgamation, consolidation or merger of any Loan Party into any other Loan Party, (B) any Transfer permitted under clause (b) below, (C) any Loan Party may make a disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another Loan Party; and (D) any Loan Party may effect a merger, dissolution, liquidation, consolidation or amalgamation to effect a Transfer permitted pursuant to Section 7.10(b).
- (b) No Loan Party shall transfer, sell, assign, lease or otherwise dispose (including by way of merger, consolidation or amalgamation) of (each, a “**Transfer**”) all or any part of its property (including without limitation any Capital Stock of a Loan Party) (whether in one or a series of transactions), except for:
 - (i) sales of Inventory in the ordinary course of its business;
 - (ii) sales or other dispositions of (A) assets (other than Accounts, Inventory and Machinery & Equipment) in the ordinary course of business that are (a) worn, damaged or obsolete, (b) no longer useable in such Person’s business or (c) no longer used or necessary for the conduct or operation of such Person’s business or (B) that are replaced or for which orders have been placed to replace the same within sixty (60) days by substitute assets in the ordinary course of business, provided such substitute assets are subject to the same or similar Security Interest in favour of the Lender;
 - (iii) Transfers of property to a Borrower or a Subsidiary; provided that (A) if the transferor in such a transaction is a Loan Party, then the transferee

must be a Loan Party or to the extent constituting an Investment, such Investment must be a Permitted Investment, and (B) to the extent constituting a Transfer by a Loan Party to a Subsidiary that is not a Loan Party, such Transfer is for fair value and any promissory note or other non-cash consideration received in respect thereof is a Permitted Investment in a Subsidiary that is not a Loan Party;

- (iv) a disposition made as a part of a Permitted Investment or consisting of the granting of Liens permitted by Section 7.19;
- (v) dispositions made as part of a sale and leaseback transaction permitted pursuant to Section 7.20;
- (vi) other dispositions (other than Accounts, Inventory and Machinery & Equipment) for fair market value in an aggregate amount not to exceed (in one transaction or in a series of related transactions) 3.5% of Combined Total Assets in any Fiscal Year, so long as no Event of Default is continuing or would result therefrom;
- (vii) other dispositions for fair market value and for which not less than seventy-five percent (75.0%) of the consideration is paid in cash or Cash Equivalents so long as the Payment Conditions are satisfied at such time and proceeds therefrom are utilized in accordance with Section 3.3;
- (viii) the lease or sublease, as lessor or sublessor, of any Real Estate of such Person, or the Transfer of Real Estate to a Loan Party;
- (ix) dispositions of accounts receivable (to the extent not forming part of the Borrowing Base) in connection with the collection or compromise thereof (other than in connection with financing transactions);
- (x) leases, subleases, non-exclusive licenses or non-exclusive sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and that do not materially interfere with the business of the Loan Parties, taken as a whole;
- (xi) transfers of property subject to Recovery Events upon receipt of the Net Cash Proceeds of such Recovery Event;
- (xii) dispositions of Permitted Investments (including Capital Stock) in Joint Ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (xiii) the use or transfer of money or cash equivalents in a manner that is not prohibited by this Agreement; and

- (xiv) the lapse or abandonment of any intellectual property to the extent not economically desirable in the business or which would not result in a Material Adverse Effect.

- (c) Any Loan Party may engage in a Permitted Acquisition.

7.11 Distributions.

No Loan Party shall directly or indirectly declare or make, or incur any liability to make, any Distribution, except:

- (a) each Loan Party may make Distributions to any other Loan Party;
- (b) each Loan Party may declare and make dividend payments or other distributions payable solely in the Capital Stock (other than Disqualified Stock) of such Person;
- (c) so long as no Event of Default exists and is continuing or would result therefrom, redemptions, acquisitions, retirements, repurchases or settlements by a Borrower of its Capital Stock (or any options or warrants or stock appreciation rights issued respect thereto) held by current or former officers, managers, consultants, directors and employees (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) of the Loan Parties in an aggregate amount not to exceed \$1,000,000 in any Fiscal Year; and
- (d) Distributions by a Borrower, whether in the form of dividends or otherwise in payment of interest and principal outstanding from time to time on any Shareholder Loans, provided that, in each case, the Payment Conditions are satisfied.

7.12 Restricted Investments.

No Loan Party shall make any Investment including any Acquisitions, other than Permitted Investments.

7.13 Guarantees.

No Loan Party shall make, issue or become liable on any Guarantee, except (i) Guarantees of the Obligations in favour of the Agent, (ii) Guarantees in favour of the lenders under any refinancing thereof permitted by Section 7.14 in respect of the obligations of the Borrowers, as a borrower under any refinancing thereof permitted by Section 7.14, (iii) endorsements of instruments for deposit in the ordinary course of business and (iv) Guarantees by any Loan Party of Debt of another Loan Party, and, to the extent constituting a Permitted Investment, Guarantees by any Loan Party of Debt of any Person that is not a Loan Party, in each case to the extent that such Debt is permitted under Section 7.14.

7.14 Debt.

No Loan Party shall incur, maintain or suffer to exist any Debt, other than:

- (a) the Obligations;

- (b) Debt described on Schedule 7.14 and Permitted Refinancing Debt thereof;
- (c) **[reserved];**
- (d) (i) Capital Leases of Fixed Assets (other than Real Estate) and purchase money secured Debt incurred to purchase Fixed Assets (other than Real Estate); provided that (i) Liens securing the same attach only to the Fixed Assets acquired by the incurrence of such Debt, and (ii) the aggregate amount of such Debt (including any such Capital Leases and purchase money secured Debt described on Schedule 7.14) of all Loan Parties outstanding does not exceed (x) \$20,000,000 at any time, and (y) with respect to any such Debt resulting from transactions permitted by Section 7.20, the limit set forth in such section and (ii) Permitted Refinancing Debt thereof;
- (e) intercompany Debt among the Loan Parties permitted under the definition of Permitted Investments or as contemplated by Section 7.16;
- (f) Subordinated Debt (including debt under the Shareholder Loans) and Permitted Refinancing Debt thereof;
- (g) Guarantees permitted by Section 7.13;
- (h) Debt under, or reimbursement obligations in respect of, letters of credit and bankers acceptances issued for performance, surety, appeal or indemnity bonds or with respect to workers' compensation claims or other statutory obligations;
- (i) Debt arising from netting services, overdraft protection, cash management services and otherwise in connection with deposit, securities and commodities accounts in the ordinary course of business;
- (j) Debt incurred in the ordinary course of business under performance, surety, statutory or appeal bonds;
- (k) Debt owed to any Persons providing property, asset, liability or other insurance to any Loan Party, so long as the amount of such Debt (in respect of such insurance) is not in excess of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Debt is outstanding only during such year;
- (l) trade payables and other liabilities accrued or incurred in the ordinary course of business other than through the borrowing of money;
- (m) Debt (other than intercompany Debt) constituting a Permitted Investment;
- (n) Debt arising from agreements of any Loan Party providing for indemnification, adjustment of purchase price based on changes in working capital and earn-outs (based on changes in working capital and earn-outs based on the income generated by assets acquired) or similar obligations, in each case, incurred or

assumed in connection with any Transfer permitted under Section 7.10(b) or any Permitted Investment;

- (o) Debt representing deferred compensation or stock-based compensation to employees, consultants or independent contractors of the Loan Parties incurred in the ordinary course of business; and
- (p) Debt in the ordinary course, in respect of credit cards, credit card purchasing services or commercial cards.

7.15 Prepayment; Repurchase and Redemption of Debt.

No Loan Party, shall directly or indirectly pay or prepay, repurchase or redeem any Debt, except:

- (a) the Obligations in accordance with the terms of this Agreement;
- (b) Debt permitted under Sections 7.14(d), 7.14(h)-7.14(l), 7.14(o) and 7.14(p);
- (c) payments or prepayments of other Debt (including Subordinated Debt (including Shareholder Loans and any remaining balance of the Parent Initial Loans after the Effective Date)), provided, however, that the Payment Conditions are satisfied;
- (d) without limiting the foregoing paragraph (c), but in addition thereto, the Effective Date Parent Initial Loan Repayment, provided, however, that the Effective Date Parent Initial Loan Repayment Conditions are satisfied; and
- (e) payments or prepayments of Shareholder Loans and/or the Parent Initial Loan made solely in Capital Stock of a Borrower (other than Disqualified Stock) that are otherwise permitted pursuant to this Agreement.

7.16 Transactions with Affiliates.

No Loan Party shall enter into, or be a party to, any transaction (or series of related transactions) with any Affiliate of such Loan Party, including without limitation any management, consulting or similar arrangement, except

- (a) transactions as set forth on Schedule 7.16;
- (b) transactions among the Loan Parties;
- (c) transactions specifically permitted pursuant to the other provisions of this Agreement, including without limitation Permitted Investments;
- (d) in the ordinary course of business and pursuant to the reasonable requirements of the business of such Loan Party upon fair and reasonable terms no less favourable to such Loan Party than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of the Loan Parties;
- (e) issuances of Capital Stock otherwise permitted hereunder;

- (f) so long as it has been approved by the applicable Loan Party's board of directors, the payment of reasonable compensation, severance or employee benefits to employees, officers and directors of such Loan Party in the ordinary course of business and consistent with industry practice;
- (g) so long as it is approved by a Loan Party's board of directors in accordance with Requirement of Law, any indemnity provided for the benefit of directors and officers of such Loan Party; and
- (h) transactions that are undertaken pursuant to, under or in connection with the Existing Excluded Entity Agreements.

7.17 Use of Proceeds.

The proceeds of the Revolving Loans made and Letters of Credit issued are to be used (i) to refinance certain existing indebtedness on the Effective Date, (ii) pay fees and expenses relating to the Transactions on the Effective Date, (iii) in the sole discretion of the Borrower, to make the Effective Date Parent Initial Loan Repayment, if permitted pursuant to this Agreement, (iv) for working capital and other general corporate purposes and, (v) in the sole discretion of the Borrower, to repay, in whole or in part, the balance of any principal and interest on the Parent Initial Loan not repaid pursuant to the Effective Date Parent Initial Loan Repayment, if permitted pursuant to this Agreement.

7.18 Business Conducted.

No Loan Party shall engage, directly or indirectly, in any material line of business substantially different from those lines of business the Loan Parties are engaged on the Effective Date and reasonable extensions, developments and expansions thereof and any others ancillary, complementary or reasonably related thereto.

7.19 Liens.

No Loan Party shall create, incur, assume or permit to exist any Lien on any Collateral or any other property (including, without limitation, Real Estate) now owned or hereafter acquired by any of them, except Permitted Liens.

7.20 Sale and Leaseback Transactions.

No Loan Party shall, directly or indirectly, enter into any arrangement with any Person providing for any Loan Parties to lease or rent property that the Loan Party has or will sell or otherwise Transfer to such Person except to the extent such Transfer is made for fair market value (as reasonably determined by the Borrowers in good faith) and the aggregate principal amount of Debt outstanding in connection with the leaseback portion of all such transactions (other than any transaction with respect to the assets described on Schedule 7.20 hereto) does not exceed \$2,000,000 at any time.

7.21 New Subsidiaries; New Security; New Guarantees.

- (a) With respect to any property acquired after the Effective Date by any Loan Party (other than (x) a fee interest in real property or (y) any property described in Section 7.21(b) below or (z) otherwise constituting Excluded Assets) as to which the Agent, for the benefit of the Secured Parties, does not have a perfected Lien as contemplated by the Security Documents, such Loan Party shall promptly (i) execute and deliver to the Agent such amendments to the Security Documents or new Security Documents as the Agent reasonably requests in order to grant to the Agent, for the benefit of the Lenders, a Lien in such property, and (ii) take all actions reasonably requested by the Agent to grant to the Agent, for the benefit of the Secured Parties, a perfected security interest in such property having the priority required by the Security Documents, including the filing of PPSA financing statements in such jurisdictions as may be required by the Security Documents or by law or as may be reasonably requested by the Agent.
- (b) With respect to any new Subsidiary (other than an Excluded Subsidiary) created or acquired after the Effective Date by any Loan Party (including any Subsidiary that ceases to constitute an Excluded Subsidiary), the Borrowers agree to promptly (i) execute and deliver to the Agent such amendments to the Security Documents or new Security Documents as the Agent reasonably deems necessary or advisable to grant to the Agent, for the benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such new Subsidiary that is owned by any Loan Party, (ii) deliver to the Agent any certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such new Subsidiary (A) (1) to promptly become a Guarantor hereunder and execute and deliver to the Agent a Joinder Agreement (in the form attached as Exhibit H) and (2) to execute a Security Agreement and any other applicable Security Documents or Loan Documents required by the Agent and cooperate with the Agent to ensure that the applicable securities, registrations, including PPSA, as applicable, are conducted and registered and (B) to take such actions reasonably deemed necessary or advisable by the Agent to grant to the Agent for the benefit of the Secured Parties a perfected security interest in and on the Collateral with respect to such new Subsidiary having the priority required by the Security Documents, including financing statements and PPSA registrations in such jurisdictions as may be required by the Security Documents or by law or as may be reasonably requested by the Agent, and (iv) deliver to the Agent and Lenders customary legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Agent. No Collateral of any new Subsidiary (which shall become a Guarantor and therefore a Loan Party hereunder) shall be included in the Borrowing Base until (y) the Agent has received and is satisfied with a Field Exam, Inventory Appraisal and Machinery & Equipment Appraisal report prepared by or for Agent with respect to such new Subsidiary in form and substance satisfactory to Agent and (z) with respect to any new Subsidiary that is not organized under the laws of Canada or any province or territory thereof, the Agent has provided its consent to such Collateral being included in the

Borrowing Base and any necessary amendments to the Loan Documents in respect thereof have been completed. For the avoidance of doubt, unless the Agent and the Required Lenders shall have otherwise agreed, no Guarantor shall be released as a Guarantor hereunder by reason of its ceasing to be a Wholly-Owned Subsidiary due to the Loan Parties' Transfer of a portion of such Subsidiary's Capital Stock.

- (c) The Loan Parties agree to promptly, upon reasonable request by the Agent, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Loan Document or other document or instrument relating to any Collateral, (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Agent may reasonably require from time to time in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Security Documents, including cooperating as necessary to enable the Agent to make any necessary or reasonably desirable recordations with the Canadian Intellectual Property Office, U.S. Copyright Office or the U.S. Patent and Trademark Office, as appropriate.
- (d) If any Lender is in the process of complying with internal policies with respect to mortgages on property in the United States, or determines, acting reasonably, that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender to hold or benefit from a Lien over real property pursuant to any law of the United States or any State thereof, such Lender may notify the Agent and disclaim any benefit of such security interest to the extent of such illegality or until such time as such Lender obtains its applicable internal policy approval; provided, that such determination or disclaimer shall not invalidate or render unenforceable such Lien for the benefit of any other Lender or Secured Party.

7.22 Fiscal Year.

No Loan Party shall change its Fiscal Year or make any changes to its accounting policies or reporting practices, other than Accounting Changes subject to the terms of Section 14.24.

7.23 Fixed Charge Coverage Ratio.

The Borrowers will maintain (tested at the end of each month) a Fixed Charge Coverage Ratio calculated on a trailing twelve month basis of not less than 1.0:1.0; provided, however, that the Borrower shall only be required to maintain and test the foregoing Fixed Charge Coverage Ratio during the term of this Credit Agreement upon an FCCR Trigger with respect to (a) the most recent fiscal month for which Financial Statements have been delivered when the FCCR Trigger occurred, and (b) each subsequent fiscal month thereafter until the fiscal month in which no FCCR Trigger has occurred for at least thirty (30) consecutive calendar days.

7.24 Corporate Documents.

No Loan Party shall amend or permit to be amended in any manner that would reasonably be expected to be materially adverse to the Agent or the Lenders, its charter, certificate, memorandum of association, articles of association, or articles of incorporation, bylaws, articles of organization, constitution, limited liability agreement, operating agreement, members agreement, memorandum of association, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation or shareholder arrangements of such Loan Party.

7.25 Restrictive Agreements.

No Loan Party shall become a party to any agreement that conditions or restricts the right of such Loan Party to incur or repay Debt, to grant Liens on its assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Debt or to repay intercompany Debt, except (a) the Loan Documents; (b) as a Requirement of Law; (c) customary provisions in leases and other contracts restricting assignment thereof; (d) restrictions that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such restrictions were not entered into solely in contemplation of such Person becoming a Subsidiary, (e) restrictions arising under Debt that is permitted by Section 7.14; provided that such restrictions will not materially affect a Borrower's ability to pay the Obligations as they become due, (f) customary restrictions that arise in connection with any Transfer permitted by Section 7.10 and are applicable pending such Transfer and solely to the assets subject to such Transfer, (g) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder, (h) restrictions imposed by Requirements of Law, (i) customary restrictions contained in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (j) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Loan Party, (k) restrictions on cash (or Cash Equivalents) or deposits imposed by customers under contracts entered into in the ordinary course of business (or otherwise constituting Permitted Liens on such cash or Cash Equivalents or deposits), (l) customary net worth provisions contained in real property leases or licenses of intellectual property entered into by a Loan Party, so long as the Borrowers have determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Loan Parties to meet their ongoing obligations.

