

**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 July 31, 2022

or

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

For the transition period from to

Commission File Number: 001-09614

**VAIL RESORTS<sup>®</sup>**

EXPERIENCE OF A LIFETIME<sup>™</sup>

**Vail Resorts, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**51-0291762**

(I.R.S. Employer Identification No.)

**390 Interlocken Crescent**

**Broomfield, Colorado**

(Address of principal executive offices)

**80021**

(Zip Code)

**(303) 404-1800**

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
<b>Common Stock, \$0.01 par value</b>	<b>MTN</b>	<b>New York Stock Exchange</b>

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

**None**

(Title of class)

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes  No

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

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

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes  No

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, based on the closing price of \$277.10 per share as reported on the New York Stock Exchange Composite Tape on January 31, 2022 (the last business day of the registrant’s most recently completed second fiscal quarter) was \$11,123,660,215.

As of September 26, 2022, 40,281,228 shares of the registrant’s common stock were outstanding.

#### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant’s definitive Proxy Statement for its 2022 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days of July 31, 2022 are incorporated by reference herein into Part III, Items 10 through 14, of this Annual Report.

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## FORWARD-LOOKING STATEMENTS

Except for any historical information contained herein, the matters discussed or incorporated by reference in this Annual Report on Form 10-K (this “Form 10-K”) contain certain forward-looking statements within the meaning of the federal securities laws. These statements relate to analyses and other information, available as of the date hereof which are based on forecasts of future results and estimates of amounts not yet determinable. These statements also relate to our contemplated future prospects, developments and business strategies.

These forward-looking statements are identified by their use of terms and phrases such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “will” and similar terms and phrases, including references to assumptions. Although we believe that our plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, we cannot assure you that such plans, intentions or expectations will be achieved. Important factors that could cause actual results to differ materially from our forward-looking statements include, but are not limited to:

- *the economy generally, and our business and results of operations, including the ultimate amount of refunds that we would be required to refund to our pass product holders for qualifying circumstances under our Epic Coverage program;*
- *prolonged weakness in general economic conditions, including adverse effects on the overall travel and leisure related industries;*
- *the ongoing COVID-19 pandemic, and its impact on the travel and leisure industry generally, and our financial condition and operations;*
- *unfavorable weather conditions or the impact of natural disasters;*
- *the willingness of our guests to travel due to terrorism, the uncertainty of military conflicts or outbreaks of contagious diseases (such as the ongoing COVID-19 pandemic), and the cost and availability of travel options and changing consumer preferences or willingness to travel;*
- *risks related to interruptions or disruptions of our information technology systems, data security or cyberattacks;*
- *risks related to our reliance on information technology, including our failure to maintain the integrity of our customer or employee data and our ability to adapt to technological developments or industry trends;*
- *the seasonality of our business combined with adverse events that may occur during our peak operating periods;*
- *competition in our mountain and lodging businesses or with other recreational and leisure activities;*
- *risks related to the high fixed cost structure of our business;*
- *our ability to fund resort capital expenditures;*
- *risks related to a disruption in our water supply that would impact our snowmaking capabilities and operations;*
- *our reliance on government permits or approvals for our use of public land or to make operational and capital improvements;*
- *risks related to federal, state, local and foreign government laws, rules and regulations;*
- *risks related to changes in security and privacy laws and regulations which could increase our operating costs and adversely affect our ability to market our products, properties and services effectively;*
- *risks related to our workforce, including increased labor costs, loss of key personnel and our ability to maintain adequate staffing, including hiring and retaining a sufficient seasonal workforce;*
- *a deterioration in the quality or reputation of our brands, including our ability to protect our intellectual property and the risk of accidents at our mountain resorts;*
- *our ability to successfully integrate acquired businesses, including their integration into our internal controls and infrastructure; our ability to successfully navigate new markets, including Europe; or that acquired businesses may fail to perform in accordance with expectations, including the Seven Springs Resorts and Andermatt-Sedrun;*
- *risks associated with international operations;*
- *fluctuations in foreign currency exchange rates where the Company has foreign currency exposure, primarily the Canadian and Australian dollars, and the Swiss franc, as compared to the U.S. dollar;*
- *changes in tax laws, regulations or interpretations, or adverse determinations by taxing authorities;*
- *risks related to our indebtedness and our ability to satisfy our debt service requirements under our outstanding debt including our unsecured senior notes, which could reduce our ability to use our cash flow to fund our operations, capital expenditures, future business opportunities and other purposes;*
- *a materially adverse change in our financial condition;*
- *adverse consequences of current or future litigation and legal claims;*
- *changes in accounting judgments and estimates, accounting principles, policies or guidelines; and*
- *other risks and uncertainties included under Part I, Item 1A. “Risk Factors” in this document.*

All forward-looking statements attributable to us or any persons acting on our behalf are expressly qualified in their entirety by these cautionary statements.

If one or more of these risks or uncertainties materialize, or if underlying assumptions prove incorrect, our actual results may vary materially from those expected, estimated or projected. Given these uncertainties, users of the information included or incorporated by reference in this Form 10-K, including investors and prospective investors, are cautioned not to place undue reliance on such forward-looking statements. Actual results may differ materially from those suggested by the forward-looking statements that we make for a number of reasons including those described above and in Part I, Item 1A. "Risk Factors" of this Form 10-K. All forward-looking statements are made only as of the date hereof. Except as may be required by law, we do not intend to update these forward-looking statements, even if new information, future events or other circumstances have made them incorrect or misleading.

## PART I

### ITEM 1. BUSINESS

#### General

Vail Resorts, Inc., together with its subsidiaries, is referred to throughout this document as “we,” “us,” “our” or the “Company.”

Vail Resorts, Inc., a Delaware corporation, was organized as a holding company in 1997 and operates through various subsidiaries. Our operations are grouped into three business segments: Mountain, Lodging and Real Estate, which represented approximately 88%, 12% and 0%, respectively, of our net revenue for our fiscal year ended July 31, 2022 (“Fiscal 2022”).

Our Mountain segment operates 41 world-class destination mountain resorts and regional ski areas (collectively, our “Resorts”). Additionally, the Mountain segment includes ancillary services, primarily including ski school, dining and retail/rental operations.

In the Lodging segment, we own and/or manage a collection of luxury hotels and condominiums under our RockResorts brand; other strategic lodging properties and a large number of condominiums located in proximity to our North American mountain resorts; National Park Service (“NPS”) concessioner properties including the Grand Teton Lodge Company (“GTLC”), which operates destination resorts in Grand Teton National Park; a Colorado resort ground transportation company and mountain resort golf courses.

We refer to “Resort” as the combination of the Mountain and Lodging segments. Our Real Estate segment owns, develops and sells real estate in and around our resort communities.

For financial information and other information about the Company’s segments and geographic areas, see Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and Item 8. “Financial Statements and Supplementary Data.”

#### Acquisition of Andermatt-Sedrun Sport AG

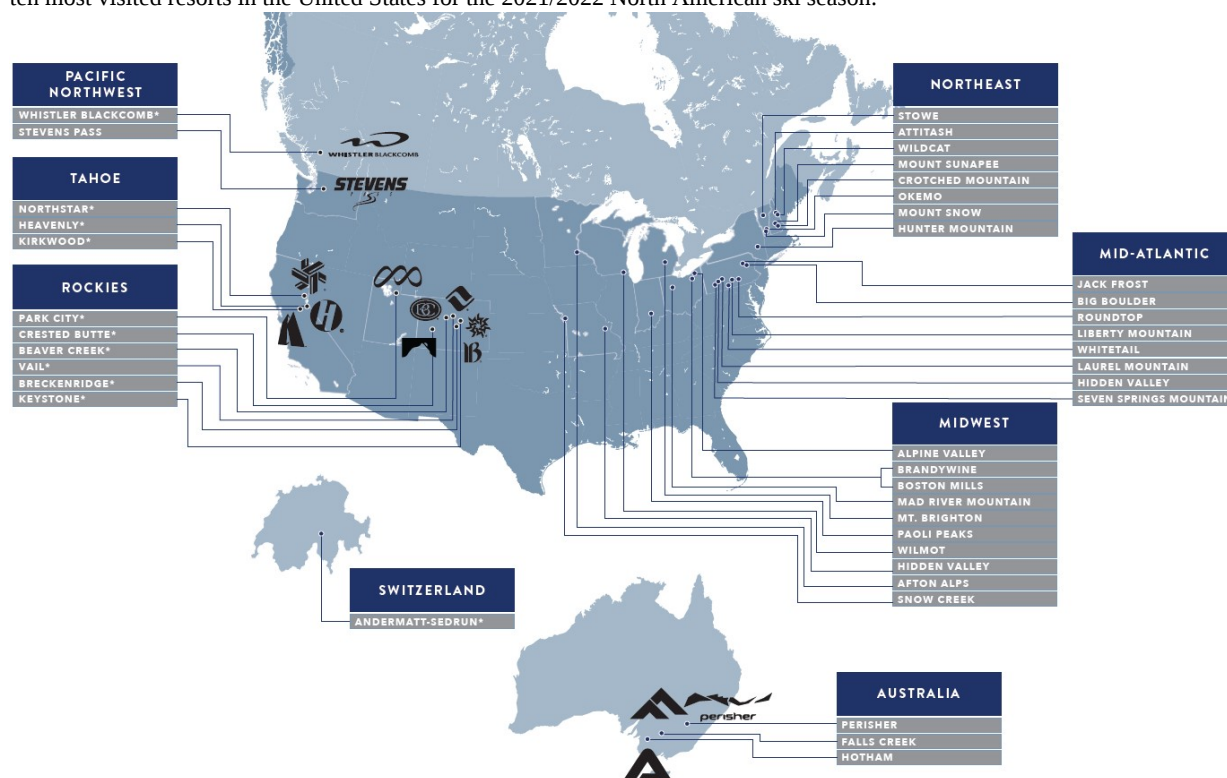
On August 3, 2022, through a wholly-owned subsidiary, we acquired a 55% controlling interest in Andermatt-Sedrun Sport AG (“Andermatt-Sedrun”) from Andermatt Swiss Alps AG (“ASA”). Andermatt-Sedrun operates mountain and ski-related assets, including all lifts, most of the restaurants and a ski school operation at the ski area. We invested CHF 149.3 million (\$155.7 million), comprised of a CHF 110.0 million (\$114.4 million) investment into Andermatt-Sedrun for use in capital investments to enhance the guest experience on the mountain and CHF 39.3 million (\$41.3 million) paid to ASA. The proceeds paid to ASA will be fully reinvested into the real estate developments in the base area. ASA has retained a 40% ownership stake, with a group of existing shareholders comprising the remaining 5% ownership.

#### COVID-19 Impact

The COVID-19 pandemic has caused significant disruptions in international and U.S. economies and markets, and has had an unprecedented impact on the travel and leisure industries, including our Company. While our North American Resorts were operational throughout the 2021/2022 ski season, the impacts of COVID-19, and specifically the Omicron variant, resulted in negative impacts to our operational results, including staffing challenges, increased labor costs and reduced visitation through the holiday period of the 2021/2022 North American ski season. In particular, Whistler Blackcomb was disproportionately impacted by COVID-19 related travel restrictions during the holiday period, which continued to result in lower than normal U.S. destination and international visitation to the resort. However, our results for the 2021/2022 North American ski season significantly improved following the holiday period, and have significantly outperformed results from the prior year, primarily due to the greater impact of COVID-19 and related limitations and restrictions on results for the prior year. Despite these improved results, COVID-19 still presents significant challenges, including challenges to our ability to maintain adequate staffing in a constrained labor market.

## Mountain Segment

In the Mountain segment, the Company operates the following 41 destination mountain resorts and regional ski areas, including five resorts within the top ten most visited resorts in the United States for the 2021/2022 North American ski season:



\*Denotes a destination mountain resort, which generally receives a meaningful portion of skier visits from long-distance travelers, as opposed to our regional ski areas, which tend to generate skier visits predominantly from their respective local markets.

Our Mountain segment derives revenue through the sale of lift tickets, including pass products, as well as a comprehensive offering of amenities available to guests, including ski and snowboard lessons, equipment rentals and retail merchandise sales, a variety of dining venues, private club operations and other winter and summer recreational activities. In addition to providing extensive guest amenities, we also lease some of our owned and leased commercial space to third party operators to add unique restaurants and retail stores to the mix of amenities at the base of our resorts.

Many of our destination mountain resorts are year-round mountain resorts that provide a comprehensive resort experience to a diverse clientele with an attractive demographic profile. We offer a broad complement of winter and summer recreational activities, including skiing, snowboarding, snowshoeing, snowtubing, sightseeing, mountain biking, guided hiking, zip lines, challenge ropes courses, alpine slides, mountain coasters, children's activities and other recreational activities. Collectively, our Resorts are located in close proximity to population centers totaling over 110 million people.

### Destination Mountain Resorts

#### Rocky Mountains (Colorado and Utah Resorts)

- Breckenridge Ski Resort ("Breckenridge") - the most visited mountain resort in the United States ("U.S.") for the 2021/2022 ski season with five interconnected peaks offering an expansive variety of terrain for every skill level, including access to above tree line intermediate and expert terrain, and progressive and award-winning terrain parks.
- Vail Mountain Resort ("Vail Mountain") - the second most visited mountain resort in the U.S. for the 2021/2022 ski season. Vail Mountain offers some of the most expansive and varied terrain in North America with approximately 5,300 skiable acres including seven world renowned back bowls and the resort's rustic Blue Sky Basin.

- Park City Resort (“Park City”) - the third most visited mountain resort in the U.S. for the 2021/2022 ski season and the largest by acreage in the U.S. Park City offers 7,300 acres of skiable terrain for every type of skier and snowboarder and offers guests an outstanding ski experience with fine dining, ski school, retail and lodging.
- Keystone Resort (“Keystone”) - the fourth most visited mountain resort in the U.S. for the 2021/2022 ski season and home to the highly renowned A51 Terrain Park, as well as the largest area of night skiing in Colorado. Keystone also offers guests a unique skiing opportunity through guided snow cat ski tours accessing five bowls. Keystone is a premier destination for families with its “Kidtopia” program focused on providing activities for kids on and off the mountain.
- Beaver Creek Resort (“Beaver Creek”) - the tenth most visited mountain resort in the U.S. for the 2021/2022 ski season. Beaver Creek is a European-style resort with multiple villages and also includes a world renowned children’s ski school program focused on providing a first-class experience with unique amenities such as a dedicated children’s gondola.
- Crested Butte Mountain Resort (“Crested Butte”) - located in southwest Colorado and includes over 1,500 skiable acres and over 3,000 feet of vertical drop. Crested Butte is known for its historic town, iconic mountain peaks and legendary skiing and riding terrain.

Pacific Northwest (British Columbia, Canada)

- Whistler Blackcomb (“Whistler Blackcomb”) - located in the Coast Mountains of British Columbia, Canada, approximately 85 miles from the Vancouver International Airport, Whistler Blackcomb is the largest year-round mountain resort in North America, with two mountains connected by the PEAK 2 PEAK gondola, which combined offer over 200 marked runs, over 8,000 acres of terrain, 14 alpine bowls, three glaciers and one of the longest ski seasons in North America. In the summer Whistler Blackcomb offers a variety of activities, including hiking trails, a bike park and sightseeing. Whistler Blackcomb is a popular destination for international visitors and was home to the 2010 Winter Olympics.

Lake Tahoe Resorts

- Heavenly Mountain Resort (“Heavenly”) - located near the South Shore of Lake Tahoe with over 4,800 skiable acres, Heavenly straddles the border of California and Nevada and offers unique and spectacular views of Lake Tahoe. Heavenly offers great nightlife, including its proximity to several casinos.
- Northstar Resort (“Northstar”) - located near the North Shore of Lake Tahoe, Northstar is the premier luxury mountain resort destination near Lake Tahoe which offers premium lodging, a vibrant base area and over 3,000 skiable acres. Northstar’s village features high-end shops and restaurants, a conference center and a 9,000 square-foot skating rink.
- Kirkwood Mountain Resort (“Kirkwood”) - located about 35 miles southwest of South Lake Tahoe, offering a unique location atop the Sierra Crest, Kirkwood is recognized for offering some of the best high alpine advanced terrain in North America with 2,000 feet of vertical drop and over 2,300 acres of terrain.

Switzerland

- Andermatt-Sedrun - acquired by the Company on August 3, 2022, Andermatt-Sedrun is located approximately 70 miles from Zurich, Switzerland and approximately 200 miles from Geneva, Switzerland, in the Ursern Valley of the Swiss Alps. Andermatt-Sedrun offers nearly 75 miles of varied terrain and a top elevation of 9,800 feet across the mountains of Andermatt, Sedrun and Gemsstock, with connected access to Disentis, which is owned independently. The ski area spans over 10 miles of scenic high alpine terrain between Andermatt and Sedrun, including the iconic Oberalp Pass, and is connected by the Matterhorn Gotthard Bahn which operates year-round.

**Regional Ski Areas**

Our ski resort network allows us to connect guests with drive-to access and destination resort access on a single pass product. Building a presence near major metropolitan areas with large populations enables us to drive advance commitment pass product sales among a broad array of guests.



### Northeast

We own and operate eight regional ski areas in the Northeast that we believe provide a compelling regional and local connection to guests within driving distance from the New York, Boston and the greater New England markets. Stowe is the premier, high-end regional ski area in the Northeast offering outstanding skiing and an exceptional base area experience. Okemo and Mount Snow are compelling regional destinations serving guests in the New York metropolitan area and throughout New England. Hunter Mountain is a day-trip ski area primarily serving the New York metropolitan area. Additionally, we own four ski areas in New Hampshire serving guests throughout New England.

### Mid-Atlantic (Pennsylvania)

We own and operate eight ski areas in the Mid-Atlantic region serving guests in Philadelphia, Pittsburgh, Southern New Jersey, Baltimore and Washington D.C. Our presence in the region allows us to offer compelling local options and easy overnight weekend and holiday trips to our premium Northeast regional ski areas, which are within driving distance from these markets.

### Midwest

We own and operate ten ski areas in the Midwest that draw guests from Chicago, Detroit, Minneapolis, St. Louis, Indianapolis, Cleveland, Columbus, Kansas City and Louisville. Located within close proximity to major metropolitan markets, these ski areas provide beginners with easy access to beginner ski programs and offer night skiing for young adults and families. Additionally, the proximity of these ski areas allows for regular usage by avid skiers.

### Pacific Northwest (U.S.)

Stevens Pass Resort (“Stevens Pass”) - acquired in August 2018, Stevens Pass is located less than 85 miles from Seattle and sits on the crest of Washington State’s Cascade Range. Stevens Pass offers terrain for all levels across 1,125 acres of skiable terrain.

### Australia

Australia is an important market for both domestic skiing during the Australian winter and as a source of international visitation to the Northern Hemisphere in the Australian off-season, with typically over one million estimated Australian skier visits annually to North America, Europe and Japan. We own three of the five largest ski areas in Australia, which we serve with the Epic Australia Pass, an Australian dollar denominated pass product marketed specifically to Australian guests. Perisher, located in New South Wales, is the largest ski resort in Australia and targets guests in the Sydney metropolitan area and the broader New South Wales market, while Falls Creek and Mount Hotham are two of the largest ski areas in Victoria and target guests in the Melbourne metropolitan area and the broader Victoria market.

### Ski Industry/Competition

There are approximately 755 ski areas in North America with approximately 470 in the U.S., ranging from small ski area operations that service day skiers to large resorts that attract both day skiers and destination resort guests looking for a comprehensive vacation experience. During the 2021/2022 North American ski season, combined skier visits for all ski areas in North America were approximately 80.6 million. Our North American Resorts had approximately 16.2 million skier visits during the 2021/2022 ski season, representing approximately 20.1% of North American skier visits.

There is limited opportunity for development of new destination ski resorts due to the limited private lands on which ski areas can be built, the difficulty in obtaining the appropriate governmental approvals to build on public lands and the significant capital needed to construct the necessary infrastructure. As such, there have been virtually no new destination ski resorts in North America for over 40 years, which has allowed and should continue to allow the best-positioned destination resorts to benefit from future industry growth. Our resorts compete with other major destination mountain resorts, including, among others, Aspen Snowmass, Copper Mountain, Mammoth, Deer Valley, Snowbird, Palisades Tahoe, Killington, Sierra at Tahoe, Steamboat, Jackson Hole and Winter Park, as well as other ski areas in Colorado, California, Nevada, Utah, the Pacific Northwest, the Northeast, the Southwest, British Columbia, Canada and Switzerland, and other destination ski areas worldwide as well as non-ski related vacation options and destinations. Additionally, our pass products compete with other multi-resort frequency and pass products in North America, including the IKON Pass, the Mountain Collective Pass and various regional and local pass products.

The ski industry statistics stated in this section have been derived primarily from data published by Colorado Ski Country USA, Canadian Ski Council, Kottke National End of Season Surveys as well as other industry publications.

## Our Competitive Strengths

We believe our premier resorts and business model differentiate our Company from the rest of the ski industry. We own and operate some of the most iconic, branded destination mountain resorts in geographically diverse and important ski destinations in Colorado, Utah, Lake Tahoe and the Pacific Northwest, including British Columbia, Canada. These resorts are complemented by regional ski areas in the Northeast, Pacific Northwest, Midwest and Mid-Atlantic regions, which are strategically positioned near key U.S. population centers, as well as three ski areas in Australia and one ski resort in Switzerland. Through our data-driven marketing analytics and personalized marketing capabilities, we target increased penetration of ski pass products, providing our guests with a strong value proposition in return for guests committing to ski at our resorts prior to, or very early into the ski season, which we believe attracts more guests to our resorts. We believe we invest in more capital improvements than our competitors and we create synergies by operating multiple resorts, which enhances our profitability by enabling customers to access our network of resorts with our pass products. Many of our destination mountain resorts located in the U.S. typically rank in the most visited ski resorts in the U.S. (five of the top ten for the 2021/2022 U.S. ski season), and most of our destination mountain resorts consistently rank in the top ranked ski resorts in North America according to industry surveys, which we attribute to our ability to provide a high-quality experience.

We believe the following factors contribute directly to each Resort's success:

### *Exceptional Mountain Experience*

- **World-Class Mountain Resorts and Integrated Base Resort Areas**

Our mountain resorts offer a multitude of skiing and snowboarding experiences for the beginner, intermediate, advanced and expert levels. Each mountain resort is fully integrated into expansive resort base areas offering a broad array of lodging, dining, retail, nightlife and other amenities, some of which we own or manage, to our guests.

- **Snow Conditions**

Our Resorts in the Rocky Mountain region of Colorado and Utah, the Sierra Nevada Mountains in Lake Tahoe and the Coast Mountains in British Columbia, Canada receive average annual snowfall between 18 and 35 feet. Even in these areas which receive abundant snowfall, we have invested in significant snowmaking systems that help provide a more consistent experience, especially in the early season. We have made significant recent investments in our snowmaking systems in Colorado that transformed the early-season terrain experience at Vail, Keystone and Beaver Creek. Our other ski areas receive less snowfall than our western North American mountain resorts, but we have invested in snowmaking operations at these resorts in order to provide a consistent experience for our guests. Additionally, we provide several hundred acres of groomed terrain at each of our mountain resorts with extensive fleets of snow grooming equipment.

- **Lift Service**

We systematically upgrade our lifts and put in new lifts to increase uphill capacity and streamline skier traffic to maximize the guest experience. Discretionary expenditures expected for calendar year 2022 include, among other projects, the installation of 18 new or replacement lifts across 12 of our resorts. Key lift upgrades include, among others:

- a new high-speed 10-person gondola at Whistler Blackcomb replacing the existing 6-person gondola;
- replacing Whistler Blackcomb's existing Big Red Express high-speed 4-person lift with a high-speed 6-person chair;
- a new high-speed 4-person chair in Vail's Sun Down Bowl;
- replacing the current 4-person chair in Vail's Game Creek Bowl with a new high-speed 6-person lift;
- replacing Breckenridge's current fixed-grip double Rip's Ride lift with a high-speed 4-person chair;
- a new high-speed 6-person chair replacing Northstar's Comstock 4-person chair; and
- replacing Heavenly's existing fixed-grip triple North Bowl lift with a high-speed 4-person chair.

In the past several years, we have installed or upgraded several high speed chairlifts and gondolas across our mountain resorts, including:

- the 250-acre lift-served terrain expansion in the McCoy Park area of Beaver Creek;
- a new four-person high speed lift to serve Peak 7 at Breckenridge;
- replacing the four-person Peru lift at Keystone with a six-person high speed chairlift;

- replacing the Peachtree lift at Crested Butte with a new three-person fixed-grip lift; and
- an upgrade of the four-person Quantum lift at Okemo with a six-person high speed chairlift, relocating the existing four-person Quantum lift to replace the Green Ridge three-person fixed-grip chairlift.
- upgrading the Daisy and Brooks fixed-grip lifts at Stevens Pass to four-person high-speed lifts;
- upgrading the Teocalli fixed-grip lift at Crested Butte to a four-person high-speed lift;
- installing a new four-person lift at Park City, Over and Out; and
- replacing the Leichardt T-bar lift at Perisher with a new four-person lift.

- **Terrain Parks**

We are committed to leading the industry in terrain park design, education and events for the growing segment of freestyle skiers and snowboarders. Each of our destination mountain resorts has multiple terrain parks that include progressively-challenging features. These park structures, coupled with freestyle ski school programs, promote systematic learning from basic to professional skills.

#### *Extraordinary Service and Amenities*

- **Commitment to the Guest Experience**

Our focus is to provide quality service at every touch point of the guest journey. Prior to arrival at our mountain resorts, guests can receive personal assistance through our full-service, central reservations group and through our comprehensive websites to book desired lodging accommodations, lift tickets and pass products, ski school lessons, equipment rentals, activities and other resort services. Upon arrival, our resort staff serve as ambassadors to engage guests, answer questions and create a customer-focused environment. We offer EpicMix, a mobile application that, through radio frequency technology or Global Positioning System, captures a guest's activity on the mountain (e.g. number of ski days, vertical feet skied and chairlift activity); provides current trail maps along with real-time trail and lift status; allows guests to access real and forecasted lift line wait times; and provides information regarding parking, dining, events and other on-mountain activities. We have also invested in lift ticket express fulfillment through mobile technology by allowing lift ticket purchasers that buy online to bypass the ticket window. Additionally, we are focused on improving the guest ski/snowboard rental experience by eliminating the need for a guest to wait in several lines with the application of a "pod" concept in several of our high-volume locations.

We also solicit guest feedback through a variety of surveys and results, which are used to ensure high levels of customer satisfaction, understand trends and develop future resort programs and amenities. We then utilize this guest feedback to help us focus our capital spending and operational efforts to the areas of the greatest need.

- **Season Pass & Epic Day Pass Products**

We offer a variety of pass products, primarily season pass and Epic Day Pass products, for all of our Resorts that are marketed towards both out-of-state and international ("Destination") guests as well as in-state and local ("Local") guests. These pass products are available for purchase prior to the start of the ski season, offering our guests a better value in exchange for their commitment to ski at our Resorts before the season begins. Our pass program drives strong customer loyalty and mitigates exposure to more weather sensitive guests, leading to greater revenue stability and allowing us to capture valuable guest data. Additionally, our pass product customers typically ski more days each season than those guests who do not buy pass products, which leads to additional ancillary spending. In addition, our pass products attract new guests to our Resorts. Our pass products generated approximately 61% of our total lift revenue for Fiscal 2022. Sales of pass products are a key component of our overall Mountain segment revenue and help create strong synergies among our Resorts. Our pass products range from providing access for a certain number of days to one or a combination of our Resorts to our Epic Pass, which provides unrestricted and unlimited access to all of our Resorts. The Epic Day Pass is a customizable one to seven day pass product purchased in advance of the season, for those skiers and riders who expect to ski a certain number of days during the season, and which is available in three tiers of resort offerings. All of our various pass product options can be found on our consumer website [www.snow.com](http://www.snow.com). Information on our websites does not constitute part of this document.

As part of our continued strategy to drive pass product sales and create a stronger connection between key skier markets and our iconic destination mountain resorts, we have continued to expand our portfolio of properties in recent years. In August 2022, we acquired Andermatt-Sedrun, located in Switzerland, marking our first strategic investment in, and opportunity to operate, a ski resort in Europe. In December 2021, we acquired Seven Springs Mountain Resort, Hidden Valley Resort and Laurel Mountain Ski Area in Pennsylvania (collectively, the “Seven Springs Resorts”), which added three regional ski areas strategically located near Pittsburgh, expanding our presence in the Mid-Atlantic region and generating incremental drive-to business from other major metropolitan areas such as Washington DC, Baltimore and Cleveland. In September 2019, we acquired Peak Resorts, Inc., which added 17 regional ski areas strategically located near key U.S. population centers in the Northeast, Mid-Atlantic and Midwest regions. Additionally, we enter into strategic long-term season pass alliance agreements with third-party mountain resorts, which for the 2022/2023 ski season include Telluride Ski Resort in Colorado, Hakuba Valley and Rusutsu Resort in Japan, Resorts of the Canadian Rockies in Canada, Les 3 Vallées in France, Verbier 4 Vallées in Switzerland, Skirama Dolomiti in Italy and Ski Arlberg in Austria, which further increase the value proposition of our pass products.

Pass product holders also receive additional value in exchange for their advance commitment through our Epic Mountain Rewards program, which provides pass product holders a discount of 20% off on-mountain food and beverage, lodging, group ski school lessons, equipment rentals and more at our North American owned and operated Resorts. Epic Mountain Rewards is available for everyone who purchases an Epic Pass, Epic Local Pass, Epic Day Pass, Epic Military Pass and most of our other pass products, regardless of whether guests plan to ski one day or every day of the season. Additionally, Epic Coverage is included with the purchase of all pass products for no additional charge and provides refunds in the event of certain resort closures and certain travel restrictions (e.g. for COVID-19), giving pass holders a refund for any portion of the season that is lost due to qualifying circumstances. Additionally, Epic Coverage provides a refund for qualifying personal circumstances including eligible injuries, job losses and many other personal events.

- Premier Ski Schools

Our mountain resorts are home to some of the highest quality and most widely recognized ski schools in the industry. Through a combination of outstanding training and abundant work opportunities, our ski schools have become home to many of the most experienced and credentialed professionals in the business. We complement our instructor staff with state-of-the-art facilities and extensive learning terrain, all with a keen attention to guest needs. We offer a wide variety of adult and child group and private lesson options with a goal of creating lifelong skiers and riders and showcasing to our guests all the terrain our resorts have to offer.

- Dining

Our Resorts provide a variety of quality on-mountain and base village dining venues, ranging from top-rated fine dining restaurants to trailside express food service outlets. For the 2021/2022 ski season, we operated approximately 260 dining venues at our Resorts, which were impacted by restrictions and limitations as a result of the impacts of COVID-19 and to ensure the safety of our guests and employees, including limited food options at quick-service restaurants, spacing of tables in seating areas to allow for physical distancing and maintaining as much outdoor seating as possible.

- Retail/Rental

We have approximately 340 retail/rental locations specializing in sporting goods including ski, snowboard and cycling equipment. Several of our rental locations offer delivery services, bringing ski and snowboard gear and expert advice directly to our guests. In addition to providing a major retail/rental presence at each of our Resorts, we also have retail/rental locations throughout the Colorado Front Range, the San Francisco Bay Area, Salt Lake City and Minneapolis. Many of our retail/rental locations near key population centers also offer prime venues for selling our pass products.

- **On-Mountain Activities**

We are a ski industry leader in providing comprehensive destination vacation experiences, including on-mountain activities designed to appeal to a broad range of interests. During a normal winter season, in addition to our exceptional ski experiences, guests can choose from a variety of non-ski related activities such as snowtubing, snowshoeing, scenic snow cat tours, backcountry expeditions, horse-drawn sleigh rides and high altitude dining, although some of these activities were restricted or limited for the most recent winter season to ensure the safety of our guests and employees as a result of COVID-19 and as a result of labor shortages. During a normal summer season, our mountain resorts offer non-ski related recreational activities and provide guests with a wide array of options including scenic chairlift and gondola rides, mountain biking, horseback riding, guided hiking, 4x4 Jeep tours and our Epic Discovery program at Vail Mountain, Heavenly and Breckenridge, although some of these activities were restricted or limited for both the 2021 and 2022 summer seasons to ensure the safety of our guests and employees as a result of COVID-19 and as a result of labor shortages. The Epic Discovery program encourages “learn through play” by featuring extensive environmental educational elements interspersed between numerous activities, consisting of zip lines, children’s activities, challenge ropes courses, tubing, mountain excursions, an alpine slide and alpine coasters.

- **Lodging and Real Estate**

High quality lodging options are an integral part of providing a complete resort experience. Our owned and managed hotels and resorts proximate to our mountain resorts, including six RockResorts branded properties and a significant inventory of managed condominium units, provide numerous accommodation options for our mountain resort guests. Our recent real estate efforts have primarily focused on the potential to expand our destination bed base and upgrade our resorts through the sale of land parcels to third-party developers, which in turn provides opportunity for the development of condominiums, luxury hotels, parking and commercial space for restaurants and retail shops. Our Lodging and Real Estate segments have and continue to invest in resort related assets and amenities or seek opportunities to expand and enhance the overall resort experience.