7.26 [Reserved.]

7.27 [Reserved.]

7.28 Special Provisions Regarding Accounts, Inventory and Other Collateral.

- (a) Each Loan Party hereby represents and warrants, with respect to such Loan Party's Accounts, that: (i) each existing Account represents, and each future Account will represent, a bona fide sale or lease and delivery of goods by such Loan Party, or rendition of services by such Loan Party, in the ordinary course of such Loan Party's business; (ii) each existing Account is, and each future Account will be, for a liquidated amount payable by the Account Debtor thereon on the

terms set forth in the invoice therefor or in the schedule thereof delivered to the Agent, without any material offset, deduction, defence or counterclaim except those known to such Loan Party and disclosed to the Agent and the Lenders in respect of offsets, deductions, defences or counterclaims involving an amount greater than (x) \$100,000 per such Account, at any time that Borrowing Base Certificates are required to be delivered on a more frequent than monthly basis hereunder or (y) \$100,000 per such Account, at any other time; (iii) no payment will be received with respect to any Account of such Loan Party, and no credit, discount or extension or agreement therefor will be granted on any Account of such Loan Party, except as reported in Borrowing Base Certificates delivered hereunder or otherwise reported by such Loan Party to the Agent pursuant to the terms hereof; (iv) each copy of any invoice delivered to the Agent by such Loan Party will be a genuine copy of the original invoice sent to the Account Debtor named therein; and (v) all goods described in any invoice representing a sale of goods will have been delivered to the Account Debtor and all services of such Loan Party described in each invoice will have been performed.

- (b) No Loan Party shall re-date any invoice or sale or make sales on extended dating beyond that customary in such Loan Party's business, or extend or modify any Account (other than extensions and modifications made in the ordinary course of business). If, at any time that Borrowing Base Certificates are required to be delivered on a more frequent than monthly basis hereunder, a Loan Party becomes aware of any matter adversely affecting the collectability in any material respect of any of its Accounts or the Account Debtor therefor involving an amount greater than \$100,000, including a dispute or claim, or information regarding the Account Debtor's creditworthiness, such Loan Party will promptly advise the Agent of the same.
- (c) No Loan Party shall accept any note or other instrument (except a check or other instrument for the immediate payment of money) with respect to any Eligible Accounts in excess of \$100,000 in the aggregate at any time outstanding, without the Agent's prior written consent. If the Agent consents to the acceptance of any such instrument, it shall be considered as evidence of the applicable Account and not payment thereof and the Loan Party will promptly deliver such instrument to the Agent, endorsed by such Loan Party to the Agent in a manner reasonably satisfactory in form and substance to the Agent.
- (d) No discount, credit or allowance shall be granted to any Account Debtor without the Agent's prior written consent, except for discounts, credits and allowances made or given in the ordinary course of the applicable Loan Party's business. Each Loan Party shall send the Agent a copy of each credit memorandum in excess of (x) \$500,000, at any time that Borrowing Base Certificates are required to be delivered on a more frequent than monthly basis hereunder or (y) \$1,500,000, at any other time, when issued, and, to the extent applicable, the Borrowers shall promptly report such credit on Borrowing Base Certificates submitted by it.

- (e) Each Loan Party shall promptly report to the Agent any return of finished goods Inventory involving an amount in excess of (x) \$500,000, at any time that Borrowing Base Certificates are required to be delivered on a more frequent than monthly basis hereunder or (y) \$2,000,000, at any other time. Each such report shall indicate the reasons for the returns and the locations and condition of the returned Inventory. In the event any Account Debtor returns finished goods Inventory to a Loan Party when an Event of Default exists and is continuing, such Loan Party, upon the written request of the Agent, shall: (i) hold all returned Inventory in trust for the Agent; (ii) segregate all returned Inventory from all of its other property; (iii) dispose of the returned Inventory solely according to the Agent's written instructions; and (iv) not issue any credits or allowances with respect thereto without the Agent's prior written consent. All returned finished goods Inventory shall be subject to the Agent's Liens thereon. Whenever any Inventory is returned, the related Account shall be deemed ineligible to the extent of the amount owing by the Account Debtor with respect to such returned Inventory.
- (f) Each Loan Party represents and warrants to the Agent and the Lenders and agrees with the Agent and the Lenders that all of the Inventory owned by such Loan Party is and will be held for sale or lease, or to be furnished in connection with the rendition of services, in the ordinary course of such Loan Party's business. Each Loan Party will keep its finished product Inventory in good and marketable condition, except for damaged or defective goods arising in the ordinary course of such Loan Party's business. Each Loan Party will not, without the prior written consent of the Agent, acquire or accept any Inventory on consignment or approval other than in the ordinary course of business in a manner consistent with past practices and, upon the reasonable request of the Agent, such Loan Party will provide the Agent with the details of any such arrangements. Each Loan Party will maintain a cycle count program relating to its Inventory in accordance with normal industry practices. Each Loan Party will maintain a perpetual inventory reporting system at all times. Each Loan Party will not, without the Agent's written consent, sell any of its Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or other repurchase or return basis other than in the ordinary course of business in a manner consistent with past practices and, upon the reasonable request of the Agent, such Loan Party will provide the Agent with the details of any such arrangements.
- (g) In connection with all Inventory of a Loan Party financed by Letters of Credit, such Loan Party will, at the Agent's request made after the occurrence and during the continuance of an Event of Default, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, checks, Inventory, Documents or Instruments of such Loan Party in which the Agent holds a security interest or Lien to deliver them to the Agent and/or subject to the Agent's order, and if they shall come into such Loan Party's possession, to deliver them, upon request, to the Agent in their original form. Each Loan Party shall also, at the Agent's request made after the occurrence and during the continuance of an Event of Default, designate the Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents of such Loan Party.

- (h) The Agent may, in its sole discretion, and shall, at the direction of the Required Lenders, pay any amount or do any act required of any Loan Party hereunder or requested by the Agent and/or Lenders to preserve, protect, maintain or, upon the occurrence of an Event of Default and exercise by the Agent and Lenders of their rights under Section 9.2 hereof, enforce the Obligations, the Collateral or the Agent's Liens, and which the Loan Party fails to pay or do, including, without limitation, payment of any judgment against the Loan Party any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or processor's claim, and any other Lien upon or with respect to the Collateral. All payments that the Agent and/or Lenders make under this Section 7.28(h) and all out-of-pocket costs and expenses that the Agent and/or Lenders pay or incur in connection with any action taken hereunder shall be charged to the Borrower's loan account as a Revolving Loan. Any payment made or other action taken by the Agent and/or Lenders under this Section 7.28(h) shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.
- (i) Each Loan Party hereby constitutes the Agent, or any person or agent the Agent may designate, as its attorney-in-fact, at the Borrowers' cost and expense to, upon the occurrence of an Event of Default which is continuing, exercise all of the following powers, which being coupled with an interest, shall be irrevocable until all Obligations to the Agent and the Lenders have been indefeasibly paid in full:
- (i) to receive, take, endorse, sign, assign and deliver, all in the name of the Agent or any Loan Party, as the case may be, any and all cheques, notes, drafts, and other documents or instruments relating to the Collateral, provided, however, that the Agent shall have the powers set out in this Subsection (i) at all times with or without the occurrence or continuance of an Event of Default;
 - (ii) to, notwithstanding the foregoing, at all times (including prior to an Event of Default) at the Agent's discretion, request from customers indebted on Accounts at any time, in the name of any Loan Party, in the name of the chartered accountants designated by the Agent or in the name of the Agent's designee, information concerning the amounts owing on the Accounts;
 - (iii) to transmit to customers indebted on Accounts notice of the Agent's interest therein and to notify customers indebted on Accounts to make payment directly to the Agent for the requisite Loan Party's account;
 - (iv) to take or bring, in the name of the Agent or any Loan Party, as the case may be, all steps, actions, suits or proceedings deemed by the Agent necessary or desirable to enforce or effect collection of the Accounts; and
 - (v) to receive, open and dispose of all mail addressed to a Loan Party and to notify the postal authority of any change of address for delivery thereof to such address as Agent may designate.

- (j) Such Loan Party assumes all responsibility and liability arising from or relating to the use, sale or other disposition of the Collateral. The Obligations shall not be affected by any failure of the Agent or any Lender to take any steps to perfect the Agent's Liens or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release any Loan Party from any of the Obligations. Following the occurrence and continuation of an Event of Default, the Agent may (but shall not be required to), and at the direction of the Required Lenders shall, without notice to or consent from any Loan Party, sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Loan Party for the Obligations or under this Agreement or any other agreement now or hereafter existing between the Agent and/or any Lender and any Loan Party.
- (k) Such Loan Party represents and warrants to the Agent and the Lenders and agrees with the Agent and the Lenders that all of the Equipment is and will be used or held for use in any Loan Party's business, and is and will be fit for such purposes. Each Loan Party shall keep and maintain the Equipment in good operating condition and repair (ordinary wear and tear excepted) and shall make all necessary replacements thereof.

7.29 Cash Management.

- (a) Subject to Section 7.31, each Loan Party shall enter into a Blocked Account Agreement with respect to each bank account listed on Schedule 6.13 which shall include all lockboxes and related lockbox accounts used for the collection of Accounts. Each Loan Party agrees that all invoices rendered and other requests made by any Loan Party for payment in respect of Accounts shall contain a written statement directing payment in respect of such Accounts to be paid to a Blocked Account Agreement in its name. At the request of the Agent, the Loan Parties shall cause bank statements and/or other reports from the Blocked Account Agreement to be delivered to the Agent not less often than monthly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above. All remittances received by any Loan Party on account of Accounts, together with the proceeds of any other Collateral, shall be held as the Agent's property, for its benefit and the benefit of the Secured Parties, by such Loan Party as trustee of an express trust for Agent's benefit and such Loan Party shall immediately deposit same in kind in a Blocked Account Agreement. The Agent retains the right at all times after the occurrence and during the continuance of an Event of Default to notify Account Debtors that a Loan Party's Accounts have been assigned to the Agent and to collect such Loan Party's Accounts directly in its own name, or in the name of the Agent's agent, and to charge the reasonable and documented collection costs and expenses, including reasonable attorneys' fees, to the Loan Account.

- (b) Each Blocked Account Agreement with respect to a Blocked Account shall require that, during a Liquidity Event and upon instruction of the Agent (which Agent agrees not to issue such instruction except during a Liquidity Event), the Clearing Bank transfer all cash receipts and other collections by ACH or wire transfer daily or less frequently as permitted by the Agent (and whether or not there are then any outstanding Obligations) to the concentration account maintained by the Agent at Royal Bank (the “**Concentration Account**”). The Concentration Account shall at all times be under the sole dominion and control of the Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be applied as provided in Section 7.29(c) below. In the event that, notwithstanding the provisions of this 7.29, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections described above, such proceeds and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party’s other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into a Blocked Account, or during a Liquidity Event, the Concentration Account, or dealt with in such other fashion as such Loan Party may be instructed by the Agent.
- (c) All funds received in the Concentration Account in immediately available funds shall be applied on a daily basis in accordance with Section 3.3(d) or be held as collateral security for the Obligations at the election of the Agent. All funds received in the Concentration Account that are not immediately available funds (checks, drafts and similar forms of payment) shall be deemed applied by Agent on account of the Obligations (subject to final payment of such items) in accordance with the foregoing sentence on the first Business Day after receipt by Agent of such items in Agent’s account. If as the result of such application of funds a credit balance exists in the Loan Account, such credit balance shall not accrue interest in favor of a Borrower but shall, so long as no Event of Default then exists, be disbursed to the Borrower or otherwise at the Borrower’s direction, upon the Borrower’s request. Upon and during the continuance of any Event of Default, the Agent may, at its option, offset such credit balance against any of the Obligations or hold such credit balance as Collateral for the Obligations.
- (d) If sales of Inventory or Machinery & Equipment of a Loan Party are made or services are rendered for cash, such Loan Party shall promptly (and in any event within five (5) Business Days) deliver to the Agent or deposit into a Blocked Account the cash which the Loan Party receives.
- (e) All payments in respect of the Obligations, including immediately available funds received by the Agent at a bank account designated by it, will be the Agent’s sole property for the benefit of the Secured Parties and will be credited to the Loan Account of the Loan Party (conditional upon final collection) after allowing one (1) Business Day for collection; provided, however, that such payments shall be deemed to be credited to the Loan Account of the Borrowers immediately upon

receipt for purposes of (i) determining Excess Availability of the Borrowers, (ii) calculating the Unused Line Fee pursuant to Section 2.5, and (iii) calculating the amount of interest accrued thereon solely for purposes of determining the amount of interest to be distributed by the Agent to the Secured Parties (but not the amount of interest payable by the Loan Parties).

- (f) The Loan Parties and the Agent acknowledge and agree that (i) the actions and proceedings contemplated by the Blocked Account Agreements (including any sweeps contemplated thereby) are instrumental to the operation of the cash management system that is required by this Agreement, (ii) any action or proceeding pursuant to the provisions of the Blocked Account Agreement (including sweeps contemplated thereby) shall not be considered as a realization on, or enforcement of, security or demand for payment under this Agreement but rather, among other things, following the issuance of an Activation Notice, a standing irrevocable direction by the Loan Parties to the Clearing Bank to thereafter transfer daily to the appropriate account of the Agent, all credit balances in the Blocked Accounts, and (iii) the Loan Parties agree to indemnify the Agent for amounts required to be paid to the Clearing Bank pursuant to the provisions of any Blocked Account Agreement, except to the extent resulting from the Agent's gross negligence or wilful misconduct, and agree that any such sums paid by the Agent thereunder shall form part of the Obligations.
- (g) With respect to each Blocked Account and each lock-box of a Loan Party maintained at Canadian Imperial Bank of Commerce or the Agent (as applicable), each Loan Party hereby acknowledges and agrees as follows:
 - (i) without limiting any rights of the Agent or the Secured Parties under any of the other Loan Documents or applicable law, Canadian Imperial Bank of Commerce or the Agent (as applicable) may offset and charge the Loan Parties' other accounts maintained with Canadian Imperial Bank of Commerce or the Agent (as applicable) for any items deposited in such Blocked Account or lock-box, as the case may be, which are returned for any reason or otherwise not collected, and may offset and charge such other accounts of the relevant Loan Party for all service charges, fees, expenses and other items normally chargeable to such Blocked Account or lock-box, as applicable, including, but not limited to, the amount of items deposited in such Blocked Account or lock-box which are returned for any reason or otherwise not collected; and
 - (ii) each Loan Party agrees to pay all other fees and charges required to be paid with respect to such Blocked Account or lock-box as set forth in any other agreement entered into by the Loan Party and Canadian Imperial Bank of Commerce or the Agent (as applicable) with respect thereto.

7.30 Further Assurances.

Such Loan Party shall execute and deliver or cause to be executed and delivered to the Agent and/or the Lenders such documents and agreements, and shall take or cause to be taken

such actions, as the Agent or any Lender may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents.

7.31 Post Closing Undertakings.

The Loan Parties shall complete, to the Agent's satisfaction, each of their covenants and undertakings as set forth on Schedule 7.31.

7.32 ERISA.

No Loan Party shall adopt, sponsor, maintain or contribute to any Plan or Pension Plan subject to ERISA.

ARTICLE 8 - CONDITIONS OF LENDING

8.1 Conditions Precedent to Making of Revolving Loans and Issuing Letters of Credit on the Effective Date.

The effectiveness of this Agreement and the obligation of the Lenders to make the initial Revolving Loans on the Effective Date and the obligation of a Letter of Credit Issuer to issue any Letter of Credit on the Effective Date, are subject to the following conditions precedent having been satisfied in a manner satisfactory to the Agent and each Lender:

- (a) This Agreement and the other Loan Documents shall have been executed by the Borrowers, the Agent and the Lenders party hereto on the Effective Date and each Loan Party shall have performed and complied with all covenants, agreements and conditions contained herein and in the other Loan Documents which are required to be performed or complied with by such Loan Party before or on the Effective Date. In particular, all actions shall have been taken as the Agent shall have reasonably requested to ensure that the Agent shall have a perfected security interest and Lien in the Collateral of the type and priority described in each applicable Security Document.
- (b) All representations and warranties made hereunder and in the other Loan Documents shall be true and correct in all material respects as if made on such date except for such representations and warranties made as of a specified date, which shall be true and correct on all material respects as of such specified dates.
- (c) No Default or Event of Default shall have occurred and be continuing after giving effect to the Revolving Loans to be made and any Letter of Credit to be issued on the Effective Date.
- (d) The Agent and the Lenders shall have received such customary opinions of counsel for the Loan Parties as the Agent or any Lender shall request, each such opinion to be in a form, scope, and substance reasonably satisfactory to the Agent, and its counsel.

- (e) The Agent shall have received:
 - (i) each document (including, without limitation, any PPSA or other financing statement) required by the Security Documents or any other Loan Document or reasonably requested by the Agent to be filed, registered or recorded in order to create in favour of the Agent, for the benefit of the Agent and the Lenders, a perfected Lien on the Collateral, prior and superior in right to any other Person (other than Permitted Liens), and in proper form for filing, registration or recordation;
 - (ii) estoppel documentation, PPSA or termination or discharge statements (and similar termination statements, discharges or releases under other Requirements of Law) authorized for filing by the appropriate Person and such other instruments, in form and substance reasonably satisfactory to the Agent, as shall be necessary to terminate and satisfy all Liens on the assets and property of the Loan Parties, except Permitted Liens; and
 - (iii) the results of a search of tax and other Liens, and judgments and of the PPSA filings, Canadian Intellectual Property Office filings and filings made pursuant to other Requirement of Law or statutes to perfect or render opposable a security interest or Lien on the Collateral or any part thereof made with respect to each of the Loan Parties in the jurisdictions in which each such Person is organized and/or in which any Collateral is located and in which PPSA filings or filings made pursuant to other Requirement of Law or statutes to perfect or render opposable a security interest or Lien in such Collateral have been made against any such Person in (i) hereinabove.
- (f) No Material Adverse Effect shall have occurred since September 30, 2021.
- (g) There shall exist no action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality that, in the reasonable judgment of the Agent, would reasonably be expected to (i) have a Material Adverse Effect or (ii) adversely affect this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby.
- (h) Each Loan Party shall have established Blocked Account Agreements in respect of its deposit accounts for collections of Accounts at a Clearing Bank reasonably acceptable to the Agent and shall cause all proceeds of Accounts to be deposited therein, in accordance with the terms of Section 7.29, provided that, if Blocked Account Agreements have not been delivered on or prior to the Effective Date, then such items may be delivered in accordance with Section 7.29.
- (i) Each Loan Party shall have used its reasonable commercial efforts to obtain and deliver to the Agent landlord waivers and processor and bailee letters from landlords and warehousemen of each of the premises leased by such Loan Party and from processors in possession of Collateral on the Effective Date at which (for any such premises or processor locations) Collateral is located on the

Effective Date and from the public warehousemen at whose warehouses any Collateral pledged by such Loan Party is located on the Effective Date, in each case in form and substance reasonably satisfactory to the Agent, duly executed by, as appropriate, such landlords, warehousemen and processors; provided, however, that the delivery of such agreements are not conditions to closing hereunder, but for each such location for which such an agreement is not delivered, the Agent may establish a reserve against the Borrowing Base equal to the lesser of (i) the amount of applicable Excess Availability from Eligible Inventory and Eligible Machinery & Equipment at the applicable location; or (ii) up to three (3) months rental and other charges for the applicable location, in each case, in accordance with clause (b) of definition of Reserves.

- (j) The Loan Parties shall have paid (i) all fees and expenses (including Attorney Costs) of the Agent incurred in connection with any of the Loan Documents and the transactions contemplated thereby prior to such date, and (ii) all fees and expenses as set forth in the Fee Letter.
- (k) The Agent shall have received evidence, in form, scope, and substance, reasonably satisfactory to the Agent, of all insurance coverage as required by this Agreement (including, without limitation, the certificates of insurance and other documents required by Section 7.5).
- (l) The Borrowers shall have delivered a Borrowing Base Certificate (and supporting information) to the Agent in form and scope satisfactory to the Agent.
- (m) The Borrowers and each of the Guarantors shall have provided the documentation and other information to the Lenders that are required by regulatory authorities under the applicable “know your customer” rules and regulations and policies, including the PATRIOT Act, Proceeds of Crime Act and AML Legislation, in each case at least three (3) business days prior to such date.
- (n) The Transactions shall have been, or contemporaneously herewith shall be, duly consummated in accordance with the terms of the Loan Documents and in compliance with all material applicable Requirements of Law, on terms reasonably acceptable to the Agent. The Agent shall have received (i) copies of each of the Loan Documents and schedules thereto, and (ii) evidence that all consents, filings and approvals required by Requirements of Law in connection therewith have been obtained and made.
- (o) The Agent shall have received a certificate of an Responsible Officer of each of the Loan Parties, on behalf of the Loan Parties and not in any personal capacity and without personal liability, dated the Effective Date and certifying (A) that attached thereto is a true and complete copy of the certificate or articles of incorporation or other constitutive or organizational documents, in each case amended to date, of such Loan Party, (B) that attached thereto is a true and complete copy of such Loan Party’s by-laws or limited liability company agreement, as the case may be, as in effect on the date of such certificate and at all times since a date prior to the date of the resolution described in item (C) below, (C) that attached thereto is a true and complete copy of a resolution adopted by

such Loan Party's Board of Directors (or in the case of a Loan Party that is not a corporation, the equivalent governing body) authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and that such resolution has not been modified, rescinded or amended and is in full force and effect, (D) that such Loan Party's certificate or articles of incorporation or other constitutive documents have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished hereinabove, and (E) as to the incumbency and specimen signature of each of such Loan Party's officers executing this Agreement or any other Loan Document delivered in connection herewith or therewith, as applicable; and a certificate of another of such Loan Party's Officers as to the incumbency and signature of the officer signing such certificate.

- (p) The Agent shall have received certificates of status, certificates of good standing, existence or its equivalent with respect to each Loan Party certified as of a recent date by the appropriate Governmental Authorities of the province, state or other jurisdiction of incorporation or organization of such Loan Party and in each other jurisdiction in which qualification is necessary in order for such Loan Party to own or lease its property and conduct its business.
- (q) The Agent shall have received a certificate from a Responsible Officer of the Borrowers, dated as of the Effective Date, certifying as to the matters in Sections 8.1(b) and (c).

The acceptance by the Borrowers of any Revolving Loans made or any Letters of Credit issued on the Effective Date shall be deemed to be a representation and warranty made by the Borrowers to the effect that all of the conditions precedent to the making of such Revolving Loans or the issuance of such Letters of Credit have been satisfied, with the same effect as delivery to the Agent and the Lenders of a certificate signed by a Responsible Officer of the Borrowers, dated the Effective Date, to such effect, except to the extent waived or postponed in writing by the Agent.

Execution and delivery to the Agent by a Lender of a counterpart of this Agreement shall be deemed confirmation by such Lender that (i) all conditions precedent in this Section 8.1 have been fulfilled to the satisfaction of such Lender, (ii) the decision of such Lender to execute and deliver to the Agent an executed counterpart of this Agreement was made by such Lender independently and without reliance on the Agent or any other Lender as to the satisfaction of any condition precedent set forth in this Section 8.1, and (iii) all documents sent to such Lender for approval, consent or satisfaction were acceptable to such Lender.

8.2 Conditions Precedent to Each Revolving Loan and Letter of Credit.

The obligation of any Lender to make a Revolving Loan, including the initial Revolving Loans on the Effective Date and the obligation of the Letter of Credit Issuer to issue any Letter of Credit on and after the Effective Date shall, in each instance, be subject to the further conditions precedent that on and as of the date of any such extension of credit:

- (a) The following statements shall be true, and the acceptance by the Borrowers of any extension of credit shall be deemed to be a statement to the effect set forth in

clauses (i) and (ii) with the same effect as the delivery to the Agent and the applicable Lenders of a certificate signed by a Responsible Officer of the Borrowers, dated the date of such extension of credit, stating that:

- (i) The representations and warranties contained in this Agreement and the other Loan Documents are correct in all material respects (which materiality qualification shall not apply to such representations and warranties already qualified as to materiality on their terms) on and as of the date of such extension of credit as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date (which shall be correct as of such specified prior date) and except to the extent the Agent has been notified in writing by the Borrowers that any representation or warranty is not correct and the Required Lenders have explicitly waived in writing after the Effective Date compliance with such representation or warranty; and
 - (ii) No event has occurred and is continuing, or would result from such extension of credit, which constitutes a Default or an Event of Default.
- (b) No such Borrowing shall exceed the applicable Excess Availability.

Provided, however, that the foregoing conditions precedent in this Section 8.2 are not conditions to each Lender participating in or reimbursing Royal Bank or the Agent for such Lender's Pro Rata Share of any Swingline Loan or Agent Advance made in accordance with the provisions of Sections 1.4(h) and 1.4(i) or unreimbursed drawings under a Letter of Credit.

ARTICLE 9 - DEFAULT; REMEDIES

9.1 Events of Default.

It shall constitute an event of default ("**Event of Default**") if any one or more of the following shall occur for any reason:

- (a) any failure to pay the principal on any of the Obligations owing hereunder or under any other Loan Document when due, whether upon demand or otherwise;
- (b) any failure to pay the interest or premium on any of the Obligations or any fee, expense or other amount owing hereunder or under any other Loan Document when due, whether upon demand or otherwise;
- (c) any representation or warranty made by any Loan Party in this Agreement or in any of the other Loan Documents or any certificate furnished by any Loan Party at any time to the Agent or any Lender shall prove to be untrue in any material respect as of the date on which made, deemed made or furnished;
- (d) (i) any default shall occur in the observance or performance of any of the covenants or agreements contained in any of Sections 5.3(a), 5.3(h), 7.5, 7.10 through 7.20, 7.23, and 7.29 of this Agreement; (ii) any default shall occur in the

observance or performance of any of the covenants or agreements contained in Sections 5.2(a), 5.2(b), 5.2(d), 5.2(e), 5.2(i) and 5.4 and such default shall continue for five (5) Business Days or more; (iii) any default shall occur in the observance or performance of any of the other covenants or agreements contained in any other Section of this Agreement (other than as specified in Section 9.1(a), (b), (c) or (d)(i) or (ii) above) or any other Loan Document or any other material agreement entered into at any time to which any Loan Party and the Agent or any Lender are party (including in respect of any Bank Products) and such default shall continue for ten (10) days or more after the earlier of (A) the date on which such failure shall first become known to any Responsible Officer of any Loan Party or (B) notice thereof is provided to any Loan Party by the Agent;

- (e) any default shall occur with respect to the Subordinated Debt or any other Debt for borrowed money, unreimbursed obligations under drawn letters of credit, obligations in respect of Capital Leases or debt obligations evidenced by bonds, debentures, notes or similar instruments (other than the Obligations), in each case, of one or more of the Loan Parties in an outstanding principal amount which, individually or in the aggregate, exceeds \$8,000,000 in the case of the Loan Parties, or under any agreement or instrument under or pursuant to which any such Debt may have been issued, created, assumed or guaranteed by any Loan Party, and such default shall continue for more than the period of grace, if any, therein specified, if the effect thereof (with or without the giving of notice or further lapse of time or both) is to accelerate, or to permit the holders of any such Debt to accelerate, the maturity of any such Debt; or any such Debt shall be declared due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment) prior to the stated maturity thereof or any such Debt shall not be paid in full upon the scheduled maturity thereof; provided that such default or event of default, as defined thereunder, remains unremedied or is not effectively waived thereunder prior to the acceleration of the Revolving Loans pursuant to Section 9.2.
- (f) any Loan Party shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or an answer or file any proposal or notice of intent to file a proposal or otherwise commence any action or proceeding seeking reorganization, arrangement or readjustment of its debts or for any other relief under the federal Bankruptcy Code, as amended, the BIA, the CCAA or under any other bankruptcy or insolvency, liquidation, winding-up or similar act or law, state, provincial, federal or foreign, now or hereafter existing, or consent to, approve of or acquiesce in, any such petition, proposal, action or proceeding; (ii) apply for or acquiesce in the appointment of a receiver, assignee, liquidator, sequestrator, custodian, monitor, administrator, trustee or similar officer for it or for all or any part of its property; (iii) make an assignment for the benefit of creditors; or (iv) be unable generally to pay its debts as they become due or shall admit in writing its inability to pay its debts generally as they become due;
- (g) an involuntary petition shall be filed or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation or readjustment of the debts of any Loan Party or for any other relief under the federal Bankruptcy

Code, as amended, BIA, the CCAA or under any other bankruptcy or insolvency, liquidation, winding-up or similar act or law, state, provincial, federal or foreign, now or hereafter existing and such petition or proceeding shall not be dismissed within sixty (60) days after the filing or commencement thereof or an order of relief shall be entered with respect thereto;

- (h) a receiver, interim receiver, assignee, liquidator, sequestrator, custodian, monitor, administrator, trustee or similar officer for any Loan Party or for all or any material part of its property, or any material part of the Collateral, shall be appointed or a warrant of attachment, execution or similar process shall be issued against all or any material part of the property of any Loan Party, or any material part of the Collateral, or any distress or analogous process is levied against all or any material part of the property of any Loan Party, or any material part of the Collateral;
- (i) a Borrower shall file a certificate of dissolution or like process under applicable state, provincial or federal law or shall be liquidated, dissolved or wound-up or shall commence or have commenced against it any action or proceeding for dissolution, winding-up or liquidation or shall take any corporate action in furtherance thereof or shall cease to carry on business;
- (j) all or any material part of the Collateral or all or a material part of the property of the Loan Parties shall be nationalized, expropriated or condemned, seized or otherwise appropriated, or custody or control of such property or of any Loan Party shall be assumed by any Governmental Authority or any court of competent jurisdiction at the instance of any Governmental Authority, except where contested in good faith by proper proceedings diligently pursued where a stay of enforcement is in effect;
- (k) one or more judgments, orders, decrees or arbitration awards is entered against one or more Loan Parties involving in the aggregate liability (to the extent not covered by independent third-party insurance) as to any one or more single or related or unrelated series of transactions, incidents or conditions, of \$5,000,000 or more (or the equivalent amount in another currency), individually or in the aggregate, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of thirty (30) days after the entry thereof other than by agreement of the other party to such action or as permitted by such judgment, order, decree or arbitration award;
- (l) any loss, theft, damage or destruction of any item or items of Collateral or other property of any Loan Party occurs which would reasonably be expected to cause a Material Adverse Effect and is not adequately covered by insurance;
- (m) there is filed against any Loan Party any action, suit or proceeding under any federal, state or provincial racketeering or similar statute (including the Racketeer Influenced and Corrupt Organization Act of 1970 and Anti-Terrorism and Sanctions Laws), which action, suit or proceeding (i) is not dismissed within sixty (60) days, and (ii) would reasonably be expected to result in the confiscation or forfeiture of any material portion of the Collateral;

- (n) for any reason other than the failure of the Agent to take any action available to it to maintain perfection of the Agent's Liens, pursuant to the Loan Documents, any Guarantee or Lien ceases to be in full force and effect or any Guarantee or Lien is challenged by any Loan Party or any Lien with respect to any material portion of the Collateral intended to be secured thereby ceases to be, or is not, valid, perfected and prior to all other Liens (other than Permitted Liens) or is terminated (except in accordance with its terms), revoked or declared void;
- (o) (i) a Termination Event shall occur or (ii) any default shall occur in the observance or performance of any of the covenants or agreements contained in any of Section 7.8;
- (p) there occurs a Change of Control; or
- (q) there occurs a Material Adverse Effect.

9.2 Remedies.

- (a) If an Event of Default exists and is continuing, the Agent may, in its discretion, and shall, at the direction of the Required Lenders, do one or more of the following at any time or times and in any order, without notice to or demand on the Loan Parties, except such notices and demands as are required under the terms of the Loan Documents or a Requirement of Law: (i) reduce the Maximum Revolver Amount or the advance rates against Eligible Accounts, Eligible Inventory, Eligible Machinery & Equipment and/or any other components used in computing the Borrowing Base or reduce one or more of the other elements used in computing the Borrowing Base (provided that if after any such advance rate or other element is so reduced, all Events of Default have been cured or waived in accordance with the terms hereof, the applicable advance rate and/or other elements that were so reduced shall be reinstated to the rate or amount in effect immediately prior to such reduction); (ii) restrict the amount of or refuse to make Revolving Loans; and (iii) restrict or refuse to provide Letters of Credit. If an Event of Default exists, the Agent shall, at the direction of the Required Lenders, do one or more of the following, in addition to the actions described in the preceding sentence, at any time or times and in any order, without notice to or demand on any Loan Party: (A) terminate the Commitments and this Agreement; (B) declare any or all Obligations to be immediately due and payable; provided, however, that upon the occurrence of any Event of Default described in Sections 9.1(f), 9.1(g), 9.1(h) or 9.1(i) as to a Loan Party or its property, the Commitments shall automatically and immediately expire and all Obligations shall automatically become immediately due and payable without notice or demand of any kind; (C) require the Borrowers to cash collateralize all outstanding Obligations (contingent or otherwise) with respect to Letters of Credit issued for the account of a Borrower; and (D) pursue its other rights and remedies under the Loan Documents and Requirement of Law.
- (b) If an Event of Default has occurred and is continuing: (i) the Agent shall have for the benefit of the Agent and the Lenders, in addition to all other rights of the Agent and the Lenders, the rights and remedies of a secured party under the Loan

Documents and the PPSA and other Requirement of Law; (ii) the Agent may, at any time, take possession of the Collateral and keep it on any Loan Party's premises, at no cost to the Agent or any Lender, or remove any part of it to such other place or places as the Agent may desire, or the Loan Parties shall, upon the Agent's demand, at the Loan Parties' cost, assemble the Collateral and make it available to the Agent at a place reasonably convenient to the Agent; and (iii) the Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Agent deems advisable, in its sole discretion, and may, if the Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, each Loan Party agrees that any notice by the Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the PPSA or otherwise, shall constitute reasonable notice to such Loan Party if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten (10) days prior to such action to such Loan Party's address specified in or pursuant to Section 14.8. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Agent or the Lenders receive payment, and if the buyer defaults in payment, the Agent may resell the Collateral without further notice to the Loan Parties. In the event the Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Loan Party irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Agent retain possession and not dispose of any Collateral until after trial or final judgment. Each Loan Party agrees that the Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Agent is hereby granted a license or other right to use, without charge, upon the occurrence and during the continuance of an Event of Default each Loan Party's labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter or any similar property, necessary to the production of, advertising or selling any Collateral (subject in the case of trademarks and any property of similar nature, to sufficient rights to quality control and inspection in favour of the relevant Loan Party required under Requirement of Law to avoid risk of invalidation of said trademarks and property of similar nature), and each Loan Party's rights under all licenses and all franchise agreements shall inure to the Agent's benefit for such purpose to the extent permitted therein. The proceeds of sale shall be applied first to all expenses of sale, including attorneys' fees, and then to the Obligations. The Agent will return any excess to the applicable Loan Party and the applicable Loan Parties (jointly and severally in the case of the Borrowers and the Guarantors with respect to Obligations owing by any of the Loan Parties shall remain liable for any deficiency.