### **Lodging Segment**

Our Lodging segment includes owned and managed lodging properties, including those under our luxury hotel management company, RockResorts; managed condominium units which are in and around our mountain resorts in Colorado, Lake Tahoe, Utah, Vermont, New York, Pennsylvania and British Columbia, Canada; two NPS concessioner properties in and near Grand Teton National Park in Wyoming; a resort ground transportation company in Colorado; and company-owned and operated mountain resort golf courses, including five in Colorado; one in Vermont, one in Pennsylvania, one in Wyoming; one in Lake Tahoe, California; and one in Park City, Utah. For additional property details, see Item 2. “Properties”.

The Lodging segment currently includes approximately 5,900 owned and managed hotel rooms and condominium units. Our lodging strategy seeks to complement and enhance our mountain resort operations through our ownership or management of lodging properties and condominiums proximate to our mountain resorts and selective management of luxury resorts in premier destination locations.

In addition to our portfolio of owned and managed luxury resort hotels and other hotels and properties, our lodging business also features a Colorado ground transportation company, which represents the first point of contact with many of our guests when they arrive by air to Colorado. We offer year-round ground transportation from Denver International Airport and Eagle County Airport to the Vail Valley (locations in and around Vail, Beaver Creek, Avon and Edwards) and Summit County (which includes Keystone, Breckenridge, Copper Mountain, Frisco and Silverthorne).

### Lodging Industry/Market

Hotels are categorized by Smith Travel Research, a leading lodging industry research firm, as luxury, upper upscale, upscale, mid-price and economy. The service quality and level of accommodations of our RockResorts’ hotels place them in the luxury segment, which represents hotels achieving the highest average daily rates (“ADR”) in the industry, and includes such brands as the Four Seasons, Ritz-Carlton and Marriott’s Luxury Collection hotels. Our other hotels are categorized in the upper upscale and upscale segments of the hotel market. The luxury and upper upscale segments consist of approximately 797,000 rooms at approximately 2,500 properties in the U.S. as of July 31, 2022. For Fiscal 2022, our owned hotels, which include a combination of certain RockResort hotels as well as other hotels in proximity to our Resorts, had an overall ADR of \$309.78, a paid occupancy rate of 55.1% and revenue per available room (“RevPAR”) of \$170.84, as compared to the upper upscale segment’s ADR of \$201.53, a paid occupancy rate of 59.3% and RevPAR of \$119.47. We believe that this comparison to the upper upscale segment is appropriate as our mix of owned hotels include those in the luxury and upper upscale segments, as well as

some of our hotels that fall in the upscale segment. The highly seasonal nature of our lodging properties typically results in lower average occupancy as compared to the upper upscale segment of the lodging industry as a whole.

### Competition

Competition in the hotel industry is generally based on quality and consistency of rooms, restaurants, meeting facilities and services, the attractiveness of locations, availability of a global distribution system and price. Our properties compete within their geographic markets with hotels and resorts that include locally-owned independent hotels, as well as facilities owned or managed by national and international chains, including such brands as Four Seasons, Hilton, Hyatt, Marriott, Ritz-Carlton and Westin. Our properties also compete for convention and conference business across the national market. We believe we are highly competitive in the resort hotel niche for the following reasons:

- all of our hotels are located in unique, highly desirable resort destinations;
- our hotel portfolio has achieved some of the most prestigious hotel designations in the world, including two properties in our portfolio that are currently rated as AAA 4-Diamond;
- many of our hotels (both owned and managed) are designed to provide a look that feels indigenous to their surroundings, enhancing the guest's vacation experience;
- each of our RockResorts hotels provides the same high level of quality and services, while still providing unique characteristics which distinguish the resorts from one another. This appeals to travelers looking for consistency in quality and service offerings together with an experience more unique than typically offered by larger luxury hotel chains;
- many of the hotels in our portfolio provide a wide array of amenities available to the guest such as access to world-class ski and golf resorts, spa and fitness facilities, water sports and a number of other outdoor activities, as well as highly acclaimed dining options;
- conference space with the latest technology is available at most of our hotels. In addition, guests at Keystone can use our company-owned Keystone Conference Center, the largest conference facility in the Colorado Rocky Mountain region with more than 100,000 square feet of meeting, exhibit and function space. The Seven Springs Resorts also provide conference services, offering over 77,000 square feet of meeting and function space;
- we have a central reservations system that leverages our mountain resort reservations system and has an online planning and booking platform, offering our guests a seamless and useful way to make reservations at our resorts; and
- we actively upgrade the quality of the accommodations and amenities available at our hotels through capital improvements. Capital funding for third-party owned properties is provided by the owners of those properties to maintain standards required by our management contracts.

### National Park Concessioner Properties

We own GTLC, which is based in the Jackson Hole area in Wyoming and operates within Grand Teton National Park under a concession agreement with the NPS with an initial term that would have expired on December 31, 2021. In June 2021, we agreed to an amendment to the agreement extending the term an additional two years, with an expiration date of December 31, 2023. We also own Flagg Ranch, located in Moran, Wyoming and centrally located between Yellowstone National Park and Grand Teton National Park on the John D. Rockefeller, Jr. Memorial Parkway (the "Parkway"). Flagg Ranch operates under a concession agreement with the NPS that expires October 31, 2028. GTLC also owns Jackson Hole Golf & Tennis Club ("JHG&TC"), located outside Grand Teton National Park near Jackson, Wyoming. GTLC's operations within Grand Teton National Park and JHG&TC have operating seasons that generally run from mid-May through the end of September.

We primarily compete with such companies as Aramark Parks & Resorts, Delaware North Companies Parks & Resorts, ExploreUS and Xanterra Parks & Resorts in retaining and obtaining NPS concession agreements. Four full-service concessioners provide accommodations within Grand Teton National Park, including GTLC. In a normal operating season, GTLC offers three lodging options within Grand Teton National Park: Jackson Lake Lodge, a full-service, 385-room resort with 17,000 square feet of conference facilities; Jenny Lake Lodge, a small, rustically elegant retreat with 37 cabins; and Colter Bay Village, a facility with 166 log cabins, 66 tent cabins, 337 campsites and a 112-space recreational vehicle park. We also operate two additional campgrounds separate from these facilities: the 304-site Gros Ventre Campground and 51-site Jenny Lake Campground. GTLC offers dining options as extensive as its lodging options, with cafeterias, casual eateries and fine dining establishments. Additionally we operate 11 retail outlets located throughout the GTLC properties. GTLC's resorts provide a wide range of activities for guests to enjoy, including cruises on Jackson Lake, boat rentals, horseback riding, guided fishing, float trips, golf and guided Grand Teton National Park tours, although due to low water levels, certain retail locations and activities are not operating for the 2022 summer season. As a result of the extensive amenities offered, as well as the

tremendous popularity of the National Park System, GTLC's accommodations within Grand Teton National Park generally operate near full capacity during their operating season.

### **Real Estate Segment**

We have extensive holdings of real property at our mountain resorts primarily throughout Summit and Eagle Counties in Colorado. Our real estate operations, through Vail Resorts Development Company ("VRDC"), a wholly-owned subsidiary, include planning, oversight, infrastructure improvement, development, marketing and sale of our real property holdings. In addition to the cash flow generated from real estate development sales, these development activities benefit our Mountain and Lodging segments by (1) creating additional resort lodging and other resort related facilities and venues (primarily restaurants, spas, commercial space, private mountain clubs, skier services facilities and parking structures) that provide us with the opportunity to create new sources of recurring revenue, enhance the guest experience and expand our destination bed base; (2) controlling the architectural themes of our resorts; and (3) expanding our property management and commercial leasing operations.

The principal activities of our Real Estate segment include the sale of land parcels to third-party developers and planning for future real estate development projects, including zoning and acquisition of applicable permits. We continue undertaking preliminary planning and design work on future projects and are pursuing opportunities with third-party developers rather than undertaking our own significant vertical development projects. We believe that, due to the low carrying cost of our real estate land investments, we are well situated to promote future projects with third-party developers while limiting our financial risk.

### **Marketing and Sales**

Our Mountain segment's marketing and sales efforts are focused on leveraging marketing analytics to drive targeted and personalized marketing to our existing and prospective guests. We capture guest data on the vast majority of guest transactions through sales of our pass products, our e-commerce platforms including mobile lift ticket sales, the EpicMix application and our lift ticket windows. We promote our Resorts using guest-centric omni-channel marketing campaigns leveraging email, direct mail, promotional programs, digital marketing (including social, search and display) and traditional media advertising where appropriate (e.g. targeted print, TV and radio). We also have marketing programs directed at attracting groups, corporate meetings and convention business. Most of our marketing efforts drive traffic to our websites, where we provide our guests with information regarding each of our Resorts, including services and amenities, reservations information, virtual tours and the opportunity to book/purchase our full suite of products (e.g. lift access, lodging, ski school, rentals, etc.) for their visits. We also enter into strategic alliances with companies to enhance the guest experience at our Resorts, as well as to create opportunities for cross-marketing.

For our Lodging segment, we promote our hotels and lodging properties through marketing and sales programs, which include marketing directly to many of our guests through our digital channels (search, social and display), promotional programs and print media advertising, all of which are designed to drive traffic to our websites and central reservations call center. We also promote comprehensive vacation experiences through various package offerings and promotions (combining lodging, lift tickets, ski school lessons, ski rental equipment, transportation and dining). In addition, our hotels have active sales forces to generate conference and group business. We market our resort properties in conjunction with our mountain resort marketing efforts where appropriate, given the strong synergies across the two businesses.

Across both the Mountain and Lodging segments, sales made through our websites and call center allow us to transact directly with our guests, which further expands our customer base and enables analytics to deliver an increasingly guest-centric marketing experience.

### **Seasonality**

Ski resort operations are highly seasonal in nature, with a typical ski season in North America generally beginning in mid-November and running through mid-April. In an effort to partially mitigate the concentration of our revenue in the winter months in North America, we offer several non-ski related activities in the summer months such as sightseeing, mountain biking, guided hiking, 4x4 Jeep tours, golf (primarily included in the operations of the Lodging segment) and our Epic Discovery program. These activities also help attract destination conference and group business to our Resorts in our off-season. In addition, the operating results of our Australian Resorts, for which the ski season generally occurs from June through early October, partially counterbalances the concentration of our revenues during this seasonally lower period in North America.

Our lodging business is also highly seasonal in nature, with peak seasons primarily in the winter months (with the exception of GTLC, Flagg Ranch, certain managed properties and mountain resort golf operations). We actively promote our extensive conference facilities and have added more off-season activities to help offset the seasonality of our lodging business. Additionally, we operate several golf courses proximate to our Resorts, as described above.

### **Sustainability & Social Responsibility**

Sustainability remains a core philosophy for us. As a company rooted in the great outdoors, we have a unique responsibility to protect and preserve the incredible environments in which we operate. Through our corporate sustainability and social responsibility program, EpicPromise, we focus on climate change mitigation, resource conservation and building stronger local communities through contributions to local non-profit organizations. Our sustainability efforts are diverse and touch nearly every area of our operations. In 2017, we launched Commitment to Zero, our pledge to have a zero net operating footprint by 2030. This commitment includes (i) achieving zero net emissions by finding operational energy efficiencies, investing in renewable energy and investing in offsets and other emissions reduction projects, (ii) zero waste to landfill and (iii) zero net operating impact to forests and habitat by restoring an acre of forest for every acre displaced by our operations.

As a result of this commitment, Vail Resorts was accepted as the first travel and tourism company into RE100, a collaborative initiative uniting more than 300 global and influential businesses committed to 100% renewable electricity. During Fiscal 2022, we continued to make progress toward our Commitment to Zero goals, despite operational adjustments made in response to COVID-19. Specifically, we focused on maintaining our robust composting and recycling diversion programs as much as possible. We furthered a pilot project to recycle snack wrappers at additional resorts and worked with strategic partners to create Adirondack chairs and a terrain park feature made from recycled wrappers and bottles for participating resorts. The 82-turbine Plum Creek Wind project we enabled came online in June 2020, and in Fiscal 2022 we purchased approximately 328,000 megawatt hours (MWh) of wind energy, addressing over 90% of the Company's current electricity use across its 37 North American destination mountain resorts and regional ski areas.

For over three years, Vail Resorts has worked with leaders from other ski companies to develop an industry-driven climate commitment. In June 2021 we, alongside Alterra Mountain Company, Boyne Resorts and POWDR, announced the Climate Collaborative Charter - the ski industry's first unified effort to combat climate change. This partnership leverages our leadership in sustainability and is expected to accelerate our collective progress, leading the industry toward long-term transformational change.

In addition, during Fiscal 2022, we sponsored the reforestation of 80 acres in Colorado and California previously impacted by wildfire, which addressed 100% of the forests impacted by our operations over the year. Through direct Epic Promise grants and contributions from our \$1 guest donation program, we partner with several local environmental organizations to fund restoration projects, including the National Forest Foundation, The Tahoe Fund, Grand Teton National Park Foundation, Mountain Trails Foundation in Park City and the EnviroFund at Whistler Blackcomb. We also encourage our employees to help protect the environment and support their local community by volunteering with various organizations.

For Fiscal 2022, our focus for the EpicPromise community impact grant program continued to be on COVID-19 response in our resort communities, including housing assistance, food security, equal access to education and other basic needs and services. In addition, we launched Epic for Everyone Youth Access in partnership with the Katz Amsterdam Foundation, hosting 917 urban youth to a 5-day snowsports program. We also continued our legacy access program with more than 7,400 youth participating in multi-day programs focused on mentorship, leadership and the impact of outdoor time on mental health in this unprecedented time. Finally, our EpicPromise Employee Foundation (the "Foundation"), which was established in 2015, is a charitable foundation funded by annual contributions from the Company, its employees and its guests. The Foundation supports Vail Resorts' employees and their families via grants for emergency relief and scholarships. Annually more than \$1 million in grants and scholarships are provided to help employees in times of need or to pursue educational opportunities. For more information on both the Foundation and our environmental stewardship, visit [www.EpicPromise.com](http://www.EpicPromise.com). Information on our websites does not constitute part of this document.

### **Human Capital Management**

At Vail Resorts, our Talent Philosophy focuses on fully achieving our mission and vision by ensuring we have the talent in place to deliver on our future growth plans. We are truly passionate about our people, and we are focused on hiring and developing the best talent and building the best teams around them. At fiscal year end, we employed approximately 6,900 year-round employees. Over the course of our Resorts' various winter and summer operating seasons in Fiscal 2022, we employed approximately 38,100 seasonal employees. In addition, we employed approximately 200 year-round employees and 100 seasonal employees on behalf of the owners of our managed hotel properties. We consider our employee relations to be positive.



During the third quarter of Fiscal 2022 we announced a significant increase in compensation for seasonal frontline staff. For the 2022/2023 North American ski season, we will be increasing our minimum wage to \$20 per hour, while maintaining career and leadership differentials to provide a significant increase in pay to all of our hourly employees. We also announced a substantial investment in our human resource department to support a return to full staffing and deliver a better employee experience. The increase in wages and the return to normal staffing levels is expected to result in an approximately \$175 million increase in expected labor expense in Fiscal 2023 compared to Fiscal 2022. Additionally, during the fourth quarter of Fiscal 2022, we announced a new mental health program available for all employees, even if they are not enrolled in an employer-sponsored healthcare plan, which includes free mental health therapy sessions. We have also recently established a Flexible Remote Work policy which allows employees to permanently work from any state in which we currently operate.

Our talent philosophy recognizes that people are our most important asset in driving our business growth, and outlines the role that leaders play in attracting, developing, engaging and rewarding high performing, high potential talent, including supporting them to achieve their future career growth. Our talent management system enables leaders with programs and tools to effectively assess, develop and reward talent and includes regular Leadership Talent Review and Assessment processes to ensure that the caliber and capability of our talent aligns with the sophistication of our business strategies and processes. Our executive team reviews talent strategy and succession planning frequently, including with our Board of Directors, to assess current and future talent needs. We have a strong track record of hiring, developing and preparing high performing, high potential talent for internal mobility and succession and since 2018, we have nearly doubled our percentage of high performing, high potential talent through performance management and talent upgrades. As a result, succession for our senior leadership roles, is primarily sourced through internal talent development and promotion, rather than external hires (69% internal fill rate). Over the past two years, we announced internal successors for some of the most senior roles in our Company, including Chief Executive Officer, Chief Marketing Officer, President of the Mountain Division and Chief Operating Officer of Hospitality and Retail. Nearly all of our recent appointments of General Manager and Chief Operating Officers of our Resorts for the past three years came from internal succession.

To ensure we are building high performing teams, we encourage every employee at every level within the Company to continuously grow their leadership by participating in on-going leadership events that build leadership capability and drive aligned leadership expectations to enable business outcomes. We host an annual Leadership Summit that brings together our leaders at manager level and above to build understanding and alignment to business priorities, explore emerging leadership topics and build connections across our growing global business and organization. We offer ongoing digital leadership series discussions led by our CEO for this same population throughout the year and equip leaders to share learnings and insights from these sessions in dialogue with their teams for the benefit of the entire organization. Our leadership philosophy has a very strong emphasis on emotional intelligence and a leader's ability to understand their own impact on others, and shape that impact to unlock the potential of their teams.

We offer a broad range of professionally designed leadership development programs, with differentiated development for our highest performing, highest potential employees who make up our long-term leadership succession pipeline. Building upon our culture of leadership development and in addition to the wage investment for seasonal, frontline talent announced in the third quarter of Fiscal 2022, we also announced a new focus on the frontline leadership development experience. For the 2022/2023 North American ski season, this includes relaunching our signature "Epic Service" training to inspire and equip frontline talent, who play the most important role in delivering a differentiated guest experience, to practice service-based leadership, which will be reinforced through a new daily in-resort frontline recognition program. The full Epic Service development platform will enable employees to choose curated learning experiences in the areas of Leadership – Self, Team, Guest Service and Business – that align with their specific motivations and career goals. Employee data will be used to build out a full portfolio of online and in-person learning programming to support these learning routes over time. Results impact will be measured by completion of required training, utilization and impact of the Epic Service recognition program and guest experience and Net Promoter scores.

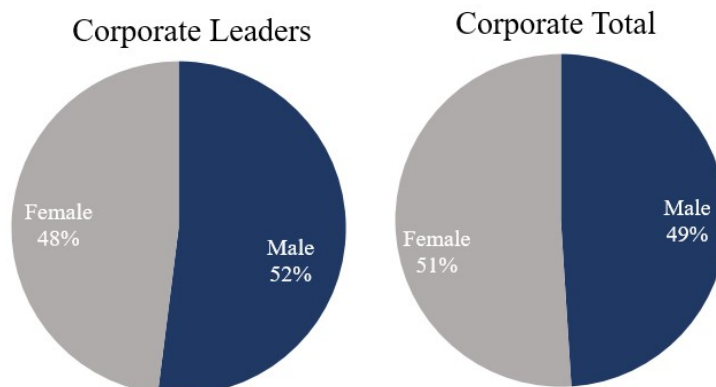
Early on in the COVID-19 pandemic, we implemented a continuous listening survey to measure and understand the impact of COVID-19 and our response actions on employees, in order to make timely adjustments to maintain strong alignment and focus, and to care for the needs of our employees through a challenging and uncertain period. We have broadened our continuous listening survey objectives and approach to focus on the drivers of sustainable engagement.

### Vail Resorts Culture

Core to our human capital management strategy is our mission – to create an *Experience of a Lifetime* for our employees so they can in turn create an *Experience of a Lifetime* for our guests. We have a values-based leadership culture that places a premium on leader transparency, vulnerability and authenticity. We look for people to join Vail Resorts who are brave, passionate and ambitious. As Vail Resorts employees, we hold ourselves accountable for living these seven foundational values every day in everything we do: Serve Others, Do Right, Do Good, Be Safe, Have Fun, Be Inclusive and Drive Value.

### Diversity, Equity and Inclusion

We believe that diversity, equity and inclusion (“DEI”) is core to both our company success and the future growth of our industry. At Vail Resorts, one of our core values is “Be Inclusive”, which means that we expect everyone at our Company to be welcoming to others, including all races, gender identities, sexual orientations, abilities and other differences.



We have a long history of building gender diversity throughout the Company. Women represent 48% of our corporate senior leaders at the director level and above and over 50% of our corporate roles generally. Ten resorts in our portfolio are led by women, including five of our seven largest resorts (Vail, Beaver Creek, Breckenridge, Park City and Crested Butte). Five of the ten directors on our Board are women and two of our nine executive committee members are women, and our Chief Executive Officer, Kirsten Lynch, is the only woman to head a Fortune 1000 company in travel and leisure. While women currently represent only approximately 20% of mountain operations senior leadership roles, we continue to strive to bring more gender diversity to these roles, which have historically been male-dominated. We have also developed Women in Leadership programs and a Women’s Employee Resources Group to foster an inclusive culture, and Forbes has previously named us one of America’s Best Employers for Women.

We are focused on improving racial diversity at Vail Resorts, as well as in our communities and our industry. To that end, we are working towards addressing barriers to attracting and retaining the best talent from BIPOC communities in order to fuel innovation and growth within our Company and industry. We are also incorporating more diverse representation in our marketing efforts, including more direct outreach to communities of color. Over the past two years, we have undertaken extensive efforts around DEI, including company-wide virtual webinars bringing forward diverse voices, DEI dialogues with external thought leaders, online DEI training modules aligned with our “Be Inclusive” value, and establishment of employee resource groups and affinity groups. As part of our commitment to driving sustainable change, we are listening and learning as a company, and the Company is part of CEO Action, Colorado Inclusive Economy and Civic Alliance. We are also focused on building support systems for a diverse employee population, including the development of Employee Resources Groups and Affinity Groups, including the recently launched Rainbow Room, an employee-founded and led affinity group focused on providing a supportive community for LGBTQ+ employees. This group provides a space for LGBTQ+ employees to connect, build community and support specific needs, challenges and successes to empower employees to bring their whole authentic selves to work.

We require our full-time, year-round employees, as well as certain seasonal employees, to complete annual training as part of our Code of Conduct. This annual requirement includes training on a variety of topics, including unconscious bias and anti-harassment. In Fiscal 2022, the training was completed by 98% of this employee base. Our Code of Conduct states that every employee is entitled to work in a respectful environment that is free of harassment, bullying and discrimination.

### Mountain Safety

The nature of our on-mountain operations comes with inherent safety risks, and the health and safety of our employees is a top priority. It is the shared responsibility of every employee to actively participate in creating a safe and secure environment and to minimize injuries. To that end, we routinely:

- Provide resources and education to promote safe operating environments at our resorts, including compliance with Occupational Safety and Health Administration standards, as well as to improve overall workplace safety and health.

This includes regular and ongoing safety training and assessments as well as safety audits, and all employees are required to take annual slope safety training.

- Proactively assess risks to identify and mitigate unsafe conditions and integrate learnings from incidents to prevent future occurrences across our network of resorts.
- Hire and train a dedicated health and safety team that oversees resort operations as well as highly trained ski patrol professionals at each resort.

#### COVID-19 Safety

The safety of our employees, guests and resort communities has been of utmost importance to us amidst the COVID-19 pandemic. Our mountain operations, retail, lodging and other employees need to be onsite to carry out their work, and as part of our commitment to safety for these employees, as well as our guests and resort communities, we took extensive steps during the 2021/2022 winter season. We continue to monitor guidance from federal and local health authorities in evaluating the need for continued COVID-19 safety protocols with regard to ongoing operations and as we prepare for the 2022/2023 North American ski season, including recently updating our policies to remove the COVID-19 vaccine as a condition of employment, consistent with the withdrawal of the Occupational Safety and Health Administration vaccination and testing emergency temporary standard for large employers.

#### Employee Housing

Providing affordable employee housing is a critical lever to achieve our hiring and retention goals. While identifying and securing affordable housing options is challenging in some of the communities in which we operate, providing frontline employees affordable housing in our resort communities is a critical aspect of the employee value proposition. For the 2022/2023 North American ski season, we will serve approximately 6,700 frontline team members with affordable housing across our Resorts, as well as an additional 1,300 team members at GTLC for the 2023 summer season. This includes the addition of nearly 500 beds recently acquired or leased, including the 441-bed project at the base of Canyons at Park City to provide affordable housing opportunities to our full time seasonal and year round workforce. We have also announced plans for new affordable housing at Whistler Blackcomb and Vail Mountain for the 2023/2024 North American ski season that we expect will serve an additional 405 team members upon completion, which are subject to regulatory approvals.

#### **Intellectual Property**

The development of intellectual property is part of our overall business strategy, and we regard our intellectual property as an important element of our success. Accordingly, we protect our intellectual property rights and seek to protect against its unauthorized use through international, national and state laws and common law rights. We file applications for and obtain trademark registrations and have filed for patents to protect inventions and will continue to do so where appropriate. We also seek to maintain our trade secrets and confidential information by nondisclosure policies and through the use of appropriate confidentiality agreements and contractual provisions.

In the highly competitive industry in which we operate, trademarks, service marks, trade names and logos are very important in the sales and marketing of our pass products, destination mountain resorts and regional ski areas, lodging properties and services. We seek to register and protect our trademarks, service marks, trade names and logos and have obtained a significant number of registrations for those trademarks. We believe our brands have become synonymous in the travel and leisure industry with a reputation for excellence in service and authentic hospitality. Among other national and international trademark registrations, the Company owns U.S. federal registrations for *Epic*<sup>®</sup>, *Epic Pass*<sup>®</sup>, *Vail Resorts*<sup>®</sup>, *Vail*<sup>®</sup>, *Beaver Creek*<sup>®</sup>, *Breckenridge*<sup>®</sup>, *Keystone*<sup>®</sup>, *Crested Butte & Design*<sup>®</sup>, *Kirkwood & Design*<sup>®</sup> and *Heavenly*<sup>®</sup>. The Company also owns Canadian and U.S. trademark registrations for the *Whistler Blackcomb & Design*<sup>®</sup> name and logo.

#### **Environmental Compliance and other Laws and Regulations**

Our operations are subject to federal, state and local laws and regulations governing the environment, including laws and regulations governing water and sewer discharges, water use, air emissions, soil and groundwater contamination, the maintenance of underground and aboveground storage tanks and the disposal of waste and hazardous materials. Examples of such laws and regulations in the U.S. include the National Environmental Policy Act (NEPA), the California Environmental Quality Act and the Vermont Land Use and Development Act. Internationally, we are subject to the Forest and Range Practices Act and Watershed Sustainability Act in British Columbia as well as the Environmental Planning and Assessment Act 1979 (NSW, Australia) and the Environment Protection Act 1970 and the Environment Protection and Biodiversity Conservation Act 1999 (Victoria, Australia). With the acquisition of Andermatt-Sedrun, the Company is required to comply with all Swiss regulations, including federal acts and ordinances, as well as Cantonal authorities.

Various federal, state, local and provincial regulations also govern our resort operations, including liquor licensing and food safety regulations applicable to our food and beverage operations and safety standards relating to our lift operations and heli-ski operations at Whistler Blackcomb. In addition, each resort is subject to and must comply with state, county, regional and local government land use regulations and restrictions, including, for example, employee housing ordinances, zoning and density restrictions, noise ordinances and wildlife, water and air quality regulations. We believe that we are in compliance, in all material respects, with environmental and other laws and regulations. Compliance with such provisions has not materially impacted our capital expenditures, earnings, or competitive position, and we do not anticipate that it will have a material impact in the future.

### **Contracts with Governmental Authorities for Resort Operations**

#### *U.S. Forest Service Resorts*

The operations of Breckenridge, Vail Mountain, Keystone, Crested Butte, Stevens Pass, Heavenly, Kirkwood, Mount Snow, Attitash and portions of Beaver Creek and Wildcat are conducted on land under the jurisdiction of the U.S. Forest Service (collectively, the “Forest Service Resorts”). The 1986 Ski Area Permit Act (the “1986 Act”) allows the Forest Service to grant Term Special Use Permits (each, a “SUP”) for the operation of ski areas and construction of related facilities on National Forest lands. In November 2011, the 1986 Act was amended by the Ski Area Recreational Opportunity Enhancement Act (the “Enhancement Act”) to clarify the Forest Service’s authority to approve facilities primarily for year-round recreation. Under the 1986 Act, the Forest Service has the authority to review and approve the location, design and construction of improvements in the permit area and many operational matters.

Each individual national forest is required by the National Forest Management Act to develop and maintain a Land and Resource Management Plan (a “Forest Plan”), which establishes standards and guidelines for the Forest Service to follow and consider in reviewing and approving our proposed actions.

Each of the Forest Service Resorts operates under a SUP, and the acreage and expiration date information for each SUP is as follows:

<b>Forest Service Resort</b>	<b>Acres</b>	<b>Expiration Date</b>
Breckenridge	5,702	December 31, 2029
Vail Mountain	12,353	December 1, 2031
Keystone	8,376	December 31, 2032
Beaver Creek	3,849	November 8, 2039
Heavenly	7,050	May 1, 2042
Mount Snow	894	April 4, 2047
Attitash	279	April 4, 2047
Wildcat	953	November 18, 2050
Kirkwood	2,330	March 1, 2052
Stevens Pass	2,443	August 31, 2058
Crested Butte	4,350	September 27, 2058

We anticipate requesting a new SUP for each Forest Service Resort prior to its expiration date as provided by Forest Service regulations and the terms of each existing SUP. We are not aware of the Forest Service refusing to issue a new SUP to replace an expiring SUP for a ski resort in operation at the time of expiration. The Forest Service can also terminate a SUP if it determines that termination is required in the public interest. However, to our knowledge, no SUP has ever been terminated by the Forest Service over the opposition of the permit holder.

Each SUP contains a number of requirements, including indemnifying the Forest Service from third-party claims arising out of our operation under the SUP and compliance with applicable laws, such as those relating to water quality and endangered or threatened species. For use of the land authorized by the SUPs, we pay a fee to the Forest Service ranging from 1.5% to 4.0% of adjusted gross revenue for activities authorized by the SUPs. Included in the calculation are sales from, among other things, lift tickets, pass products, ski school lessons, food and beverage, certain summer activities, equipment rentals and retail merchandise.

The SUPs may be revised or amended to accommodate changes initiated by us or by the Forest Service to change the permit area or permitted uses. The Forest Service may amend a SUP if it determines that such amendment is in the public interest. While the Forest Service is required to seek the permit holder's consent to any amendment, an amendment can be finalized over a permit holder's objection. Permit amendments must be consistent with the Forest Plan and are subject to the provisions of the National Environmental Policy Act ("NEPA"), both of which are discussed below.

The 1986 Act requires a Master Development Plan ("MDP") for each ski area that is granted a SUP, and all improvements that we propose to make on National Forest System lands under any of our SUPs must be included in a MDP, which describes the existing and proposed facilities, developments and area of activity within the permit area. The MDPs are reviewed by the Forest Service for compliance with the Forest Plan and other applicable laws and, if found to be compliant, are accepted by the Forest Service. Notwithstanding acceptance by the Forest Service of the conceptual MDPs, individual projects still require separate applications and compliance with NEPA and other applicable laws before the Forest Service will approve such projects. We update or amend our MDPs for our Forest Service Resorts from time to time.

#### *Whistler Blackcomb*

Whistler Blackcomb is comprised of two mountains: Whistler Mountain and Blackcomb Mountain. Whistler Mountain and Blackcomb Mountain are located on Crown Land within the traditional territory of the Squamish and Lil'wat Nations. The relationship between Whistler Blackcomb and Her Majesty, the Queen in Right of British Columbia (the "Province") is largely governed by Master Development Agreements (the "MDAs") between the Province and Whistler Mountain Resort Limited Partnership ("Whistler LP") with respect to Whistler Mountain, and between the Province and Blackcomb Skiing Enterprises Limited Partnership ("Blackcomb LP") with respect to Blackcomb Mountain. Together, Whistler LP and Blackcomb LP are referred to as the "Partnerships."

The MDAs, which were entered into in February 2017, have a term of 60 years (expiring on February 23, 2077) and are replaceable for an additional 60 years by option exercisable by the Partnerships after the first 30 years of the initial term. In accordance with the MDAs, the Partnerships are obligated to pay annual fees to the Province at a percentage of gross revenues related to the operation of certain activities at Whistler Blackcomb.

The MDAs require that each of the mountains be developed, operated and maintained in accordance with its respective master plan, which contains requirements as to matters such as trail design and development, passenger lift development and environmental concerns. The MDAs grant a general license to use the Whistler Mountain lands and the Blackcomb Mountain lands for the operation and development of Whistler Blackcomb. The MDAs also provide for the granting of specific tenures of land owned by the Province to the Whistler LP or the Blackcomb LP, as applicable, by way of rights-of-way, leases or licenses. Each Partnership is permitted to develop new improvements to Whistler Mountain or Blackcomb Mountain, as the case may be, within standard municipal type development control conditions. We are obligated to indemnify the Province from third-party claims arising out of our operations under the MDAs.

#### *Northeast Resorts*

Stowe and Okemo operate partially on land that we own and partially on land we lease from the State of Vermont. With respect to Stowe, the land we own is on the Spruce Peak side of the resort while the land we lease from the State of Vermont is located on Mt. Mansfield in the Mt. Mansfield State Forest. The initial ten year term of the lease commenced in June 1967, and the lease provides for eight separate ten year extension options. The current term of the lease extends through June 2027, and there are three remaining ten year extension options. With respect to Okemo, we own the Jackson Gore base area land and lease most of the skiable terrain from the State of Vermont. The initial ten year term of the lease commenced in December 1963, and the lease provides for eight separate ten year extension options. The current term of the lease extends through December 2023, and there are three remaining ten year extension options. Under both leases, the land can be used for the development and operation of a ski area including ski trails, ski lifts, warming shelters, restaurants and maintenance facilities. For use of the land under the leases, we pay a fee to the State of Vermont based on revenue for activities authorized by the lease, such as lift tickets, pass products, food and beverage, summer activities and retail merchandise. We are obligated to indemnify the State of Vermont from third-party claims arising out of our operations under the lease.

Mount Sunapee lies within the Mount Sunapee State Park and operates on land that we lease from the State of New Hampshire. The initial twenty year term of the lease commenced in July 1998, and the lease provides for three separate ten year extension options. The current term of the lease extends through June 2028, and there are two remaining ten year extension options. The land can be managed and operated as a ski area and summer recreational facility, including all of its support activities, to provide year-round outdoor recreation. For use of the land under the lease, we pay a fee to the State of New Hampshire that includes both a base fee and a fee based on revenue from activities authorized by the lease, such as lift tickets, pass products,

food and beverage, summer activities and retail merchandise. We are obligated to indemnify the State of New Hampshire from third-party claims arising out of our operations under the lease.

#### *Laurel Mountain*

Laurel Mountain Ski Area operates within Laurel Mountain State Park (“State Park”) under a Concession Lease Agreement (the “Lease Agreement”) with the Commonwealth of Pennsylvania, acting through the Department of Conservation and Natural Resources (“Department”). The Lease Agreement, first entered into on October 15, 2018, allows for ski operations on approximately 387 acres of the State Park, including the existing ski area, buildings and equipment owned by the Department. The Lease Agreement is automatically renewed for a total of 35 one-year terms through October 31, 2051. We pay a fixed annual rent, as well as an additional amount based on the number of skier visits, with a cap subject to semi-annual consumer price index adjustments.

#### *Australian Resorts*

Perisher is located in the Kosciuszko National Park, the largest national park in New South Wales, Australia. The resort includes four villages (Perisher Valley, Smiggin Holes, Guthega and Blue Cow) and their associated ski fields, as well as the site of the Skitube Alpine Railway at Bullock’s Flat, which is accredited in accordance with the Rail Safety National Law (NSW) No. 82a. The Office of Environment and Heritage (“OEH”), an agency of the New South Wales government, which is part of the Department of Planning and Environment, is responsible for the protection and conservation of the Kosciuszko National Park. The National Parks and Wildlife Act 1974 (NSW) (“NPW Act”) establishes the National Parks and Wildlife Service and is responsible for the control and management of the Kosciuszko National Park.

The NPW Act requires the Kosciuszko National Park to be managed in accordance with the principles specified in that legislation, including the provision for sustainable visitor or tourist use and enjoyment that is compatible with the conservation of the national park’s natural and cultural values. The legislation also authorizes the Minister for the Environment and the Minister for Heritage (the “Minister”) to grant leases and licenses of land within the Kosciuszko National Park for various purposes, including for purposes related to sustainable visitor or tourist use and enjoyment. Under this power, the Minister has granted to Perisher a lease and a license of specified land within the Kosciuszko National Park until June 30, 2048, with an option to renew for an additional period of 20 years. The Minister has also granted Perisher a lease of the parking lot at Perisher Valley that expires on December 31, 2025. Subject to certain conditions being met, the lease for the Perisher Valley parking lot can be extended until June 30, 2048, with an option to renew for a further 20 years. The lease and license provide for the payment of a minimum annual base rent with periodic increases in base rent over the term, turnover rent payments based on a percentage of certain gross revenue, remittance of park user fees and certain other charges, also subject to periodic increases over the term.

Falls Creek and Hotham are located in the Alpine National Park in Victoria, Australia. Falls Creek and Hotham both operate on Crown land permanently reserved under the *Crown Land (Reserves) Act 1978* (Vic), with the exception of three small parcels of freehold land within the Hotham resort area. Each resort is subject to the *Alpine Resorts (Management) Act 1997* (Vic) (the “ARM Act”), which is in place to manage the development, promotion, management and use of the resorts on a sustainable basis and in a manner that is compatible with the alpine environment. The ARM Act established the Alpine Resorts Commission to plan for the direction and sustainable growth of Victoria’s five alpine resorts (including Falls Creek and Hotham). This includes review and coordination of the implementation of an Alpine Resorts Strategic Plan to which Falls Creek and Hotham are subject.

The ARM Act also established each of the Falls Creek Resort Management Board and Hotham Resort Management Board (the “RMBs”), each of which is appointed by, and responsible to, the Minister for Energy, Environment and Climate Change (the “Minister”). The RMBs are responsible for the management and collection of fees for entrance into the Alpine National Park and from Falls Creek and Hotham ski resorts. The ARM Act authorizes the RMBs to grant leases subject to Ministerial approval, and under this power, the entities operating the Hotham and Falls Creek resorts have each been leased land within the Alpine National Park under various long-term leases with differing expiration dates. The main lease for the ski field at Falls Creek expires December 31, 2040, while the main lease for the ski field at Hotham expires December 31, 2057. The key ski field leases provide for the payment of rent with both a fixed and variable component, a community service charge payable to the ARCC and a ski patrol contribution payable to RMBs. At Hotham, we also lease land known as ‘Dinner Plain’ within the Alpine National Park which expires on June 30, 2031, with an option to extend for a further 10 years.

The *Alpine Resorts (Management) Regulations 2009* (Vic) gives the RMBs the power to declare the snow season, temporarily close the resort to entry if there is a significant danger to public safety, determine parts of a resort to which entry is prohibited, set aside areas of the resort for public use, parking, driving of vehicles, or landing of aircraft, and determine the areas for cross country ski trails, skiing, snowboarding and other snow play activities.

## *Andermatt-Sedrun*

Andermatt-Sedrun, acquired by the Company on August 3, 2022, is located in the Usern Valley of the Swiss Alps and comprises five mountains (Gemsstock, Nätschen, Sedrun/Oberalp, Realp and Valtgeva). Ski operations are conducted on land owned by ASA as freehold or leasehold properties, land owned by Usern Corporation, land owned by the municipality of Tujetsch and land owned by private property owners.

ASA holds three leasehold properties, which are owed by either Usern Corporation, a corporation under public law consisting of all the citizens of the Usern Valley, or the Swiss Confederation, namely the Federal Department of Defense, Civil Protection, and Sport (“DDPS”). For the land owned by Usern Corporation, ASA and Usern Corporation have entered into a main framework concession agreement, dated August 13, 2013, which sets forth the terms and conditions for the use of the land in connection with ski infrastructure facilities in the Gemsstock and Nätschen-Götsch-Oberalp areas (“Usern Framework Concession”). The Usern Framework Concession was entered into for a fixed term until December 31, 2032. An application for renewal of the Usern Framework Concession must be submitted at least 12 months prior to the expiration of the concession agreement, and we anticipate applying for the renewal. For the land owned by the Swiss Confederation, ASA has entered into leasehold agreements with the DDPS, which have a term of 50 years expiring on April 10, 2067 and March 13, 2068.

Another part of the land on which the Andermatt-Sedrun resort operations are conducted is owned by the municipality of Tujetsch. By means of a personal easement agreement dated October 12, 2012, ASA was granted various building rights and rights of way in order to build, operate and maintain the T-Bars and chairlifts on Tujetsch's property. The personal easement agreement was entered into for a fixed term until October 12, 2032, and we anticipate applying for renewal.

With respect to Swiss operations, companies who provide for regular and commercial passenger transportation by rail, road and water as well as by cable cars and elevators must obtain a passenger transport concession from the Federal Office of Transport (“FOT”). Under the Usern Framework Concession, ASA was granted the required concessions for all ski infrastructure facilities and the usage of the ski slopes on the property of the Usern Corporation. In the course of expanding the ski infrastructure facilities Userntal-Oberalp, the FOT granted ASA passenger transport concessions for a total of 12 cableway installations by means of a plan approval dated May 30, 2014. Each passenger transport concession has a separate expiration date between 2026 and 2042, and we will then be able to apply for an extension or new concession. Additionally, the plan approval included concessions and approvals for ancillary installations such as ski slopes, snowmaking systems, rolling carpets, railway station passenger subway and clearings.

## **Concession Agreements**

### *National Park Concessioner Properties*

GTLC operates three lodging properties, food and beverage services, retail, camping and other services within the Grand Teton National Park under a concession agreement with the NPS. Our concession agreement with the NPS for GTLC, which had an initial term expiration date of December 31, 2021, was amended in June 2021 to extend the term to December 31, 2023. We pay a fee to the NPS of a percentage of the majority of our sales occurring in Grand Teton National Park.

Flagg Ranch Company, a wholly-owned subsidiary, provides lodging, food and beverage services, retail, service station, recreation and other services on the Parkway located between Grand Teton National Park and Yellowstone National Park. Our concession contract with the NPS for the Parkway expires on October 31, 2028, and we pay a fee to the NPS of a percentage of the majority of our sales occurring in the Parkway.

Prior to expiration of these concession contracts, we will have the opportunity to bid against other prospective concessioners for award of a new contract. The NPS may suspend operations under the concession contract at any time if the NPS determines it is necessary to protect visitors or resources within the Grand Teton National Park or during a Federal Government shutdown. The NPS may also terminate the concession contract for breach, following notice and a 15 day cure period or if it believes termination is necessary to protect visitors or resources within the Grand Teton National Park.

## **Available Information**

We file with or furnish to the Securities and Exchange Commission (“SEC”) reports, including our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These reports, proxy statements and other information are available free of charge on our corporate website [www.vailresorts.com](http://www.vailresorts.com) as soon as reasonably practicable after they are electronically filed with or furnished to the SEC. Information on our websites does not constitute part of this document. Materials filed with or furnished to the SEC are also made available on its website at [www.sec.gov](http://www.sec.gov).

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

Our operations and financial results are subject to various risks and uncertainties that could adversely affect our financial position, results of operations and cash flows. The risks described below should carefully be considered together with the other information contained in this report.

### **Risks Related to Our Business**

**Our Epic Coverage program may require us to provide significant refunds to our pass product holders, which would result in reduced revenue and also exposes us to the risk of customer complaints and negative perception about our pass products.**

In April 2020, the Company introduced Epic Coverage, which is included with the purchase of all pass products for no additional charge. Epic Coverage offers refunds to pass product holders if certain qualifying personal or Resort closure events occur before or during the ski season, subject to express terms and conditions. Accordingly, to the extent that any of our Resorts need to be closed for all or specified portions of the ski season (including due to COVID-19), we could be required to provide a significant amount of refunds to our pass product holders, subject to express terms and conditions, which could have a material negative impact on our financial performance and condition.

The estimated amount of refunds reduce the amount of pass product revenue recognized by the Company. To estimate the amount of refunds under Epic Coverage, the Company considers (i) historical claims data for personal events, (ii) provincial, state, county and local COVID-19 regulations and public health orders and (iii) the Company's operating plans for its Resorts. The Company believes the estimates of refunds are reasonable; however, the program is relatively new and there continues to be uncertainty surrounding COVID-19, and therefore actual results could vary materially from such estimates, and the Company could be required to refund significantly higher amounts than estimated.

Epic Coverage has also resulted in customer complaints and negative perception by customers who believe they are entitled to a refund for events that do not qualify under the express terms and conditions of the program. Any complaints posted by customers on social media platforms, even if inaccurate, may harm our reputation, and may divert management's time and attention away from other business matters.

**We are subject to the risk of prolonged weakness in general economic conditions including adverse effects on the overall travel and leisure related industries.**

Skiing, travel and tourism are discretionary recreational activities that can entail a relatively high cost of participation and may be adversely affected by economic slowdown or recession. Economic conditions in North America, Europe and parts of the rest of the world, including inflationary pressures, supply chain disruption, geopolitical uncertainties, increased labor costs and shortages, increased fuel prices, high unemployment, erosion of consumer confidence, health pandemics (such as the ongoing impact of COVID-19), sovereign debt issues and financial instability in the global markets, among other factors, could have negative effects on the travel and leisure industry and on our results of operations. As a result of these and other economic uncertainties, we have experienced and may continue to experience in the future, a change in booking trends including where guest reservations are made much closer to the actual date of stay, a decrease in the length of stay, a decrease in consumer spending and/or a decrease in group bookings. We cannot predict what further impact these uncertainties may continue to have on overall travel and leisure or more specifically, on our guest visitation, guest spending or other related trends and the ultimate impact it will have on our results of operations. Additionally, the actual or perceived fear of weakness in the economy could also lead to decreased spending by our guests. This could be further exacerbated by the fact that we charge some of the highest prices for single day lift tickets and ancillary services in the ski industry; however, we offer pass products, including the Epic Day Pass, that are available at a discount to the single day lift ticket prices. In the event of a decrease in visitation and overall guest spending we may decide we need to offer a higher amount of discounts and incentives than we have historically, which would adversely impact our operating results. Our Resorts also serve as a destination for international guests. To the extent there are material changes in exchange rates relative to the U.S. dollar or travel restrictions in place due to inflation, geopolitical conflicts or COVID-19, it could impact the volume of international visitation, which could have a significant impact on our operating results.

**The ongoing COVID-19 pandemic has had, and may continue to have, a significant negative impact on the travel and leisure industry generally and, as a result, on our financial condition and operations.**

The COVID-19 pandemic has been and continues to be a complex and evolving situation and has resulted in significant disruption and additional risks to our business; the lodging, hospitality, resort and travel industries; and the global economy. We



expect the impact of the disruptions resulting from the impact of the COVID-19 pandemic, including the extent of their adverse impact on global economic activity, the volatility of financial markets, the travel and leisure industry, and our financial and operational results, will continue to be dictated by the length of time such disruptions continue. Although all our properties are currently open, we cannot predict whether future closures would be appropriate or could be mandated. Even once travel advisories and restrictions are modified or cease to be necessary, demand for travel and leisure may remain weak for a significant length of time and we cannot predict if or when our properties will return to pre-outbreak levels of visitation. In particular, future demand for travel and leisure may be negatively impacted by the adverse changes in the perceived or actual economic climate, including higher unemployment rates, declines in income levels and loss of personal wealth from the impact of the COVID-19 Pandemic

While our North American Resorts were operational throughout the 2021/2022 ski season, Whistler Blackcomb was disproportionately impacted by COVID-19 related travel restrictions, which created challenging results for international destination visitation to the resort. Additionally, the significant increase in COVID-19 cases associated with the Omicron variant during the second quarter Fiscal 2022 negatively impacted our operational results due to staffing challenges and lower overall skier visitation, consistent with the broader travel and leisure sector at that time. Our Australian Resorts were open for their 2022 winter season, however, there were public health orders in place until July 6, 2022 which required those arriving from outside of the country to undertake a PCR test upon arrival (and incur a negative test result to avoid a mandatory quarantine), which may have impacted early season visitation. We continue to monitor public health orders and regulations that affect or may affect our winter operations for the 2022/2023 North American ski season.

The COVID-19 pandemic has had, and may continue to have, a material adverse effect on our business, financial performance and condition, operating results, liquidity and cash flows. Given the uncertainty around the extent and timing of the potential future spread or mitigation of the COVID-19 pandemic and around the imposition or relaxation of protective measures, we cannot reasonably estimate the impact on our business, financial performance and condition, operating results, liquidity and cash flows. To the extent the COVID-19 pandemic adversely affects our business and financial results, it may also have the effect of heightening many of the other risks described in the Risk Factors presented in this Annual Report on Form 10-K, and our subsequent filings with the SEC. Any future outbreak of any other highly infectious or contagious disease could have a similar impact.

**We are vulnerable to unfavorable weather conditions and the impact of natural disasters.**

Our ability to attract guests to our Resorts is influenced by weather conditions and by the amount and timing of snowfall during the ski season. Unfavorable weather conditions can adversely affect skier visits and our revenue and profits. Unseasonably warm weather may result in inadequate natural snowfall and reduce skiable terrain, which increases the cost of snowmaking and could render snowmaking, wholly or partially, ineffective in maintaining quality skiing conditions, including in areas which are not accessible by snowmaking equipment. On the other hand, excessive natural snowfall may significantly increase the costs incurred to groom trails and may make it difficult for guests to access our mountain Resorts.

Additionally, there is scientific research that emissions of greenhouse gases continue to alter the composition of the global atmosphere in ways that are affecting and are expected to continue affecting the global climate. The effect of climate change, including any impact of global warming, could have a material adverse effect on our results of operations as a result of decreased snowfall, increased weather variability and/or warmer overall temperatures, which would likely adversely affect skier visits and our revenue and profits. For instance, revenues and profits generated from mountain summer activities/sightseeing and golf peak season operations are not nearly sufficient to off-set off-season losses from our other mountain and lodging operations. This impact could be exacerbated by climate change.

There can be no assurance that our Resorts will receive seasonal snowfalls near their historical averages. As an example of weather variability, during the 2017/2018 North American ski season, we experienced historically low snowfall across our western U.S. Resorts for the first half of the ski season, with snowfall in Vail, Beaver Creek and Park City through January 31, 2018 at the lowest levels recorded in over 30 years while Tahoe was more than 50% below the 20-year average. Conversely, during the 2018/2019 North American ski season, our western U.S. Resorts experienced above-average snowfall while through December 31, 2019 for the 2019/2020 North American ski season, our Pacific Northwest Resorts (Whistler Blackcomb and Stevens Pass) experienced the lowest snowfall in over 30 years. During the 2020/2021 North American ski season, snowfall levels were well below average at our Colorado, Utah and Tahoe Resorts through the holiday season. Past snowfall levels or consistency of snow conditions can impact sales of pass products or other advanced bookings. Additionally, the early season snow conditions and skier perceptions of early season snow conditions can influence the momentum and success of the overall ski season. Unfavorable weather conditions can adversely affect our Resorts and lodging properties as guests tend to delay or postpone vacations if conditions differ from those that are typical at such Resorts for a given season. Although we have created

geographic diversification to help mitigate the impact of weather variability, there is no way for us to predict future weather patterns or the impact that weather patterns may have on our results of operations or visitation.

A severe natural disaster, such as a forest fire, may interrupt our operations, damage our properties, reduce the number of guests who visit our Resorts in affected areas and negatively impact our revenue and profitability. Damage to our properties could take a long time to repair and there is no guarantee that we would have adequate insurance to cover the costs of repair and recoup lost profits. Furthermore, such a disaster may interrupt or impede access to our affected properties or require evacuations and may cause visits to our affected properties to decrease for an indefinite period. The ability to attract visitors to our Resorts is also influenced by the aesthetics and natural beauty of the outdoor environment where our Resorts are located. A severe forest fire or other severe impacts from naturally occurring events could negatively impact the natural beauty of our Resorts and have a long-term negative impact on our overall guest visitation as it would take several years for the environment to recover.

**Leisure travel is particularly susceptible to various factors outside of our control, including terrorism, the uncertainty of military and geopolitical conflicts, the cost and availability of travel options and changing consumer preferences or willingness to travel.**

Our business is sensitive to the willingness of our guests to travel. Pandemics, acts of terrorism, political events and developments in military and geopolitical conflicts in areas of the world from which we draw our guests could depress the public's propensity to travel and cause severe disruptions in both domestic and international air travel and consumer discretionary spending, which could reduce the number of visitors to our Resorts and have an adverse effect on our results of operations. Many of our guests travel by air and the impact of higher prices for commercial airline services, availability of air services and willingness of guests to travel by air could cause a decrease in visitation by Destination guests to our Resorts. A significant portion of our guests also travel by vehicle and higher gasoline prices or willingness of guests to travel generally due to safety or traffic concerns could cause a decrease in visitation by guests who would typically drive to our Resorts. Higher cost of travel may also affect the amount that guests are willing to spend at our Resorts and could negatively impact our revenue particularly for lodging, ski school, dining and retail/rental. The ongoing Russian invasion of Ukraine and its resulting impacts, including supply chain disruptions, increased fuel prices, international sanctions and other measures that have been imposed, as well as resulting economic volatility and uncertainty, have increased the cost of travel, which may adversely affect our business.

Additionally, our success depends on our ability to attract visitors to our Resorts. Changes in consumer tastes and preferences, particularly those affecting the popularity of skiing and snowboarding, and other social and demographic trends could adversely affect the number of skier visits during a ski season. A significant decline in skier visits compared to historical levels would have a material adverse effect on our business, prospects, financial condition, results of operations and cash flows.

**Cyberattacks or other interruptions to or disruption of our information technology systems and services could disrupt our business.**

Our business relies on the continuous operation of information technology systems and services. Despite our efforts, our information networks and systems are vulnerable to service interruptions or to security breaches from inadvertent or intentional actions by our employees or vendors, natural disasters, system or equipment malfunctions, power outages, computer viruses or intentional attacks by malicious third parties, which could persist undetected for an extended period of time. Any interruption to these systems and services could adversely impact our business, including lost revenue, customer claims, damage to reputation, litigation, and/or denial or interruption to our processing of transactions and/or the services we provide to customers. We also provide information to third party service providers and rely on third party service providers for the provision of information technology services. There is a risk that the information held by third parties could be disclosed, otherwise compromised, or disrupted. We carry insurance for many of these adverse events, including cyber security insurance, but our insurance coverage may not always be sufficient to meet all of our liabilities.

There has been a rise in the number of sophisticated cyberattacks on network and information systems, including ransomware attacks that prevent the target from accessing its own data and/or systems until a ransom is paid. As a result, the risks associated with such an event continue to increase. We have experienced cybersecurity threats and incidents, none of which has been material to us to date. We have taken, and continue to take, steps to address these concerns by implementing security and internal controls. However, there can be no assurance that a system interruption, security breach or unauthorized access will not occur. Cyber threats and attacks are constantly evolving and becoming more sophisticated, which increases the difficulty and cost of detecting and defending against them. Cyber threats and attacks can have cascading impacts across networks, systems and operations. Any such interruption, breach or unauthorized access to our network or systems, or the networks or systems of our vendors, could adversely affect our business operations and result in the loss of critical or sensitive confidential information or intellectual property, as well as impact our ability to meet regulatory or compliance obligations, and could result in financial, legal, business and reputational harm to us. These events also could result in large expenditures to repair or replace the damaged properties, products, services, networks or information systems to protect them from similar events in the future.

**Failure to maintain the integrity and security of our internal, employee or guest data could result in damages to our reputation and subject us to costs, fines or lawsuits.**

Our business relies on the use of large volumes of data. We collect and retain guest data, including credit card numbers and other sensitive personal information, for various business purposes, such as processing transactions, marketing and other promotional purposes. We also maintain personal information about our employees. We could make faulty decisions if data is inaccurate or incomplete. Maintaining the integrity and security of data can be costly and is critical to our business, and our guests and employees have a high expectation that we will adequately protect their personal information. A significant theft, loss, loss of access to, or fraudulent use of customer, employee, or company data held by us or our service providers could adversely impact our reputation, and could result in significant remedial and other expenses, fines, and/or litigation.

**Our business is highly seasonal.**

Our mountain and lodging operations are highly seasonal in nature. Peak operating season for our North American Resorts is from late November to mid-April, and accordingly, revenue and profits from our mountain and most of our lodging operations are substantially lower and historically result in losses from late spring to late fall. Conversely, peak operating seasons for our Australian Resorts, GTLC and Flagg Ranch, mountain summer activities (including our Epic Discovery program), sightseeing and our golf courses generally occur from June to the end of September. Revenue and profits generated by our Australian Resorts, GTLC and Flagg Ranch, mountain summer activities/sightseeing and golf peak season operations are not nearly sufficient to fully offset our off-season losses from our other mountain and lodging operations. For Fiscal 2022, approximately 83% of total combined Mountain and Lodging segment net revenue (excluding Lodging segment revenue associated with reimbursement of payroll costs) was earned during our second and third fiscal quarters. This seasonality is partially mitigated by the sale of pass products (which for Fiscal 2022 accounted for approximately 61% of the total lift revenue) predominately occurring during the period prior to the start of the ski season as the cash from those sales is collected in advance and revenue is primarily recognized in the second and third fiscal quarters. In addition, the timing of major holidays and school breaks can impact vacation patterns and therefore visitation at our destination mountain Resorts and regional ski areas. If we were to experience an adverse event or realize a significant deterioration in our operating results during our peak periods (our fiscal second and third quarters) we would be unable to fully recover any significant declines due to the seasonality of our business (for example, the outbreak of the COVID-19 pandemic which has resulted in Resort closures). See “Risks Related to Our Business—The ongoing COVID-19 pandemic has had, and may continue to have, a significant negative impact on the travel and leisure industry generally and, as a result, on our financial condition and operations.” Operating results for any three-month period are not necessarily indicative of the results that may be achieved for any subsequent quarter or for a full fiscal year (see Notes to Consolidated Financial Statements).

**We face significant competition.**

The ski resort and lodging industries are highly competitive. There are approximately 755 ski areas in North America, including approximately 470 in the U.S. that serve local and destination guests, and these ski areas can be more or less impacted by weather conditions based on their location and snowmaking capabilities. The factors that we believe are important to customers include:

- proximity to population centers;
- availability and cost of transportation to ski areas;
- availability and quality of lodging options in resort areas;
- ease of travel to ski areas (including direct flights by major airlines);
- pricing of lift tickets and/or pass products;
- the magnitude, quality and price of related ancillary services (ski school, dining and retail/rental), amenities and lodging;
- snowmaking facilities;
- type and quality of skiing and snowboarding offered;
- duration of the ski season;
- weather conditions; and
- reputation.

There are many competing options for our guests, including other major resorts in Colorado, Utah, California, Nevada, the Pacific Northwest, Northeast, Southwest and British Columbia, Canada, Switzerland, and other major destination ski areas worldwide. Our guests can choose from any of these alternatives, as well as non-skiing vacation options and destinations around the world. In addition, other forms of leisure such as sporting events and participation in other competing indoor and outdoor recreational activities are available to potential guests.

RockResorts hotels, our other hotels and our property management business compete with numerous other hotel and property management companies that may have greater financial resources than we do and they may be able to adapt more quickly to changes in customer requirements or devote greater resources to promotion of their offerings than us.

**The high fixed cost structure of mountain resort operations can result in significantly lower margins if revenues decline.**

The cost structure of our mountain Resort operations has a significant fixed component with variable expenses including, but not limited to, land use permit or lease fees and other resort related fees; credit card fees; retail/rental cost of sales; labor; and resort, dining and ski school operations. Any material declines in the economy, elevated geopolitical uncertainties and/or significant changes in historical snowfall patterns, as well as other risk factors discussed herein, could adversely affect revenue. See “Risks Related to Our Business—The ongoing COVID-19 pandemic has had, and could continue to have, a significant negative impact on our financial condition and operations. Further, the spread of COVID-19 has caused severe disruptions in the U.S. and global economies and financial markets and could potentially create widespread business continuity issues of an as yet unknown magnitude and duration. Any future outbreak of any COVID-19 variant or other highly infectious or contagious disease could have a similar impact.” As such, our margins, profits and cash flows may be materially reduced due to declines in revenue given our relatively high fixed cost structure. In addition, inflation has accelerated in the U.S. and globally due in part to global supply chain issues, the Ukraine-Russia war, a rise in energy prices, and strong consumer demand, as economies continue to reopen from restrictions related to the COVID-19 pandemic. Increases in expenses as a result of this inflationary environment and other economic factors may adversely impact wages and other labor costs, energy, healthcare, insurance, transportation and fuel, cost of goods, property taxes, minimum lease payments and other expenses and operating costs included in our fixed cost structure, which may also reduce our margin, profits and cash flows.

**We may not be able to fund resort capital expenditures.**

We regularly expend capital to construct, maintain and renovate our mountain Resorts and properties in order to remain competitive, maintain the value and brand standards of our mountain Resorts and properties and comply with applicable laws and regulations. We cannot always predict where capital will need to be expended in a given fiscal year and capital expenditures can increase due to circumstances beyond our control. We currently anticipate that we will spend approximately \$323 million to \$333 million on capital projects in calendar year 2022.

Our ability to fund capital expenditures will depend on our ability to generate sufficient cash flow from operations and/or to borrow from third parties in the debt or equity markets. We cannot provide assurances that our operations will be able to generate sufficient cash flow to fund such capital expenditures, or that we will be able to obtain sufficient financing on adequate terms, or at all, especially considering rising interest rates. Our ability to generate cash flow and to obtain third-party financing will depend upon many factors, including:

- our future operating performance;
- general economic conditions, including interest rates, and economic conditions affecting the resort industry, the ski industry and the capital markets;
- competition; and
- legislative and regulatory matters affecting our operations and business;

Any inability to generate sufficient cash flows from operations or to obtain adequate third-party financing could cause us to delay or abandon certain projects and/or plans.

**A disruption in our water supply would impact our snowmaking capabilities and operations.**

Our operations are heavily dependent upon our access to adequate supplies of water for snowmaking and to otherwise conduct our operations. Our mountain Resorts are subject to federal, state, provincial and local laws and regulations relating to water rights. Changes in these laws and regulations may adversely affect our operations. In addition, a severe and prolonged drought may adversely affect our water supply and increase the cost of snowmaking. A significant change in law or policy, impact from climate change or any other interference with our access to adequate supplies of water to support our current operations or an expansion of our operations would have a material adverse effect on our business, prospects, financial position, results of operations and cash flows.

**We rely on various government permits and landlord approvals at our U.S. resorts.**

Our U.S. Resort operations require permits and approvals from certain federal, state and local authorities, including the Forest Service, U.S. Army Corps of Engineers, the States of Vermont, New Hampshire and Pennsylvania and the NPS. Virtually all of our ski trails and related activities, including our summer activities, at Vail Mountain, Breckenridge, Keystone, Crested Butte,

Stevens Pass, Heavenly, Kirkwood, Mount Snow, Wildcat, a majority of Beaver Creek and portions of Attitash are located on National Forest land. The Forest Service has granted us permits to use these lands, but maintains the right to review and approve many operational matters, as well as the location, design and construction of improvements in these areas. The expiration dates for our permits are set forth in the Business section of this Form 10-K under the heading "Contracts with Governmental Authorities for Resort Operations".

The Forest Service can terminate or amend these permits if, in its opinion, such termination is required in the public interest. A termination or amendment of any of our permits could have a materially adverse effect on our business and operations. In order to undertake improvements and new development, we must apply for permits and other approvals. These efforts, if unsuccessful, could impact our expansion efforts. Furthermore, Congress may materially increase the fees we pay to the Forest Service for use of these National Forest lands.

Stowe and Okemo are partially located on land we lease from the State of Vermont, Mount Sunapee is located on land we lease from the State of New Hampshire and Laurel Mountain is located on land we lease from the State of Pennsylvania. We are required to seek approval from such states for certain developments and improvements made to the resort. Certain other resorts are operated on land under long term leases with third parties. For example, operations at our Northstar, Park City and Mad River Mountain Resorts are conducted pursuant to long-term leases with third parties who require us to operate the Resorts in accordance with the terms of the leases and seek certain approvals from the respective landlords for improvements made to the Resorts. The initial lease term for Northstar with affiliates of EPR Properties expires in January 2027 and allows for three 10-year renewal options. We entered into a transaction agreement, master lease agreement and ancillary transaction documents with affiliate companies of Talisker Corporation ("Talisker"), and the initial lease term for our Park City resort with Talisker expires in May 2063 with six 50-year renewal options. Additionally, GTLC and Flagg Ranch operate under concession agreements with the NPS that expire on December 31, 2023 and October 31, 2028, respectively. There is no guarantee that at the end of the lease/license or agreements under which we operate our Resorts we will renew or, if desired, be able to negotiate new terms that are favorable to us. Additionally, our Resorts that operate on privately-owned land are subject to local land use regulation and oversight by county and/or town governments, and we may not be able to obtain the requisite approvals needed for resort improvements or expansions. Failure to comply with the provisions, obligations and terms (including renewal requirements and deadlines) of our material permits and leases could adversely impact our operating results.

**We rely on foreign government leases and landlord approvals, and are subject to certain related laws and regulations, at our international resorts.**

Our international Resort operations require permits and approvals from certain foreign authorities, including the (i) Province of British Columbia, (ii) the New South Wales and Victoria, Australia governments and (iii) the DDPS, the municipality of Tujetsch and the FOT in Switzerland. Our operations at Whistler Blackcomb are located on Crown Land within the traditional territory of the Squamish and Lil'wat Nations, and the operations and future development of both Whistler Mountain and Blackcomb Mountain are governed by Master Development Agreements, which expire on February 23, 2077. We have a lease and a license for Perisher within the Kosciuszko National Park which expires in June 2048, with an option to renew for an additional period of 20 years. Perisher relies on a suite of planning approvals (and existing use rights) granted under the Australian EPA Act to operate the resort. Strategic planning documents have been adopted to provide a framework for the assessment and approval of future development at the resort. Perisher also holds a number of environmental approvals to regulate its operations, including an environment protection license and a suite of dangerous goods licenses related to the storage of diesel, heating oil and propane in storage tanks across the resort. Each of Falls Creek and a majority of Hotham is located in the Alpine National Park in Victoria, Australia that is permanently reserved under the Crown Land Act and subject to the ARM Act. The ARM Act established the Falls Creek RMB and the Hotham RMB, which is responsible for the management and collection of fees from Falls Creek and Hotham, respectively, and the ARM Regulations give each of the Falls Creek RMB and the Hotham RMB certain discretion over the operations of Falls Creek and Hotham, respectively, including the authority to (i) declare the snow season, (ii) temporarily close the applicable resort if entry would be a significant danger to public safety and (iii) determine which portions of the applicable resort are open to the public and the activities that are permitted on those portions of such resort. Portions of our operations at Andermatt-Sedrun are located on land owned by (i) the DDPS and subject to two leasehold agreements with ASA, each with a term of 50 years expiring on April 10, 2067 and March 13, 2068; and (ii) the municipality of Tujetsch by means of a personal easement agreement which expires on October 12, 2032 with an option to apply for renewal. We also hold a passenger transport concessions from the FOT, for a total of 12 cableway installations by means of a plan approval dated May 3, 2014. Each passenger transport concession has a separate expiration date between 2026 and 2042, and we will then be able to apply for an extension or new concession. There is no guarantee that at the end of the initial lease/license or agreements under which we operate our Resorts we will renew or, if desired, be able to negotiate new terms that are favorable to us. Failure to comply with the provisions, obligations and terms (including renewal requirements and deadlines) of our material permits and leases could adversely impact our operating results.