- (c) If an Event of Default occurs and is continuing, each Loan Party hereby waives all rights to notice and hearing prior to the exercise by the Agent of the Agent's

rights to repossess the Collateral without judicial process or to reply, attach or levy upon the Collateral without notice or hearing.

ARTICLE 10 - TERM AND TERMINATION

10.1 Term and Termination.

The term of this Agreement shall end on the Termination Date unless sooner terminated in accordance with the terms hereof. The Agent, upon direction from the Required Lenders, may terminate this Agreement without notice (other than as specifically required under this Agreement or any other Loan Documents) upon the occurrence and continuation of an Event of Default in accordance with the terms hereof. Upon the effective date of termination of this Agreement for any reason whatsoever, all Obligations (including all unpaid principal, accrued and unpaid interest and any early termination or prepayment fees or penalties) shall become immediately due and payable and the Borrowers shall immediately arrange (including in accordance with Section 1.5(g)) for the cash collateralization, cancellation and return of all Letters of Credit and cancellation, termination or cash collateralization of all Bank Products, as applicable, then outstanding. Notwithstanding the termination of this Agreement, until all Obligations are paid and performed in full in cash, each Loan Party shall remain bound by the terms of this Agreement and the other Loan Documents to which it is a party and shall not be relieved of any of its Obligations hereunder or under any other Loan Document, and the Agent and the Lenders shall retain all their rights and remedies hereunder and under the other Loan Documents (including the Agent's Liens in and all rights and remedies with respect to all then existing and after-arising Collateral).

ARTICLE 11 - AMENDMENTS; WAIVERS; PARTICIPATIONS; ASSIGNMENTS; SUCCESSORS

11.1 Amendments and Waivers.

- (a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by the Agent at the written direction of the Required Lenders, provided that, in each case, the Pro Rata Share of any Defaulting Lender shall be disregarded in any calculation thereof) and the Loan Parties which are parties to such Loan Document and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given;
 - (i) provided, however, that no such waiver, amendment or consent shall, unless in writing and signed by all Lenders (other than any Defaulting Lender with respect to clauses A, B and C), and acknowledged by the Agent, do any of the following:
 - (A) change the definitions of "Required Lenders", "Pro Rata Share" or "Supermajority Lenders";

- (B) release of all or substantially all of the Guarantees of the Obligations or release all or substantially all of the Collateral (other than as permitted by Section 12.11);
 - (C) change the order of payments provided in Section 3.7; or
 - (D) amend this Section 11.1; and
- (ii) provided, however, that no such waiver, amendment or consent shall, unless in writing and signed by each Lender (including a Defaulting Lender) directly and adversely affected thereby, and acknowledged by the Agent, do any of the following:
- (A) increase (except in accordance with Section 1.7) or extend the Revolving Credit Commitment of any Lender (and only each Lender with respect to which its Revolving Credit Commitment is in fact increasing shall be deemed directly and adversely affected thereby), it being understood that a waiver of any condition precedent or the waiver of any Default or Event of Default or mandatory prepayment shall not constitute an increase in any Revolving Credit Commitment;
 - (B) reduce the principal of, or the rate of interest specified herein (other than waivers of the Default Rate) on, any Revolving Loan or any fees or other amounts payable hereunder or under any other Loan Document to a Lender (but not by virtue of a waiver of any condition precedent, Default, Event of Default or mandatory prepayment or change to a financial test);
 - (C) extend the Stated Termination Date (it being understood that a waiver of a condition precedent or the waiver of any Default or Event of Default or mandatory prepayment shall not constitute an extension of the Stated Termination Date);
 - (D) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to a Lender hereunder or under any other Loan Document (it being understood that a waiver of any condition precedent or the waiver of any Default, Event of Default or mandatory prepayment shall not constitute an extension of a scheduled payment or the time of payment); or
 - (E) change the provisions of Section 3.7 in a manner that would alter the manner in which payments are shared among the Secured Parties; and
- (iii) provided, however, that no such waiver, amendment or consent shall, unless in writing and signed by the Supermajority Lenders (provided that, the Pro Rata Share of any Defaulting Lender shall be disregarded in any

calculation thereof), and acknowledged by the Agent, do any of the following:

- (A) change the definitions of “Borrowing Base” or any of the other defined terms included within such definitions if the effect of such change is to increase the amount available to be borrowed thereunder (other than, for the avoidance of doubt, changes in Reserves implemented by the Agent in its Permitted Discretion); and

provided, however, the Agent may, in its sole discretion and notwithstanding the limitations contained in clauses (a)(i)(A) and (a)(iii)(A) above and any other terms of this Agreement, make Swingline Loans in accordance with Section 1.4(h) and Agent Advances in accordance with Section 1.4(i); and, provided further, that no amendment, waiver or consent shall, unless in writing and signed by the Agent, amend or modify the rights or duties of the Agent as such under this Agreement or any other Loan Document; and, provided further, that no amendment, waiver or consent shall, unless in writing and signed by the Letter of Credit Issuer, amend the definition of LC Accommodation or otherwise amend or modify the rights or duties of the Letter of Credit Issuer as such under this Agreement or any other Loan Document and, provided further, that no amendment, waiver or consent shall, unless in writing and signed by Royal Bank, amend Section 1.4(h) or otherwise affect the rights or duties of Royal Bank as Swingline Lender under this Agreement or any other Loan Document; and provided further, that Schedule 1.2 hereto (Commitments) may be amended from time to time by the Agent alone to reflect assignments of Commitments in accordance herewith and changes in Commitments in accordance with Section 1.7 and Section 3.2(a); and provided further, that, if the Agent and the Borrowers shall have jointly identified an obvious error or any error or omission of a technical nature in the Loan Documents, or in order to implement any Benchmark Replacement or any Conforming Change or otherwise effectuate the terms of Section 2.9 of Section 2.10 in accordance with the terms thereof, then the Agent and the Borrowers shall be permitted to amend such provision without any further action or consent of any other party if the same is not objected to in writing by the Required Lenders to the Agent within five (5) Business Days following receipt of notice thereof.

- (b) If, in connection with any proposed amendment, waiver or consent (a “**Proposed Change**”) requiring the consent of all Lenders, the consent of the Required Lenders or the Supermajority Lenders, as the case may be, is obtained, but the consent of other Lenders is not obtained (any such Lender whose consent is not obtained being referred to herein as a “**Non-Consenting Lender**”), then, so long as the Agent is not a Non-Consenting Lender, at the Borrowers’ request, the Agent or an Eligible Assignee shall have the right (but not the obligation) with the Agent’s approval, to purchase from the Non-Consenting Lenders, and the Non-Consenting Lenders agree that they shall sell, all the Non-Consenting Lenders’ Commitments and Revolving Loans in accordance with the procedures set forth in Section 11.2.

11.2 Assignments; Participations.

- (a) Any Lender may, with the written consent of the Agent, the Swingline Lender and the Letter of Credit Issuer (which consents shall not be unreasonably withheld or delayed) and, so long as no Event of Default has occurred and is continuing, with the written consent of the Borrowers (which consent shall not be unreasonably withheld or delayed; provided, that the Borrowers may not withhold its consent to an assignment solely on the basis that the proposed Eligible Assignee may have a claim under Section 4.1 if that claim is also available to the assigning Lender and provided further that such consent, when required, shall be deemed to have been given if the Borrowers have not responded within fifteen (15) Business Days of a written request for such consent), assign and delegate to one or more Eligible Assignees (provided that no consent of the Borrowers shall be required in connection with any assignment and delegation, by (i) a Lender to an Affiliate of such Lender, (ii) a Lender to another Lender, (iii) a Lender to an Approved Fund, or (iv) the Agent in its efforts to complete syndication of the Total Facility)) (any proposed assignee, hereinafter an “**Assignee**”) all, or any ratable part of all, of the Revolving Loans, the Revolving Credit Commitment and the other rights and obligations of such Lender hereunder, in each case in a minimum amount of: (i) \$0 in the case of an assignment to another Lender, an Affiliate of a Lender or an Approved Fund, and otherwise (ii) \$5,000,000 or the Equivalent Amount thereof in U.S. Dollars (or such lesser amount as may be agreed by the Agent and, so long as no Event of Default pursuant to Sections 9.1(a), 9.1(b), 9.1(f), 9.1(g), 9.1(h) or 9.1(i) has occurred and is continuing the Borrowers) provided that, unless an assignor Lender has assigned and delegated all of its Revolving Loans and Revolving Credit Commitment, no such assignment and/or delegation shall be permitted unless, after giving effect thereto, such assignor Lender retains a Revolving Credit Commitment in a minimum amount of \$5,000,000 (or the Equivalent Amount thereof in U.S. Dollars). The Borrowers and the Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Assignee, shall have been given to the Borrowers and the Agent by such Lender and the Assignee; (ii) such Lender and its Assignee shall have delivered to the Borrowers and the Agent an Assignment and Acceptance in substantially the form of Exhibit A (“**Assignment and Acceptance**”) and (iii) except for any assignment by the Agent in its efforts to complete syndication of the Total Facility and except for any replacement of a Non-Consenting Lender by the Borrowers, in which case the Borrowers shall pay, the assignor Lender or Assignee has paid to the Agent a processing fee in the amount of \$3,500. Other than during the continuation of an Event of Default, no such assignment shall result in any increased liability of the Borrowers under Section 4.1.
- (b) From and after the date that the Agent notifies the assignor Lender that it has received an executed Assignment and Acceptance and payment of the above-referenced processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations have been assigned to it pursuant to such

Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assignor Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

- (c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto or the attachment, perfection or priority of any Lien granted by a Loan Party to the Agent or any Lender in the Collateral of such Loan Party; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Loan Parties or the performance or observance by the Loan Parties of any of their obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such Assignee will, independently and without reliance upon the Agent, Agent or such assigning Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Agent and the Agent by the terms hereof, together with such powers, including the discretionary rights and incidental power, as are reasonably incidental thereto; and (vi) such Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.
- (d) Immediately upon satisfaction of the requirements of Section 11.2(a), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Revolving Credit Commitment allocated to each Assignee shall reduce the Revolving Credit Commitment of the assigning Lender *pro tanto*.
- (e) Any Lender (the "**originating Lender**") may at any time sell to one or more commercial banks, financial institutions or other Persons not Affiliates of any of Loan Parties (a "**Participant**") participating interests in any Revolving Loans, the

Commitment of that Lender and the other interests of that Lender hereunder and under the other Loan Documents; provided, however, that (i) the originating Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) the originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Loan Parties and the Agent shall continue to deal solely and directly with the originating Lender in connection with the originating Lender's rights and obligations under this Agreement and the other Loan Documents, and (iv) no Lender shall transfer or grant any participating interest under which the Participant has rights to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document (except to the extent that such amendment, waiver or consent both directly affects the Participant and would (x) increase (other than in accordance with Section 1.7) or extend the Commitment of the originating Lender, (y) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the originating Lender hereunder or under any other Loan Document or (z) reduce the principal of, or the rate of interest specified herein (other than the waiver of the Default Rate) on, any Revolving Loan owing to the originating Lender or any fees or other amounts payable to the originating Lender hereunder or under any other Loan Document), and all amounts payable by the Borrowers hereunder shall be determined as if such Lender had not sold such participation; except that, if amounts outstanding under this Agreement are due and unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent and subject to the same limitation as if the amount of its participating interest were owing directly to it as a Lender under this Agreement.

- (f) Notwithstanding the foregoing, no Assignee or Participant shall be entitled to receive any greater payment under Sections 4.1 and 4.3 hereof than such Lender would have been entitled to receive.
- (g) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent shall have no responsibility for maintaining a Participant Register.

- (h) Notwithstanding any other provision in this Agreement, any Lender may at any time assign as security, create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favour of any Federal Reserve Bank in accordance with Regulation A of the FRB or U.S. Treasury Regulation 31 CFR §203.14 or any other funding source of such Lender, and such Federal Reserve Bank or funding source may enforce such pledge or security interest in any manner permitted under Requirement of Law; provided, however, that such Lender shall remain a “Lender” under this Agreement and shall continue to be bound by all the terms and conditions set forth in this Agreement and the other Loan Documents.

11.3 Replacement of Lenders.

If any Lender (i) is a Defaulting Lender or (ii) does not make a SOFR Revolving Loan pursuant to Section 4.2 or fails to designate an alternate lending office pursuant to Section 4.1 or (iii) seeks indemnification for increased costs pursuant to Section 4.3 or (iv) is owed additional amounts pursuant to Sections 4.1 or 4.3, which increased costs or additional amounts are not being incurred generally by the other Lenders, then the Borrowers shall have the right, but not the obligation so long as no Event of Default is continuing, to replace such Lender with other banks or financial institutions (the “**Replacement Lender(s)**”) reasonably acceptable to the Agent and with the Agent’s consent, which consent shall not be unreasonably withheld or delayed. The Replacement Lender(s) shall execute Assignment(s) and Acceptance(s) pursuant to which it and they shall become a party hereto as provided in Section 11.2 and such assignment shall be effectuated in accordance with Section 11.2. Upon compliance with the provisions for assignment provided in Section 11.2 (but provided that if the Defaulting Lender refuses or otherwise fails to execute the applicable Assignment and Acceptance within two (2) Business Days of a request to do so, it shall be deemed to have executed the Assignment and Acceptance by mere insertion of its name as “Assignor”) and the payment of amounts referred to in clause (a) thereof, the Replacement Lender(s) shall constitute “Lender(s)” hereunder and the Lender(s) being so replaced shall no longer constitute “Lender(s)” hereunder. Any such replacement shall be effected within one hundred and eighty (180) days after delivery of the Agent’s certificate under Section 4.6, or the date the Lender became a Defaulting Lender.

ARTICLE 12 - THE AGENT, FUNDING BANK, ETC.

12.1 Appointment and Authorization.

- (a) Each Lender hereby irrevocably designates and appoints the Royal Bank as its Administrative Agent and its Collateral Agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as such on the express conditions contained in this Article 12. Except for Section 12.9 and Section 12.10, the provisions of this Article 12 are solely for the benefit of Agent and the Lenders and the Loan Parties shall have no rights as third party beneficiaries of any of the provisions contained herein.

Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” in this Agreement with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Requirement of Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which the Agent is expressly entitled to take or assert under this Agreement and the other Loan Documents, including (a) the determination of the applicability of ineligibility criteria with respect to the calculation of Borrowing Base, (b) the making of Agent Advances or (c) the exercise of remedies pursuant to Section 9.2, and any action so taken or not taken shall be deemed consented to by the Lenders.

12.2 Delegation of Duties.

The Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact (including for greater certainty, any branch or Affiliate of an Agent) and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or wilful misconduct.

12.3 Liability of Agent.

None of the Agent-Related Persons shall (i) be liable to any of the Lenders for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the Transactions contemplated hereby (except for its own gross negligence or wilful misconduct) or (ii) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by any Loan Party or any officer thereof contained in this Agreement or in any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent Related Person 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 other Loan Document, or to inspect any of the properties, books or records of any Loan Party. Agent is not liable or responsible for any actions or inactions of a Defaulting Lender.

12.4 Reliance by Agent.

The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders or, if so required, (or all Lenders if so required by Section 11.1) and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

12.5 Notice of Default.

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Agent shall have received written notice from a Lender or a Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “**notice of default.**” The Agent will notify the Lenders of its receipt of any such notice. The Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9.1; provided, however, that unless and until the Agent has received any such request, the 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.

12.6 Credit Decision.

Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by the Agent hereinafter taken, including any review of the affairs of a Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to the Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by the Agent, the Agent shall not have any duty or

responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party which may come into the possession of any of the Agent-Related Persons.