**We are subject to extensive environmental and health and safety laws and regulations in the ordinary course of business.**

Our operations are subject to a variety of federal, state, local and foreign environmental laws and regulations including those relating to air emissions, discharges to water, storage, treatment and disposal of wastes and other liquids, land use, remediation of contaminated sites, protection of natural resources such as wetlands and sustainable visitor or tourist use and enjoyment. For example, future expansions of certain of our mountain facilities must comply with applicable forest plans approved under the National Forest Management Act, federal, state and foreign wildlife protection laws or local zoning requirements, and in Vermont, our operations must comply with Act 250, which regulates the impacts of development to, among other things, waterways, air, wildlife and earth resources, and any projects must be completed pursuant to a Master Plan. In addition, most projects to improve, upgrade or expand our ski areas are subject to environmental review under the NEPA, FRPA, Act 250, the CEQA, the Australian NPW Act, the Australian EPA Act or the Australian EP Act, as applicable. Our ski area improvement proposals may not be approved or may be approved with modifications that substantially increase the cost or decrease the desirability of implementing the project. From time to time our operations are subject to inspections by environmental regulators or other regulatory agencies. We are also subject to worker health and safety requirements as well as various state and local public health laws, rules, regulations and orders related to COVID-19, including vaccination, mask and social distancing requirements. We believe our operations are in substantial compliance with applicable material environmental, health and safety requirements. However, our efforts to comply do not eliminate the risk that we may be held liable, incur fines or be subject to claims for damages, and that the amount of any liability, fines, damages or remediation costs may be material for, among other things, the presence or release of regulated materials at, on or emanating from properties we now or formerly owned or operated, newly discovered environmental impacts or contamination at or from any of our properties, or changes in environmental laws and regulations or their enforcement.

**Changes in security and privacy laws and regulations could increase our operating costs, increase our exposure to fines and litigation, and adversely affect our ability to market our products, properties and services effectively.**

The information, security and privacy requirements imposed by applicable laws and governmental regulation and the payment card industry are increasingly demanding in the U.S. and other jurisdictions where we operate. Maintaining compliance with applicable security and privacy regulations may increase our operating costs or our exposure to potential fines and litigation in connection with the enforcement of such regulations, or otherwise impact our ability to market our products, properties and services to our guests. Any future changes or restrictions in U.S. or international privacy laws could also adversely affect our operations, including our ability to transfer guest data. Changes in U.S. or international law affecting marketing, solicitation or privacy, could adversely affect our marketing activities and force changes in our marketing strategy or increase the costs of marketing. If access to lists of potential customers from travel service providers or other companies with whom we have relationships was prohibited or otherwise restricted, our ability to develop new customers and introduce them to our products could be impaired.

**We rely on information technology to operate our businesses and maintain our competitiveness, and any failure to adapt to technological developments or industry trends could harm our business or competitive position.**

We depend on the use of sophisticated information technology and systems for central reservations, point of sale, marketing, customer relationship management and communication, procurement, maintaining the privacy of guest and employee data, administration and technologies we make available to our guests. We must continuously improve and upgrade our systems and infrastructure to offer enhanced products, services, features and functionality, while maintaining the reliability and integrity of our systems, network security and infrastructure. We may not be able to maintain our existing systems or replace or introduce new technologies and systems as quickly as we would like or in a cost-effective manner, which may keep us from achieving the desired results in a timely manner, to the extent anticipated, or at all. Also, we may be unable to devote adequate financial resources to new technologies and systems in the future. If any of these events occur, our business and financial performance could suffer.

**We may not be able to hire, train, reward and retain adequate team members and determine and maintain adequate staffing, including our seasonal workforce, which may impact labor costs and our ability to achieve our operating, growth and financial objectives.**

Our long-term growth and profitability depend partially on our ability to recruit and retain high-quality employees to work in and manage our Resorts. Adequate staffing and retention of qualified employees is a critical factor affecting our guests' experiences in our Resorts. In addition, our mountain and lodging operations are highly dependent on a large seasonal workforce. Maintaining adequate staffing is complicated and unpredictable due to the impacts of the COVID-19 pandemic and the constrained labor market. For example, in December 2021 and January 2022, daily exclusions of COVID-symptomatic employees reduced our total workforce and significantly increased volatility in our staffing levels, resulting in the temporary closure of some ski lifts and dining facilities at certain Resorts. The market for the most qualified talent continues to be highly

competitive and we must provide competitive wages, benefits and workplace conditions to attract and retain the most qualified employees, particularly during a time when we have seen significant wage inflation in the market for employees. In addition, in many communities, the supply of resort-area housing is constrained due to market conditions, making it difficult for our employees to obtain available, affordable housing. Further, zoning regulations, protracted approval processes and local anti-development sentiment can prevent or substantially delay new housing projects that we or other parties may pursue to meet the demand for new affordable housing stock.

Changes in immigration laws could also impact our workforce because we typically recruit and hire foreign nationals as part of our seasonal workforce. For example, due in part to certain federal vaccination requirements for foreign workers and embassy closures as a result of COVID-19, we were unable to hire the number of foreign workers we anticipated for the 2021/2022 season. A shortage of international workers, failure to adequately recruit and retain new domestic employees, higher than expected attrition levels, or increased wages all could affect our ability to open and operate parts of our Resorts, deliver guest service at traditional margins or achieve our labor cost objectives.

We are also subject to various federal, state and foreign laws governing matters such as minimum wage requirements, sick leave pay, overtime compensation and other working conditions, work authorization requirements, discrimination and family and medical leave. Cost of labor and labor-related benefits are primary components in the cost of our operations. Labor shortages, affordable employee housing shortages, increased employee turnover and health care mandates can increase our labor costs. We are subject to mandated minimum wage rates and also experience market-driven pressures to pay wages even higher than mandated minimum wages. This can result in increases not only to the wages of our minimum wage employees but also to the wages paid to employees at wage rates that are above the minimum wage. During Fiscal 2021, we implemented minimum wage increases across many of our Resorts, and in January 2022 we announced a new end of season bonus program of \$2 per hour for all hours worked by qualifying employees during the applicable time period. For the 2022/2023 North American ski season, we will be increasing our minimum wage to \$20 per hour and announced a substantial investment in our human resource department to support our effort to return to normal staffing levels. The increase in wages and a return to normal staffing is expected to result in an approximately \$175 million increase in expected labor expense in Fiscal 2023 compared to Fiscal 2022. From time to time, we have experienced non-union employees attempting to unionize. While only a very small portion of our employees are unionized at present, we may experience additional union activity in the future, which could lead to disruptions in our business, increases in our operating costs and/or constraints on our operating flexibility. These potential labor impacts could adversely impact our results of operations. For additional details, see “Business—Human Capital Management.”

**We have recently acquired the Seven Springs Resorts, which were not subject to rules and regulations promulgated under the Sarbanes-Oxley Act of 2002, as amended (“Sarbanes-Oxley”), and they may therefore lack the internal controls that would be required of a U.S. public company, which could ultimately affect our ability to ensure compliance with the requirements of Section 404 of Sarbanes-Oxley.**

We have recently acquired the Seven Springs Resorts, which were not previously subject to the rules and regulations promulgated under Sarbanes-Oxley and accordingly were not required to establish and maintain an internal control infrastructure meeting the standards promulgated under Sarbanes-Oxley. Our assessment of and conclusion on the effectiveness of our internal control over financial reporting as of July 31, 2022 did not include certain elements of the internal controls of the Seven Springs Resorts, which were acquired on December 31, 2021.

Although our management will continue to review and evaluate the effectiveness of our internal controls in light of this acquisition, we cannot provide any assurances that there will be no significant deficiencies or material weaknesses in our internal control over financial reporting. Any significant deficiencies or material weaknesses in the internal control structure of our acquired businesses may cause significant deficiencies or material weaknesses in our internal control over financial reporting, which could have a material adverse effect on our business and our ability to comply with Section 404 of Sarbanes-Oxley.

**Our business depends on the quality and reputation of our brands, and any deterioration in the quality or reputation of these brands, including as a result of misappropriation of our intellectual property or the risk of accidents occurring at our mountain resorts or competing mountain resorts, may reduce visitation and negatively impact our operations.**

A negative public image or other adverse events could affect the reputation of one or more of our mountain Resorts, other destination resorts, hotel properties and other businesses or more generally impact the reputation of our brands. Any resulting harm on our business may be immediate without affording us an opportunity for redress or correction. Our ability to attract and retain guests depends, in part, upon the external perceptions of the Company, the quality and safety of our Resorts, services and activities, including summer activities, and our corporate and management integrity. While we maintain and promote an on-

mountain safety program, there are inherent risks associated with our Resort activities. From time to time in the past, accidents and other injuries have occurred on Resort property. An accident or an injury at any of our Resorts or at resorts operated by competitors, particularly an accident or injury involving the safety of guests and employees that receives media attention, could negatively impact our brand or reputation, cause loss of consumer confidence in us, reduce visitation at our Resorts, and negatively impact our results of operations.

The considerable expansion in the use of social media over recent years has compounded the impact of negative publicity. Information posted on social media platforms at any time may be adverse to our interests or may be inaccurate, each of which may harm our reputation or business. If the reputation or perceived quality of our brands declines, our market share, reputation, business, financial condition or results of operations could be adversely impacted. Additionally, our intellectual property, including our trademarks, domain names and other proprietary rights, constitutes a significant part of our value. Any misappropriation, infringement or violation of our intellectual property rights could also diminish the value of our brands and their market acceptance, competitive advantages or goodwill, which could adversely affect our business.

#### **Our acquisitions might not be successful.**

In recent years, we have completed numerous acquisitions and may continue to acquire certain mountain resorts, hotel properties and other businesses complementary to our own, as well as developable land in proximity to our Resorts. Acquisitions are complex to evaluate, execute and integrate. We cannot ensure that we will be able to accurately evaluate or successfully integrate and manage acquired mountain resorts, properties and businesses and increase our profits from these operations. We continually evaluate potential acquisitions both domestically and internationally and intend to actively pursue acquisition opportunities, some of which could be significant. As a result, we face various risks from acquisitions, including our recent acquisitions of the Seven Springs Resorts and Andermatt-Sedrun, some of which include:

- our evaluation of the synergies and/or long-term benefits of an acquired business;
- our inability to integrate acquired businesses into our operations as planned;
- diversion of our management's attention;
- increased expenditures (including legal, accounting and due diligence expenses, higher administrative costs to support the acquired entities, information technology, personnel and other integration expenses);
- potential increased debt leverage;
- potential issuance of dilutive equity securities;
- litigation arising from acquisition activity;
- potential impairment of goodwill, intangible or tangible assets;
- additional risks with respect to current and potential international operations, including by unique laws, regulations and business practices of foreign jurisdictions; and
- unanticipated problems or liabilities.

In addition, we run the risk that any new acquisitions may fail to perform in accordance with expectations, and that estimates of the costs of improvements and integration for such properties may prove inaccurate.

#### **We are subject to additional risks with respect to our current and potential international operations and properties.**

As a result of the acquisitions of Whistler Blackcomb in Canada, Perisher, Hotham and Falls Creek in Australia, and Andermatt-Sedrun in Switzerland, and potential future international acquisitions, we have and may continue to increase our operations outside of the United States. We are accordingly subject to a number of risks relating to doing business internationally. We also intend to consider strategic growth opportunities for our portfolio globally through acquisitions in attractive international markets to service demonstrable demand where we believe the anticipated risk-adjusted returns are consistent with our investment objectives. Our international operations and properties and in particular our newly acquired European properties (following the Andermatt-Sedrun acquisition), could be affected by factors peculiar to the laws, regulations and business practices of those jurisdictions. These laws, regulations and business practices expose us to risks that are different than or in addition to those commonly found in the United States. Risks relating to our international operations and properties include:

- changing governmental rules and policies, including changes in land use and zoning laws;
- enactment of laws relating to international ownership and laws restricting the ability to remove profits earned from activities within a particular country to a person's or company's country of origin;
- changes in laws or policies governing foreign trade or investment and use of foreign operations or workers, and any negative sentiments towards multinational companies as a result of any such changes to laws, regulations or policies or due to trends such as political populism and economic nationalism;



- variations in currency exchange rates and the imposition of currency controls;
- adverse market conditions caused by terrorism, civil unrest, natural disasters, infectious disease and changes in international, national or local governmental or economic conditions;
- business disruptions arising from public health crises and outbreaks of communicable diseases, including the recent coronavirus outbreak;
- the willingness of U.S. or international lenders to make loans in certain countries and changes in the availability, cost and terms of secured and unsecured debt resulting from varying governmental economic policies;
- the imposition of unique tax structures and changes in tax rates and other operating expenses in particular countries, including the potential imposition of adverse or confiscatory taxes;
- the potential imposition of restrictions on currency conversions or the transfer of funds;
- general political and economic instability;
- compliance with international laws and regulations (including anti-corruption regulations, such as the U.S. Foreign Corrupt Practices Act);
- data security, including requirements that local customer data be stored locally and not transferred to other jurisdictions; and
- our limited experience and expertise in foreign countries, particularly European countries, relative to our experience and expertise in the United States;

If any of the foregoing risks were to materialize, they could materially and adversely affect us.

**We may be adversely impacted by the effects of high or prolonged inflation.**

Inflation increases the cost of goods we purchase and services we buy, the cost of capital projects and wages and benefits for our workforce. Although we may take measures to mitigate the impact of inflation through pricing actions or cost reduction measures, if we are not able to offset inflationary costs, our results of operations will be negatively impacted and possibly in a material manner. As a result, the impact of high and prolonged inflation could have a material adverse effect on our business, financial condition, or results of operations. Inflationary pressures also increase the cost of living and cost of travel, which decreases consumers' disposable income and could impact our guests' discretionary spending habits or willingness to visit our Resorts, which could reduce customer demand for the products and services that we offer and negatively impact our revenues and operating cash flow.

**Exchange rate fluctuations could result in significant foreign currency gains and losses and affect our business results.**

We are exposed to currency translation risk because the local currency utilized in the operations of Whistler Blackcomb, Perisher, Hotham, Falls Creek and Andermatt-Sedrun are different than our functional currency, the U.S. dollar. As a result, changes in foreign exchange rates, in particular between the Canadian dollar, Australian dollar, Swiss franc and the U.S. dollar, affect the amounts we record for our foreign assets, liabilities, revenues and expenses, and could have a negative effect on our financial results. We currently do not enter into hedging arrangements to minimize the impact of foreign currency fluctuations. We expect that our exposure to foreign currency exchange rate fluctuations will increase as our international operations grow and if we acquire additional international resorts.

**We are subject to tax laws and regulations in multiple jurisdictions, and changes to those laws and regulations or interpretations thereof or adverse determinations by tax authorities may adversely affect us.**

We are subject to income and other taxes in the United States and in multiple foreign jurisdictions. Due to economic and political conditions, tax rates in various jurisdictions may be subject to significant change. Our effective tax rates could be affected by changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities, or changes in tax laws or their interpretation.

We are also subject to the examination of tax returns and other tax matters by the Internal Revenue Service ("IRS") and other tax authorities and governmental bodies. We regularly assess the likelihood of an adverse outcome resulting from these examinations to determine the adequacy of our provision for taxes. There can be no assurance as to the outcome of these examinations. If our effective tax rates were to increase or if the ultimate determination of our taxes owed is for an amount in excess of amounts previously accrued, our financial condition, operating results and cash flows could be adversely affected.

## Risks Relating to Ownership of our Common Stock

### **We cannot provide assurance that we will pay dividends, or if paid, that dividend payments will be consistent with historical levels.**

We have generally paid quarterly dividends since fiscal 2011, which are funded through cash flow from operations, available cash on hand and borrowings under our Credit Facilities. The declaration of dividends is subject to the discretion of our Board of Directors, and is limited by applicable state law concepts of available funds for distribution, as well as contractual restrictions. As a result, the amount, if any, of the dividends to be paid in the future will depend upon a number of factors, including our available cash on hand, anticipated cash needs, overall financial condition, restrictions contained in our Eighth Amended and Restated Credit Agreement (the “Vail Holdings Credit Agreement”), any future contractual restrictions, future prospects for earnings and cash flows, as well as other factors considered relevant by our Board of Directors. In addition, our Board of Directors may also suspend the payment of dividends at any time if it deems such action to be in the best interests of the Company and its stockholders. For example, on April 1, 2020, in response to actions taken in response to COVID-19, we announced that our Board of Directors suspended our quarterly dividend for at least two quarters, which such suspension continued throughout Fiscal 2021. Additionally, during the period that we were subject to the Financial Covenants Temporary Waiver Period (See “Risks Relating to Ownership of our Common Stock—Restrictions imposed by the terms of our indebtedness may prevent or limit our future business plans.”), we were prohibited from paying any dividends or making share repurchases, unless (x) no default or potential default existed under the Vail Holdings Credit Agreement and (y) we had liquidity of at least \$300.0 million, and the aggregate amount of dividends paid and share repurchases made by us during the Financial Covenants Temporary Waiver Period could not exceed \$38.2 million in any fiscal quarter. If we do not pay dividends, the price of our common stock must appreciate for investors to realize a gain on their investment in Vail Resorts, Inc. This appreciation may not occur and our stock may in fact depreciate in value. On September 22, 2022, our Board of Directors approved a cash dividend of \$1.91 per share payable on October 24, 2022 to stockholders of record as of October 5, 2022.

### **Our indebtedness could adversely affect our financial condition and our ability to operate our business, to react to changes in the economy or our industry, to fulfill our obligations under our various notes, to pay our other debts, and could divert our cash flow from operations for debt payments.**

We have a substantial amount of debt, which requires significant interest and principal payments. As of July 31, 2022, we had \$2.8 billion in total indebtedness outstanding. This amount includes (i) \$575.0 million in aggregate principal amount of 0.0% convertible notes due 2026 (the “0.0% Convertible Notes”), (ii) \$600.0 million aggregate principal amount of our unsecured senior notes issued on May 4, 2020 (the “6.25% Notes”), (iii) \$1.1 billion of indebtedness pursuant to the term loan facility under the Vail Holdings Credit Agreement, (iv) \$11.7 million of indebtedness under our credit agreement at Whistler Blackcomb (the “Whistler Credit Agreement”), (v) \$357.6 million with respect to our obligation associated with the Canyons long-term lease and (vi) \$114.2 million with respect to the EPR Secured Notes under the master credit and security agreements and other related agreements with EPT Ski Properties, Inc. and its affiliates (“EPR”), as amended (collectively, the “EPR Agreements” and together with the Vail Holdings Credit Agreement and the Whistler Credit Agreement, the “Credit Agreements,” and such facilities, the “Credit Facilities”). Our borrowings under the Vail Holdings Credit Agreement are subject to interest rate changes substantially increasing our risk to changes in interest rates. Following the Fifth Amendment to the Vail Holdings Credit Agreement, dated as of August 31, 2022 (the “Fifth Amendment”), borrowings under the Vail Holdings Credit Agreement, including the term loan facility, bear interest annually at a rate of SOFR, which replaced LIBOR as the reference interest rate under the Fifth Amendment, plus a spread of 0.1%, plus 1.25%. We also have, on a cumulative basis, minimum lease payment obligations under operating leases of approximately \$273.7 million as of July 31, 2022. Our level of indebtedness and minimum lease payment obligations could have important consequences. For example, it could:

- make it more difficult for us to satisfy our obligations under our outstanding debt;
- increase our vulnerability to general adverse economic and industry conditions;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, including the annual payments under the Canyons lease, thereby reducing the availability of our cash flow to fund working capital, capital expenditures, real estate developments, marketing efforts and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- place us at a competitive disadvantage compared to our competitors that have less debt;
- limit our ability to borrow additional funds, refinance debt, or obtain additional financing for working capital, capital expenditures, debt service requirements, acquisitions or other general corporate purposes;
- make it difficult for us to satisfy our obligations, including debt service requirements under our outstanding debt; and
- cause potential or existing customers to not contract with us due to concerns over our ability to meet our financial obligations, such as insuring against our professional liability risks, under such contracts.

Furthermore, our debt under our Credit Facilities bears interest at variable rates, which may be impacted by potential future changes in interest rates due to reference rate reform. We may be able to incur additional indebtedness in the future. The terms of our Credit Facilities, the 0.0% Convertible Notes and the 6.25% Notes do not fully prohibit us from doing so. If we incur additional debt, the related risks that we face could intensify.

**Restrictions imposed by the terms of our indebtedness may prevent us from capitalizing on business opportunities.**

The operating and financial restrictions and covenants in our Credit Facilities and the indenture governing the 6.25% Notes may adversely affect our ability to finance future operations or capital needs or to engage in other business activities and strategic initiatives that may be in our long-term best interests.

Our Credit Facilities impose significant operating and financial restrictions on us. These restrictions limit our ability and the ability of our subsidiaries to, among other things:

- incur or guarantee additional debt or issue capital stock;
- pay dividends and make other distributions on, or redeem or repurchase, capital stock;
- make certain investments;
- incur certain liens;
- enter into transactions with affiliates;
- merge or consolidate;
- enter into agreements that restrict the ability of subsidiaries to make dividends, distributions or other payments to us or the guarantors;
- designate restricted subsidiaries as unrestricted subsidiaries; and
- transfer or sell assets.

On December 18, 2020, we entered into an amendment to the Vail Holdings Credit Agreement, pursuant to which we were exempted from complying with certain financial maintenance covenants for the fiscal quarters ending through January 31, 2022 (unless we made a one-time irrevocable election to terminate such exemption period prior to such date) (such period, the “Financial Covenants Temporary Waiver Period”), and we were prohibited from undertaking certain activities during such period. On October 31, 2021, we exited the Financial Covenants Temporary Waiver Period. As a result, we were required to comply with the financial maintenance covenants in the Vail Holdings Credit Agreement starting with the fiscal quarter ended October 31, 2021, and we are no longer subject to the covenant modifications that were applicable during the Financial Covenants Temporary Waiver Period.

The indenture governing the 6.25% Notes contains a number of significant restrictions and covenants that limit our ability to:

- grant or permit liens;
- engage in sale/leaseback transactions; and
- engage in a consolidation or merger, or sell, transfer or otherwise dispose of all or substantially all of our assets.

In addition, the Whistler Credit Agreement contains restrictions on the ability of Whistler Mountain Resort Limited Partnership and Blackcomb Skiing Enterprises Limited Partnership (together “The WB Partnerships”) and their respective subsidiaries, and the EPR Agreements contain restrictions on the ability of Peak Resorts and its subsidiaries, to make dividends, distributions or other payments to us or the guarantors. We and our subsidiaries are subject to other covenants, representations and warranties in respect of our Credit Facilities, including financial covenants as defined in the Credit Agreements. Events beyond our control, including the impact of the ongoing COVID-19 pandemic, may affect our ability to comply with these covenants.

As a result of these restrictions, we will be limited as to how we conduct our business and we may be unable to raise additional debt or equity financing to compete effectively or to take advantage of new business opportunities. The terms of any future indebtedness we may incur could include more restrictive covenants. We may not be able to maintain compliance with our financial covenants in the future and, if we fail to do so, we may not be able to obtain waivers from the lenders and/or amend the covenants.

There can be no assurance that we will meet the financial covenants contained in our Credit Facilities, when in effect. If we breach any of these restrictions or covenants, or suffer a material adverse change which restricts our borrowing ability under our Credit Facilities, we would not be able to borrow funds thereunder without a waiver. Any inability to borrow could have an adverse effect on our business, financial condition and results of operations. In addition, a breach, if uncured, could cause a default under the applicable agreement(s) governing our indebtedness, in which case such we may be required to repay these borrowings before their due date. We may not have or be able to obtain sufficient funds to make these accelerated payments. If

we are forced to refinance these borrowings on less favorable terms or cannot refinance these borrowings, our results of operations and financial condition could be adversely affected.

**We may not continue to repurchase our common stock pursuant to our share repurchase program, and any such repurchases may not enhance long-term stockholder value. Share repurchases could also increase the volatility of the price of our common stock and could diminish our cash reserves.**

In March 2006, our Board of Directors approved a share repurchase program, authorizing the Company to repurchase up to 3,000,000 shares of common stock. In July 2008, the Board of Directors increased the authorization by an additional 3,000,000 shares, and in December 2015, the Board increased the authorization by an additional 1,500,000 shares for a total authorization to repurchase up to 7,500,000 shares. Since inception of its share repurchase program through July 31, 2022, the Company has repurchased 6,465,708 shares at a cost of approximately \$479.4 million. As of July 31, 2022, 1,034,292 shares remained available to repurchase under the existing share repurchase program which has no expiration date.

Although our Board of Directors has approved a share repurchase program, the share repurchase program does not obligate us to repurchase any specific dollar amount or to acquire any specific number of shares. The timing and amount of repurchases, if any, will depend upon several factors, including market and business conditions, our liquidity and capital resources, the trading price of our common stock and the nature of other investment opportunities. The repurchase program may be limited, suspended or discontinued at any time without prior notice. In addition, repurchases of our common stock pursuant to our share repurchase program could cause our stock price to be higher than it would be in the absence of such a program and could potentially reduce the market liquidity for our stock. Additionally, our share repurchase program could diminish our cash reserves, which may impact our ability to finance future growth and to pursue possible future strategic opportunities and acquisitions. Further, the U.S. has implemented a 1% excise tax on certain corporate share repurchases beginning in January 2023, which could adversely impact our share repurchases. There can be no assurance that any share repurchases will enhance stockholder value because the market price of our common stock may decline below levels at which we repurchased shares of stock. Although our share repurchase program is intended to enhance long-term stockholder value, there is no assurance that it will do so and short-term stock price fluctuations could reduce the program's effectiveness.

## **General Risk Factors**

### **We are subject to litigation in the ordinary course of business.**

We are, from time to time, subject to various asserted or unasserted legal proceedings and claims. Any such proceedings or claims, regardless of merit, could be time consuming and expensive to defend and could divert management's attention and resources. While we believe we have adequate insurance coverage and/or accrue for loss contingencies for all known matters that are probable and can be reasonably estimated, we cannot provide any assurance that the outcome of all current or future litigation proceedings and claims will not have a material adverse effect on us and our results of operations.

### **We are subject to complex and evolving accounting regulations and use certain estimates and judgments that may differ significantly from actual results.**

Implementation of existing and future legislation, rulings, standards and interpretations from the Financial Accounting Standards Board or other regulatory bodies could affect the presentation of our financial statements and related disclosures. Future regulatory requirements could significantly change our current accounting practices and disclosures. Such changes in the presentation of our financial statements and related disclosures could change an investor's interpretation or perception of our financial position and results of operations.

We use many methods, estimates and judgments in applying our accounting policies (see "Critical Accounting Policies" in Item 7 of this Form 10-K). Such methods, estimates and judgments are, by their nature, subject to substantial risks, uncertainties and assumptions, and factors may arise over time that lead us to change our methods, estimates and judgments. Changes in those methods, estimates and judgments could significantly affect our results of operations.

### **Anti-takeover provisions affecting us could prevent or delay a change of control that is beneficial to our stockholders.**

Provisions of our certificate of incorporation and bylaws, provisions of our debt instruments and other agreements and provisions of applicable Delaware law and applicable federal and state regulations may discourage, delay or prevent a merger or other change of control that holders of our securities may consider favorable. These provisions could:

- delay, defer or prevent a change in control of our Company;
- discourage bids for our securities at a premium over the market price;
- adversely affect the market price of, and the voting and other rights of the holders of our securities; or

- impede the ability of the holders of our securities to change our management.

For instance, provisions of the indentures governing our indebtedness stipulate that the Company must repurchase the senior notes at the option of their holders upon the event of a change in control of the Company. Further, a change of control would constitute an event of default under our credit agreements.

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

None.

**ITEM 2. PROPERTIES.**

The following table sets forth the principal properties that we own or lease for use in our operations:

Location	Ownership	Use
Afton Alps, MN	Owned	Ski resort operations, including ski lifts, ski trails, clubhouse, buildings, commercial space and other improvements
Alpine Valley Resort, OH	Owned	Ski resort operations, including ski lifts, ski trails, golf course, clubhouse, buildings, commercial space and other improvements
Arrowhead Mountain, CO	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, property management and commercial space
Attitash Mountain, NH (279 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
BC Housing RiverEdge, CO	26% Owned	Employee housing facilities
Bachelor Gulch Village, CO	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, property management and commercial space
Beaver Creek Resort, CO	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, property management, commercial space and real estate held for sale or development
Beaver Creek Mountain, CO (3,849 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
Beaver Creek Mountain Resort, CO	Owned	Golf course, clubhouse, commercial space and residential condominium units
Big Boulder Mountain, PA	Owned	Ski trails, ski lifts, buildings and other improvements
Boston Mills/Brandywine, OH	Owned	Ski trails, ski lifts, buildings and other improvements
Breckenridge Ski Resort, CO	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, property management, commercial space and real estate held for sale or development
Breckenridge Mountain, CO (5,702 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
Breckenridge Terrace, CO	50% Owned	Employee housing facilities
Broomfield, CO	Leased	Corporate offices
Colter Bay Village, WY	Concession contract	Lodging and dining facilities
Crested Butte Mountain Resort, CO	Owned	Buildings, other improvements and land used for operation of Crested Butte Mountain Resort
Crested Butte Mountain Resort, CO (4,350 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
Crotched Mountain, NH	Owned	Ski trails, ski lifts, buildings and other improvements
Eagle-Vail, CO	Owned	Warehouse facility
Edwards, CO	Leased	Administrative offices
Falls Creek Alpine Resort, Victoria, Australia (1,112 acres)	Leased	Ski resort operations, including ski lifts, ski trails, buildings and other improvements
Headwaters Lodge & Cabins at Flagg Ranch, WY	Concession contract	Lodging and dining facilities

Location	Ownership	Use
Heavenly Mountain Resort, CA & NV	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements and commercial space
Heavenly Mountain, CA & NV (7,050 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
Hidden Valley Resort, MO	Owned	Ski trails, ski lifts, buildings and other improvements
Hidden Valley Resort, PA	Owned	Ski trails, ski lifts, buildings and other improvements
Hotham Alpine Resort, Victoria, Australia (791 acres)	Leased	Ski resort operations, including ski lifts, ski trails, buildings and other improvements
Hunter Mountain, NY	Owned	Ski resort operations, including ski lifts, ski trails, golf course, clubhouse, buildings, commercial space and other improvements.
Jack Frost Ski Resort, PA	Owned	Ski trails, ski lifts, buildings and other improvements
Jackson Hole Golf & Tennis Club, WY	Owned	Golf course, clubhouse, tennis and dining facilities
Jackson Lake Lodge, WY	Concession contract	Lodging, dining and conference facilities
Jenny Lake Lodge, WY	Concession contract	Lodging and dining facilities
Keystone Conference Center, CO	Owned	Conference facility
Keystone Lodge, CO	Owned	Lodging, spa, dining and conference facilities
Keystone Resort, CO	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, commercial space, property management, dining and real estate held for sale or development
Keystone Mountain, CO (8,376 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
Keystone Ranch, CO	Owned	Golf course, clubhouse and dining facilities
Kirkwood Mountain Resort, CA	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, property management and commercial space
Kirkwood Mountain, CA (2,330 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
Laurel Mountain, PA	Leased	Ski trails, ski lifts, buildings and other improvements
Liberty Mountain Resort, PA	Owned	Ski resort operations, including ski lifts, ski trails, golf course, clubhouse, buildings and other improvements
Mad River Mountain, OH	Leased	Ski trails, ski lifts, buildings and other improvements
Mount Snow, VT (894 acres)	SUP	Ski resort operations, including ski lifts, ski trails, golf course, clubhouse, buildings, commercial space and other improvements.
Mount Sunapee Resort, NH (850 acres)	Leased	Ski resort operations, including ski lifts, ski trails, buildings and other improvements and commercial space
Mt. Brighton, MI	Owned	Ski resort operations, including ski lifts, ski trails, buildings, commercial space and other improvements
Mt. Mansfield, VT (1,400 acres)	Leased	Ski trails, ski lifts, buildings and other improvements used for operation of Stowe Mountain Resort
Northstar California Resort, CA (7,200 acres)	Leased	Ski trails, ski lifts, golf course, commercial space, dining facilities, buildings and other improvements
Northstar Village, CA	Leased	Commercial space, ski resort operations, dining facilities, buildings, property management and other improvements
Okemo Mountain Resort, VT	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, property management and commercial space
Okemo Mountain, VT (1,223 acres)	Leased	Ski resort operations, including ski lifts, ski trails, dining facilities, buildings and other improvements
Paoli Peaks, IN	Owned/Leased	Ski trails, ski lifts, buildings and other improvements
Park City Mountain, UT (8,900 acres)	Leased	Ski resort operations including ski lifts, ski trails, buildings, commercial space, dining facilities, property management, conference facilities and other improvements (including areas previously referred to as Canyons Resort, UT)

Location	Ownership	Use
Park City Mountain, UT (220 acres)	Owned	Ski trails, ski lifts, dining facilities, commercial space, buildings, real estate held for sale or development and other improvements
Perisher Ski Resort, NSW, Australia (3,335 acres)	Owned/Leased/Licensed	Ski trails, ski lifts, dining facilities, commercial space, railway, buildings, lodging, conference facilities and other improvements
Red Cliffs Lodge, CA	Leased	Dining facilities, ski resort operations, commercial space, administrative offices
Red Sky Ranch, CO	Owned	Golf courses, clubhouses, dining facilities and real estate held for sale or development
River Course at Keystone, CO	Owned	Golf course and clubhouse
Roundtop Mountain Resort, PA	Owned	Ski resort operations, including ski lifts, ski trails, buildings, commercial space and other improvements
Seven Springs Resort, PA	Owned	Ski trails, ski lifts, dining facilities, commercial space, lodging, property management, conference facilities and other improvements
Snow Creek, MO	Owned	Ski trails, ski lifts, buildings and other improvements
SSI Venture, LLC (“VRR”) Properties; CO, CA, NV, UT, MN & BC, Canada	Owned/Leased	Approximately 260 rental and retail stores (of which approximately 110 stores are currently held under lease) for recreational products and 7 leased warehouses
Ski Tip Lodge, CO	Owned	Lodging and dining facilities
Stevens Pass, WA	Owned	Employee housing and guest parking facilities
Stevens Pass Mountain, WA (2,443 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
Stevens Pass Ski Resort, WA	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements and commercial space
Stowe Mountain Resort, VT	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements and commercial space
The Arrabelle at Vail Square, CO	Owned	Lodging, spa, dining and conference facilities
The Lodge at Vail, CO	Owned	Lodging, spa, dining and conference facilities
The Osprey at Beaver Creek, CO	Owned	Lodging, dining and conference facilities
The Tarnes at Beaver Creek, CO	31% Owned	Employee housing facilities
Tenderfoot Housing, CO	50% Owned	Employee housing facilities
The Pines Lodge at Beaver Creek, CO	Owned	Lodging, dining and conference facilities
Vail Mountain, CO	Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, property management, commercial space and real estate held for sale or development
Vail Mountain, CO (12,353 acres)	SUP	Ski trails, ski lifts, buildings and other improvements
Whistler Blackcomb Resort, BC, Canada	75% Owned	Ski resort operations, including ski lifts, ski trails, buildings and other improvements, property management, commercial space and real estate held for sale or development
Whistler Mountain and Blackcomb Mountain, BC, Canada	MDA	Ski resort operations, including ski lifts, ski trails, buildings and other improvements
Whistler Blackcomb Resort, BC, Canada	Leased	Employee housing facilities
Whitetail Resort, PA	Owned	Ski resort operations, including ski lifts, ski trails, golf course, buildings, commercial space and other improvements
Wildcat Mountain, NH	SUP/Owned	Ski trails, ski lifts, buildings and other improvements
Wilmot Mountain, WI	Owned	Ski trails, ski lifts, buildings and other improvements

Many of our properties are used across all segments in complementary and interdependent ways.