12.7 Indemnification.

Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Borrowers and without limiting the obligation of the Borrowers to do so), in accordance with their Pro Rata Shares, from and against any and all Indemnified Liabilities as such term is defined in Section 14.11; provided, however, that no Lender shall be liable for the payment to the Agent-Related Persons of any portion of such Indemnified Liabilities to the extent resulting from such Person's gross negligence or wilful misconduct as determined in a final non-appealable judgment of a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse the Agent upon demand for its Pro Rata Share of any costs or out of pocket expenses (including fees and expenses of counsel) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Borrowers. The undertaking in this Section 12.7 shall survive the payment of all Obligations hereunder and the resignation or replacement of any Agent.

12.8 Agent in Individual Capacity.

Royal Bank and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrowers or any of their Subsidiaries or Affiliates as though Royal Bank were not an Agent hereunder and without notice to or consent of the Lenders. Royal Bank or its Affiliates may receive information regarding the Borrowers, their Subsidiaries, their Affiliates and Account Debtors (including information that may be subject to confidentiality obligations in favour of the Borrowers or such Subsidiary or Affiliate) and the Lenders acknowledge that Agent and Royal Bank shall be under no obligation to provide such information to them. With respect to its Revolving Loans, Royal Bank and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not an Agent, and the terms "**Lender**" and "**Lenders**" include Royal Bank in its individual capacity.

12.9 Successor Agent.

The Agent may resign as Agent, as applicable, upon at least thirty (30) days' prior written notice to the Lenders and the Borrowers, such resignation to be effective upon the acceptance of a successor agent to its appointment as Agent, which successor agent, so long as an Event of Default is not continuing, shall have been consented to by the Borrowers (which consent shall not be unreasonably withheld or delayed). Subject to the foregoing, if the Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent, so long as an Event of Default is not continuing, shall have been consented to by the Borrowers (which consent shall not be unreasonably withheld). If

no successor agent is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint, after consulting with the Lenders and the Borrowers, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" as applicable shall mean such successor agent and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article 12 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement.

12.10 Withholding Tax.

- (a) Each Lender (including, without limitation, any assignee or transferee of all or any part of any of the Obligations owing by the Borrowers) that is not a Qualified Lender shall deliver to the Agent (if it is then permitted to do so under law) such number of original copies (with at least one copy for the Borrowers) as may be required by a Governmental Authority of such form or forms as may be required under a taxation treaty entered into between Canada and another jurisdiction or any provision of Canadian federal or provincial law or as a result of the administrative practices or requirements of the CRA or any other Canadian taxation authority as a condition to or exemption from, or reduction of, Canadian withholding Taxes. Such Lender agrees to promptly notify the Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, including, if applicable, any event which causes any Lender to cease to be a Qualified Lender.
- (b) If any Lender is entitled to a reduction in the applicable withholding tax, the Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding Taxes after taking into account such reduction. However, if the forms or other documentation required by clause (a) of this Section 12.10 are not delivered to the Agent prior to the earlier of the date such interest payment is made or the date that such forms or other documentation are required by law, treaty or taxation authority policy to be delivered to the Agent, then the Agent may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding Taxes without reduction. None of the Loan Parties shall have any liability under Section 4.1 or otherwise with respect to such amounts withheld by the Agent pursuant to this subsection.
- (c) If the IRS or any other Governmental Authority of the United States of America, the CRA or any other Governmental Authority of Canada or other jurisdiction asserts a claim that the Agent and/or a Borrower, as applicable, did not properly withhold Taxes from amounts paid to or for the account of any Lender (because the appropriate form was not delivered (or not delivered in sufficient number), was not properly executed, or because such Lender failed to notify the Agent and/or the Borrowers, as applicable, of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), including, if applicable, the Lender ceasing to be a Qualified Lender)

such Lender shall indemnify the Agent and/or the Borrowers, as applicable, fully for all amounts paid, directly or indirectly, by the Agent and/or such Borrowers, as applicable, as Taxes or otherwise, including penalties and interest, and including any Taxes imposed by any jurisdiction on the amounts payable to the Agent and/or the Borrowers, as applicable, under this Section 12.10, together with all costs and expenses (including Attorney Costs). The obligation of the Lenders under this subsection shall survive the payment of all Obligations and the resignation or replacement of the Agent.

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

12.11 Collateral Matters.

- (a) The Lenders hereby irrevocably authorize the Agent, at its option and in its sole discretion, to release, subordinate and take such actions as may be necessary to release or subordinate any of the Agent's Liens upon any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by the Borrowers of all Revolving Loans, reimbursement obligations in respect of Letters of Credit and all other Obligations (whether or not any of such obligations are due), and the termination of all outstanding Letters of Credit (or the deposit with the Agent of Supporting Letters of Credit in accordance with and as required by Section 1.5(g)); (ii) constituting property being sold or disposed of (other than to another Loan Party) if the applicable Loan Party certifies to the Agent that the sale or disposition is made in compliance with Section 7.10 (and the Agent may rely conclusively on any such certificate, without further inquiry); (iii) constituting property in which the Borrowers certify to the Agent that no Loan Party owned an interest at the time the Lien was granted or at any time thereafter (and the Agent may rely conclusively on any such certificate, without further inquiry); (iv) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement; or (v) as contemplated by the last sentence of this 12.11(a). Except as provided above, the Agent will not release any of the Agent's Liens without the prior written authorization of the Lenders or the Required Lenders, as the case may be, pursuant to the terms of Section 11.1; provided that the Agent may, in its discretion, release the Agent's Liens on Collateral valued in the aggregate not in

excess of \$3,000,000 during each Fiscal Year without the prior written authorization of the Required Lenders. Upon request by the Agent or the Borrowers at any time, the Lenders will confirm in writing the Agent's authority to release any of the Agent's Liens upon particular types or items of Collateral pursuant to this Section 12.11. The Agent hereby agrees that, so long as no Default or Event of Default has occurred and is continuing, it shall return promptly to the Borrowers all cash collateral held by the Agent from time to time in connection with any Letter of Credit issued hereunder for the account of the Borrowers upon the later of (x) the satisfaction in full of all of the Obligations of the Borrowers with respect to such Letter of Credit and (y) the return and cancellation of such Letter of Credit (or, in the case of any cash collateral held by the Agent under clause sixth of Section 3.7(a)(ii) with respect to a Letter of Credit, upon the cure or waiver in accordance with the terms hereof of the relevant Event of Default requiring such cash collateralization).

- (b) Upon receipt by the Agent of any authorization required pursuant to Section 12.11(a) from the Lenders of the Agent's authority to release or subordinate the Agent's Liens upon particular types or items of Collateral, and upon at least three (3) Business Days prior written request by the Borrowers, the Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Agent's Liens upon such Collateral; provided, however, that (i) the Agent shall not be required to execute any such document on terms which, in the Agent's reasonable opinion, would expose the Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral.
- (c) The Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by the Borrowers or other Loan Party or is cared for, protected or insured or has been encumbered or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral or any act, omission or event related thereto, the Agent may act in any manner it may deem reasonably appropriate, in its sole discretion given the Agent's own interest in the Collateral in its capacity as one of the Lenders and that the Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing.
- (d) The Security Documents shall be granted in favour of and held by the Agent for and on behalf of the Secured Parties in accordance with the provisions of this Agreement. The Agent shall not be liable to any Secured Party for any action

taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. If the Agent becomes aware of any matter concerning the Agent's Liens which it considers to be material, it shall promptly inform the Lenders.

12.12 Restrictions on Actions by Lenders; Sharing of Payments.

- (a) Each of the Lenders agrees that it shall not, without the express consent of the Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of the Agent, set off against the Obligations, any amounts owing by such Lender to any of the Loan Parties or any accounts of any of the Loan Parties now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so by the Agent, take or cause to be taken any action to enforce its rights under this Agreement or any other Loan Document against any of the Loan Parties, including the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.
- (b) If at any time or times any Lender shall receive (i) by payment, foreclosure, setoff or otherwise, any proceeds of Collateral or any payments with respect to the Obligations of a Loan Party to such Lender arising under or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Lender from the Agent pursuant to the terms of this Agreement or (ii) payments hereunder in excess of such Lender's ratable portion of all such distributions hereunder with respect to the applicable Obligations, such Lender shall promptly (1) turn the same over to the Agent, in kind, and with such endorsements as may be required to negotiate the same to the Agent or in same day funds, as applicable, for the account of all of the Lenders and for application to the applicable Obligations in accordance with the applicable provisions of this Agreement or (2) excluding the Agent and Royal Bank as regards Bank Products, purchase, without recourse or warranty, an undivided interest and participation in the applicable Obligations owed to the other applicable Lenders so that such excess payment received shall be applied rateably as among the applicable Lenders in accordance with their Pro Rata Shares; provided, however, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

12.13 Agency for Perfection.

Each Lender hereby appoints each other Lender as agent and mandatary for the purpose of perfecting the Lenders' security interest in assets which, in accordance with the PPSA or any other Requirement of Law can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof,

and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or in accordance with the Agent's instructions.

12.14 Payments by Agent to Lenders.

All payments to be made by the Agent to the Lenders shall be made by external wire transfer or internal transfer of immediately available funds to each Lender pursuant to wire transfer instructions delivered in writing to the Agent on or prior to the Effective Date (or if such Lender is an Assignee, on the applicable Assignment and Acceptance) or pursuant to such other wire transfer instructions as each party may designate for itself by written notice to the Agent. Concurrently with each such payment, the Agent shall identify whether such payment (or any portion thereof) represents principal, premium or interest on the Revolving Loans or otherwise. Unless the Agent receives notice from the Borrowers prior to the date on which any payment is due to the applicable Lenders from the Borrowers that the Borrowers will not make such payment in full as and when required, the Agent may assume that the Borrowers have made such payment in full to the Agent on such date in immediately available funds and the Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender from the Borrowers. If and to the extent the Borrowers have not made such payment in full to the Agent, each Lender shall repay to the Agent on demand such amount distributed to such Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Lender until the date repaid.

12.15 Settlement of Revolving Loans.

- (a) Revolving Loans. Each Lender's funded portion of the Revolving Loans is intended by the Lenders to be equal at all times to such Lender's Pro Rata Share of the outstanding Revolving Loans. Notwithstanding such agreement, the Agent and the other Lenders agree (which agreement shall not be for the benefit of or enforceable by the Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among them as to the Revolving Loans, the Swingline Loans and the Agent Advances shall take place on a periodic basis in accordance with the following provisions:
 - (i) The Agent shall request settlement ("**Revolving Loan Settlement**") with the Lenders on at least a weekly basis or on a more frequent basis at the Agent's election, (A) for itself, with respect to each outstanding Swingline Loan and Agent Advance, and (B) with respect to collections received, in each case, by notifying the Lenders of such requested Revolving Loan Settlement by telecopy, telephone or other similar form of transmission, of such requested Revolving Loan Settlement, no later than 12:00 noon (Toronto time) on the date of such requested Revolving Loan Settlement (the "**Revolving Loan Settlement Date**"). Each Lender (other than the Agent in the case of Swingline Loans and Agent Advances) shall transfer the amount of such Lender's Pro Rata Share of the outstanding principal amount of the Swingline Loans and Agent Advances with respect to each Revolving Loan Settlement to the Agent, to the Agent's account, not later than 2:00 p.m. (Toronto time), on the Revolving Loan Settlement Date

applicable thereto (such transfer to be made in the same currency as the currency of the applicable Swingline Loans and Agent Advances). Revolving Loan Settlements may occur during the continuation of a Default or an Event of Default and whether or not the applicable conditions precedent set forth in Article 8 have then been satisfied. Such amounts made available to the Agent shall be applied against the amounts of the applicable Swingline Loans or Agent Advance and, together with the portion of such Swingline Loans or Agent Advance representing Royal Bank's Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders. If any such amount is not transferred to the Agent by any Lender on the Revolving Loan Settlement Date applicable thereto, the Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon (in the same respective currency or currencies as the applicable amount or amounts to be recovered) at the Prime Rate for the first three (3) days from and after the Revolving Loan Settlement Date and thereafter at the Interest Rate then applicable to the Prime Rate Revolving Loans for itself, with respect to each Swingline Loans or Agent.

- (ii) Notwithstanding the foregoing, not more than one (1) Business Day after demand is made by the Agent (whether before or after the occurrence of a Default or an Event of Default and regardless of whether the Agent has requested a Revolving Loan Settlement with respect to a Swingline Loan or Agent Advance), each other Lender (A) shall irrevocably and unconditionally purchase and receive from Royal Bank or the Agent, as applicable, without recourse or warranty, an undivided interest and participation in such Agent Advance equal to such Lender's Pro Rata Share of such Swingline Loan or Agent Advance and (B) if Revolving Loan Settlement has not previously occurred with respect to such Swingline Loans or Agent Advances, upon demand by Royal Bank or Agent, as applicable, shall pay to Royal Bank or Agent, as applicable, as the purchase price of such participation an amount equal to one hundred percent (100%) of such Lender's Pro Rata Share of such Swingline Loans or Agent Advances. If such amount is not in fact made available to the Agent by any Lender, the Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon (in the same respective currency or currencies as the relevant Swingline Loans or Agent Advances, as the case may be) at the Prime Rate for the first three (3) days from and after such demand and thereafter at the Interest Rate then applicable to Prime Rate Revolving Loans.
- (iii) From and after the date, if any, on which any Lender purchases an undivided interest and participation in any Swingline Loans or Agent Advance pursuant to clause (ii) above, the Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by the Agent in respect of such Swingline Loan or Agent Advance.

- (iv) Between Revolving Loan Settlement Dates, the Agent, to the extent no Swingline Loans or Agent Advances are outstanding, may pay over to Royal Bank any payments received by the Agent, which in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to Royal Bank's Revolving Loans. If, as of any Revolving Loan Settlement Date, collections received since then immediately preceding Revolving Loan Settlement Date have been applied to Royal Bank's Revolving Loans (other than to Swingline Loans or Agent Advances in which such Lender has not yet funded its purchase of a participation pursuant to clause (ii) above), as provided for in the previous sentence, Royal Bank shall pay to the Agent for the accounts of the Lenders, to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Revolving Loan Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Revolving Loan Settlement Dates, the Agent with respect to Swingline Loans or Agent Advances, and each Lender with respect to the Revolving Loans other than Swingline Loans or Agent Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the actual average daily amount of funds employed by Royal Bank, the Agent and the other Lenders.
 - (v) Unless the Agent has received written notice from a Lender to the contrary, the Agent may assume that the applicable conditions precedent set forth in Article 8 have been satisfied and the requested Borrowing will not exceed Excess Availability on any Funding Date for a Revolving Loan.
 - (vi) Notwithstanding anything to the contrary in the Agreement, (a) if an Event of Default occurs, or (b) if at any time or from time to time, the Swingline Lender, in its sole discretion, gives notice in writing to the Agent, who shall forthwith notify the Lenders, of the principal amount of such Swingline Lender's outstanding Swingline Loan, such Swingline Loan shall be funded with a Borrowing consisting of Revolving Loans.
- (b) Lenders' Failure to Perform. All Revolving Loans (other than Swingline Loans and Agent Advances) shall be made by the Lenders simultaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loans hereunder, nor shall any Revolving Credit Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligation to make any Revolving Loans hereunder, (ii) no failure by any Lender to perform its obligation to make any Revolving Loans hereunder shall excuse any other Lender from its obligation to make any Revolving Loans hereunder, and (iii) the obligations of each Lender hereunder shall be several, not joint and several.