**ITEM 3. LEGAL PROCEEDINGS.**

We are a party to various lawsuits arising in the ordinary course of business. We believe that we have adequate insurance coverage and/or have accrued for all loss contingencies for asserted and unasserted matters and that, although the ultimate outcome of such claims cannot be ascertained, current pending and threatened claims are not expected, individually or in the aggregate, to have a material adverse impact on our financial position, results of operations and cash flows.

**ITEM 4. MINE SAFETY DISCLOSURES.**

Not applicable.



## PART II

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

#### *Market and Stockholders*

Our common stock is traded on the New York Stock Exchange ("NYSE") under the symbol "MTN." As of September 26, 2022, 40,281,228 shares of common stock were outstanding, held by approximately 245 holders of record.

#### *Dividend Policy*

In fiscal 2011, our Board of Directors approved the commencement of a regular quarterly cash dividend on our common stock, subject to quarterly declaration, which has typically been increased on an annual basis. We announced on April 1, 2020 that we would be suspending the declaration of our quarterly dividend in response to the impacts of the COVID-19 pandemic. We did not pay any dividends during the year ended July 31, 2021 ("Fiscal 2021") and we resumed making dividend payments in October 2021. The amount, if any, of dividends to be paid in the future will depend on our available cash on hand, anticipated cash needs, overall financial condition, restrictions contained in our Vail Holdings Credit Agreement, future prospects for earnings and cash flows, as well as other factors considered relevant by our Board of Directors. On September 22, 2022, our Board of Directors approved a cash dividend of \$1.91 per share payable on October 24, 2022 to stockholders of record as of October 5, 2022. We expect to fund the dividend with available cash on hand.

#### *Repurchase of Equity Securities*

The following table sets forth our purchases of shares of our common stock during the fourth quarter of Fiscal 2022:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs (1)
May 1, 2022 - May 31, 2022	158,268	\$ 234.88	158,268	1,035,716
June 1, 2022 - June 30, 2022	1,424	\$ 228.86	1,424	1,034,292
July 1, 2022 - July 31, 2022	—	\$ —	—	1,034,292
Total	159,692	\$ 234.83	159,692	1,034,292

- (1) The share repurchase program is conducted under authorizations made from time to time by our Board of Directors. On March 9, 2006, the Company's Board of Directors approved a share repurchase program, authorizing the Company to repurchase up to 3,000,000 shares of common stock. On July 16, 2008, the Company's Board of Directors increased the authorization by an additional 3,000,000 shares, and on December 4, 2015, the Company's Board of Directors increased the authorization by an additional 1,500,000 shares for a total authorization to repurchase shares of up to 7,500,000 shares. From inception of this stock repurchase program through July 31, 2022, the Company has repurchased 6,465,708 shares at a cost of approximately \$479.4 million. As of July 31, 2022, 1,034,292 shares remained available to repurchase under the existing repurchase authorization. Repurchases under these authorizations may be made from time to time at prevailing prices as permitted by applicable laws, and subject to market conditions and other factors. The timing as well as the number of Vail Shares that may be repurchased under the program will depend on several factors, including our future financial performance, our available cash resources and competing uses for cash that may arise in the future, the restrictions in our Vail Holdings Credit Agreement, prevailing prices of Vail Shares and the number of Vail Shares that become available for sale at prices that we believe are attractive. These authorizations have no expiration date.

#### *Exchangeco Shares*

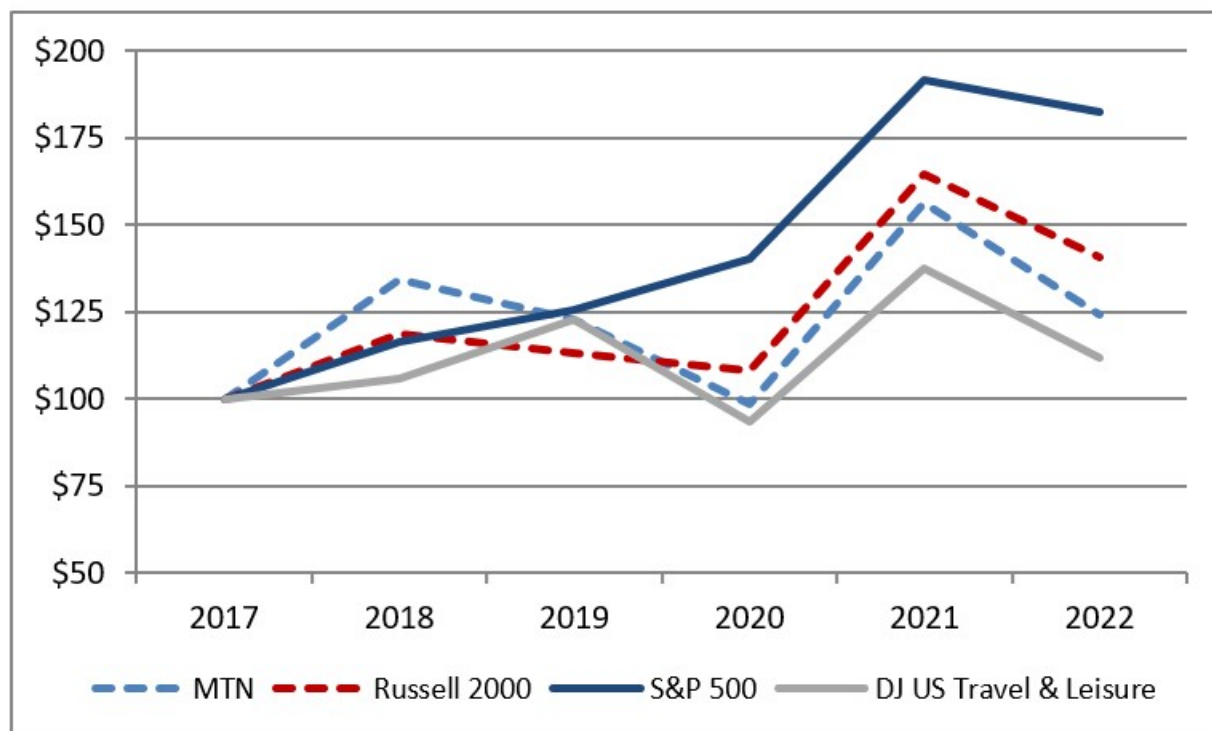
In connection with the Company's acquisition of Whistler Blackcomb in October 2016, the Company issued consideration in the form of shares of Vail Resorts common stock (the "Vail Shares"), redeemable preferred shares of the Company's wholly-owned Canadian subsidiary Whistler Blackcomb Holdings Inc. ("Exchangeco") or cash (or a combination thereof). Whistler Blackcomb shareholders elected to receive 3,327,719 Vail Shares and 418,095 redeemable preferred shares of Exchangeco (the "Exchangeco Shares"). The Exchangeco Shares could be redeemed for Vail Shares at any time until October 2023 or until the Company elects to convert any remaining Exchangeco Shares to Vail Shares, which we have the ability to do once total

Exchangeco Shares outstanding fall below 20,904 shares (or 5% of the total Exchangeco Shares originally issued). In July 2022, the number of outstanding Exchangeco Shares fell below such threshold and on August 25, 2022, the Company elected to redeem all outstanding Exchangeco Shares, effective September 26, 2022. As of the date of this Annual Report on Form 10-K, all Exchangeco Shares have been exchanged for Vail Shares. Both Vail Shares and Exchangeco Shares have a par value of \$0.01 per share, and Exchangeco Shares, while they were outstanding, were substantially the economic equivalent of the Vail Shares. The Company’s calculation of weighted-average shares outstanding includes the Exchangeco Shares.

**Performance Graph**

The total return graph below is presented for the period from the beginning of our fiscal year ended July 31, 2018 through the end of our fiscal year ended July 31, 2022 (“Fiscal 2022”). The comparison assumes that \$100 was invested at the beginning of the period in our common stock (“MTN”), The Russell 2000 Stock Index, The Standard & Poor’s 500 Stock Index and the Dow Jones U.S. Travel and Leisure Stock Index, with dividends reinvested where applicable. We include the Dow Jones U.S. Travel and Leisure Index as we believe we compete in the travel and leisure industry.

The performance graph is not deemed filed with the Securities and Exchange Commission (“SEC”) and is not to be incorporated by reference into any of our filings under the Securities Act of 1933 or the Exchange Act, unless such filings specifically incorporate the performance graph by reference therein.



	As of July 31,					
	2017	2018	2019	2020	2021	2022
Vail Resorts, Inc.	\$ 100.00	\$ 134.22	\$ 123.01	\$ 98.39	\$ 156.38	\$ 124.02
Russell 2000	\$ 100.00	\$ 118.73	\$ 113.44	\$ 108.21	\$ 164.41	\$ 140.84
Standard & Poor’s 500	\$ 100.00	\$ 116.23	\$ 125.50	\$ 140.48	\$ 191.66	\$ 182.73
Dow Jones U.S. Travel and Leisure	\$ 100.00	\$ 105.97	\$ 122.97	\$ 93.52	\$ 137.40	\$ 111.89

**ITEM 6. [Reserved]**

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

The following Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) should be read in conjunction with the Consolidated Financial Statements and notes related thereto included in this Form 10-K. To the extent that the following MD&A contains statements which are not of a historical nature, such statements are forward-looking statements which involve risks and uncertainties. These risks include, but are not limited to, those discussed in Item 1A. “Risk Factors” in this Form 10-K. The following discussion and analysis should be read in conjunction with the Forward-Looking Statements section and Item 1A. “Risk Factors” each included in this Form 10-K.

The MD&A includes discussion of financial performance within each of our three segments. We have chosen to specifically include segment Reported EBITDA (defined as segment net revenue less segment operating expense, plus or minus segment equity investment income or loss and for the Real Estate segment, plus gain or loss on sale of real property) in the following discussion because we consider this measurement to be a significant indication of our financial performance. We utilize segment Reported EBITDA in evaluating our performance and in allocating resources to our segments. Net Debt (defined as long-term debt, net plus long-term debt due within one year less cash and cash equivalents) is included in the following discussion because we consider this measurement to be a significant indication of our available capital resources. We also believe that Net Debt is an important measurement as it is an indicator of our ability to obtain additional capital resources for our future cash needs. Resort Reported EBITDA (defined as the combination of segment Reported EBITDA of our Mountain and Lodging segments), Total Reported EBITDA (which is Resort Reported EBITDA plus segment Reported EBITDA from our Real Estate segment) and Net Debt are not measures of financial performance or liquidity defined under accounting principles generally accepted in the United States (“GAAP”). Refer to the end of the Results of Operations section for a reconciliation of net income attributable to Vail Resorts, Inc. to Total Reported EBITDA and Resort Reported EBITDA, and long-term debt, net to Net Debt.

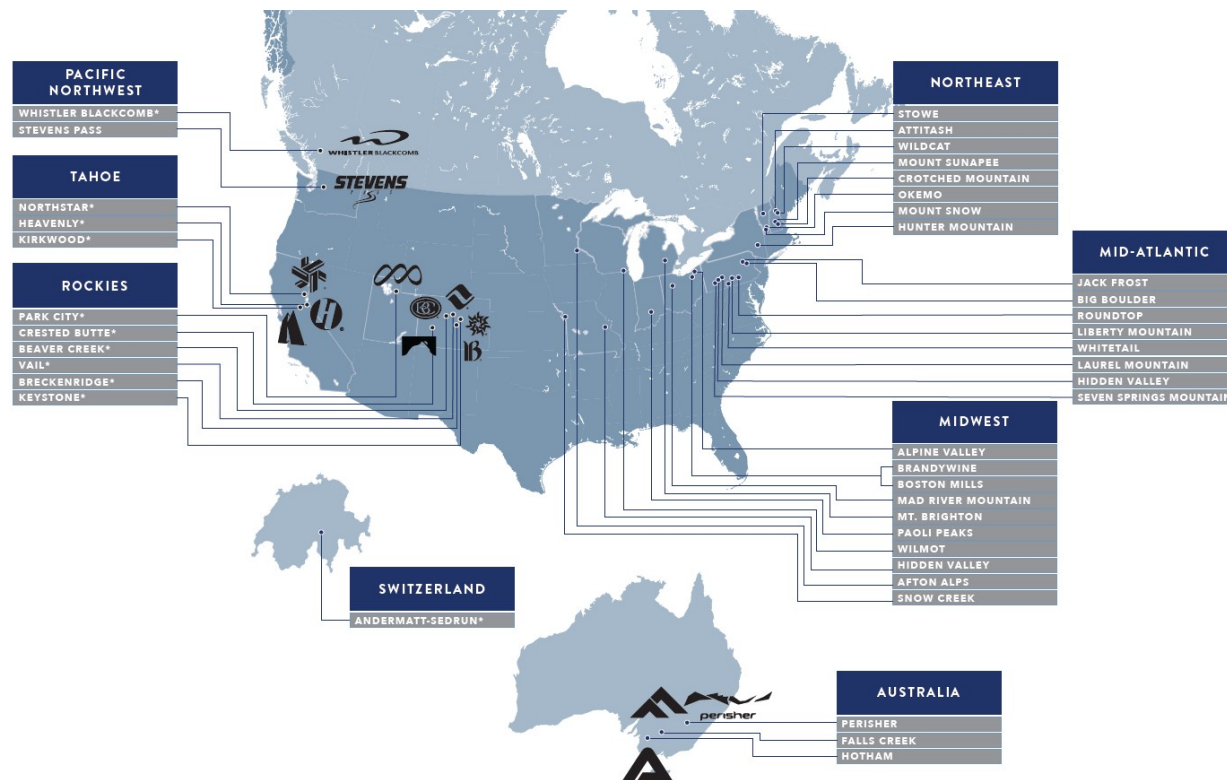
Items excluded from Resort Reported EBITDA, Total Reported EBITDA and Net Debt are significant components in understanding and assessing financial performance or liquidity. Resort Reported EBITDA, Total Reported EBITDA and Net Debt should not be considered in isolation or as an alternative to, or substitute for, net income, net change in cash and cash equivalents or other financial statement data presented in the Consolidated Financial Statements as indicators of financial performance or liquidity. Because Resort Reported EBITDA, Total Reported EBITDA and Net Debt are not measurements determined in accordance with GAAP and are thus susceptible to varying calculations, Resort Reported EBITDA, Total Reported EBITDA and Net Debt, as presented herein, may not be comparable to other similarly titled measures of other companies. In addition, our segment Reported EBITDA (i.e. Mountain, Lodging and Real Estate), the measure of segment profit or loss required to be disclosed in accordance with GAAP, may not be comparable to other similarly titled measures of other companies.

### Overview

Our operations are grouped into three integrated and interdependent segments: Mountain, Lodging and Real Estate. We refer to “Resort” as the combination of the Mountain and Lodging segments. The Mountain, Lodging and Real Estate segments represented approximately 88%, 12% and 0%, respectively, of our net revenue for Fiscal 2022.

**Mountain Segment**

In the Mountain segment, the Company operates the following 41 destination mountain resorts and regional ski areas:



\*Denotes a destination mountain resort, which generally receives a meaningful portion of skier visits from long-distance travelers, as opposed to our regional ski areas, which tend to generate skier visits predominantly from their respective local markets.

Additionally, we operate ancillary services, primarily including ski school, dining and retail/rental operations, and for our Australian ski areas, including lodging and transportation operations. Mountain segment revenue is seasonal, with the majority of revenue earned from our North American ski operations occurring in our second and third fiscal quarters and the majority of revenue earned from our Australian ski operations occurring in our first and fourth fiscal quarters. Our North American destination mountain resorts and regional ski areas (collectively, “Resorts”) typically experience their peak operating season for the Mountain segment from mid-December through mid-April, and our Australian ski areas typically experience their peak operating season from June to early October. Our largest source of Mountain segment revenue comes from the sale of lift tickets (including pass products), which represented approximately 59%, 63% and 53% of Mountain segment net revenue for Fiscal 2022, the fiscal year ended July 31, 2021 (“Fiscal 2021”) and the fiscal year ended July 31, 2020 (“Fiscal 2020”), respectively.

Lift revenue is driven by volume and pricing. Pricing is impacted by both absolute pricing, as well as the demographic mix of guests, which impacts the price points at which various products are purchased. The demographic mix of guests that visit our North American Resorts is divided into two primary categories: (i) out-of-state and international (“Destination”) guests and (ii) in-state and local (“Local”) guests. For the 2021/2022 North American ski season, Destination guests comprised approximately 58% of our North American destination mountain resort skier visits (excluding complimentary access), while Local guests comprised approximately 42% of our North American destination mountain resort skier visits (excluding complimentary access), which compares to 52% and 48%, respectively, for the 2020/2021 North American ski season and approximately 58% and 42%, respectively, for the 2019/2020 North American ski season. Skier visitation at our regional ski areas is largely comprised of Local guests. Destination guests generally purchase our higher-priced lift tickets (including pass products) and utilize more ancillary services such as ski school, dining and retail/rental, as well as lodging at or around our mountain resorts. Additionally, Destination guest visitation is less likely to be impacted by changes in the weather during the current season, but may be more impacted by adverse economic conditions, the global geopolitical climate or weather conditions in the immediately preceding ski season. Local guests tend to be more value-oriented and weather sensitive.

We offer a variety of pass products for all of our Resorts, marketed toward both Destination and Local guests. Our pass product offerings range from providing access to one or a combination of our Resorts for a certain number of days to our Epic Pass, which allows pass holders unlimited and unrestricted access to all of our Resorts. The Epic Day Pass is a customizable one to seven day pass product purchased in advance of the season, for those skiers and riders who expect to ski a certain number of days during the season, and which is available in three tiers of resort access offerings. Our pass products provide a compelling value proposition to our guests, which in turn assists us in developing a loyal base of customers who commit to ski at our Resorts in advance of the ski season and typically ski more days each season at our Resorts than those guests who do not buy pass products. Additionally, we enter into strategic long-term pass alliance agreements with third-party mountain resorts, which further increase the value proposition of our pass products. For the 2022/2023 ski season, our pass alliances include Telluride Ski Resort in Colorado, Hakuba Valley and Rusutsu Resort in Japan, Resorts of the Canadian Rockies in Canada, Les 3 Vallées in France, Verbier 4 Vallées in Switzerland, Skirama Dolomiti in Italy and Ski Arlberg in Austria. Our pass program drives strong customer loyalty; mitigates exposure to more weather sensitive guests; generates additional ancillary spending; and provides cash flow in advance of winter season operations. In addition, our pass program attracts new guests to our Resorts. All of our pass products, including the Epic Pass and Epic Day Pass, are predominately sold prior to the start of the ski season. Pass product revenue, although primarily collected prior to the ski season, is recognized in the Consolidated Statements of Operations throughout the ski season on a straight-line basis using skiable days (see Notes to the Consolidated Financial Statements for additional information).

Lift revenue consists of pass product lift revenue (“pass revenue”) and non-pass lift product revenue (“non-pass revenue”). Approximately 61%, 61% and 51% of total lift revenue was derived from pass revenue for Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively (including the impact of the deferral of pass product revenue from Fiscal 2020 to Fiscal 2021 as a result of credits offered to 2019/2020 North American pass product holders who purchased 2020/2021 pass products). Additionally, lift revenue for Fiscal 2021 was impacted by restrictions which only allowed pass product holders to access our Resorts during the early portion of the 2020/2021 North American ski season, as well as our use of a reservation system, which limited capacity for both pass product holders and non-pass lift tickets.

The cost structure of our mountain resort operations has a significant fixed component with variable expenses including, but not limited to, land use permit or lease fees, credit card fees, retail/rental cost of sales and labor, ski school labor and expenses associated with dining operations; as such, profit margins can fluctuate greatly based on the level of revenues.

### ***Lodging Segment***

Operations within the Lodging segment include: (i) ownership/management of a group of luxury hotels through the RockResorts brand proximate to our Colorado and Utah mountain resorts; (ii) ownership/management of non-RockResorts branded hotels and condominiums proximate to our North American Resorts; (iii) National Park Service (“NPS”) concessioner properties, including the Grand Teton Lodge Company (“GTLC”); (iv) a Colorado resort ground transportation company; and (v) mountain resort golf courses.

The performance of our lodging properties (including managed condominium units) proximate to our Resorts, and our Colorado resort ground transportation company, are closely aligned with the performance of the Mountain segment and generally experience similar seasonal trends, particularly with respect to visitation by Destination guests. Revenues from such properties represented approximately 73%, 67% and 75% of Lodging segment net revenue (excluding Lodging segment revenue associated with the reimbursement of payroll costs) for Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively. Management primarily focuses on Lodging net revenue excluding payroll cost reimbursements and Lodging operating expense excluding reimbursed payroll costs (which are not measures of financial performance under GAAP) as the reimbursements are made based upon the costs incurred with no added margin and as such, the revenue and corresponding expense do not affect our Lodging Reported EBITDA, which we use to evaluate Lodging segment performance. Revenue of the Lodging segment during our first and fourth fiscal quarters is generated primarily by the operations of our NPS concessioner properties (as their peak operating season generally occurs from mid-May through the end of September); mountain resort golf operations and seasonally lower volume from our other owned and managed properties and businesses.

### **Real Estate Segment**

The principal activities of our Real Estate segment include the sale of land parcels to third-party developers and planning for future real estate development projects, including zoning and acquisition of applicable permits. We continue undertaking preliminary planning and design work on future projects and are pursuing opportunities with third-party developers rather than undertaking our own significant vertical development projects. Additionally, real estate development projects by third-party developers most often result in the creation of certain resort assets that provide additional benefit to the Mountain segment. We believe that, due to our low carrying cost of real estate land investments, we are well situated to promote future projects by third-party developers while limiting our financial risk. Our revenue from the Real Estate segment and associated expense can fluctuate significantly based upon the timing of closings and the type of real estate being sold, causing volatility in the Real Estate segment's operating results from period to period.

### **Recent Trends, Risks and Uncertainties**

We have identified the following important factors (as well as risks and uncertainties associated with such factors) that could impact our future financial performance or condition:

- COVID-19 has led to travel restrictions and other adverse economic impacts in global and local economies. Our operations for Fiscal 2022 continued to be negatively impacted by COVID-19 and associated government-mandated restrictions, including capacity limitations, vaccination requirements and mask and social distancing requirements. Additionally, we may impose our own COVID-19 related restrictions in addition to what is required by state and local governments in the interest of the safety of our guests, employees and resort communities. The ongoing impacts of COVID-19 and associated regional shutdowns resulted in periodic closures of our Australian ski areas during their 2021 ski seasons. Although conditions have improved relative to the prior year, we are uncertain as to the ultimate severity and duration of the COVID-19 pandemic as well as the related global or other travel restrictions and other adverse impacts. We have experienced a negative change in performance and our future performance could also be negatively impacted. In addition, the North American economy may be impacted by economic challenges in North America or declining or slowing growth in economies outside of North America, accompanied by devaluation of currencies, rising inflation, trade tariffs and fluctuating commodity prices. While we anticipate improvements as compared to Fiscal 2022 and Fiscal 2021, we cannot predict the ultimate impact that the global economic uncertainty as a result of COVID-19 will have on overall travel and leisure spending or more specifically, on our guest visitation, guest spending or other related trends for the upcoming 2022/2023 North American ski season.
- The timing and amount of snowfall can have an impact on Mountain and Lodging revenue, particularly with regard to skier visits and the duration and frequency of guest visitation. To help mitigate this impact, we sell a variety of pass products prior to the beginning of the ski season, which results in a more stabilized stream of lift revenue. Additionally, our pass products provide a compelling value proposition to our guests, which in turn create a guest commitment predominately prior to the start of the ski season. In March 2022, we began our pass product sales program for the 2022/2023 North American ski season. Pass product sales through September 23, 2022 for the upcoming 2022/2023 North American ski season increased approximately 6% in units and approximately 7% in sales dollars as compared to the prior year through September 24, 2021. Pass product sales are adjusted to include pass product sales for the Seven Springs Resorts in both periods and to eliminate the impact of foreign currency by applying an exchange rate of \$0.76 between the Canadian dollar and U.S. dollar to both periods for Whistler Blackcomb pass product sales. We cannot predict if this favorable trend will continue through the remainder of the 2022 North American pass product sales campaign or the overall impact that pass product sales will have on lift revenue for the 2022/2023 North American ski season.

- The 2021/2022 North American ski season got off to a slow start with challenging early season conditions which persisted through the holiday period, but results were strong from January through the remainder of the season. We had particularly strong Destination visitation this year, which was further supported by lift ticket sales at our Colorado and Utah resorts that exceeded our expectations through the spring. Our results at Whistler Blackcomb were also stronger than expected after the holiday period due to the easing of travel restrictions in Canada in late February. Additionally, after the holiday period, performance at our eastern U.S. ski areas was in-line with our expectations while our Tahoe resorts were impacted by challenging spring conditions, resulting in performance below our expectations. Throughout the season, our ancillary businesses continued to be capacity constrained by staffing and, in the case of dining, by operational restrictions associated with COVID-19. During the fourth quarter of Fiscal 2022, our Australian resorts experienced record visitation, driven by strong demand following two years of COVID-19 related disruptions, continued momentum in advance commitment pass product sales following the addition of Hotham and Falls Creek in April 2019, and favorable early season conditions that continued throughout the quarter. We cannot predict the impact that COVID-19 limitations and restrictions, future weather conditions or continued staffing challenges may have on our skier visitation and results of operations for the year ending July 31, 2023 (“Fiscal 2023”) and beyond.
- As of July 31, 2022, we had \$1,107.4 million of cash and cash equivalents as well as \$417.4 million available under the revolver component of our Eighth Amended and Restated Credit Agreement, dated as of August 15, 2018 and as amended most recently on December 18, 2020 (the “Vail Holdings Credit Agreement”), which represents the total commitment of \$500.0 million less certain letters of credit outstanding of \$82.6 million. Additionally, we have a credit facility which supports the liquidity needs of Whistler Blackcomb (the “Whistler Credit Agreement”). As of July 31, 2022, we had C\$281.6 million (\$220.0 million) available under the revolver component of the Whistler Credit Agreement which represents the total commitment of C\$300.0 million (\$234.3 million) less outstanding borrowings of C\$15.0 million (\$11.7 million) and letters of credit outstanding of C\$3.4 million (\$2.6 million). We believe that our existing cash and cash equivalents, availability under our credit agreements and the expected positive cash flow from operating activities of our Mountain and Lodging segments less resort capital expenditures will continue to provide us with sufficient liquidity to fund our operations.
- On December 31, 2021, through a wholly-owned subsidiary, we acquired Seven Springs Mountain Resort, Hidden Valley Resort and Laurel Mountain Ski Area in Pennsylvania (collectively, the “Seven Springs Resorts”) from Seven Springs Mountain Resort, Inc. and its affiliates for a purchase price of approximately \$116.5 million, after adjustments for certain agreed-upon terms, which we funded with cash on hand. The acquisition included the mountain operations of the Seven Springs Resorts, including base area skier services (food and beverage, retail and rental, lift ticket offices and ski and snowboard school facilities), as well as hotel, conference center and other related operations. We cannot predict the ultimate impact the acquisition of the Seven Springs Resorts will have on our future results from operations.
- On August 3, 2022, through a wholly-owned subsidiary, we acquired a 55% controlling interest in Andermatt-Sedrun Sport AG (“Andermatt-Sedrun”) from Andermatt Swiss Alps AG (“ASA”). Andermatt-Sedrun controls and operates all of Andermatt-Sedrun's mountain and ski-related assets, including lifts, most of the restaurants and a ski school operation at the ski area. We invested CHF 149.3 million (\$155.7 million), comprised of a CHF 110.0 million (\$114.4 million) investment into Andermatt-Sedrun for use in capital investments to enhance the guest experience on the mountain and CHF 39.3 million (\$41.3 million) paid to ASA. The proceeds paid to ASA will be fully reinvested into the real estate developments in the base area. ASA retains a 40% ownership stake, with a group of existing shareholders comprising the remaining 5% ownership. We will provide unlimited and unrestricted access to Andermatt-Sedrun on the Epic Pass for the 2022/2023 ski season, as well as provide access on other pass products. We cannot predict the ultimate impact the acquisition of Andermatt-Sedrun will have on our future results from operations.

## Results of Operations

### Summary

Shown below is a summary of operating results for Fiscal 2022, Fiscal 2021 and Fiscal 2020 (in thousands):

	Year ended July 31,		
	2022	2021 <sup>(1)</sup>	2020 <sup>(1)</sup>
Net income attributable to Vail Resorts, Inc.	\$ 347,923	\$ 127,850	\$ 98,833
Income before provision for income taxes	\$ 457,161	\$ 125,183	\$ 116,433
Mountain Reported EBITDA	\$ 811,167	\$ 552,753	\$ 503,440
Lodging Reported EBITDA	25,747	(8,097)	(91)
Resort Reported EBITDA	\$ 836,914	\$ 544,656	\$ 503,349
Real Estate Reported EBITDA	\$ (3,927)	\$ (4,582)	\$ (4,128)

<sup>(1)</sup> Segment results for Fiscal 2021 and Fiscal 2020 have been retrospectively adjusted to reflect current period presentation. See Notes to the Consolidated Financial Statements for additional information.

A discussion of segment results, including reconciliations of net income attributable to Vail Resorts, Inc. to Total Reported EBITDA, and other items can be found below. The consolidated results of operations, including any consolidated financial metrics pertaining thereto, include the operations of the Seven Springs Resorts (acquired December 31, 2021) prospectively from the date of acquisition.

COVID-19 in general had an adverse impact on our results of operations for Fiscal 2022, Fiscal 2021 and Fiscal 2020 as further described below in our segment results of operations.

The sections titled “Fiscal 2022 compared to Fiscal 2021” and “Fiscal 2021 compared to Fiscal 2020” in each of the Mountain and Lodging segment discussions below provide comparisons of financial and operating performance for Fiscal 2022 to Fiscal 2021 and Fiscal 2021 to Fiscal 2020, respectively, unless otherwise noted.



## Mountain Segment

Mountain segment operating results for Fiscal 2022, Fiscal 2021 and Fiscal 2020 are presented by category as follows (in thousands, except ETP):

	Year ended July 31,			Percentage Increase/(Decrease)	
	2022	2021 <sup>(1)</sup>	2020 <sup>(1)</sup>	2022/2021	2021/2020
<b>Mountain net revenue:</b>					
Lift	\$ 1,310,213	\$ 1,076,578	\$ 913,091	21.7 %	17.9 %
Ski school	223,645	144,227	189,131	55.1 %	(23.7)%
Dining	163,705	92,186	167,551	77.6 %	(45.0)%
Retail/rental	311,768	227,993	270,299	36.7 %	(15.7)%
Other	203,783	161,814	186,548	25.9 %	(13.3)%
<b>Total Mountain net revenue</b>	<b>2,213,114</b>	<b>1,702,798</b>	<b>1,726,620</b>	<b>30.0 %</b>	<b>(1.4)%</b>
<b>Mountain operating expense:</b>					
Labor and labor-related benefits	561,266	458,029	479,993	22.5 %	(4.6)%
Retail cost of sales	99,024	77,217	97,052	28.2 %	(20.4)%
Resort related fees	93,177	69,983	75,246	33.1 %	(7.0)%
General and administrative	292,412	253,279	239,412	15.5 %	5.8 %
Other	358,648	298,235	333,167	20.3 %	(10.5)%
<b>Total Mountain operating expense</b>	<b>1,404,527</b>	<b>1,156,743</b>	<b>1,224,870</b>	<b>21.4 %</b>	<b>(5.6)%</b>
Mountain equity investment income, net	2,580	6,698	1,690	(61.5)%	296.3 %
<b>Mountain Reported EBITDA</b>	<b>\$ 811,167</b>	<b>\$ 552,753</b>	<b>\$ 503,440</b>	<b>46.8 %</b>	<b>9.8 %</b>
Total skier visits	17,298	14,852	13,483	16.5 %	10.2 %
ETP	\$ 75.74	\$ 72.49	\$ 67.72	4.5 %	7.0 %

<sup>(1)</sup> Segment results for Fiscal 2021 and Fiscal 2020 have been retrospectively adjusted to reflect current period presentation. See Notes to the Consolidated Financial Statements for additional information.

Mountain Reported EBITDA includes \$20.9 million, \$20.3 million and \$17.4 million of stock-based compensation expense for Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively.

### Fiscal 2022 compared to Fiscal 2021

Mountain Reported EBITDA increased \$258.4 million, or 46.8%, primarily due to strong North American pass product sales growth for the 2021/2022 North American ski season and fewer COVID-19 related limitations and restrictions on our North American operations compared to the prior year. Visitation across our North American Resorts increased relative to prior year levels, but was partially offset by the negative impact of delayed Resort openings due to challenging early season conditions. Additionally, our Australian resorts had strong visitation during the fourth quarter of Fiscal 2022, compared to being negatively impacted by limitations and restrictions during the 2021 Australian ski season. These increases were partially offset by an increase in variable expenses associated with the increase in revenue and visitation, and an increase in general and administrative expenses primarily due to cost discipline efforts in the prior year associated with lower levels of operations. Mountain segment results for Fiscal 2022 also include acquisition and integration related expenses, including expenses associated with the acquisitions of the Seven Springs Resorts and Andermatt-Sedrun, of \$7.7 million, compared to \$1.0 million of acquisition and integration related expenses for Fiscal 2021.

Lift revenue increased \$233.6 million, or 21.7%, primarily due to an increase in pass revenue and an increase in non-pass lift ticket purchases. Pass revenue increased 21.5%, which was primarily driven by increased pass product sales for the 2021/2022 North American ski season compared to the 2020/2021 North American ski season, which were favorably impacted by increased pass product sales to new pass holders and Destination guests. Non-pass revenue increased 22.0% primarily due to an increase in visitation, which was significantly impacted by COVID-19 related capacity limitations in the prior year, as well as an increase in non-pass ETP of 8.2%. The increase in non-pass lift revenue was partially offset by delayed North American Resort openings as a result of challenging early season conditions, which negatively impacted visitation.

Ski school revenue increased \$79.4 million, or 55.1%; dining revenue increased \$71.5 million, or 77.6%; and retail/rental revenue increased \$83.8 million, or 36.7%. Each increased primarily due to fewer COVID-19 related limitations and restrictions on our North American winter operations as compared to the prior year, as well as an increase in demand over the prior year.

Other revenue mainly consists of summer visitation and other mountain activities revenue, employee housing revenue, guest services revenue, commercial leasing revenue, marketing revenue, private club revenue (which includes both club dues and amortization of initiation fees), municipal services revenue and other recreation activity revenue. Other revenue also includes Australian ski area lodging and transportation revenue. Other revenue increased \$42.0 million, or 25.9%, primarily as a result of increased visitation and fewer COVID-19 related limitations and restrictions on our North American operations as compared to the prior year.

Operating expense increased \$247.8 million, or 21.4%, which was primarily attributable to increased variable expenses associated with increases in revenue, and the impact of cost discipline efforts in the prior year associated with lower levels of operations, including limitations, restrictions and closures resulting from COVID-19. Additionally, operating expense for Fiscal 2022 includes acquisition and integration related expenses, including expenses associated with the acquisitions of the Seven Springs Resorts and Andermatt-Sedrun, of \$7.7 million, compared to \$1.0 million of acquisition and integration related expense for Fiscal 2021.

Labor and labor-related benefits increased 22.5%, primarily due to increased staffing associated with an increase in visitation and the impact of COVID-19 related cost actions in the prior year, including salary reductions, as well as a decrease of \$16.5 million in tax credits from COVID-19 related legislation in Canada. Retail cost of sales increased 28.2%, compared to an increase in retail sales of 36.3%, reflecting increased margins on a higher mix of newer, higher-margin retail products. Resort related fees increased 33.1%, primarily due to increases in revenue on which those fees are based. General and administrative expense increased 15.5%, primarily due to an increase in corporate overhead costs due to cost reduction measures in the prior year to offset the impacts of COVID-19, as well as a decrease of \$5.2 million in tax credits associated with COVID-19 related legislation in Canada and Australia. Other expense increased 20.3%, primarily due to increases in variable operating expenses associated with increased revenues and visitation, as well as an increase in acquisition and integration related expenses of \$6.7 million.

Mountain equity investment income, net primarily includes our share of income from the operations of a real estate brokerage company. Mountain equity investment income from the real estate brokerage company decreased \$4.1 million, or 61.5%, for Fiscal 2022 compared to Fiscal 2021 primarily due to a lower number of real estate sales.

#### ***Fiscal 2021 compared to Fiscal 2020***

Mountain Reported EBITDA increased \$49.3 million, or 9.8%, primarily due to the impact of the Fiscal 2020 Resort Closures, including the deferral of \$120.9 million of pass product revenue from Fiscal 2020 to Fiscal 2021 as a result of the Credit Offer to 2019/2020 North American pass product holders, as well as cost discipline efforts in Fiscal 2021 associated with lower levels of operations. These increases were partially offset by limitations and restrictions on our North American winter operations and closures, limitations and restrictions at Perisher, Falls Creek and Hotham during both the 2020 and 2021 Australian ski seasons. Additionally, Whistler Blackcomb's performance was negatively impacted in Fiscal 2021 due to the continued closure of the Canadian border to international guests and was further impacted by the resort closing earlier than expected on March 30, 2021 following a provincial health order issued by the government of British Columbia. Mountain segment results also include \$1.0 million and \$13.6 million of acquisition and integration related expenses for Fiscal 2021 and Fiscal 2020, respectively, which are recorded within Mountain other operating expense. Additionally, operating results from Whistler Blackcomb, which are translated from Canadian dollars to U.S. dollars, were favorably affected by increases in the Canadian dollar exchange rate relative to the U.S. dollar for Fiscal 2021 as compared to Fiscal 2020, resulting in a decrease in Mountain Reported EBITDA of approximately \$2.0 million, which the Company calculated by applying current period foreign exchange rates to the prior period results.

Lift revenue increased \$163.5 million, or 17.9%, primarily due to the Company operating for the full U.S. ski season in Fiscal 2021 as compared to the shortened operating season in Fiscal 2020 as a result of the Resort Closures, including the deferral impact of the Credit Offer from Fiscal 2020 to Fiscal 2021, partially offset by limitations and restrictions on our North American winter operations in Fiscal 2021 due to the ongoing impacts of COVID-19, which resulted in a decrease in non-pass visitation. Pass product revenue increased 40.6%, primarily as a result of strong North American pass sales growth for the 2020/2021 ski season, including the deferral impact of the Credit Offer which was recognized primarily during Fiscal 2021. Non-pass revenue decreased 5.7% due to reduced non-pass visitation to our Resorts, which were adversely impacted by COVID-19 related capacity limitations and snowfall levels that were well below average at our Colorado, Utah and Tahoe

resorts through the holiday season, partially offset by an increase in non-pass ETP of 10.1%. Visitation was particularly impacted in regions where heightened COVID-19 related restrictions were in place, including Whistler Blackcomb, Tahoe and Vermont. Additionally, Whistler Blackcomb's results were disproportionately impacted as compared to our broader Mountain segment performance in Fiscal 2021 due to the continued closure of the Canadian border to international guests, and was further impacted by the resort closing earlier than expected on March 30, 2021 following a provincial health order issued by the government of British Columbia.

Ski school revenue, dining revenue and retail/rental revenue each decreased in Fiscal 2021 compared to Fiscal 2020 primarily due to the limitations and restrictions on our North American operations during Fiscal 2021 as a result of the impacts of COVID-19 on our business.

Other revenue mainly consists of summer visitation and mountain activities revenue, employee housing revenue, guest services revenue, commercial leasing revenue, marketing and internet advertising revenue, private club revenue (which includes both club dues and amortization of initiation fees), municipal services revenue and other recreation activity revenue. Other revenue is also comprised of Australian ski area lodging and transportation revenue. For Fiscal 2021, other revenue decreased \$24.7 million, or 13.3%, primarily due to decreased mountain activities and mountain services revenue as a result of limitations and restrictions on our business in Fiscal 2021 due to COVID-19, as well as a reduction in ski pass insurance revenue as a result of the replacement of our previous ski pass insurance program with Epic Coverage for the 2020/2021 North American ski season, which is free to all pass product holders.

Operating expense decreased \$68.1 million, or 5.6%, which was primarily attributable to cost discipline efforts in Fiscal 2021 associated with lower levels of operations and limitations, restrictions and closures of Resort operations resulting from COVID-19. Additionally, operating expense includes \$1.0 million and \$13.6 million of acquisition and integration related expenses for Fiscal 2021 and Fiscal 2020, respectively.

Labor and labor-related benefits decreased 4.6%, primarily due to cost discipline efforts in Fiscal 2021 associated with limitations, restrictions and closures of our Resort operations as a result of COVID-19, as well as incremental tax credits of approximately \$10.3 million primarily associated with COVID-19 related legislation passed in Canada, partially offset by an increase in variable compensation. Retail cost of sales decreased 20.4% compared to a decrease in retail sales of 23.5%, reflecting a higher mix of aged retail products sold at reduced margins. Resort related fees decreased 7.0% primarily due to decreases in revenue on which those fees are based. General and administrative expense increased 5.8%, primarily due to a \$13.2 million charge recorded during the fourth quarter of Fiscal 2021 for a contingent obligation with respect to employment-related litigation, as well as an increase in variable compensation accruals, partially offset by incremental tax credits of approximately \$2.7 million primarily associated with COVID-19 related legislation passed in Canada and Australia. Other expense decreased 10.5% primarily due to decreases in variable operating expenses associated with reduced revenues, as well as a decrease in acquisition and integration related expenses of \$12.6 million.

Mountain equity investment income, net primarily includes our share of income from the operations of a real estate brokerage joint venture. Mountain equity investment income from the real estate brokerage company increased \$5.0 million (296.3%) for Fiscal 2021 compared to Fiscal 2020 due to a significant increase in both the number of real estate sales and the average price of those sales.

## Lodging Segment

Lodging segment operating results for Fiscal 2022, Fiscal 2021 and Fiscal 2020 are presented by category as follows (in thousands, except average daily rate (“ADR”) and revenue per available room (“RevPAR”)):

	Year ended July 31,			Percentage Increase/(Decrease)	
	2022	2021 <sup>(1)</sup>	2020 <sup>(1)</sup>	2022/2021	2021/2020
<b>Lodging net revenue:</b>					
Owned hotel rooms	\$ 80,579	\$ 47,509	\$ 44,992	69.6 %	5.6 %
Managed condominium rooms	97,704	72,217	76,480	35.3 %	(5.6)%
Dining	48,569	17,211	31,464	182.2 %	(45.3)%
Transportation	16,021	9,271	15,796	72.8 %	(41.3)%
Golf	10,975	9,373	8,023	17.1 %	16.8 %
Other	46,500	43,008	44,933	8.1 %	(4.3)%
Lodging net revenue (excluding payroll cost reimbursements)	300,348	198,589	221,688	51.2 %	(10.4)%
Payroll cost reimbursements	11,742	6,553	10,549	79.2 %	(37.9)%
<b>Total Lodging net revenue</b>	<b>312,090</b>	<b>205,142</b>	<b>232,237</b>	<b>52.1 %</b>	<b>(11.7)%</b>
<b>Lodging operating expense:</b>					
Labor and labor-related benefits	128,884	95,899	107,651	34.4 %	(10.9)%
General and administrative	55,081	43,714	39,283	26.0 %	11.3 %
Other	90,636	67,073	74,845	35.1 %	(10.4)%
Lodging operating expense (excluding reimbursed payroll costs)	274,601	206,686	221,779	32.9 %	(6.8)%
Reimbursed payroll costs	11,742	6,553	10,549	79.2 %	(37.9)%
<b>Total Lodging operating expense</b>	<b>286,343</b>	<b>213,239</b>	<b>232,328</b>	<b>34.3 %</b>	<b>(8.2)%</b>
<b>Lodging Reported EBITDA</b>	<b>\$ 25,747</b>	<b>\$ (8,097)</b>	<b>\$ (91)</b>	<b>418.0 %</b>	<b>(8,797.8)%</b>
<b>Owned hotel statistics</b>					
ADR	\$ 309.78	\$ 264.83	\$ 266.43	17.0 %	(0.6)%
RevPar	\$ 170.84	\$ 122.45	\$ 122.34	39.5 %	0.1 %
<b>Managed condominium statistics</b>					
ADR	\$ 410.13	\$ 349.08	\$ 328.98	17.5 %	6.1 %
RevPar	\$ 122.15	\$ 77.74	\$ 83.10	57.1 %	(6.5)%
<b>Owned hotel and managed condominium statistics (combined)</b>					
ADR	\$ 373.89	\$ 322.15	\$ 310.76	16.1 %	3.7 %
RevPar	\$ 133.53	\$ 85.99	\$ 90.37	55.3 %	(4.8)%

<sup>(1)</sup> Segment results for Fiscal 2021 and Fiscal 2020 have been retrospectively adjusted to reflect current period presentation. See Notes to the Consolidated Financial Statements for additional information.

Lodging Reported EBITDA includes \$3.7 million, \$3.8 million and \$3.4 million of stock-based compensation expense for Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively.

## Fiscal 2022 compared to Fiscal 2021

Lodging Reported EBITDA increased \$33.8 million, or 418.0%, primarily as a result of fewer COVID-19 capacity-related restrictions and limitations on our North American operations compared to the prior year, which resulted in increased occupancy at our lodging properties as compared to the prior year, as well as an increase in ADR of 16.1% driven by increased pricing at our owned hotels and managed condominiums due to an increase in demand particularly for group visitation. Additionally we benefited from the incremental operations of the Seven Springs Resorts (acquired in December 2021) which generated \$5.8 million of EBITDA in the current year. These increases were partially offset by increased general and administrative expenses primarily due to COVID-19 related cost management in the prior year.

Revenue from owned hotel rooms, managed condominium rooms, dining, transportation, golf and other revenue each increased primarily as a result of fewer COVID-19 related limitations and restrictions as compared to the prior year, as well as an increase in demand over the prior year and incremental revenue from the Seven Springs Resorts of \$18.7 million.

Operating expense (excluding reimbursed payroll costs) increased 32.9%, including incremental operating expenses from the Seven Springs Resorts of \$12.9 million. Labor and labor related benefits increased 34.4%, primarily due to increased staffing associated with improved North American operations in the current year as a result of fewer COVID-19 related limitations and restrictions and increased demand, as well as the impact of salary reductions in the prior year. General and administrative expense increased 26.0% primarily due to an increase in allocated corporate overhead costs for nearly all functions, which were impacted in the prior year by COVID-19 related cost management. Other expense increased 35.1%, primarily related to higher variable expenses associated with increased revenue.

Revenue from payroll cost reimbursement and the corresponding reimbursed payroll costs relate to payroll costs at managed hotel properties where we are the employer and all payroll costs are reimbursed by the owners of the properties under contractual arrangements. Since the reimbursements are made based upon the costs incurred with no added margin, the revenue and corresponding expense have no effect on our Lodging Reported EBITDA.

#### ***Fiscal 2021 compared to Fiscal 2020***

Lodging Reported EBITDA for Fiscal 2021 decreased \$8.0 million or 8797.8%, primarily as a result of limitations and restrictions on our North American operations in Fiscal 2021 as a result of the impacts of COVID-19, which resulted in reduced occupancy and capacity-related restrictions at our lodging properties compared to Fiscal 2020.

Revenue from managed condominium rooms, dining, transportation and other revenue each decreased primarily as a result of the impacts of COVID-19. These decreases were partially offset by increases in revenue from golf, primarily due to strong summer demand in Fiscal 2021, and owned hotel rooms, primarily as a result of increased revenue from GTLC and partially offset by decreases at our other lodging properties as a result of the impacts of COVID-19.

Operating expense (excluding reimbursed payroll costs) decreased 6.8%. Labor and labor related benefits decreased 10.9% primarily due to decreased staffing associated with COVID-19. General and administrative expense increased 11.3% due to an increase in allocated corporate overhead costs across all functions, including variable compensation accruals, primarily as a result of lower costs in the prior year associated with the Resort Closures. Other expense decreased 10.4% related to lower variable expenses associated with reduced revenue as a result of COVID-19.

Revenue from payroll cost reimbursement and the corresponding reimbursed payroll costs relate to payroll costs at managed hotel properties where we are the employer and all payroll costs are reimbursed by the owners of the properties under contractual arrangements. Since the reimbursements are made based upon the costs incurred with no added margin, the revenue and corresponding expense have no effect on our Lodging Reported EBITDA.

#### ***Real Estate Segment***

Our Real Estate net revenue is primarily determined by the timing of closings and the mix of real estate sold in any given period. Different types of projects have different revenue and profit margins; therefore, as the real estate inventory mix changes, it can greatly impact Real Estate segment net revenue, operating expense, gain on sale of real property and Real Estate Reported EBITDA.

Real Estate segment operating results for Fiscal 2022, Fiscal 2021 and Fiscal 2020 are presented by category as follows (in thousands):

	Year ended July 31,			Percentage Increase/(Decrease)	
	2022	2021	2020	2022/2021	2021/2020
Total Real Estate net revenue	\$ 708	\$ 1,770	\$ 4,847	(60.0)%	(63.5)%
Real Estate operating expense:					
Cost of sales (including sales commissions)	251	1,294	3,932	(80.6)%	(67.1)%
Other	5,660	5,382	5,250	5.2 %	2.5 %
Total Real Estate operating expense	5,911	6,676	9,182	(11.5)%	(27.3)%
Gain on sale of real property	1,276	324	207	293.8 %	56.5 %
Real Estate Reported EBITDA	\$ (3,927)	\$ (4,582)	\$ (4,128)	14.3 %	(11.0)%

#### ***Fiscal 2022***

We did not close on any significant real estate transactions during Fiscal 2022. Other operating expense of \$5.7 million was primarily comprised of general and administrative costs, such as labor and labor-related benefits, professional services and allocated corporate overhead costs.

#### ***Fiscal 2021***

We did not close on any significant real estate transactions during Fiscal 2021. Other operating expense of \$5.4 million was primarily comprised of general and administrative costs, such as labor and labor-related benefits, professional services and allocated corporate overhead costs.

#### ***Fiscal 2020***

During Fiscal 2020, we closed on the sale of a development land parcel for \$4.1 million which was recorded within Real Estate net revenue, with a corresponding cost of sale (including sales commission) of \$3.9 million.

Other operating expense of \$5.3 million was primarily comprised of general and administrative costs, such as labor and labor-related benefits, professional services and allocated corporate overhead costs.

## Other Items

In addition to segment operating results, the following items contributed to our overall financial position and results of operations (in thousands).

	Year ended July 31,			Percentage Increase/(Decrease)	
	2022	2021	2020	2022/2021	2021/2020
Asset impairments	\$ —	\$ —	\$ (28,372)	nm	(100.0)%
Change in estimated fair value of contingent consideration	\$ (20,280)	\$ (14,402)	\$ 2,964	(40.8)%	(585.9)%
Gain (loss) on disposal of fixed assets and other, net	\$ 43,992	\$ (5,373)	\$ 838	918.8 %	(741.2)%
Interest expense, net	\$ (148,183)	\$ (151,399)	\$ (106,721)	2.1 %	(41.9)%
Foreign currency (loss) gain on intercompany loans	\$ (2,682)	\$ 8,282	\$ (3,230)	(132.4)%	356.4 %
Provision for income taxes	\$ (88,824)	\$ (726)	\$ (7,378)	(12,134.7)%	90.2 %
Effective tax rate	(19.4)%	(0.6)%	(6.3)%	18.8 pts	(5.7 pts)
Net (income) loss attributable to noncontrolling interest	\$ (20,414)	\$ 3,393	\$ (10,222)	(701.7)%	133.2 %

*Asset impairments.* We recorded an asset impairment of approximately \$28.4 million during Fiscal 2020 as a result of the effects of COVID-19 on our Colorado resort ground transportation company, with corresponding reductions to goodwill, net of \$25.7 million and intangible assets, net and property, plant and equipment, net of \$2.7 million. See Notes to the Consolidated Financial Statements for additional information.

*Change in estimated fair value of contingent consideration.* We recorded losses of \$20.3 million and \$14.4 million during Fiscal 2022 and Fiscal 2021, respectively, primarily related to an increase in the estimated contingent consideration payment for each respective year, as well as accretion resulting from the passage of time. We recorded a gain of \$3.0 million during Fiscal 2020 primarily related to a decrease in the estimated Contingent Consideration payments for Fiscal 2020 and Fiscal 2021 as a result of a decrease in expected results due to the anticipated impacts of COVID-19 at that time. The estimated fair value of contingent consideration is based on assumptions for EBITDA of Park City in future periods, as calculated under the lease on which participating payments are determined, and was \$42.4 million and \$29.6 million as of July 31, 2022 and 2021, respectively.

*Gain (loss) on disposal of fixed assets and other, net.* Gain on disposal of fixed assets and other, net for Fiscal 2022 included (i) \$32.2 million from the sale of the DoubleTree at Breckenridge hotel; (ii) \$10.3 million in proceeds from the NPS related to partial payments for a leasehold surrender interest at GTLC associated with assets that have been fully depreciated by the Company (payments were made at the request of the NPS); and (iii) \$7.9 million from the sale of an administrative building in Avon, CO. These gains were partially offset by losses on other annual disposals of fixed assets.

*Interest expense, net.* Interest expense, net for Fiscal 2021 increased compared to Fiscal 2020 primarily due to borrowings under our 6.25% unsecured bond offering, which was completed on May 4, 2020 (the “6.25% Notes”) and generated approximately \$28.3 million of incremental interest expense in Fiscal 2021, and \$12.5 million of non-cash interest expense associated with amortization of the debt discount for the 0.0% Convertible Notes, which were issued in December 2020.

*Foreign currency (loss) gain on intercompany loans.* Foreign currency (loss) gain on intercompany loans for Fiscal 2022 decreased as compared to Fiscal 2021 and increased for Fiscal 2021 as compared to Fiscal 2020, both as a result of the Canadian dollar fluctuating relative to the U.S. dollar, and was associated with an intercompany loan from Vail Holdings, Inc. to Whistler Blackcomb in the original amount of \$210.0 million that was funded, effective as of November 1, 2016, in connection with the acquisition of Whistler Blackcomb. This intercompany loan, which had an outstanding balance of approximately \$97.2 million as of July 31, 2022, requires foreign currency remeasurement to Canadian dollars, the functional currency for Whistler Blackcomb. As a result, foreign currency fluctuations associated with the loan are recorded within our results of operations.

*Provision for income taxes.* The effective tax rate was 19.4%, 0.6% and 6.3% in Fiscal 2022, Fiscal 2021 and Fiscal 2020, respectively. The increase in the effective tax rate during Fiscal 2022 compared to Fiscal 2021 was primarily due to an increase in full fiscal year pre-tax book income, which lessens the tax rate impact from favorable permanent items and favorable discrete items, as well as a shift in income to higher tax rate jurisdictions. The decrease in the effective tax rate provision during Fiscal 2021 compared to Fiscal 2020 was primarily driven by an increase in excess tax benefits from employee share awards that were exercised (stock appreciation rights) and that vested (restricted stock awards).

*Net (income) loss attributable to noncontrolling interest.* Net (income) loss attributable to noncontrolling interest is primarily associated with the income or loss attributable to the minority shareholder of Whistler Blackcomb, and accordingly, fluctuations are primarily associated with changes in income or loss from Whistler Blackcomb operations.

### Reconciliation of Non-GAAP Measures

The following table reconciles net income attributable to Vail Resorts, Inc. to Total Reported EBITDA for Fiscal 2022, Fiscal 2021 and Fiscal 2020 (in thousands):

	Year ended July 31,		
	2022	2021 <sup>(1)</sup>	2020 <sup>(1)</sup>
Net income attributable to Vail Resorts, Inc.	\$ 347,923	\$ 127,850	\$ 98,833
Net income (loss) attributable to noncontrolling interests	20,414	(3,393)	10,222
Net income	368,337	124,457	109,055
Provision for income taxes	88,824	726	7,378
Income before provision for income taxes	457,161	125,183	116,433
Depreciation and amortization	252,391	252,585	249,572
Asset impairments	—	—	28,372
(Gain) loss on disposal of fixed assets and other, net	(43,992)	5,373	(838)
Change in estimated fair value of contingent consideration	20,280	14,402	(2,964)
Investment income and other, net	(3,718)	(586)	(1,305)
Foreign currency loss (gain) on intercompany loans	2,682	(8,282)	3,230
Interest expense, net	148,183	151,399	106,721
Total Reported EBITDA	\$ 832,987	\$ 540,074	\$ 499,221
Mountain Reported EBITDA	\$ 811,167	\$ 552,753	\$ 503,440
Lodging Reported EBITDA	25,747	(8,097)	(91)
Resort Reported EBITDA	836,914	544,656	503,349
Real Estate Reported EBITDA	(3,927)	(4,582)	(4,128)
Total Reported EBITDA	\$ 832,987	\$ 540,074	\$ 499,221

<sup>(1)</sup> Segment results for Fiscal 2021 and Fiscal 2020 have been retrospectively adjusted to reflect current period presentation. See Notes to the Consolidated Financial Statements for additional information.

The following table reconciles long-term debt, net to Net Debt (defined as long-term debt, net plus long-term debt due within one year less cash and cash equivalents) (in thousands):

	Year ended July 31,	
	2022	2021
Long-term debt, net	\$ 2,670,300	\$ 2,736,175
Long-term debt due within one year	63,749	114,117
Total debt	2,734,049	2,850,292
Less: cash and cash equivalents	1,107,427	1,243,962
Net Debt	\$ 1,626,622	\$ 1,606,330



## Liquidity and Capital Resources

Changes in significant sources and uses of cash for Fiscal 2022, Fiscal 2021 and Fiscal 2020 are presented by categories as follows (in thousands):

	Year ended July 31,		
	2022	2021	2020
Net cash provided by operating activities	\$ 710,499	\$ 525,250	\$ 394,950
Net cash used in investing activities	\$ (347,917)	\$ (103,329)	\$ (492,739)
Net cash (used in) provided by financing activities	\$ (493,136)	\$ 434,662	\$ 376,233

Historically, we have lower cash available at the end of each first and fourth fiscal quarter-end as compared to our second and third fiscal quarter-ends, primarily due to the seasonality of our Mountain segment operations, although our available cash balances as of July 31, 2022 and 2021 were higher than our historical July 31 balance primarily as a result of the debt offerings we completed in Fiscal 2021 and Fiscal 2020.

### *Fiscal 2022 compared to Fiscal 2021*

We generated \$710.5 million of cash from operating activities during Fiscal 2022, an increase of \$185.2 million when compared to \$525.3 million of cash generated during Fiscal 2021. The increase in operating cash flows was primarily a result of increased Mountain and Lodging segment operating results during Fiscal 2022 compared to the prior year, including an increase in pass product sales and associated accounts receivable collections, net of refunds, during Fiscal 2022 compared to the prior year, which was impacted by the credits offered to 2019/2020 North American pass product holders who purchased 2020/2021 pass products. These increases were partially offset by (i) a decrease in cash flows from accounts payable and accrued liabilities, primarily associated with the lower level of operations as of the beginning of Fiscal 2021 resulting from COVID-19 and (ii) an increase in inventory purchases during Fiscal 2022 compared to the prior year.

Cash used in investing activities for Fiscal 2022 increased by \$244.6 million primarily due to (i) cash payments of \$116.3 million, net of cash acquired of \$0.2 million, related to the acquisition of the Seven Springs Resorts during Fiscal 2022; (ii) a cash deposit of \$114.4 million made in July 2022 related to the acquisition of Andermatt-Sedrun, which closed on August 3, 2022; and (iii) an increase in capital expenditures of \$77.7 million as a result of the deferral of discretionary capital projects in the prior year related to our decision to prioritize near-term liquidity due to the effects of COVID-19. These increases were partially offset by proceeds of \$40.5 million from the sale of the DoubleTree at Breckenridge during Fiscal 2022, as well as proceeds of \$10.3 million from the NPS related to partial payments for leasehold surrender interest at GTLC associated with assets that have been fully depreciated and the sale of an administrative building in Avon, CO for \$11.3 million.

Cash (used in) provided by financing activities decreased by \$927.8 million during Fiscal 2022 compared to Fiscal 2021, primarily due to (i) prior year proceeds of \$575.0 million from the issuance of our 0.0% Convertible Notes during Fiscal 2021; (ii) an increase in dividends paid of \$225.8 million; (iii) an increase in repurchases of common stock of \$75.0 million; (iv) a \$51.5 million repayment of debt associated with the maturity of the EB-5 Development Notes (as defined in Notes to Consolidated Financial Statements); and (v) an increase in net payments under the revolver component of our Whistler Credit Agreement of \$14.8 million. These increases were partially offset by a decrease in financing costs primarily associated with the issuance of the 0.0% Convertible Notes in the prior year.

### ***Fiscal 2021 compared to Fiscal 2020***

We generated \$525.3 million of cash from operating activities during Fiscal 2021, an increase of \$130.3 million when compared to \$395.0 million of cash generated during Fiscal 2020. The increase in operating cash flows was primarily a result of (i) an increase in accounts payable and accrued liabilities (excluding accounts payable and accrued liabilities assumed through acquisitions) primarily due to an increase in accrued trade payables, salaries and wages in Fiscal 2021 due to a return to more normal operations, as compared to significantly lower accruals in the prior year due to the early closure of the 2019/2020 North American ski season for our Resorts, lodging properties and retail stores beginning on March 15, 2020; (ii) an increase in pass product sales and collections as compared to Fiscal 2020, primarily as a result of the impacts of COVID-19, including the extended pass product sales deadline in the prior year and the impact of credits offered to 2019/2020 North American pass product holders who purchased 2020/2021 pass products; and (iii) a decrease in inventories (excluding inventories assumed through acquisitions) as of July 31, 2021 as compared to the beginning of the fiscal year relative to an increase in the prior year period. These increases were partially offset by an increase in cash interest payments of \$37.3 million in Fiscal 2021 as compared to the prior year, primarily due to incremental cash interest payments on the 6.25% Notes issued in May 2020, for which the first interest payments were made during Fiscal 2021.

Cash used in investing activities for Fiscal 2021 decreased by \$389.4 million, primarily due to cash payments of \$327.6 million, net of cash acquired, related to the acquisition of Peak Resorts during Fiscal 2020. Additionally, capital expenditures decreased by \$57.2 million primarily as a result of the deferral of a significant amount of discretionary capital projects related to our decision during the outbreak of COVID-19 to prioritize near-term liquidity.

Cash provided by financing activities increased by \$58.4 million during Fiscal 2021 compared to Fiscal 2020, primarily due to (i) proceeds of \$575.0 million from the issuance of our 0.0% Convertible Notes during Fiscal 2021; (ii) a decrease in dividends paid of \$212.7 million; (iii) a decrease in net payments of \$208.0 million under the revolver component of our Vail Holdings Credit Agreement; and (iv) a decrease in repurchases of common stock of \$46.4 million. These increases in cash provided by financing activities were partially offset by (i) proceeds of \$600.0 million related to the issuance of our 6.25% Notes during Fiscal 2020; (ii) proceeds of \$335.6 million from incremental borrowings under the term loan portion of our Vail Holdings Credit Agreement during Fiscal 2020, which were used to fund the Peak Resorts acquisition; (iii) an increase in net payments under the revolver component of our Whistler Credit Agreement of \$23.5 million; and (iv) an increase in employee taxes paid for equity award exercises of \$19.6 million.

### ***Significant Sources of Cash***

We had \$1,107.4 million of cash and cash equivalents as of July 31, 2022, compared to \$1,244.0 million as of July 31, 2021. Although we cannot predict the future impact associated with the COVID-19 pandemic or other economic factors on our business, we currently anticipate that our Mountain and Lodging segment operating results will continue to provide a significant source of future operating cash flows.