- (c) Defaulting Lenders. Unless the Agent receives notice from a Lender on or prior to the Effective Date or, with respect to any Borrowing after the Effective Date, at least one Business Day prior to the date of such Borrowing, that such Lender will not make available as and when required hereunder to the Agent that Lender's Pro Rata Share of a Borrowing, the Agent may assume that each Lender has made such amount available to the Agent in immediately available funds on the Funding Date. Furthermore, the Agent may, in reliance upon such assumption, make available to the Borrowers on such date a corresponding amount. If any Lender has not transferred its full Pro Rata Share to the Agent in immediately available funds and the Agent has transferred a corresponding amount to the Borrowers on the Business Day following such Funding Date that Lender shall make such amount available to the Agent, together with interest (in the same currency as the related Borrowing) at the Prime Rate for that day. A notice by the Agent submitted to any Lender with respect to amounts owing shall be conclusive, absent manifest error. If each Lender's full Pro Rata Share is transferred to the Agent as required, the amount transferred to the Agent shall constitute that Lender's Revolving Loan for all purposes of this Agreement. If that amount is not transferred to the Agent on the Business Day following the Funding Date, the Agent will notify the Borrowers of such failure to fund and, within one (1) Business Day after demand by the Agent, the Borrowers shall pay such amount to the Agent for the Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the Interest Rate applicable at the time to the Revolving Loans comprising that particular Borrowing. The failure of any Lender to make any Revolving Loan on any Funding Date shall not relieve any other Lender of its obligation hereunder to make a Revolving Loan on that Funding Date. No Lender shall be responsible for any other Lender's failure to advance such other Lenders' Pro Rata Share of any Borrowing.
- (d) Retention of Defaulting Lender's Payments. The Agent shall not be obligated to transfer to a Defaulting Lender any payments made by the Borrowers to the Agent for the Defaulting Lender's benefit; nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder. Amounts payable to a Defaulting Lender shall instead be paid to or retained by the Agent and any such payments shall in the discretion of the Agent be held in a non-interest bearing account or otherwise invested as Agent shall see fit; provided that the amount of any such payments shall be returned to the Borrowers, if the Borrowers are entitled to same under the terms of this Agreement, promptly following the removal of the Defaulting Lender pursuant to Section 12.15(a). Notwithstanding any other terms hereof, the Defaulting Lender shall not be entitled to interest in any amounts returned by Agent. In its discretion, to the extent the Borrowers have not reduced the Revolving Credit Commitments by repaying the outstanding borrowed Revolving Loans of the Defaulting Lenders, the Agent may loan the Borrowers the amount of all such payments received or retained by it for the account of such Defaulting Lender. In its discretion, the Agent may loan the Borrowers the amount of all such payments received or retained by it for the account of such Defaulting Lender. Any amounts so loaned to the Borrowers shall bear interest at the rate applicable to Prime Rate Revolving Loans and for all other purposes of this

Agreement shall be treated as if they were Revolving Loans to such Borrowers, provided, however, that for purposes of voting or consenting to matters with respect to the Loan Documents and determining Pro Rata Shares, such Defaulting Lender shall be deemed not to be a “Lender” or “Lender”. Until a Defaulting Lender cures its failure to fund its Pro Rata Share of any Borrowing (A) such Defaulting Lender shall not be entitled to any portion of the Unused Line Fee and (B) the Unused Line Fee shall accrue in favour of the Lenders which have funded their respective Pro Rata Shares of such requested Borrowing and shall be allocated among such performing Lenders rateably based upon their relative Revolving Credit Commitments. This Section 12.15 shall remain effective with respect to such Lender until such time as the Defaulting Lender shall no longer be in default of any of its obligations under this Agreement. The terms of this Section 12.15 shall not be construed to increase or otherwise affect the Revolving Credit Commitment of any Lender or relieve or excuse the performance by the Borrowers of their duties and obligations hereunder.

- (e) Removal of Defaulting Lender. At the Borrowers’ request, the Agent or an Eligible Assignee reasonably acceptable to the Agent and the Borrowers shall have the right (but not the obligation) to purchase from any Defaulting Lender, and each Defaulting Lender shall, upon such request, sell and assign to the Agent or such Eligible Assignee, all of the Defaulting Lender’s outstanding Commitments hereunder. Such sale shall be consummated promptly after the Agent has arranged for a purchase by the Agent or an Eligible Assignee pursuant to an Assignment and Acceptance, and at an aggregate price equal to the outstanding principal balance of the Defaulting Lender’s and its related Revolving Loans, plus accrued interest and fees, without premium or discount, and plus all other amounts owing to such Defaulting Lender hereunder. In the event that a Defaulting Lender refuses or otherwise fails to execute an acceptable Assignment and Acceptance within two (2) Business Days of a request to do so, it shall be deemed to have executed the applicable Assignment and Acceptance by mere insertion of its name as “Assignor”.

12.16 Letters of Credit; Intra Lender Issues.

- (a) Notice of Issuance of Letters of Credit. On each Revolving Loan Settlement Date, the Agent shall notify each Lender of the issuance of all Letters of Credit since the prior Revolving Loan Settlement Date.
- (b) Participations in Letters of Credit.
 - (i) Purchase of Participations. Immediately upon issuance of any Letter of Credit in accordance with Section 1.5(d), each Lender shall be deemed to have irrevocably and unconditionally purchased and received without recourse or warranty, an undivided interest and participation equal to such Lender’s Pro Rata Share of the face amount of such Letter of Credit, in connection with the issuance of such Letter of Credit (including all obligations of the applicable Borrower with respect thereto, and any security therefor or guaranty pertaining thereto).

- (ii) Sharing of Reimbursement Obligation Payments. Whenever the Agent receives a payment from a Borrower on account of reimbursement obligations in respect of a Letter of Credit as to which the Agent has previously received for the account of the Letter of Credit Issuer thereof payment from a Lender, the Agent shall promptly pay to such Lender such Lender's Pro Rata Share of such payment from such Borrower. Each such payment shall be made by the Agent on the next Revolving Loan Settlement Date.
- (iii) Documentation. Upon the request of any Lender, the Agent shall furnish to such Lender copies of any Letter of Credit and such other documentation as may reasonably be requested by such Lender.
- (iv) Obligations Irrevocable. The obligations of each Lender to make payments to the Agent with respect to any Letter of Credit or with respect to their participation therein or with respect to the Revolving Loans, as applicable, made as a result of a drawing under a Letter of Credit and the obligations of the Borrower to make payments to the Agent, for the account of the Lenders, shall be irrevocable and shall not be subject to any qualification or exception whatsoever, including any of the following circumstances:
 - (I) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;
 - (II) the existence of any claim, setoff, defence or other right which the Borrower or other Loan Party may have at any time against a beneficiary named in a Letter of Credit or any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), any Lender, the Agent, the issuer of the Letter of Credit or any other Person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transactions between the Borrower or other Loan Party or any other Person and the beneficiary named in any Letter of Credit);
 - (III) any draft, certificate or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
 - (IV) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents;
 - (V) the occurrence of any Default or Event of Default; or

- (VI) the failure of the Borrowers to satisfy the applicable conditions precedent set forth in Article 8.
- (c) Recovery or Avoidance of Payments; Refund of Payments In Error. In the event any payment by or on behalf of any of the Borrowers received by the Agent with respect to any Letter of Credit and distributed by the Agent to the Lenders on account of their respective participations therein is thereafter set aside, avoided or recovered from the Agent in connection with any receivership, liquidation or bankruptcy proceeding, the Lenders shall, upon demand by the Agent, pay to the Agent their respective Pro Rata Shares of such amount set aside, avoided or recovered, together with interest at the rate and in the currency required to be paid by the Agent upon the amount required to be repaid by it. Unless the Agent receives notice from the Borrowers prior to the date on which any payment is due to the applicable Lenders that the Borrower will not make such payment in full as and when required, the Agent may assume that the Borrowers have made such payment in full to the Agent on such date in immediately available funds and the Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender from the Borrowers. If and to the extent the Borrowers have not made such payment in full to the Agent, each Lender shall repay to the Agent on demand such amount distributed to such Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to the Lender until the date repaid.
- (d) Indemnification by Lenders. To the extent not reimbursed by the Borrowers and without limiting the obligations of the Borrowers hereunder, the Lenders agree to indemnify the Letter of Credit Issuer rateably in accordance with their respective Pro Rata Shares, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Letter of Credit Issuer in any way relating to or arising out of any Letter of Credit or the transactions contemplated thereby or any action taken or omitted by the Letter of Credit Issuer under any Letter of Credit issued by the Letter of Credit Issuer or any Loan Document in connection therewith; provided that no Lender shall be liable for any of the foregoing to the extent it arises from the gross negligence or wilful misconduct of the Person to be indemnified. Without limitation of the foregoing, each Lender agrees to reimburse the Letter of Credit Issuer promptly upon demand for its Pro Rata Share of any costs or expenses payable by the Borrowers to the Letter of Credit Issuer, to the extent that the Letter of Credit Issuer is not promptly reimbursed for such costs and expenses by the Borrowers. The agreement contained in this Section 12.16(d) shall survive payment in full of all other Obligations.

12.17 Concerning the Collateral and the Related Loan Documents.

Each Lender authorizes and directs the Agent to enter into, execute and deliver the other Loan Documents, for the ratable benefit of such Agent and the Lenders. Each Lender agrees that any action taken by such Agent, or the Required Lenders, as applicable, in accordance with the

terms of this Agreement or the other Loan Documents, and the exercise by the Agent, or the Required Lenders, as applicable, of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders. The Lenders acknowledge that the Revolving Loans, Agent Advances and Bank Products and all interest, fees and expenses hereunder in respect of Obligations of the Borrowers constitute one Debt, secured *pari passu* by all of the Collateral, directly and indirectly as primary Loan Parties and guarantors. For greater certainty all the Revolving Loans and the Obligations of each Loan Party are cross-guaranteed and cross-collateralized.

12.18 Field Audit and Examination Reports; Disclaimer by Lenders.

By signing this Agreement, each Lender:

- (a) is deemed to have requested that the Agent furnish such Lender, promptly after it becomes available, a copy of each Field Exam report (each a “**Report**” and collectively, “**Reports**”) prepared by or on behalf of the Agent;
- (b) expressly agrees and acknowledges that neither the Royal Bank nor the Agent (i) makes any representation or warranty as to the accuracy of any Report or (ii) shall be liable for any information contained in any Report;
- (c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or the Royal Bank or other party performing any audit or examination will inspect only specific information regarding the relevant Loan Party and will rely significantly upon the relevant Loan Party’s books and records, as well as on representations of the relevant Loan Party’s personnel;
- (d) agrees to keep all Reports confidential and strictly for its internal use and not to distribute except to its participants or use any Report in any other manner, except as may be required by law, regulation or judicial proceeding; and
- (e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrowers or the indemnifying Lender’s participation in or the indemnifying Lender’s purchase of, a loan or loans of the Borrowers; and (ii) to pay and protect, and indemnify, defend and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses and other amounts (including Attorney Costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

12.19 Relation Among Lenders.

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

12.20 Sharing of Information.

The Agent and the Lenders may share among themselves any information they may have from time to time concerning the Loan Parties whether or not such information is confidential, but shall have no obligation to do so (except for any obligations of the Agent to provide information to the extent required in this Agreement). The Loan Party Representative hereby consents to any such sharing of information among the Agent and the Lenders.

12.21 Arranger and Other Agent.

None of the Arranger nor any Lender or Affiliate thereof now or hereafter identified as a syndication agent hereunder solely in their respective capacities as such shall have any right, power, obligation, liability, responsibility or duty under this Agreement.

12.22 Electronic Platform, Etc.

The Loan Parties hereby acknowledge that (a) the Agent and/or the Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrowers and the other Loan Parties hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on SyndTrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that wish to receive only information that (i) is publicly available, (ii) is not material with respect to the Borrowers or the other Loan Parties or its or their respective securities for purposes of United States federal and state securities laws and Canadian federal and provincial securities laws or (iii) constitutes information of a type that would be publicly available if the Loan Parties were public reporting companies (collectively, the "**Public Side Information**")) and who may be engaged in investment and other market related activities with respect to the Borrowers or the other Loan Parties or its or their respective securities (each, a "**Public Lender**"). Before distribution of any Borrower Materials to Lenders, the Borrowers agree to identify that portion of the Borrower Materials that may be distributed to the Public Lenders as "Public Information," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof. By marking Borrower Materials as "PUBLIC," the Borrowers shall be deemed to have authorized the Agent, the Arrangers and the Lenders to treat such Borrower Materials as containing only Public Side Information. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Lender." The Agent and the Arrangers shall treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting, and shall only post such Borrower Materials, on a portion of the Platform not designated "Public Lender."

12.23 Lender Meetings.

The Agent shall call a meeting of the Lenders at any time not earlier than five (5) days and not later than thirty (30) days after receipt of a written request for a meeting provided by any

Lender; provided that the above notice requirements may be waived by the unanimous agreement of the Lenders; and provided further that any instrument executed by all of the Lenders (which may be in counterparts) shall have the same effect as if passed by the Lenders at a duly called meeting.

12.24 Erroneous Payments.

- (a) If the Agent notifies a Lender, Letter of Credit Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, Letter of Credit Issuer or Secured Party (any such Lender, Letter of Credit Issuer, Secured Party or other recipient, a “**Payment Recipient**”) that the Agent has determined in its sole reasonable discretion 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 Payment Recipient) (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 Payment Recipient shall promptly, but in no event later than two (2) Business Days thereafter, return to the Agent, in same day funds (in the currency so received), the amount of any such Erroneous Payment (or portion thereof), 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 (i) in respect of U.S. Dollar amounts only, at the Base Rate and a rate determined by the Agent in accordance with prevailing banking industry rules on interbank compensation from time to time in effect, or (ii) in respect of Canadian Dollar amounts only, at a rate determined by the Agent in accordance with prevailing banking industry rules on interbank compensation from time to time in effect. 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. A notice of the Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.
- (b) Without limiting immediately preceding clause (a), each Payment Recipient hereby further agrees that if it receives an Erroneous Payment from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Agent (or any of its Affiliates) with respect to such Erroneous Payment (the “**Payment Notice**”), or (y) that was not preceded or accompanied by a Payment Notice sent by the Agent (or any of its Affiliates), then, said Payment Recipient shall be on notice, in each case, that an error has been made with respect to such Erroneous Payment. Each Payment Recipient agrees that, in each such case, or if it otherwise becomes

aware an Erroneous Payment (or portion thereof) may have been sent in error, such Payment Recipient shall promptly notify the Agent of such occurrence and, upon demand from the Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent (i) in respect of U.S. Dollar amounts, at the greater of the Base Rate and a rate determined by the Agent in accordance with prevailing banking industry rules on interbank compensation from time to time in effect, or (ii) in respect of Canadian Dollar amounts, at a rate determined by the Agent in accordance with prevailing banking industry rules on interbank compensation from time to time in effect.

- (c) Each Payment Recipient hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Agent to such Payment Recipient from any source, against any amount due to the Agent under any of the immediately preceding clauses (a) or (b) 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 (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), the Borrowers and each other Loan Party hereby agrees that (x) the Agent shall be subrogated to all the rights of such Payment Recipient with respect to such amount (including, without limitation, the right to sell and assign the Loans (or any portion thereof), which were subject to the Erroneous Payment Return Deficiency) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers 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, (i) comprised of funds received by the Agent from the Borrowers or any other Loan Party or (ii) the proceeds of realization from the enforcement of one or more of the Loan Documents against or in respect of the Borrowers or one or more of the Loan Parties, in each case, for the purpose of making such Erroneous Payment. For the avoidance of doubt, no assignment of an Erroneous Payment Return Deficiency will reduce the Commitments of any Payment Recipient 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 the assignment of an Erroneous Payment Return Deficiency, 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 Payment Recipient under the Loan Documents with respect to each Erroneous Payment Return Deficiency.
- (e) Each party’s obligations, agreements and waivers under this Section 12.24 shall survive the resignation or replacement of the Agent, any transfer of rights or

obligations by, or the replacement of, a Lender or Letter of Credit Issuer, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE 13 - GUARANTEES

13.1 The Guarantees.

Each Guarantor, as primary obligor and not merely as a surety, hereby unconditionally and irrevocably, jointly and severally, guarantees to the Agent and each of the Secured Parties the punctual payment when due in accordance with the terms hereof of all Obligations, of whatever kind and description, of the Borrowers to the Agent and each of the Secured Parties now or hereafter existing, whether direct or indirect, absolute or contingent, matured or unmatured, secured or unsecured pursuant to or arising out of or under this Agreement and the other Loan Documents (including all interest that accrues after the commencement of any case or proceeding by or against the Borrowers under any federal or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), including, without limitation, all Obligations (all such obligations so guaranteed are referred to herein as the “**Guaranteed Obligations**”).

13.2 Guarantee Absolute.

Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with their terms regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Agent and/or Secured Parties with respect thereto. The liability of each Guarantor hereunder shall be joint and several and absolute and unconditional irrespective of (and each Guarantor hereby waives, to the fullest extent permitted by Requirement of Law, any defense relating to):

- (a) Any lack of validity or enforceability of the Obligations or the Guaranteed Obligations or any agreement or instrument relating thereto;
- (b) Any change in the time, manner or place of the payment of, or in any other term of, all or any of the Obligations or the Guaranteed Obligations, or any amendment or modification of or any consent to departure from this Agreement or any other Loan Document;
- (c) Any exchange, release, unopposability or nonperfection of any Collateral or any release or amendment to, waiver of, or consent to departure from, or any Guarantee for, all or any part of the Obligations or the Guaranteed Obligations;
- (d) Any whole or partial termination of this Guarantee as to any other Guarantor; or
- (e) Any other circumstance which might otherwise constitute a defence available to, or a discharge of, a Borrower in respect of the Obligations or the Guaranteed Obligations or a Guarantor in respect of this Guarantee or the Guaranteed Obligations.

This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations or the Guaranteed Obligations are rescinded or must otherwise be returned by the Agent and/or Secured Parties upon the bankruptcy or reorganization of any Guarantor or otherwise under Requirement of Law, all as though such payment had not been made.