In addition to our \$1,107.4 million of cash and cash equivalents at July 31, 2022, we had \$417.4 million available under the revolver component of our Vail Holdings Credit Agreement as of July 31, 2022 (which represents the total commitment of \$500.0 million less certain letters of credit outstanding of \$82.6 million). Also, to further support the liquidity needs of Whistler Blackcomb, we had C\$281.6 million (\$220.0 million) available under the revolver component of our Whistler Credit Agreement (which represents the total commitment of C\$300.0 million (\$234.3 million) less outstanding borrowings of C\$15.0 million (\$11.6 million) and letters of credit outstanding of C\$3.4 million (\$2.6 million)). We expect that our liquidity needs in the near term will be met by continued use of our existing cash and cash equivalents, operating cash flows and borrowings under both the Vail Holdings Credit Agreement and Whistler Credit Agreement, if needed. On August 31, 2022, we entered into an amendment of the Vail Holdings Credit Agreement, to extend the maturity date by two years to September 2026. Additionally, in connection with the amendment the reference rate changed from LIBOR to the secured overnight financing rate ("SOFR") given the anticipated sunset of LIBOR in June of 2023. SOFR is a broad measure of the cost of borrowing cash in the overnight U.S. Treasury repo market and is administered by the Federal Reserve Bank of New York. There were no other material changes in terms. The Vail Holdings Credit Agreement and the Whistler Credit Agreement provide adequate flexibility and are priced favorably with any new borrowings currently priced at SOFR, plus a spread of 0.1%, plus 1.25% for the Vail Holdings Credit Agreement, and Bankers Acceptance Rate plus 1.75% for the Whistler Credit Agreement.

## ***Significant Uses of Cash***

### ***Capital Expenditures***

We have historically invested significant amounts of cash in capital expenditures for our resort operations, and we expect to continue to do so, subject to operating performance particularly as it relates to discretionary projects. In addition, we may incur capital expenditures for retained ownership interests associated with third-party real estate development projects. Currently planned capital expenditures primarily include investments that will allow us to maintain our high-quality standards, as well as certain incremental discretionary improvements at our Resorts, throughout our owned hotels and in technology that can impact the full network. We evaluate additional discretionary capital improvements based on an expected level of return on investment.

We currently anticipate we will spend approximately \$323 million to \$333 million on resort capital expenditures during calendar year 2022. This plan includes the installation of 18 new or replacement lifts across 12 of our resorts, which will meaningfully increase lift capacity at those lift locations. The capital plan includes approximately \$9 million for the addition of annual capital expenditures associated with the recently acquired Seven Springs Resorts, approximately \$4 million related to the addition of Andermatt-Sedrun and approximately \$20 million of incremental spending to complete the one-time capital plans associated with the Peak Resorts and Triple Peaks acquisitions. Also included in these estimated capital expenditures are approximately \$105 million to \$115 million of maintenance capital expenditures, which are necessary to maintain appearance and level of service appropriate to our resort operations. We currently plan to utilize cash on hand, borrowings available under our credit agreements and/or cash flow generated from future operations to provide the cash necessary to complete our capital plans.

Approximately \$87 million was spent for capital expenditures in calendar year 2022 as of July 31, 2022, leaving approximately \$236 million to \$246 million to spend in the remainder of calendar year 2022.

### ***Acquisitions***

On December 31, 2021, we acquired the assets of the Seven Springs Resorts for a purchase price of approximately \$116.5 million, after adjustments for certain agreed-upon terms, which was funded with cash on hand.

On August 3, 2022, we acquired a majority stake in Andermatt-Sedrun Sport AG, for a purchase price of CHF 149.3 million (\$155.7 million), which was funded with cash on hand. During Fiscal 2022, we made a cash deposit of CHF 110.0 million (\$114.4 million) to escrow as a required prepayment in connection with the acquisition, and the remaining CHF 39.3 million (\$41.3 million) was paid subsequent to July 31, 2022. As of August 3, 2022, the value of the total consideration paid to the seller was \$155.4 million.

### ***Debt***

As of July 31, 2022, principal payments on the majority of our long-term debt (\$2.7 billion of the total \$2.8 billion debt outstanding as of July 31, 2022) are not due until fiscal year 2025 and beyond. As of July 31, 2022 and 2021, total long-term debt, net (including long-term debt due within one year) was \$2.7 billion and \$2.9 billion, respectively. Net Debt (defined as long-term debt, net plus long-term debt due within one year less cash and cash equivalents) was \$1.6 billion as of both July 31, 2022 and 2021.

As of July 31, 2022, the Vail Holdings Credit Agreement provides for (i) a revolving loan facility in an aggregate principal amount of \$500.0 million and (ii) a term loan facility of \$1.1 billion. We expect that our liquidity needs in the near term will be met by continued use of our existing cash and cash equivalents, operating cash flows and borrowings under the Vail Holdings Credit Agreement and the Whistler Credit Agreement, if needed.

Our debt service requirements can be impacted by changing interest rates as we had approximately \$0.7 billion of net variable-rate debt outstanding as of July 31, 2022, after consideration of \$400.0 million in interest rate swaps which convert variable-rate debt to fixed-rate debt. A 100-basis point change in LIBOR (or its successor, SOFR) would cause our annual interest payments on our net variable-rate debt to change by approximately \$7.4 million. Additionally, the annual payments associated with the financing of the Canyons transaction increase by the greater of CPI less 1%, or 2%. The fluctuation in our debt service requirements, in addition to interest rate and inflation changes, may be impacted by future borrowings under our credit agreements or other alternative financing arrangements we may enter into. Our long term liquidity needs depend upon operating results that impact the borrowing capacity under our credit agreements, which can be mitigated by adjustments to capital expenditures, the flexibility of investment activities and the ability to obtain favorable future financing. We can respond to liquidity impacts of changes in the business and economic environment, by managing our capital expenditures, variable operating expenses, the timing of new real estate development activity and the payment of cash dividends on our common stock.

### Material Cash Requirements

As part of our ongoing operations, we enter into arrangements that obligate us to make future payments under contracts such as debt agreements and construction agreements in conjunction with our resort capital expenditures. Debt obligations, which totaled \$2.8 billion as of July 31, 2022, are recognized as liabilities in our Consolidated Balance Sheet. Obligations under construction contracts and other purchase commitments are not recognized as liabilities in our Consolidated Balance Sheet until services and/or goods are received which is in accordance with GAAP. A summary of our material cash requirements as of July 31, 2022 (excluding obligations presented elsewhere, including Notes to Consolidated Financial Statements) is presented below (in thousands):

	Payments Due by Period				
	Total	Fiscal 2023	2-3 years	4-5 years	More than 5 years
Long-term debt <sup>(1)</sup>	\$ 3,164,858	152,598	1,748,777	630,925	632,558
Service contracts	\$ 26,507	24,800	1,288	419	—
Purchase obligations and other <sup>(2)</sup>	\$ 698,358	597,847	77,411	—	23,100
Total contractual cash obligations	\$ 3,889,723	\$ 775,245	\$ 1,827,476	\$ 631,344	\$ 655,658

<sup>(1)</sup> Long-term debt includes principal payments, fixed-rate interest payments (including payments that are required under interest rate swaps) and estimated variable interest payments utilizing interest rates in effect at July 31, 2022, and assumes all debt outstanding as of July 31, 2022 will be held to maturity. The future annual interest obligations noted herein are estimated only in relation to debt outstanding as of July 31, 2022, and do not reflect interest obligations on potential future debt or refinancing (including the impact of the Fifth Amendment, which we entered into in August 2022 and which extended the maturity date of our Vail Holdings Credit Agreement by two years to September 2026 (see Notes to Consolidated Financial Statements for additional information)).

Long-term debt also includes \$12.8 million of proceeds resulting from real estate transactions accounted for as a financing arrangements. Fiscal 2023 payments shown above include approximately \$6.2 million of proceeds, which are expected to be recognized on the Company's Statement of Operations during Fiscal 2023 as a result of the anticipated resolution of continuing involvement, with no associated cash outflow (see Notes to Consolidated Financial Statements for additional information).

<sup>(2)</sup> Purchase obligations and other primarily includes amounts which are classified as trade payables (\$149.8 million), accrued payroll and benefits (\$109.8 million), accrued fees and assessments (\$25.7 million), contingent consideration liability (\$42.4 million) and accrued taxes (including taxes for uncertain tax positions) (\$87.5 million) on our Consolidated Balance Sheet as of July 31, 2022. These amounts also include other commitments for goods and services not yet received, including construction contracts and minimum commitments under season pass alliance agreements, which are not included on our Consolidated Balance Sheet as of July 31, 2022 in accordance with GAAP. Purchase obligations and other does not include any amounts associated with the acquisition of Andermatt-Sedrun, which was acquired on August 3, 2022.

### Share Repurchase Program

Our share repurchase program is conducted under authorizations made from time to time by our Board of Directors. On March 6, 2006, our Board of Directors initially authorized the repurchase of up to 3,000,000 shares of Vail Shares and later authorized additional repurchases of up to 3,000,000 additional Vail Shares (July 16, 2008) and 1,500,000 Vail Shares (December 4, 2015), for a total authorization to repurchase shares of up to 7,500,000 Vail Shares. During Fiscal 2022, we repurchased 304,567 shares of common stock at an average price of \$246.27 for a total cost of \$75.0 million. Since the inception of this stock repurchase program through July 31, 2022, we have repurchased 6,465,708 Vail Shares at a cost of approximately \$479.4 million. As of July 31, 2022, 1,034,292 Vail Shares remained available to repurchase under the existing repurchase authorization. Vail Shares purchased pursuant to the repurchase program will be held as treasury shares and may be used for the issuance of shares under our share award plan. Repurchases under the program may be made from time to time at prevailing prices as permitted by applicable laws, and subject to market conditions and other factors. The timing, as well as the number of Vail Shares that may be repurchased under the program, will depend on several factors, including our future financial performance, our available cash resources and competing uses for cash that may arise in the future, the restrictions in our Vail Holdings Credit Agreement, prevailing prices of Vail Shares and the number of Vail Shares that become available for sale at prices that we believe are attractive. The share repurchase program has no expiration date.

### Dividend Payments

During Fiscal 2022, we paid cash dividends of \$5.58 per share (\$225.8 million, including cash dividends paid to Exchangeco shareholders). We did not pay cash dividends during Fiscal 2021. On September 22, 2022, our Board of Directors approved a cash dividend of \$1.91 per share payable on October 24, 2022 to stockholders of record as of October 5, 2022. We expect to fund the dividend with available cash on hand. The amount, if any, of dividends to be paid in the future will depend on our available cash on hand, anticipated cash needs, overall financial condition, restrictions contained in our Vail Holdings Credit Agreement, future prospects for earnings and cash flows, as well as other factors considered relevant by our Board of Directors.

### **Covenants and Limitations**

We must abide by certain restrictive financial covenants under our credit agreements. The most restrictive of those covenants include the following: for the Vail Holdings Credit Agreement, Net Funded Debt to Adjusted EBITDA ratio, Secured Net Funded Debt to Adjusted EBITDA ratio and the Interest Coverage ratio (each as defined in the Vail Holdings Credit Agreement); for the Whistler Credit Agreement, Consolidated Total Leverage Ratio and Consolidated Interest Coverage Ratio (each as defined in the Whistler Credit Agreement); and for the EPR Secured Notes, Maximum Leverage Ratio and Consolidated Fixed Charge Ratio (each as defined in the EPR Agreements). In addition, our financing arrangements limit our ability to make certain restricted payments, pay dividends on or redeem or repurchase stock, make certain investments, make certain affiliate transfers and may limit our ability to enter into certain mergers, consolidations or sales of assets and incur certain indebtedness. Our borrowing availability under the Vail Holdings Credit Agreement is primarily determined by the Net Funded Debt to Adjusted EBITDA ratio, which is based on our segment operating performance, as defined in the Vail Holdings Credit Agreement. Our borrowing availability under the Whistler Credit Agreement is primarily determined based on the commitment size of the credit facility and our compliance with the terms of the Whistler Credit Agreement.

We were in compliance with all restrictive financial covenants in our debt instruments as of July 31, 2022. We expect that we will continue to meet all applicable financial maintenance covenants in effect in our credit agreements throughout the year ending July 31, 2023; however, there can be no assurance that we will continue to meet such financial covenants. If such covenants are not met, we would be required to seek a waiver or amendment from the banks participating in our credit agreements. There can be no assurance that such waiver or amendment would be granted, which could have a material adverse impact on our liquidity.

### **Off Balance Sheet Arrangements**

We do not have off balance sheet transactions that are expected to have a material effect on our financial condition, revenue, expenses, results of operations, liquidity, capital expenditures or capital resources.

### **Critical Accounting Policies**

The preparation of Consolidated Financial Statements in conformity with GAAP requires us to select appropriate accounting policies and to make judgments and estimates affecting the application of those accounting policies. In applying our accounting policies, different business conditions or the use of different assumptions may result in materially different amounts reported in the Consolidated Financial Statements.

We have identified the most critical accounting policies which were determined by considering accounting policies that involve the most complex or subjective decisions or assessments. We also have other policies considered key accounting policies; however, these policies do not meet the definition of critical accounting policies because they do not generally require us to make estimates or judgments that are complex or subjective. We have reviewed these critical accounting policies and related disclosures with our Audit Committee of the Board of Directors.

### **Goodwill and Intangible Assets**

#### *Description*

The carrying value of goodwill and indefinite-lived intangible assets are evaluated for possible impairment on an annual basis or between annual tests if an event occurs or circumstances change that would more likely than not reduce the estimated fair value of a reporting unit or indefinite-lived intangible asset below its carrying value. Other intangible assets are evaluated for impairment only when there is evidence that events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable.

### *Judgments and Uncertainties*

Application of the goodwill and indefinite-lived intangible asset impairment test requires judgment, including the identification of reporting units, assignment of assets and liabilities to reporting units, assignment of goodwill to reporting units and determination of the estimated fair value of reporting units and indefinite-lived intangible assets. We perform a qualitative analysis to determine whether it is more likely than not that the fair value of a reporting unit or indefinite-lived intangible asset exceeds the carrying amount. If it is determined, based on qualitative factors, that the fair value of the reporting unit or indefinite-lived intangible asset may be more likely than not less than carrying amount, or if significant changes to macro-economic factors related to the reporting unit or intangible asset have occurred that could materially impact fair value since the previous quantitative analysis was performed, a quantitative impairment test would be required, in which we would determine the estimated fair value of our reporting units using a discounted cash flow analysis and determine the estimated fair value of indefinite-lived intangible assets primarily using the income approach based upon estimated future revenue streams. These analyses require significant judgments, including estimation of future cash flows, which is dependent on internal forecasts, available industry/market data (to the extent available), estimation of the long-term rate of growth for our business including expectations and assumptions regarding the impact of general economic conditions on our business, estimation of the useful life over which cash flows will occur (including terminal multiples), determination of the respective weighted average cost of capital and market participant assumptions. Changes in these estimates and assumptions could materially affect the determination of estimated fair value and impairment for each reporting unit or indefinite-lived intangible asset.

### *Effect if Actual Results Differ From Assumptions*

Goodwill and indefinite-lived intangible assets are tested for impairment at least annually as of May 1. Our testing for goodwill and indefinite-lived intangible asset impairment consists of a comparison of the estimated fair value of those assets with their net carrying values. If the net carrying value of the assets exceed their estimated fair value, an impairment will be recognized for indefinite-lived intangible assets, including goodwill, in an amount equal to that excess; otherwise, no impairment loss is recognized. During Fiscal 2022, we primarily performed qualitative analyses of our reporting units and indefinite-lived intangible assets and determined that the estimated fair value of all material reporting units and indefinite-lived intangible assets significantly exceeded their respective carrying values.

Fair value determinations require considerable judgment and are sensitive to changes in underlying assumptions and factors. As a result, there can be no assurance that the estimates and assumptions made for purposes of the annual goodwill impairment test will prove to be an accurate prediction of the future. Examples of events or circumstances that could reasonably be expected to negatively affect the underlying key assumptions and ultimately impact the estimated fair value of our reporting units may include such items as: (1) prolonged adverse weather conditions resulting in a sustained decline in guest visitation; (2) a prolonged weakness in the general economic conditions in which guest visitation and spending is adversely impacted (particularly with regard to COVID-19 or other potential future pandemics); and (3) volatility in the equity and debt markets which could result in a higher discount rate.

While historical performance and current expectations have generally resulted in estimated fair values of our reporting units in excess of carrying values, if our assumptions are not realized, it is possible that an impairment charge may need to be recorded in the future. However, it is not possible at this time to determine if an impairment charge would result or if such a charge would be material. As of July 31, 2022, we had \$1,754.9 million of goodwill and \$254.2 million of indefinite-lived intangible assets recorded on our Consolidated Balance Sheet. There can be no assurance that the estimates and assumptions made for purposes of the annual goodwill and indefinite-lived intangible asset impairment tests will prove to be an accurate prediction of the future.

## **Tax Contingencies**

### *Description*

We must make certain estimates and judgments in determining income tax expense for financial statement purposes. These estimates and judgments occur in the calculation of tax credits and deductions and in the calculation of certain tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes, as well as the interest and penalties relating to uncertain tax positions. The calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax regulations. We recognize liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step requires us to estimate and measure the largest tax benefit that is cumulatively greater than 50% likely of being realized upon ultimate settlement. It is inherently difficult and subjective to estimate such amounts, as this requires us to determine the probability of various possible outcomes. This evaluation is based on factors including, but not limited to, changes in facts or circumstances, changes in tax law, interpretation of tax law, effectively settled issues under audit and new audit activity. A significant amount of time may pass before a particular matter, for which we may have established a reserve, is audited and fully resolved.

### *Judgments and Uncertainties*

The estimates of our tax contingencies reserve contain uncertainty because management must use judgment to estimate the potential exposure associated with our various filing positions.

### *Effect if Actual Results Differ From Assumptions*

We believe the estimates and judgments discussed herein are reasonable and we have adequate reserves for our tax contingencies for uncertain tax positions. Our reserves for uncertain tax positions, including any income tax related interest and penalties, are \$68.8 million as of July 31, 2022. This reserve relates to the treatment of the Canyons lease payments obligation as payments of debt obligations and that the tax basis in Canyons goodwill is deductible. Actual results could differ and we may be exposed to increases or decreases in those reserves and tax provisions that could be material.

An unfavorable tax settlement could require the use of cash and could possibly result in increased tax expense and effective tax rate and/or adjustments to our deferred tax assets and deferred tax liabilities in the year of resolution. A favorable tax settlement could possibly result in a reduction in our tax expense, effective tax rate, income taxes payable, other long-term liabilities and/or adjustments to our deferred tax assets and deferred tax liabilities in the year of settlement or in future years.

## **Depreciable Lives of Assets**

### *Description*

Mountain and lodging operational assets, furniture and fixtures, computer equipment, software, vehicles and leasehold improvements are primarily depreciated using the straight-line method over the estimated useful life of the asset. Assets may become obsolete or require replacement before the end of their useful life in which the remaining book value would be written-off or we could incur costs to remove or dispose of assets no longer in use.

### *Judgments and Uncertainties*

The estimates of our useful lives of the assets contain uncertainty because management must use judgment to estimate the useful life of the asset.

### *Effect if Actual Results Differ From Assumptions*

Although we believe the estimates and judgments discussed herein are reasonable, actual results could differ, and we may be exposed to increased expense related to depreciable assets disposed of, removed or taken out of service prior to its originally estimated useful life, which may be material. A 10% decrease in the estimated useful lives of depreciable assets would have increased depreciation expense by approximately \$24.0 million for Fiscal 2022.

## **Business Combinations**

### *Description*

A component of our growth strategy has been to acquire and integrate businesses that complement our existing operations. We account for business combinations in accordance with the guidance for business combinations and related literature. Accordingly, we allocate the purchase price of acquired businesses to the identifiable tangible and intangible assets acquired and liabilities assumed based upon their estimated fair values at the date of acquisition. The difference between the purchase price and the estimated fair value of the net assets acquired or the excess of the aggregate estimated fair values of assets acquired and liabilities assumed is recorded as goodwill. In determining the estimated fair values of assets acquired and liabilities assumed in a business combination, we use various recognized valuation methods including present value modeling and referenced market values (where available). Valuations are performed by management or independent valuation specialists under management's supervision, where appropriate.

### *Judgments and Uncertainties*

Accounting for business combinations requires our management to make significant estimates and assumptions, especially at the acquisition date, including our estimates for intangible assets, contractual obligations assumed and contingent consideration, where applicable. Although we believe the assumptions and estimates we have made in the past have been reasonable and appropriate, they are based in part on historical experience and information obtained from the management of the acquired companies and are inherently uncertain. Examples of critical estimates in valuing certain of the intangible assets we have acquired include, but are not limited to: determination of weighted average cost of capital, market participant assumptions, royalty rates, terminal multiples and estimates of future cash flows to be generated by the acquired assets. In addition to the estimates and assumptions applied to valuing intangible assets acquired, the determination of the estimated fair value of contingent consideration, including estimating the likelihood and timing of achieving the relevant thresholds for contingent consideration payments, requires the use of subjective judgments. We estimate the fair value of the Park City contingent consideration payments using an option pricing valuation model which incorporates, among other factors, projected achievement of specified financial performance measures, discounts rates and volatility for the respective business.

### *Effect if Actual Results Differ From Assumptions*

We believe that the estimated fair values assigned to the assets acquired and liabilities assumed are based on reasonable assumptions that a marketplace participant would use. While we use our best estimates and assumptions to accurately value assets acquired and liabilities assumed at the acquisition date, our estimates are inherently uncertain and subject to refinement. As a result, during the measurement period, which may be up to one year from the acquisition date, we may record adjustments to the assets acquired and liabilities assumed with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the estimated fair values of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments would be recorded in our Consolidated Statements of Operations.

We recognize the fair value of contingent consideration at the date of acquisition as part of the consideration transferred to acquire a business. The liability associated with contingent consideration is remeasured to fair value at each reporting period subsequent to the date of acquisition taking into consideration changes in financial projections and long-term growth rates, among other factors, that may impact the timing and amount of contingent consideration payments until the term of the agreement has expired or the contingency is resolved. Increases in the fair value of contingent consideration are recorded as losses in our Consolidated Statements of Operations, while decreases in fair value are recorded as gains.

### **New Accounting Standards**

Refer to the Summary of Significant Accounting Policies within the Notes to Consolidated Financial Statements for a discussion of new accounting standards.



## Seasonality and Quarterly Results

Our mountain and lodging operations are seasonal in nature, with a typical peak operating season in North America generally beginning in mid-December and running through mid-April. In particular, revenue and profits for our North America mountain and most of our lodging operations are substantially lower and historically result in losses from late spring to late fall. Conversely, peak operating seasons for our NPS concessioner properties, our mountain resort golf courses and our Australian resorts' ski season generally occur during the North American summer months while the North American winter months result in operating losses. Revenue and profits generated by NPS concessioner properties' summer operations, golf operations and Australian resorts' ski operations are not sufficient to fully offset our off-season losses from our North American mountain and other lodging operations. During Fiscal 2022, approximately 83% of total combined Mountain and Lodging segment net revenue (excluding Lodging segment revenue associated with reimbursement of payroll costs) was earned during the second and third fiscal quarters. Therefore, the operating results for any three-month period are not necessarily indicative of the results that may be achieved for any subsequent quarter or for a full year (see Notes to Consolidated Financial Statements).

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

*Interest Rate Risk.* Our exposure to market risk is limited primarily to the fluctuating interest rates associated with variable rate indebtedness. At July 31, 2022, we had approximately \$0.7 billion of net variable rate indebtedness (after taking into consideration \$400.0 million in interest rate swaps which converts variable-rate debt to fixed-rate debt), representing approximately 26% of our total debt outstanding, at an average interest rate during Fiscal 2022 of approximately 2.6%. Based on variable-rate borrowings outstanding as of July 31, 2022, a 100-basis point (or 1.0%) change in LIBOR (or its successor, SOFR) would result in our annual interest payments on our net variable-rate debt changing by \$7.4 million. Our market risk exposure fluctuates based on changes in underlying interest rates.

*Foreign Currency Exchange Rate Risk.* We are exposed to currency translation risk because the results of our international operations are conducted in local currency, which we then translate to U.S. dollars for inclusion in our Consolidated Financial Statements. As a result, changes in foreign exchange rates, in particular the Canadian dollar and Australian dollar compared to the U.S. dollar, affect the amounts we record for our foreign assets, liabilities, revenues and expenses, and could have a negative effect on our financial results. Additionally, we have foreign currency transaction exposure from an intercompany loan to Whistler Blackcomb that is not deemed to be permanently invested, which has and could materially change due to fluctuations in the Canadian dollar exchange rate. The results of Whistler Blackcomb and our Australian ski areas are reported in Canadian dollars and Australian dollars respectively, which we then translate to U.S. dollars for inclusion in our Consolidated Financial Statements. We do not currently enter into hedging arrangements to minimize the impact of foreign currency fluctuations on our operations.

The following table summarizes the amounts of foreign currency translation adjustments, representing (losses) gains, and foreign currency (loss) gain on intercompany loans recognized in comprehensive income (in thousands):

	Year ended July 31,		
	2022	2021	2020
Foreign currency translation adjustments	\$ (46,493)	\$ 100,019	\$ (9,075)
Foreign currency (loss) gain on intercompany loans	\$ (2,682)	\$ 8,282	\$ (3,230)

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

**Vail Resorts, Inc.**

*Consolidated Financial Statements for the Years Ended July 31, 2022, 2021 and 2020*

<a href="#"><u>Management's Report on Internal Control Over Financial Reporting</u></a>	<a href="#"><u>65</u></a>
<a href="#"><u>Report of Independent Registered Public Accounting Firm (PCAOB ID 238)</u></a>	<a href="#"><u>66</u></a>
<i>Consolidated Financial Statements</i>	
<a href="#"><u>Consolidated Balance Sheets</u></a>	<a href="#"><u>68</u></a>
<a href="#"><u>Consolidated Statements of Operations</u></a>	<a href="#"><u>69</u></a>
<a href="#"><u>Consolidated Statements of Comprehensive Income</u></a>	<a href="#"><u>70</u></a>
<a href="#"><u>Consolidated Statements of Stockholders' Equity</u></a>	<a href="#"><u>71</u></a>
<a href="#"><u>Consolidated Statements of Cash Flows</u></a>	<a href="#"><u>72</u></a>
<a href="#"><u>Notes to Consolidated Financial Statements</u></a>	<a href="#"><u>73</u></a>

### ***Management's Report on Internal Control over Financial Reporting***

Management of Vail Resorts, Inc. (the "Company") is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States of America.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of the effectiveness of internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management, including the Company's Chief Executive Officer and Chief Financial Officer, assessed the effectiveness of the Company's internal control over financial reporting as of July 31, 2022. In making this assessment, management used the criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013. Based on this assessment, management concluded that, as of July 31, 2022, the Company's internal control over financial reporting was effective. Management's evaluation and conclusion on the effectiveness of internal control over financial reporting as of July 31, 2022 excluded certain elements of internal controls of Seven Springs Mountain Resort, Hidden Valley Resort and Laurel Mountain Ski Area (collectively, the "Seven Springs Resorts," acquired December 31, 2021) due to the timing of this acquisition. Those elements of the acquired resorts' internal controls over financial reporting that have been excluded represent less than 1% of total consolidated assets and approximately 2% of total consolidated net revenues of the Company as of and for the year ended July 31, 2022.

The Company's independent registered public accounting firm, PricewaterhouseCoopers LLP, has issued an attestation report on the effectiveness of the Company's internal control over financial reporting as of July 31, 2022, as stated in the Report of Independent Registered Public Accounting Firm on the following page.

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders  
of Vail Resorts, Inc.

***Opinions on the Financial Statements and Internal Control over Financial Reporting***

We have audited the accompanying consolidated balance sheets of Vail Resorts, Inc. and its subsidiaries (the “Company”) as of July 31, 2022 and 2021, and the related consolidated statements of operations, of comprehensive income, of stockholders’ equity and of cash flows for each of the three years in the period ended July 31, 2022, 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 July 31, 2022, 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 July 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended July 31, 2022 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 July 31, 2022, 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 the accompanying Management’s Report on Internal Control over Financial Reporting. 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.

As described in Management’s Report on Internal Control over Financial Reporting, management has excluded certain elements of the internal control over financial reporting of Seven Springs Mountain Resort, Hidden Valley Resort and Laurel Mountain Ski Area (collectively, the “Seven Springs Resorts”) from its assessment of the Company’s internal control over financial reporting as of July 31, 2022 because it was acquired by the Company in a purchase business combination during 2022. Subsequent to the acquisition, certain elements of the Seven Springs Resorts’ internal control over financial reporting and related processes were integrated into the Company’s existing systems and internal control over financial reporting. Those controls that were not integrated have been excluded from management’s assessment of the effectiveness of internal control over financial reporting as of July 31, 2022. We have also excluded these elements of the internal control over financial reporting of the Seven Springs Resorts from our audit of the Company’s internal control over financial reporting. The excluded elements represent controls over less than 1% of consolidated assets and approximately 2% of the consolidated net revenues.

***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.

### ***Fair Value Measurement of the Contingent Consideration***

As described in Note 9 to the consolidated financial statements, the Company has established a liability of \$42.4 million as of July 31, 2022 for additional amounts that management believes are likely to be paid to the previous owner of Park City (the "Contingent Consideration"). The Company remeasures the Contingent Consideration to fair value at each reporting date until the contingency is resolved. The estimated fair value of Contingent Consideration includes the future period resort operations of Park City in the calculation of EBITDA on which participating contingent payments are made, which is determined on the basis of estimated subsequent year performance, escalated by an assumed long-term growth factor and discounted to net present value. Fair value is estimated using an option pricing valuation model. As described by management, key assumptions in determining the fair value under this model included future period Park City EBITDA, discount rate and volatility.

The principal considerations for our determination that performing procedures relating to the fair value measurement of the Contingent Consideration is a critical audit matter are (i) the significant judgment by management when developing the fair value measurement, which in turn led to a high degree of auditor judgment, subjectivity, and effort in performing procedures and evaluating audit evidence related to management's significant assumptions for the future period Park City EBITDA, discount rate, and volatility; and (ii) the audit effort involved the use of professionals with specialized skill and knowledge.

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 management's fair value measurement of the Contingent Consideration including controls over the Company's significant assumptions. The procedures also included, among others, testing management's process for developing the fair value measurement and evaluating the significant assumptions used by management, related to the future period Park City EBITDA, discount rate, and volatility. Evaluating management's assumptions related to the future period Park City EBITDA, discount rate, and volatility involved evaluating whether the assumptions used by management were reasonable considering (i) the current and past period EBITDA performance of Park City; (ii) the consistency with external market data; and (iii) whether these assumptions were consistent with evidence obtained in other areas of the audit. Professionals with specialized skill and knowledge were used to assist in the evaluation of the Company's discount rate and volatility assumptions.

/s/ PricewaterhouseCoopers LLP  
Denver, Colorado  
September 28, 2022

We have served as the Company's auditor since 2002.

**Vail Resorts, Inc.**  
**Consolidated Balance Sheets**  
(In thousands, except per share amounts)

	July 31,	
	2022	2021
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 1,107,427	\$ 1,243,962
Restricted cash	18,680	14,612
Accounts receivable, net of allowances of \$6,356 and \$7,621, respectively	383,425	345,408
Inventories, net of reserves of \$2,687 and \$2,601, respectively	108,723	80,316
Other current assets	173,277	61,288
Total current assets	1,791,532	1,745,586
Property, plant and equipment, net (Note 8)	2,118,052	2,067,876
Real estate held for sale or investment	95,983	95,615
Goodwill, net (Note 8)	1,754,928	1,781,047
Intangible assets, net (Note 8)	314,058	319,110
Operating right-of-use assets (Note 4)	192,070	204,716
Deferred charges and other assets	51,405	37,106
Total assets	\$ 6,318,028	\$ 6,251,056
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable and accrued liabilities (Note 8)	\$ 942,830	\$ 815,472
Income taxes payable	104,275	48,812
Long-term debt due within one year (Note 6)	63,749	114,117
Total current liabilities	1,110,854	978,401
Long-term debt, net (Note 6)	2,670,300	2,736,175
Operating lease liabilities (Note 4)	174,567	190,561
Other long-term liabilities	246,359	264,034
Deferred income taxes, net (Note 10)	268,464	252,817
Total liabilities	4,470,544	4,421,988
Commitments and contingencies (Note 11)		
Stockholders' equity:		
Preferred stock, \$0.01 par value, 25,000 shares authorized, no shares issued and outstanding	—	—
Common stock, \$0.01 par value, 100,000 shares authorized and 46,744 and 46,552 shares issued, respectively	467	466
Exchangeable shares, \$0.01 par value, 3 and 34 shares issued and outstanding, respectively (Note 5)	—	—
Additional paid-in capital	1,184,577	1,196,993
Accumulated other comprehensive income	10,923	27,799
Retained earnings	895,889	773,752
Treasury stock, at cost; 6,466 and 6,161 shares, respectively (Note 13)	(479,417)	(404,411)
Total Vail Resorts, Inc. stockholders' equity	1,612,439	1,594,599
Noncontrolling interests	235,045	234,469
Total stockholders' equity	1,847,484	1,829,068
Total liabilities and stockholders' equity	\$ 6,318,028	\$ 6,251,056

The accompanying Notes are an integral part of these Consolidated Financial Statements.