13.3 Consents, Waivers and Renewals.

Each Guarantor hereby renounces to the benefits of division and discussion. Each Guarantor hereby waives promptness, diligence, notice of the acceptance hereof, notice of intent to accelerate and notice of acceleration and any other notice with respect to any of the Obligations or the Guaranteed Obligations and this Agreement and any requirement that the Agent and/or Secured Parties protect, secure, perfect, render opposable or insure any Agent's Lien or Lien on any property subject thereto or exhaust any right or take any action against the Borrower any Guarantor or any other Person or any Collateral before proceeding hereunder. Each Guarantor agrees that the Agent and/or Secured Parties may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the Borrowers or the Guarantor extend the time of payment of, exchange or surrender any Collateral for, or renew any of the Obligations or the Guaranteed Obligations, and may also make any agreements with the Borrowers, any Guarantor or with any other party to or Person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge, or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between the Agent and/or any Secured Parties and the Borrowers or any such other party or Person, without in any way impairing or affecting this Guarantee. Each Guarantor agrees to make payment to the Agent, for the rateable benefit of the Secured Parties, of any of the Obligations and the Guaranteed Obligations whether or not the Agent and/or any Lenders shall have resorted to any collateral security, or shall have proceeded against any other Loan Party principally or secondarily obligated with respect to any of the Obligations or the Guaranteed Obligations. The Agent and/or Secured Parties shall be free to deal with the Borrowers and each of the Guarantors as it sees fit.

13.4 Subrogation.

No Guarantor shall exercise any rights which it may acquire by way of subrogation under this Agreement, by any payment made hereunder or otherwise, until all the Obligations and the Guaranteed Obligations shall have been paid in full. If any amount shall be paid to a Loan Party on account of such subrogation rights in violation of the foregoing restriction, such amount shall be held in trust for the benefit of the Agent (for itself and the other Secured Parties) and shall forthwith be paid to the Agent (for itself and the other Secured Parties) to be credited and applied to the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement.

13.5 Protection Clause.

Whenever herein a representation or warranty is expressed by a Guarantor or, subject to Section 13.1 above, any agreement to do any act or thing is made by a Guarantor, same shall be deemed to be a representation or warranty as to that Guarantor only and not a representation or warranty of any matter or circumstance of any other Guarantor and an agreement as to its

conduct and not the conduct of any other Guarantor. Subject to Section 13.1 above, no Guarantor shall be liable for any obligation of any other Guarantor's Guaranteed Obligations.

13.6 Limitation on Guarantee of Obligations.

- (a) In any action or proceeding with respect to any Guarantor involving any state or provincial corporate law, or any state or provincial or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of such Guarantor under Section 13.1 hereof would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under said Section 13.1, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Lender, the Agent or any other Person, be automatically limited and reduced to the highest amount which is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.
- (b) To the extent that any Guarantor shall make a payment under this Agreement of all or any of the Guaranteed Obligations (a "**Guarantor Payment**") which, taking into account all other Guarantor Payments then previously or concurrently made by the Guarantor, exceeds the amount which the Guarantor would otherwise have paid if the Guarantor had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Guarantor's "Allocable Amount" (as defined below) (in effect immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of the Guarantor in effect immediately prior to the making of such Guarantor Payment, then, following payment in full in cash of the Obligations and termination of the Revolving Credit Commitments, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, the Guarantors for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.
 - (i) As of any date of determination, the "**Allocable Amount**" of any Guarantor shall be equal to the maximum amount of the claim which could then be recovered from such Guarantor under this Agreement without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.
 - (ii) This subsection (b) is intended only to define the relative rights of Guarantors and nothing set forth in this subsection (b) is intended to or shall impair the obligations of Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement.
 - (iii) The rights of the parties under this subsection (b) shall be exercisable upon the full and indefeasible payment of the Obligations and the termination of this Agreement and the other Loan Documents.

- (iv) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of any Guarantor to which such contribution and indemnification is owing.

13.7 Guarantee of Payment.

Each Guarantor further agrees that this Guarantee constitutes a guaranty of payment when due and not of collection, and waives any right to require that any resort be had by the Agent or any Secured Party to any of the Collateral or other security held for payment of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of the Agent or any Secured Party in favour of any other Guarantor or any other Person or to any other guarantor of all or part of the Guaranteed Obligations.

13.8 Subordination.

Each Guarantor hereby subordinates any and all debts liabilities and other Obligations owed to such Guarantor by each other Loan Party (the “**Subordinated Obligations**”) to the Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 13.8:

- (a) Prohibited Payments, Etc. Except during the continuation of an Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Laws relating to any other Loan Party), each Guarantor may receive payments from any other Loan Party on account of the Subordinated Obligations. After the occurrence and during the continuation of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), however, unless the Agent shall otherwise agree, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations, other than the filing of proofs of claim or other similar requirements to preserve its rights as creditor.
- (b) Prior Payment of Guaranteed Obligations. In any proceeding under any Bankruptcy Law relating to any other Loan Party, each Guarantor agrees that the Secured Parties shall be entitled to receive payment in full in cash of all Guaranteed Obligations (including all interest and expenses accruing after the commencement of proceeding under any Bankruptcy Law whether or not constituting an allowed claim in such proceeding (“**Post Petition Interest**”)) before such Guarantor receives payment of any Subordinated Obligations.
- (c) Turn-Over. After the occurrence and during the continuation of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), each Guarantor shall, if the Agent so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Secured Parties and deliver such payments to the Agent on account of the Guaranteed Obligations (including all Post Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Agreement.

- (d) Agent Authorization. After the occurrence and during the continuation of any Event of Default (including, without limitation, the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Loan Party), the Agent is authorized and empowered (but without any obligation to so do), in its discretion, (i) in the name of each Guarantor, to collect and enforce, and to submit claims in respect of, Subordinated Obligations and to apply any amounts received thereon to the Guaranteed Obligations (including any and all Post Petition Interest), and (ii) to require each Guarantor (A) to collect and enforce, and to submit claims in respect of, Subordinated Obligations and (B) to pay any amounts received on such obligations to the Agent for application to and to the extent of the Guaranteed Obligations (including any and all Post Petition Interest).

ARTICLE 14 - MISCELLANEOUS

14.1 No Waivers; Cumulative Remedies.

No failure by an Agent or any Lender to exercise any right, remedy or option under this Agreement or any present or future supplement thereto or in any other agreement between or among any Loan Party and an Agent and/or any Lender or delay by the Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by the Agent or any Secured Party will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by the Agent or the Secured Parties on any occasion shall affect or diminish the Agent's and each Secured Party's rights thereafter to require strict performance by the Loan Parties of any provision of this Agreement. The Agent and the Secured Parties may proceed directly to collect the Obligations without any prior recourse to the Collateral. The Agent's and each Secured Party's rights under this Agreement will be cumulative and not exclusive of any other right or remedy which the Agent or any Lender may have.

14.2 Severability.

The illegality or unenforceability of any provision of this Agreement or any other Loan Document or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

14.3 Governing Law; Choice of Forum; Service of Process.

- (a) THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF BRITISH COLUMBIA AND THE LAWS OF CANADA APPLICABLE THEREIN; PROVIDED, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN BRITISH COLUMBIA SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT;

PROVIDED, FURTHER, THAT THE AGENT AND THE LENDERS SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

- (b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE PROVINCE OF BRITISH COLUMBIA OR OF CANADA, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE LOAN PARTIES, THE AGENT AND THE LENDERS CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE LOAN PARTIES, THE AGENT AND THE LENDERS IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. NOTWITHSTANDING THE FOREGOING: (1) THE AGENT AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST ANY LOAN PARTY OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION THE AGENT OR THE LENDERS DEEM NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR OTHER SECURITY FOR THE OBLIGATIONS AND (2) EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT ANY APPEALS FROM THE COURTS DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE THOSE JURISDICTIONS.
- (c) 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 REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO SUCH LOAN PARTY AT ITS ADDRESS SET FORTH IN SECTION 14.8 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE U.S. MAILES OR CANADA POST IN EACH CASE POSTAGE PREPAID. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF THE AGENT OR THE LENDERS TO SERVE LEGAL PROCESS BY ANY OTHER MANNER PERMITTED BY LAW.

14.4 WAIVER OF JURY TRIAL.

EACH OF THE LOAN PARTIES, THE SECURED PARTIES AND THE AGENT IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AGENT RELATED PERSON, PARTICIPANT OR ASSIGNEE,

WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. EACH OF THE LOAN PARTIES, THE LENDERS AND THE AGENT AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION 14.4 AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

14.5 Survival of Representations and Warranties.

All of each Loan Party's representations and warranties contained in this Agreement shall survive the execution, delivery and acceptance thereof by the parties, notwithstanding any investigation by the Agent or the Lenders or their respective agents.

14.6 Other Security and Guarantees.

The Agent may, without notice or demand and without affecting the Loan Parties' obligations hereunder, from time to time: (a) take from any Person and hold collateral (other than the Collateral) for the payment of all or any part of the Obligations and exchange, enforce or release such collateral or any part thereof; and (b) accept and hold any endorsement or guarantee of payment of all or any part of the Obligations and release or substitute any such endorser or guarantor or any Person who has given any Lien in any other collateral as security for the payment of all or any part of the Obligations or any other Person in any way obligated to pay all or any part of the Obligations.

14.7 Fees and Expenses.

The Borrowers agree to pay to the Agent for its benefit, on demand, all out-of-pocket costs and expenses (other than any Indemnified Taxes, which are governed by Section 4.1, and any costs or losses governed by Section 4.3 or Section 4.4) that the Agent pays or incurs in connection with the negotiation, preparation, syndication, consummation, administration, enforcement, registration, stamping and termination of this Agreement or any of the other Loan Documents, including: (a) Attorney Costs; (b) reasonable and documented costs and expenses (including Attorney Costs) for any amendment, supplement, waiver, consent or subsequent closing in connection with the Loan Documents and the transactions contemplated thereby; (c) documented costs and expenses of lien and title searches and title insurance; (d) taxes, fees and other charges for recording the filing financing statements and continuations, and other actions to perfect, protect, and continue the Agent's Liens (including costs and expenses paid or incurred by the Agent in connection with the consummation of this Agreement); (e) sums paid or incurred to pay any amount or take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; (f) subject to the terms of Sections 7.4(b) and 7.4(c), reasonable and documented costs of appraisals, inspections and verifications of the Collateral and other due diligence with respect to the Collateral and the Loan Parties, including travel, lodging, and meals for inspections of the Collateral and any Loan Party's operations by the Agent plus a reasonable fee per Person per day for field examinations and audits and the

preparation of reports thereof; and (g) reasonable and documented costs and expenses of forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining Concentration Accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral. In addition, the Borrowers agree to pay reasonable and documented costs and expenses incurred by the Agent (including Attorney Costs) to the Agent, for their benefit, within five Business Days following written demand, and to the other Lenders for their benefit, within five Business Days following written demand, and to pay to the Lenders' all reasonable fees, expenses and disbursements incurred by such other Lenders for one law firm for all Lenders taken as a whole retained by such other Lenders, in each case, paid or incurred to obtain payment of the Obligations, enforce the Agent's Liens, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of the Loan Documents or to defend any claims made or threatened against the Agent or any Lender arising out of the transactions contemplated hereby (including preparations for and consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of the Loan Documents regarding costs and expenses to be paid by the Borrowers. All of the foregoing costs and expenses shall be, at Agent's option, (i) debited from any Designated Account, as applicable, or any other bank account of the Loan Parties maintained with Royal Bank, or (ii) charged to the Borrowers' Loan Accounts as Revolving Loans, all as described and further permitted pursuant to Section 3.6.

14.8 Notices.

Except as otherwise provided herein, all notices, demands and requests that any party is required or elects to give to any other shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, but not limited to, delivery by overnight mail and courier service, (b) four (4) days after it shall have been mailed by Canada Post or United States mail, first class, certified or registered, with postage prepaid (c) in the case of notice by a telecopy device, when properly transmitted, or (d) in the case of a communication by email, receipt of such communication must be confirmed by the recipient by the end of the next Business Day or, if not so confirmed, must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that any communication originally delivered by email shall be deemed to have been given and received on the day on which it was so delivered or transmitted (if a Business Day, and if not, then on the next succeeding Business Day) unless received after 5:00 pm (local time in the place of receipt) in which case it shall be deemed to have been given and received on the next succeeding Business Day, and in each case addressed to the party to be notified as follows:

If to the Agent:

Royal Bank of Canada
Agency Services Group
155 Wellington Street West, 8th Floor
Toronto, Ontario M5V 3K7

Attention: Manager, Agency Services Group
Telecopy No.: (416) 842-4023
Email: rbcmagnt@rbccm.com
with copies to (which shall not constitute notice):

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53,
Toronto ON M5K 1E7 Canada

Attention: David M.A. Amato
Telecopy No.: (416) 216-1861
Email: david.amato@nortonrosefulbright.com

If to Royal Bank:

Royal Bank of Canada
200 Bay Street
13th Floor, South Tower
Toronto, Ontario M5J 2J5

Attention: Director, Portfolio Management
Telecopy No.: (416) 947-7620
Email: stuart.coulter@rbccm.com

If to a Loan Party:

c/o Mercer International Inc.
Suite 1120, 700 West Pender Street
Vancouver, British Columbia V6C 1G8

Attention: Genevieve Stannus, Treasurer
Telecopy No. (604) 639-4605
Email: genevieve.stannus@mercerint.com

with copies to (which shall not constitute notice):

Sangra Moller LLP
Cathedral Place
1000, 925 West Georgia Street
Vancouver, British Columbia V6C 3L2

Attention: Harjit S. Sangra
Telecopy No. (604) 669-8803
Email: hsangra@sangramoller.com

or to such other address as each party may designate for itself by like notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designated above to receive copies shall not adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

14.9 Waiver of Notices.

Unless otherwise expressly provided herein, each Loan Party waives presentment, protest and notice of demand or dishonour and protest as to any instrument, notice of intent to accelerate any or all of the Obligations and notice of acceleration of any or all of the Obligations, as well as any and all other notices to which it might otherwise be entitled. No notice to or demand on any Loan Party which the Agent or any Lender may elect to give shall entitle such Loan Party to any or further notice or demand in the same, similar or other circumstances.

14.10 Binding Effect.

The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors, and assigns of the parties hereto; provided, however, that no interest herein may be assigned by any Loan Party without prior written consent of the Agent and each Lender. The rights and benefits of the Agent and the Lenders hereunder shall, if such Persons so agree, inure to any party acquiring any interest in the Obligations or any part thereof.

14.11 Indemnity of the Agent and the Secured Parties by the Loan Parties.

- (a) Each Loan Party agrees, jointly and severally, to defend, indemnify and hold the Agent-Related Persons, and each Secured Party and each of their respective Affiliates, officers, directors, employees, counsel, advisors, representatives, agents and attorneys-in-fact of the foregoing (each, an “**Indemnified Person**”) harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Revolving Loans and the termination, resignation or replacement of the Agent or replacement of any Lender) be imposed on, incurred by or asserted against any such Indemnified Person in any way relating to or arising out of this Agreement, any other Loan Document or any document contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any such Indemnified Person under or in connection with any of the foregoing, including with respect to any investigation, litigation or proceeding (including any insolvency proceeding or appellate proceeding) related to or arising out of this Agreement, any other Loan Document or the Revolving Loans or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”); provided, that the Loan Parties shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent they are found by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the unlawful conduct, wilful misconduct or gross negligence of such Indemnified Person or any Related Party thereof. The agreements in this Section 14.11(a) shall survive payment of all other Obligations .
- (b) Each Loan Party agrees, jointly and severally, to indemnify, defend and hold harmless each Indemnified Person from any loss or liability related to or arising out of its role as a Lender or Affiliate of a Lender under this Agreement, any other Loan Document or the Revolving Loans or the use of the proceeds thereof,

whether or not any Indemnified Person is a party thereto, and directly or indirectly arising out of the use, generation, manufacture, production, storage, Release, threatened Release, discharge, disposal or presence of a Contaminant relating to any Loan Party's operations, business or property; provided, that the Loan Parties shall have no obligation under this Section 14.11(b) to any Indemnified Person with respect to any loss or liability to the extent such loss or liability is found by a final non-appealable judgment of a court of competent jurisdiction to have resulted from the unlawful conduct, wilful misconduct or gross negligence of such Indemnified Person or any Related Party thereof, as the case may be. This indemnity will apply whether the Contaminant is on, under or about any Loan Party's property or operations or property leased to any Loan Party. The indemnity includes but is not limited to Attorney Costs. This indemnity will survive repayment of all other Obligations.

14.12 Limitation of Liability.

NO CLAIM MAY BE MADE BY ANY LOAN PARTY, ANY SECURED PARTY OR OTHER PERSON AGAINST THE AGENT, ANY LENDER OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, COUNSEL, REPRESENTATIVES, AGENT OR ATTORNEYS IN FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY AND EACH SECURED PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOUR.

14.13 Final Agreement.

This Agreement and the other Loan Documents are intended by each Loan Party, the Agent, the Lenders and the other Secured Parties to be the final, complete and exclusive expression of the agreement between them. This Agreement and the other Loan Documents (including the Fee Letter (which is considered a Loan Document)) supersede any and all prior oral or written agreements relating to the subject matter hereof. No modification, rescission, waiver, release or amendment of any provision of this Agreement or any other Loan Document shall be made, except by a written agreement signed by the Loan Parties party thereto and a duly authorized officer of each of the Agent and the requisite Lenders.

14.14 Counterparts.

This Agreement and each other Loan Document may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by fax or other electronic transmission of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The words "execution," "execute", "signed," "signature," and words of like import in or related to any

document to be signed in connection with this Agreement or any other Loan Document shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, as in provided Parts 2 and 3 of the Personal Information Protection and Electronic Documents Act (Canada), the Electronic Commerce Act, 2000 (Ontario), the Electronic Transaction Acts (British Columbia), the Electronic Transactions Act (Alberta), or any other similar laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada. The Agent may, in its discretion, require that any such documents and signatures executed electronically or delivered by fax or other electronic transmission be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any document or signature executed electronically or delivered by fax or other electronic transmission.

14.15 Captions.

The captions contained in this Agreement are for convenience of reference only, are without substantive meaning and should not be construed to modify, enlarge or restrict any provision.

14.16 Right of Setoff.

In addition to any rights and remedies of the Lenders provided by law, if an Event of Default exists or any or all of the Revolving Loans have been accelerated, each Lender is authorized at any time and from time to time, without prior notice to any Loan Party, any such notice being waived by each of the Loan Parties to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender or any Affiliate of such Lender to or for the credit or the account of any Loan Party against any and all Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not the Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured. Each Lender agrees promptly to notify the Borrowers and the Agent after any such set-off and application made by such Lender; provided, however, that the failure to give or the delay in giving such notice shall not affect the validity of such set-off and application. NOTWITHSTANDING THE FOREGOING, PAYMENTS SHALL BE APPLIED IN ACCORDANCE WITH SECTION 3.7 AND NO LENDER SHALL EXERCISE ANY RIGHT OF SET OFF, BANKER'S LIEN OR THE LIKE AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF ANY LOAN PARTY HELD OR MAINTAINED BY SUCH LENDER WITHOUT THE PRIOR WRITTEN CONSENT OF THE AGENT.

14.17 Confidentiality.

- (a) Each Loan Party hereby consents that the Agent and each Lender may issue and disseminate to the public general information describing the credit accommodation entered into pursuant to this Agreement, including the name and address of any Loan Party and a general description of any Loan Party's business and may use any Loan Party's name in advertising and other promotional material.

- (b) Each Lender severally agrees to take normal and reasonable precautions and exercise due care to maintain the confidentiality of all information provided to the Agent or such Lender by or on behalf of the Loan Parties, under this Agreement or any other Loan Document, except to the extent that such information (i) was or becomes generally available to the public other than as a result of disclosure by the Agent or such Lender or (ii) was or becomes available on a nonconfidential basis from a source other than a Loan Party, provided that such source is not bound by a confidentiality agreement or is not acting in a fiduciary or trust position or capacity with a Loan Party known to the Agent or such Lender; provided, however, that the Agent and any Lender may disclose such information (1) at the request or pursuant to any requirement of any Governmental Authority to which the Agent or such Lender is subject or in connection with an examination of the Agent or such Lender by any such Governmental Authority; (2) pursuant to subpoena or other court process (and the Agent or such Lender, as the case may be, shall endeavour to provide the Borrowers with prior notice of such disclosure to the extent practicable and shall, at the sole cost and expense of the Loan Parties, cooperate, to the extent practicable and not in a manner adverse to the Agent or such Lender, with the Borrowers if the Borrowers seek a protective order with respect to the relevant information); (3) when required to do so in accordance with the provisions of any applicable Requirement of Law; (4) to the extent permitted by law and to the extent reasonably required in connection with any litigation or proceeding (including, but not limited to, any bankruptcy proceeding) to which an Agent, any Lender or any of their respective Affiliates may be party (and such Agent or such Lender, as the case may be, shall endeavour to provide the Borrowers with prior notice of such disclosure to the extent practicable and shall, at the sole cost and expense of the Loan Parties, cooperate, to the extent practicable and not in a manner adverse to such Agent or such Lender, with the Borrowers if the Borrowers seek a protective order with respect to the relevant information); (5) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (6) to such Agent's or such Lender's independent auditors, accountants, attorneys and other professional advisors and such Agent's or such Lender's Affiliates, employees, directors and officers (and such Agent or such Lender, as the case may be, shall advise such auditors, accountants, attorneys, other professional advisors, Affiliates, employees, directors or officers of the confidential nature of such information); (7) to any prospective Participant or Assignee under any Assignment and Acceptance, actual or potential, provided that such prospective Participant or Assignee agrees to keep such information confidential to the same extent required of the Lenders hereunder; (8) as expressly permitted under the terms of any other document or agreement regarding confidentiality to which a Loan Party is party or is deemed party with the Agent or such Lender, and (9) to its Affiliates who are informed of and who agree to maintain the confidentiality of the information.

14.18 Conflicts with Other Loan Documents.

Unless otherwise expressly provided in this Agreement (or in another Loan Document by specific reference to the applicable provision contained in this Agreement), if any provision

contained in this Agreement conflicts with any provision of any other Loan Document, the provision contained in this Agreement shall govern and control.

14.19 Judgment Currency.

If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the “**Original Currency**”) into another currency (the “**Second Currency**”), the rate of exchange applied shall be the Spot Rate (plus any premium and costs of exchange payable in connection with such purchase) at which the relevant Agent or the relevant Lender, as the case may be, could purchase in the Toronto foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. Each Loan Party agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the relevant Agent or relevant Lender, as the case may be, receives payment of any sum so adjudged to be due hereunder in the Second Currency, such Agent or such Lender may, in accordance with normal banking procedures, purchase, in the Toronto foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, each Loan Party agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify such Agent or such Lender, as the case may be, against such loss.

14.20 Appointment of Loan Party Representative; Reliance Upon Authority.

Each Loan Party hereby designates Mercer Peace River as its representative and agent on its behalf (the “**Loan Party Representative**”) for the purposes of (i) giving instructions with respect to the disbursement of the proceeds of Revolving Loans to be made to the Borrowers, selecting interest rate options for the Borrowers and requesting Letters of Credit for the account of the Borrowers. and (ii) giving and receiving on such Loan Party’s behalf all other notices, directions, instructions, requests, other communications and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants and consenting or agreeing to any amendment or waiver of compliance with any provision of any Loan Document) on behalf of such Loan Party under the Loan Documents. The Loan Party Representative hereby accepts such appointment. The Agent and each Lender may regard any notice, direction, instruction, request or other communication pursuant to any Loan Document from the Loan Party Representative as a notice, direction, instruction, request or communication, as the case may be, from the applicable Loan Party or Loan Parties, and may give any notice or other communication required or permitted to be given to any Loan Party or Loan Parties hereunder to the Loan Party Representative on behalf of such Loan Party or Loan Parties. Each Loan Party agrees that each notice, election, direction, instruction, request, other communication, representation and warranty, consent, covenant, agreement and undertaking or other action made or taken on its behalf by the Loan Party Representative shall be deemed for all purposes to have been made or taken by such Loan Party and shall be binding upon and enforceable against such Loan Party to the same extent as if the same had been made or taken directly by such Loan Party.

14.21 PATRIOT Act, Sanctions, Etc.

- (a) To the extent applicable, each Loan Party is in compliance, in all material respects, with (i) the *Trading with the Enemy Act*, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) or other Requirements of Law relating to terrorism or money laundering.
- (b) None of the Loan Parties, any director, officer, employee or controlled Affiliate of any Loan Party is the subject of any Sanctions; and no Loan Party will directly or indirectly use the proceeds of the facilities made available hereunder or otherwise knowingly make available such proceeds to any Person for the purpose of financing any activities or business of or with any Person currently the subject of any Sanctions or in violation of any Sanctions.
- (c) The Agent and the Lenders hereby notify the Borrowers that pursuant to the requirements of the PATRIOT Act, the Agent and the Lenders are required to obtain, verify and record information that identifies each Borrower, including its legal name, address, tax ID number and other information that will allow the Agent and the Lenders to identify it in accordance with the PATRIOT Act. The Agent and the Lenders will also require information regarding each personal guarantor, if any, and may require information regarding the Borrowers' management and owners, such as legal name, address, social security number and date of birth.

14.22 Foreign Asset Control Regulations.

Neither of the advance of the Revolving Credit Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the “**Trading With the Enemy Act**”) or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “**Executive Order**”) and (b) the USA PATRIOT Act. Furthermore, none of the Borrowers nor their Affiliates (a) is or will become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) knowingly engages or will engage in any dealings or transactions, or be otherwise associated, with any such “blocked person” or in any manner violative of any such order. Each Loan Party is in compliance, in all material respects, with the *USA PATRIOT Act*. No part of the proceeds of the Revolving Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

14.23 Canadian Anti-Money Laundering Legislation.

- (a) No Loan Party is an individual or entity currently the subject of any action, suit or proceeding under any federal, state or provincial racketeering or similar statute (including the *Racketeer Influenced and Corrupt Organization Act of 1970* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)*). The operations of the Loan Parties are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable money laundering and anti-corruption and bribery statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the “**AML Legislation**”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Loan Party with respect to the AML Legislation is pending or, to the best knowledge of any Loan Party, threatened.
- (b) Each Loan Party acknowledges that, pursuant to the AML Legislation, the Lenders may be required to obtain, verify and record information regarding the Loan Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender, any Letter of Credit Issuer or any Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence
- (c) If the Agent has ascertained the identity of any Loan Party or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then the Agent:
 - (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Agent within the meaning of the applicable AML Legislation; and
 - (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent does not have any obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so. All forms provided to the Agent regarding authority to execute and deliver for and on behalf of the Loan Parties, for the establishment or operation of the accounts of the Loan Parties and to give orders or instruction to transact and/or withdraw, including the names of authorized signatories, are equally applicable for all Lenders.

14.24 Accounting Changes.

In the event that any Accounting Change (as defined below) after the Effective Date shall occur and such change results in a change in the method of calculation of financial ratios, standards or terms in this Agreement or in the Borrowers' method of calculation of Combined Net Income or EBITDA or the conversion of foreign currencies for financial reporting purposes, then, at the request of the Borrowers or the Required Lenders, the Borrowers and the Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrowers' financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrowers, the Agent and the Required Lenders, all financial ratios, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "**Accounting Changes**" refers to changes in accounting principles required by GAAP and includes any change in the treatment of leases as Capital Leases or operating leases on a Person's balance sheets.

14.25 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrowers and each Guarantor acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agent, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrowers and their Affiliates, on the one hand, and the Agent, the Lenders and the Arrangers, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Agent, the Lenders and the Arrangers is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary for the Borrowers, any of their Affiliates or any other Person and (B) none of the Agent, the Lenders, the Lead Arranger or the Arrangers have any obligation to the Borrowers or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Lenders, the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers and their Affiliates, and none of the Agent, the Lenders or the Arrangers have any obligation to disclose any of such interests to the Borrowers or any of their Affiliates. To the fullest extent permitted by law, each of the Borrowers and each Guarantor hereby waives and releases any claims that it may have against the Agent, the Lenders and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

14.26 Applications Under the CCAA and BIA.

Each Borrower and each other Loan Party acknowledges that its business and financial relationships with the Lenders are unique from its relationship with any other of its creditors. Each Borrower and each other Loan Party agrees that it shall not file any plan of arrangement

under the CCAA or proposal under the BIA which provides for, or would permit, directly or indirectly, the Lenders to be classified with any other creditors of the Loan Parties for purposes of such CCAA plan of arrangement, BIA proposal or otherwise.

14.27 Acknowledgement and Consent to Bail In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA 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 Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA 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 Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

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[signature pages follow]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

“BORROWERS”

MERCER PEACE RIVER PULP LTD.

Per: /s/ David Gandossi

Name: David Gandossi

Title: President

**MERCER CELGAR LIMITED
PARTNERSHIP, by its general partner
MERCER CELGAR PULP LTD.**

Per: /s/ David Gandossi

Name: David Gandossi

Title: President

MERCER FORESTRY SERVICES LTD.

Per: /s/ Genevieve Stannus

Name: Genevieve Stannus

Title: Treasurer

“GUARANTORS”

MERCER CELGAR PULP LTD.

Per: /s/ David Gandossi

Name: David Gandossi

Title: President

MERCER CELGAR HOLDINGS LLC

Per: /s/ **David Gandossi**

Name: David Gandossi

Title: Manager

“AGENT”

Royal Bank Of Canada

/s/ Yvonne Brazier

By: Yvonne Brazier

Title: Manager, Agency Services

ROYAL BANK OF CANADA, as a Lender
and a Letter of Credit Issuer

/s/ Stuart Coulter

By: Stuart Coulter

Title: Authorized Signatory

**CANADIAN IMPERIAL BANK OF
COMMERCE**, as a Lender and a Letter of
Credit Issuer

/s/ Farhad Foroughi

By: Farhad Foroughi

Title: Authorized Signatory

/s/ Geoff Golding

By: Geoff Golding

Title: Authorized Signatory

**WELLS FARGO CAPITAL FINANCE
CORPORATION CANADA, as a Lender**

/s/ Carmela Massari

By: Carmela Massari

Title: Senior Vice President

SUBSIDIARIES OF MERCER INTERNATIONAL INC.

In accordance with Item 601(b)(21) of Regulation S-K, the following list excludes certain subsidiaries which, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1-02(w) of Regulation S-X.

Name of Subsidiary ⁽¹⁾	State or Other Jurisdiction of Incorporation or Organization
Zellstoff-und Papierfabrik Rosenthal GmbH	Germany
Zellstoff Stendal GmbH	Germany
Mercer Timber Products GmbH	Germany
Mercer Holz GmbH	Germany
Mercer Celgar Pulp Ltd.	Canada
Mercer Celgar Limited Partnership	Canada
Mercer Mass Timber LLC	Washington State
Mercer Sandalwood Pty Ltd.	Australia
Mercer Peace River Pulp Ltd.	Canada

⁽¹⁾ All the subsidiaries are conducting business under their own names.

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-234039), S-8 (No. 333-219333), S-8 (No. 333-198365) and S-8 (No. 333-167478) of Mercer International Inc. of our report dated February 17, 2022 relating to the consolidated financial statements and the effectiveness of internal control over financial reporting, which appears in Mercer International Inc.'s Annual Report on Form 10-K for the year ended December 31, 2021. We also consent to the reference to us under the heading "Experts" in the Registration Statement on Form S-3 (No. 333-234039).

/s/PricewaterhouseCoopers LLP

Chartered Professional Accountants

Vancouver, Canada
February 17, 2022

CERTIFICATION OF PERIODIC REPORT

I, David M. Gandossi, certify that:

1. I have reviewed this annual report on Form 10-K of Mercer International Inc. (the “Registrant”);
2. Based on my knowledge, this annual 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 annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual 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 annual 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 annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
 - d) Disclosed in this annual 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 this 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.

Date: February 17, 2022

/s/ DAVID M. GANDOSSO

David M. Gandossi
Chief Executive Officer

CERTIFICATION OF PERIODIC REPORT

I, David K. Ure, certify that:

1. I have reviewed this annual report on Form 10-K of Mercer International Inc. (the “Registrant”);
2. Based on my knowledge, this annual 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 annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual 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 annual 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 annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
 - d) Disclosed in this annual 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 this 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.

Date: February 17, 2022

/s/ DAVID K. URE

David K. Ure
Chief Financial Officer

**CERTIFICATION OF PERIODIC REPORT PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE *SARBANES-OXLEY ACT OF 2002***

I, David M. Gandossi, Chief Executive Officer of Mercer International Inc. (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, to my knowledge:

- (1) the annual report on Form 10-K of the Company for the year ended December 31, 2021 (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.

Dated: February 17, 2022

/s/ DAVID M. GANDOSSI

David M. Gandossi
Chief Executive Officer

A signed original of this written statement required by Section 906 of the *Sarbanes-Oxley Act of 2002* has been provided to Mercer International Inc. and will be retained by Mercer International Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the *Sarbanes-Oxley Act of 2002* and shall not, except to the extent required by the *Sarbanes-Oxley Act of 2002*, be deemed filed by the Company for purposes of Section 18 of the *Securities Exchange Act of 1934*, as amended.

**CERTIFICATION OF PERIODIC REPORT PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE *SARBANES-OXLEY ACT OF 2002***

I, David K. Ure, Chief Financial Officer of Mercer International Inc. (the “Company”), certify pursuant 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the *Sarbanes-Oxley Act of 2002* , that, to my knowledge:

- (1) the annual report on Form 10-K of the Company for the year ended December 31, 2021 (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.

Dated: February 17, 2022

/s/ DAVID K. URE

David K. Ure
Chief Financial Officer

A signed original of this written statement required by Section 906 of the *Sarbanes-Oxley Act of 2002* has been provided to Mercer International Inc. and will be retained by Mercer International Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the *Sarbanes-Oxley Act of 2002* and shall not, except to the extent required by the *Sarbanes-Oxley Act of 2002*, be deemed filed by the Company for purposes of Section 18 of the *Securities Exchange Act of 1934* , as amended.