**Vail Resorts, Inc.**  
**Consolidated Statements of Operations**  
(In thousands, except per share amounts)

	Year Ended July 31,		
	2022	2021	2020
<b>Net revenue:</b>			
Mountain and Lodging services and other	\$ 2,116,547	\$ 1,650,055	\$ 1,578,463
Mountain and Lodging retail and dining	408,657	257,885	380,394
Resort net revenue	2,525,204	1,907,940	1,958,857
Real Estate	708	1,770	4,847
Total net revenue	2,525,912	1,909,710	1,963,704
<b>Operating expense (exclusive of depreciation and amortization shown separately below):</b>			
Mountain and Lodging operating expense	1,180,963	960,453	1,019,437
Mountain and Lodging retail and dining cost of products sold	162,414	112,536	159,066
General and administrative	347,493	296,993	278,695
Resort operating expense	1,690,870	1,369,982	1,457,198
Real Estate	5,911	6,676	9,182
Total segment operating expense	1,696,781	1,376,658	1,466,380
<b>Other operating (expense) income:</b>			
Depreciation and amortization	(252,391)	(252,585)	(249,572)
Gain on sale of real property	1,276	324	207
Asset impairments (Note 2)	—	—	(28,372)
Change in estimated fair value of contingent consideration (Note 9)	(20,280)	(14,402)	2,964
Gain (loss) on disposal of fixed assets and other, net	43,992	(5,373)	838
Income from operations	601,728	261,016	223,389
Interest expense, net	(148,183)	(151,399)	(106,721)
Mountain equity investment income, net	2,580	6,698	1,690
Investment income and other, net	3,718	586	1,305
Foreign currency (loss) gain on intercompany loans (Note 6)	(2,682)	8,282	(3,230)
Income before provision for income taxes	457,161	125,183	116,433
Provision for income taxes (Note 10)	(88,824)	(726)	(7,378)
Net income	368,337	124,457	109,055
Net (income) loss attributable to noncontrolling interests	(20,414)	3,393	(10,222)
Net income attributable to Vail Resorts, Inc.	\$ 347,923	\$ 127,850	\$ 98,833
<b>Per share amounts (Note 5):</b>			
Basic net income per share attributable to Vail Resorts, Inc.	\$ 8.60	\$ 3.17	\$ 2.45
Diluted net income per share attributable to Vail Resorts, Inc.	\$ 8.55	\$ 3.13	\$ 2.42
Cash dividends declared per share	\$ 5.58	\$ —	\$ 5.28

The accompanying Notes are an integral part of these Consolidated Financial Statements.

**Vail Resorts, Inc.**  
**Consolidated Statements of Comprehensive Income**  
(In thousands)

	Year Ended July 31,		
	2022	2021	2020
Net income	\$ 368,337	\$ 124,457	\$ 109,055
Foreign currency translation adjustments	(46,493)	100,019	(9,075)
Change in estimated fair value of hedging instruments, net of tax	18,906	12,817	(22,510)
Comprehensive income	340,750	237,293	77,470
Comprehensive income attributable to noncontrolling interests	(9,703)	(24,807)	(3,744)
Comprehensive income attributable to Vail Resorts, Inc.	\$ 331,047	\$ 212,486	\$ 73,726

The accompanying Notes are an integral part of these Consolidated Financial Statements.



**Vail Resorts, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
(In thousands, except share amounts)

	Common Stock		Additional Paid in Capital	Accumulated Other Comprehensive (Loss) Income	Retained Earnings	Treasury Stock	Total Vail Resorts, Inc. Stockholders' Equity	Noncontrolling Interests	Total Stockholders' Equity
	Vail Resorts	Exchangeable							
Balance, July 31, 2019	\$ 461	\$ 1	\$ 1,130,083	\$ (31,730)	\$ 759,801	\$(357,989)	\$ 1,500,627	\$ 226,213	\$ 1,726,840
Comprehensive income:									
Net income	—	—	—	—	98,833	—	98,833	10,222	109,055
Foreign currency translation adjustments	—	—	—	(2,597)	—	—	(2,597)	(6,478)	(9,075)
Change in estimated fair value of hedging instruments, net of tax	—	—	—	(22,510)	—	—	(22,510)	—	(22,510)
Total comprehensive income							73,726	3,744	77,470
Stock-based compensation expense (Note 14)	—	—	21,021	—	—	—	21,021	—	21,021
Issuance of shares under share award plan, net of shares withheld for employee taxes (Note 14)	2	—	(19,480)	—	—	—	(19,478)	—	(19,478)
Exchangeable share transfers	1	(1)	—	—	—	—	—	—	—
Repurchases of common stock (Note 13)	—	—	—	—	—	(46,422)	(46,422)	—	(46,422)
Dividends (Note 5)	—	—	—	—	(212,732)	—	(212,732)	—	(212,732)
Distributions to noncontrolling interests, net	—	—	—	—	—	—	—	(15,032)	(15,032)
Balance, July 31, 2020	464	—	1,131,624	(56,837)	645,902	(404,411)	1,316,742	214,925	1,531,667
Comprehensive income:									
Net income (loss)	—	—	—	—	127,850	—	127,850	(3,393)	124,457
Foreign currency translation adjustments	—	—	—	71,819	—	—	71,819	28,200	100,019
Change in estimated fair value of hedging instruments, net of tax	—	—	—	12,817	—	—	12,817	—	12,817
Total comprehensive income							212,486	24,807	237,293
Equity component of 0.0% Convertible Notes, net (Note 6)	—	—	80,066	—	—	—	80,066	—	80,066
Stock-based compensation expense (Note 14)	—	—	24,395	—	—	—	24,395	—	24,395
Issuance of shares under share award plan, net of shares withheld for employee taxes (Note 14)	2	—	(39,092)	—	—	—	(39,090)	—	(39,090)
Distributions to noncontrolling interests, net	—	—	—	—	—	—	—	(5,263)	(5,263)
Balance, July 31, 2021	466	—	1,196,993	27,799	773,752	(404,411)	1,594,599	234,469	1,829,068
Comprehensive income:									
Net income	—	—	—	—	347,923	—	347,923	20,414	368,337
Foreign currency translation adjustments	—	—	—	(35,782)	—	—	(35,782)	(10,711)	(46,493)
Change in estimated fair value of hedging instruments, net of tax	—	—	—	18,906	—	—	18,906	—	18,906
Total comprehensive income							331,047	9,703	340,750
Stock-based compensation expense (Note 14)	—	—	24,885	—	—	—	24,885	—	24,885
Issuance of shares under share award plan, net of shares withheld for employee taxes (Note 14)	1	—	(37,301)	—	—	—	(37,300)	—	(37,300)
Repurchases of common stock (Note 13)	—	—	—	—	—	(75,006)	(75,006)	—	(75,006)
Dividends (Note 5)	—	—	—	—	(225,786)	—	(225,786)	—	(225,786)
Distributions to noncontrolling interests, net	—	—	—	—	—	—	—	(9,127)	(9,127)
Balance, July 31, 2022	\$ 467	\$ —	\$ 1,184,577	\$ 10,923	\$ 895,889	\$(479,417)	\$ 1,612,439	\$ 235,045	\$ 1,847,484

The accompanying Notes are an integral part of these Consolidated Financial Statements.

**Vail Resorts, Inc.**  
**Consolidated Statements of Cash Flows**  
(In thousands)

	Year Ended July 31,		
	2022	2021	2020
<b>Cash flows from operating activities:</b>			
Net income	\$ 368,337	\$ 124,457	\$ 109,055
<b>Adjustments to reconcile net income to net cash provided by operating activities:</b>			
Depreciation and amortization	252,391	252,585	249,572
Asset impairments	—	—	28,372
Stock-based compensation expense	24,885	24,395	21,021
Deferred income taxes, net	(9,390)	(16,136)	17,435
(Gain) loss on disposal of fixed assets and other, net	(43,992)	5,373	(838)
Change in estimated fair value of contingent consideration	20,280	14,402	(2,964)
Other non-cash expense (income), net	3,510	(7,231)	(3,356)
<b>Changes in assets and liabilities, net of effects of acquisitions:</b>			
Accounts receivable, net	(39,010)	(237,188)	167,347
Inventories, net	(28,048)	22,781	(1,924)
Accounts payable and accrued liabilities	41,078	118,979	(82,394)
Deferred revenue	48,973	199,410	(98,003)
Income taxes payable - excess tax benefit from share award plans	(17,042)	(18,096)	(8,236)
Income taxes payable - other	98,349	29,946	(4,951)
Other assets and liabilities, net	(9,822)	11,573	4,814
Net cash provided by operating activities	710,499	525,250	394,950
<b>Cash flows from investing activities:</b>			
Capital expenditures	(192,817)	(115,097)	(172,334)
Acquisition of businesses, net of cash acquired	(116,337)	—	(327,555)
Deposit for future acquisition of business	(114,414)	—	—
Cash received from disposal of fixed assets	66,264	9,705	6,630
Other investing activities, net	9,387	2,063	520
Net cash used in investing activities	(347,917)	(103,329)	(492,739)
<b>Cash flows from financing activities:</b>			
Proceeds from borrowings under Vail Holdings Credit Agreement	—	—	892,625
Proceeds from borrowings under Whistler Credit Agreement	—	27,775	209,634
Proceeds from borrowings under 0.0% Convertible Notes	—	575,000	—
Proceeds from borrowings under 6.25% Notes	—	—	600,000
Repayments of borrowings under Vail Holdings Credit Agreement	(62,500)	(62,500)	(811,875)
Repayments of borrowings under Whistler Credit Agreement	(32,633)	(45,657)	(204,032)
Repayment of EB-5 Development Notes	(51,500)	—	—
Employee taxes paid for share award exercises	(37,300)	(39,090)	(19,478)
Repurchases of common stock	(75,006)	—	(46,422)
Dividends paid	(225,786)	—	(212,732)
Other financing activities, net	(8,411)	(20,866)	(31,487)
Net cash (used in) provided by financing activities	(493,136)	434,662	376,233
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(1,913)	(95)	5,253
Net (decrease) increase in cash and cash equivalents	(132,467)	856,488	283,697
<b>Cash, cash equivalents and restricted cash:</b>			
Beginning of period	\$ 1,258,574	\$ 402,086	\$ 118,389
End of period	\$ 1,126,107	\$ 1,258,574	\$ 402,086
Cash paid for interest	\$ 114,074	\$ 125,667	\$ 88,398
Taxes paid, net	\$ 19,692	\$ 5,011	\$ 4,134
<b>Non-cash investing activities:</b>			
Accrued capital expenditures	\$ 30,556	\$ 5,158	\$ 15,046

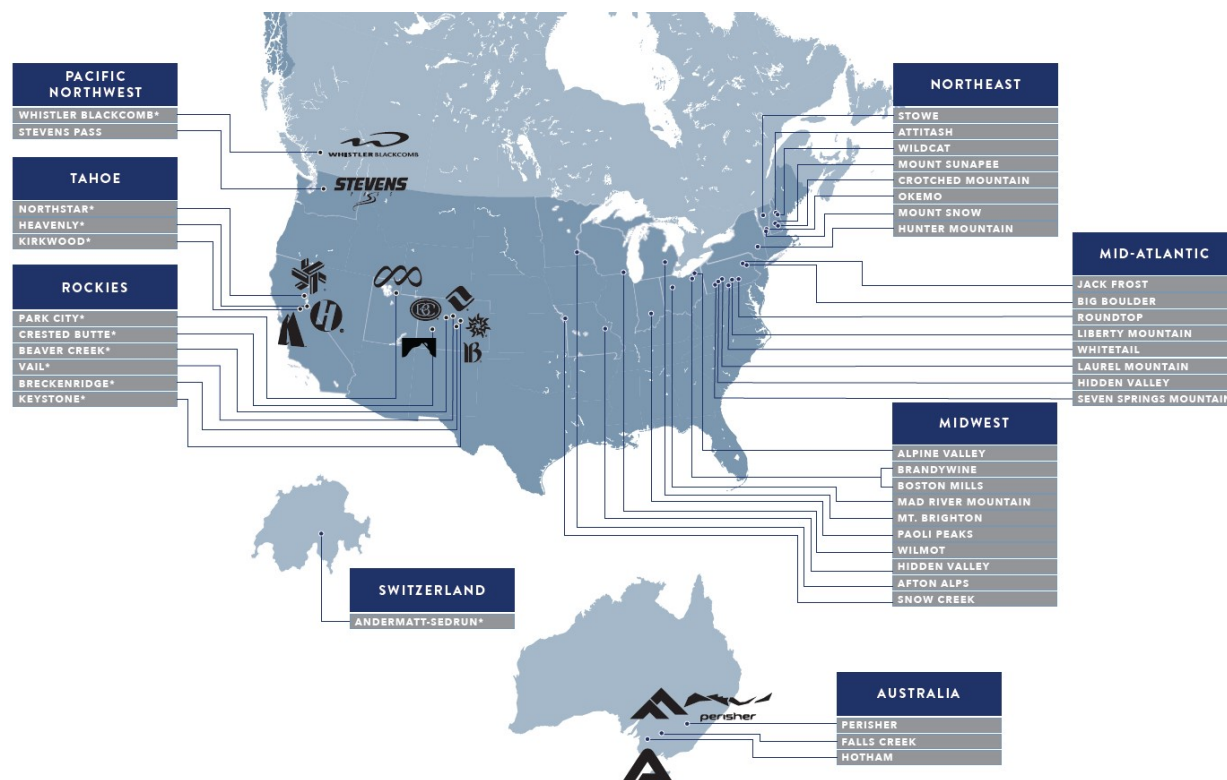
The accompanying Notes are an integral part of these Consolidated Financial Statements.

## Notes to Consolidated Financial Statements

### 1. Organization and Business

Vail Resorts, Inc. (“Vail Resorts”) is organized as a holding company and operates through various subsidiaries. Vail Resorts and its subsidiaries (collectively, the “Company”) operate in three business segments: Mountain, Lodging and Real Estate. The Company refers to “Resort” as the combination of the Mountain and Lodging segments.

In the Mountain segment, the Company operates the following 41 destination mountain resorts and regional ski areas as of September 28, 2022:



\*Denotes a destination mountain resort, which generally receives a meaningful portion of skier visits from long-distance travelers, as opposed to the Company’s regional ski areas, which tend to generate skier visits predominantly from their respective local markets.

Additionally, the Mountain segment includes ancillary services, primarily including ski school, dining and retail/rental operations, and for the Company’s Australian ski areas, including lodging and transportation operations. Several of the resorts located in the United States (“U.S.”) operate primarily on federal land under the terms of Special Use Permits granted by the U.S. Department of Agriculture Forest Service. The operations of Whistler Blackcomb are conducted on land owned by the government of the Province of British Columbia, Canada within the traditional territory of the Squamish and Lil’wat Nations. The operations of the Company’s Australian ski areas are conducted pursuant to long-term leases and licenses on land owned by the governments of New South Wales and Victoria, Australia. Okemo, Mount Sunapee and Stowe operate on land leased from the respective states in which the resorts are located and on land owned by the Company.

In the Lodging segment, the Company owns and/or manages a collection of luxury hotels and condominiums under its RockResorts brand; other strategic lodging properties and a large number of condominiums located in proximity to the Company’s North American mountain resorts; National Park Service (“NPS”) concessioner properties including the Grand Teton Lodge Company (“GTLC”), which operates destination resorts in Grand Teton National Park; a Colorado resort ground transportation company and mountain resort golf courses.

Vail Resorts Development Company (“VRDC”), a wholly-owned subsidiary, conducts the operations of the Company’s Real Estate segment, which owns, develops and sells real estate in and around the Company’s resort communities.

The Company’s mountain business and its lodging properties at or around the Company’s mountain resorts are seasonal in nature, and typically experience their peak operating seasons primarily from mid-December through mid-April in North America. The peak operating season at the Company’s Australian resorts, NPS concessioner properties and golf courses generally occurs from June to early October.

### **Acquisition of Andermatt-Sedrun Sport AG**

On August 3, 2022, through a wholly-owned subsidiary, the Company acquired a 55% controlling interest in Andermatt-Sedrun Sport AG (“Andermatt-Sedrun”) from Andermatt Swiss Alps AG (“ASA”). Andermatt-Sedrun operates mountain and ski-related assets, including lifts, most of the restaurants and a ski school operation at the ski area. Ski operations are conducted on land owned by ASA as freehold or leasehold properties, land owned by Usern Corporation, land owned by the municipality of Tujetsch and land owned by private property owners. See Note 16, Subsequent Events, for additional information.

## **2. Summary of Significant Accounting Policies**

*Principles of Consolidation* — The accompanying Consolidated Financial Statements include the accounts of the Company and its consolidated subsidiaries for which the Company has a controlling financial interest. Investments in which the Company does not have a controlling financial interest, but has significant influence, are accounted for under the equity method. All significant intercompany transactions have been eliminated in consolidation.

*Cash and Cash Equivalents* — The Company considers all highly liquid investments with maturities of three months or less at the date of purchase to be cash equivalents.

*Restricted Cash* — The Company considers cash to be restricted when withdrawal or general use is legally restricted.

*Accounts Receivable* — The Company records trade accounts receivable in the normal course of business related to the sale of products or services. The allowance for doubtful accounts is based on a specific reserve analysis and on a percentage of accounts receivable and takes into consideration such factors as historical write-offs, the economic climate and other factors that could affect collectability. Write-offs are evaluated on a case by case basis.

*Inventories* — The Company’s inventories consist primarily of purchased retail goods, food and beverage items and spare parts. Inventories are stated at the lower of cost or net realizable value, determined using primarily an average weighted cost method. The Company records a reserve for estimated shrinkage and obsolete or unusable inventory.

*Property, Plant and Equipment* — Property, plant and equipment is carried at cost net of accumulated depreciation. Repairs and maintenance are expensed as incurred. Expenditures that improve the functionality of the related asset or extend the useful life are capitalized. When property, plant and equipment is retired or otherwise disposed of, the related gain or loss is included in income from operations. Leasehold improvements are amortized on the straight-line method over the shorter of the remaining lease term or estimated useful life of the asset. Depreciation is calculated on the straight-line method, including property, plant and equipment under finance leases, generally based on the following useful lives:

	<b>Estimated Life in Years</b>
Land improvements	10-35
Buildings and building improvements	7-30
Machinery and equipment	2-30
Furniture and fixtures	3-10
Software	3
Vehicles	3-10

*Real Estate Held for Sale or Investment* — The Company capitalizes as real estate held for sale or investment the original land acquisition cost, direct construction and development costs, property taxes, interest recorded on costs related to real estate under development and other related costs. Sales and marketing expenses are charged against income in the period incurred.

*Deferred Financing Costs* — Certain costs incurred with the issuance of debt and debt securities are capitalized and included as a reduction in the net carrying value of long-term debt, net of accumulated amortization, with the exception of costs incurred related to line-of-credit arrangements, which are included in deferred charges and other assets, net of accumulated amortization. Amortization of such deferred financing costs are recorded to interest expense, net on the Company's Consolidated Statements of Operations over the respective term of the applicable debt instruments. When debt is extinguished prior to its maturity date, the amortization of the remaining unamortized deferred financing costs, or pro-rata portion thereof, is charged to loss on extinguishment of debt.

*Goodwill and Intangible Assets* — The Company has classified as goodwill the cost in excess of estimated fair value of the net assets of businesses acquired in purchase transactions. The Company's major intangible asset classes are trademarks, water rights, customer lists, property management contracts and Forest Service permits. Goodwill and various indefinite-lived intangible assets, including certain trademarks, water rights and certain property management contracts, are not amortized but are subject to at least annual impairment testing. The Company tests these non-amortizing assets annually (or more often, if necessary) for impairment as of May 1. Amortizable intangible assets are amortized over the shorter of their contractual terms or estimated useful lives.

For the testing of goodwill and other indefinite-lived intangible assets for impairment, the Company may perform a qualitative analysis to determine whether it is more likely than not that the fair value of a reporting unit or indefinite-lived intangible asset exceeds the carrying amount, which includes an evaluation as to whether there have been significant changes to macro-economic factors related to the reporting unit or intangible asset that could materially impact fair value. If it is determined, based on qualitative factors, that the fair value of the reporting unit or indefinite-lived intangible asset is more likely than not less than carrying amount, or if significant changes to macro-economic factors related to the reporting unit or intangible asset have occurred that could materially impact estimated fair values since the previous quantitative analysis was performed, a quantitative impairment test would be required, in which the Company would determine the estimated fair value of its reporting units using discounted cash flow analyses and determine the estimated fair value of its indefinite-lived intangible assets using an income approach. The quantitative test for impairment consists of a comparison of the estimated fair value of the assets with their respective net carrying values. If the net carrying amount of the assets exceed their respective estimated fair values, an impairment loss would be recognized for indefinite-lived intangibles, including goodwill, in an amount equal to that excess. If the net carrying amount of the assets does not exceed their respective estimated fair values, no impairment loss is recognized.

The Company determined that there were no impairments of goodwill or definite and indefinite-lived assets for the years ended July 31, 2022 and 2021. As a result of COVID-19 and the impact it has had on the Company's operations during the year ended July 31, 2020, the Company determined that the estimated fair value of its Colorado resort ground transportation company reporting unit within its Lodging segment no longer exceeded its carrying value. As a result, the Company recognized an impairment of approximately \$28.4 million related to its Colorado resort ground transportation company during the year ended July 31, 2020, which was recorded within asset impairments on the Company's Consolidated Statement of Operations, with a corresponding reduction to goodwill, net of \$25.7 million and to intangible assets, net and property, plant and equipment, net of \$2.7 million. The Company determined that there were no other impairments of goodwill or definite and indefinite-lived assets for the year ended July 31, 2020.

*Long-Lived Assets* — The Company evaluates potential impairment of long-lived assets and long-lived assets to be disposed of whenever events or changes in circumstances indicate that the net carrying amount of an asset may not be fully recoverable. If the sum of the expected cash flows, on an undiscounted basis, is less than the net carrying amount of the asset, an impairment loss is recognized in the amount by which the net carrying amount of the asset exceeds its estimated fair value. The Company determined that there were no impairments of long-lived assets for the years ended July 31, 2022 and 2021. As discussed above, the Company recorded an impairment to long-lived assets related to its Colorado resort ground transportation company during the year ended July 31, 2020. The Company determined that there were no other impairments of long-lived assets for the year ended July 31, 2020.

*Revenue Recognition* — The Company's significant accounting policies with regard to revenue recognition are discussed in Note 3, Revenues.

*Real Estate Cost of Sales* — Costs of real estate transactions include direct project costs, common cost allocations (primarily determined on relative sales value) and sales commission expense. The Company utilizes the relative sales value method to determine cost of sales for condominium units sold within a project when specific identification of costs cannot be reasonably determined.

*Foreign Currency Translation* — The functional currency of the Company's entities operating outside of the United States is the principal currency of the economic environment in which the entity primarily generates and expends cash, which is

generally the local currency. The assets and liabilities of these foreign operations are translated at the exchange rate in effect as of the balance sheet dates. Income and expense items are translated using the weighted average exchange rate for the period. Translation adjustments from currency exchange, including intercompany transactions of a long-term nature, are recorded in accumulated other comprehensive (loss) income as a separate component of stockholders' equity. Intercompany transactions that are not of a long-term nature are reported as gains and losses within "segment operating expense" and for intercompany loans within foreign currency (loss) gain on intercompany loans on the Company's Consolidated Statements of Operations.

*Reserve Estimates* — The Company uses estimates to record reserves for certain liabilities, including medical claims, workers' compensation claims, third-party loss contingencies and property taxes, among other items. The Company estimates the probable costs related to these liabilities that will be incurred and records that amount as a liability in its Consolidated Financial Statements. Additionally, the Company records, as applicable, receivables related to insurance recoveries for loss contingencies if deemed probable of recovery. These estimates are reviewed and adjusted as the facts and circumstances change. The Company records legal costs related to defending claims as incurred.

*Advertising Costs* — Advertising costs are expensed at the time such advertising commences. Advertising expense for the years ended July 31, 2022, 2021 and 2020 was \$47.7 million, \$38.6 million and \$41.6 million, respectively, and was recorded within Mountain and Lodging operating expenses on the Company's Consolidated Statement of Operations.

*Income Taxes* — Income tax expense includes U.S. tax (federal and state) and foreign income taxes. The Company's provision for income taxes is based on pre-tax income, changes in deferred tax assets and liabilities and changes in estimates with regard to uncertain tax positions. Deferred tax assets and liabilities are recorded for the estimated future tax effects of temporary differences between the tax bases of assets and liabilities and amounts reported in the accompanying Consolidated Balance Sheets and for operating loss and tax credit carrybacks or carryforwards. The change in deferred tax assets and liabilities for the period measures the deferred tax provision or benefit for the period. Effects of changes in enacted tax laws on deferred tax assets and liabilities are reflected as adjustments to the tax provision or benefit in the period of enactment. The Company's deferred tax assets have been reduced by a valuation allowance to the extent it is deemed to be more likely than not that some or all of the deferred tax assets will not be realized. The Company recognizes liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is "more-likely-than-not" to be sustained, on audit, including resolution of related appeals or litigation processes, if any. The second step requires the Company to estimate and measure the largest tax benefit that is cumulatively greater than 50% likely of being realized upon ultimate settlement. Interest and penalties accrued in connection with uncertain tax positions are recognized as a component of income tax expense. See Note 10, Income Taxes, for more information.

*Fair Value of Financial Instruments* — The recorded amounts for cash and cash equivalents, restricted cash, receivables, other current assets and accounts payable and accrued liabilities approximate fair value due to their short-term nature. The fair value of amounts outstanding under the Company's credit agreements and the Employee Housing Bonds (as defined in Note 6, Long-Term Debt) approximate book value due to the variable nature of the interest rate associated with the debt. The estimated fair values of the 6.25% Notes and the 0.0% Convertible Notes (each as defined in Note 6, Long-Term Debt) are based on quoted market prices (a Level 2 input). The estimated fair value of the EPR Secured Notes (as defined in Note 6, Long-Term Debt) has been estimated using an analysis based on current borrowing rates for debt with similar remaining maturities and ratings (a Level 2 input). The carrying values, including any unamortized premium or discount, and estimated fair values of the 6.25% Notes, 0.0% Convertible Notes and EPR Secured Notes as of July 31, 2022 are presented below (in thousands):

	July 31, 2022	
	Carrying Value	Estimated Fair Value
6.25% Notes	\$ 600,000	\$ 614,268
0.0% Convertible Notes	\$ 498,251	\$ 524,837
EPR Secured Notes	\$ 134,107	\$ 160,977

*Stock-Based Compensation* — Stock-based compensation expense is measured at the grant date based upon the estimated fair value of the award and is recognized as expense over the applicable vesting period of the award generally using the straight-line method (see Note 14, Stock Compensation Plan, for more information), less the amount of forfeited awards which are recorded as they occur. The following table shows total net stock-based compensation expense for the years ended July 31, 2022, 2021 and 2020 included in the accompanying Consolidated Statements of Operations (in thousands):

	Year Ended July 31,		
	2022	2021	2020
Mountain stock-based compensation expense	\$ 20,892	\$ 20,311	\$ 17,410
Lodging stock-based compensation expense	3,737	3,783	3,399
Real Estate stock-based compensation expense	256	301	212
Pre-tax stock-based compensation expense	24,885	24,395	21,021
Less: benefit from income taxes	6,189	5,871	5,027
Net stock-based compensation expense	\$ 18,696	\$ 18,524	\$ 15,994

*Concentration of Credit Risk* — The Company’s financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents and restricted cash. The Company places its cash and temporary cash investments in low risk accounts with high-quality credit institutions. The Company does not enter into financial instruments for trading or speculative purposes. Concentration of credit risk with respect to accounts and notes receivables is limited due to the wide variety of customers and markets in which the Company transacts business, as well as their dispersion across many geographical areas. The Company performs ongoing credit evaluations of its customers and generally does not require collateral, but does require advance deposits on certain transactions.

*Accounting for Hedging Instruments* — From time to time, the Company enters into interest rate swaps to hedge the variability in cash flows associated with variable-rate borrowings by converting the floating interest rate to a fixed interest rate (the “Interest Rate Swaps”). As of July 31, 2022, the Company hedged the future cash flows associated with \$400.0 million of the principal amount outstanding of its Vail Holdings Credit Agreement (as defined in Note 6, Long-Term Debt), which were designated as cash flow hedges. The accounting for changes in fair value of hedging instruments depends on the effectiveness of the hedge. In order to qualify for hedge accounting, the underlying hedged item must expose the Company to risks associated with market fluctuations and the financial instrument used must reduce the Company’s exposure to market fluctuation throughout the hedge period. Changes in estimated fair value of the Interest Rate Swaps are recorded within change in estimated fair value of hedging instruments, net of tax, on the Company’s Consolidated Statements of Comprehensive Income, and such change was recorded as a gain (loss) of \$18.9 million, \$12.8 million and (\$22.5) million during the years ended July 31, 2022, 2021 and 2020, respectively. Amounts are reclassified into interest expense, net from other comprehensive income during the period in which the hedged item affects earnings. During the years ended July 31, 2022 and 2021, \$4.3 million and \$5.4 million, respectively, was reclassified into interest expense, net from other comprehensive income. As of July 31, 2022, the estimated fair value of the Interest Rate Swaps was an asset of approximately \$12.3 million and was recorded within deferred charges and other assets on the Company’s Consolidated Balance Sheet, and the impact of the underlying cash flows associated with the Interest Rate Swaps are recorded within interest expense, net on the Company’s Consolidated Statements of Operations. See Note 9, Fair Value Measurements, for more information.

*Leases* — The Company determines if an arrangement is or contains a lease at inception or modification of the arrangement. An arrangement is or contains a lease if there is one or more assets identified and the right to control the use of any identified asset is conveyed to the Company for a period of time in exchange for consideration. Control over the use of an identified asset means the lessee has both the right to obtain substantially all of the economic benefits from the use of the asset and the right to direct the use of the asset. Generally, the Company classifies a lease as a finance lease if the terms of the agreement effectively transfer control of the underlying asset; otherwise, it is classified as an operating lease. For contracts that contain lease and non-lease components, the Company accounts for these components separately. For leases with terms greater than twelve months, the associated lease right-of-use (“ROU”) assets and lease liabilities are recognized at the estimated present value of future lease payments over the lease term at commencement date. The Company’s leases do not provide a readily determinable implicit rate; therefore, the Company uses an estimated incremental borrowing rate to discount the future minimum lease payments. For leases containing fixed rental escalation clauses, the escalators are factored into the determination of future minimum lease payments. The Company includes options to extend a lease when it is reasonably certain that such options will be exercised. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term. See Note 4, Leases, for more information.

*Use of Estimates* — The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (“GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the balance sheet date and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

### **Recently Issued Accounting Standards**

#### *Standards Being Evaluated*

In March 2020, the Financial Accounting Standards Board (“FASB”) issued ASU 2020-04, “Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting.” The ASU provides optional transition guidance, for a limited time, to companies that have contracts, hedging relationships or other transactions that reference the London Inter-bank Offered Rate (“LIBOR”) or another reference rate which is expected to be discontinued because of reference rate reform. The amendments provide optional expedients and exceptions for applying GAAP to contracts, hedging relationships and other transactions if certain criteria are met. The amendments in this update are effective as of March 12, 2020 through December 31, 2022. The amendments in this update may be applied as of any date from the beginning of an interim period that includes or is subsequent to March 12, 2020, or prospectively from a date within an interim period that includes or is subsequent to March 12, 2020, up to the date that the financial statements are available to be issued. All other amendments should be applied on a prospective basis. The Company will complete its assessment of the effect that the adoption of this standard will have on its Consolidated Financial Statements in the first quarter of the fiscal year ending July 31, 2023, but does not expect it will have a material effect.

In August 2020, the FASB issued ASU 2020-06, “Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity” which simplifies the guidance in Accounting Standards Codifications (“ASC”) 470-20, “Debt – Debt with Conversion and Other Options” by reducing the number of accounting separation models for convertible instruments, amending the guidance in ASC 815-40, “Derivatives and Hedging – Contracts in Entity’s Own Equity” for certain contracts in an entity’s own equity that are currently accounted for as derivatives, and requiring entities to use the if-converted method for all convertible instruments in the diluted earnings per share (“EPS”) calculation. This standard will be effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years (the Company’s first quarter of the fiscal year ending July 31, 2023). This standard allows for a modified retrospective or fully retrospective method of transition. The Company will adopt ASU 2020-06 on August 1, 2022 using the modified retrospective method, and therefore financial information for periods before August 1, 2022 will remain unchanged. As a result of the adoption of ASU 2020-06, the Company will reclassify the equity component of its 0.0% Convertible Notes (as defined in Note 6, Long-Term Debt) to long-term debt, net, and it will no longer record non-cash interest expense related to the amortization of the debt discount.

### **3. Revenues**

#### *Revenue Recognition*

The following provides information about the Company’s composition of revenue recognized from contracts with customers and other revenues, the performance obligations under those contracts, and the significant judgments made in accounting for those contracts:

- Mountain revenue is derived from a wide variety of sources, including, among other things: lift revenue, which includes sales of lift tickets and pass products; ski school revenue, which includes the revenue derived from ski school operations; dining revenue, which includes both casual and fine dining on-mountain operations; retail sales and equipment rentals; and other on-mountain revenue, which includes private ski club revenue (which includes both club dues and amortization of initiation fees), marketing and internet advertising revenue, municipal services and lodging and transportation operations at the Company’s Australian ski areas. The Company also includes other sources of revenue, primarily related to commercial leasing and employee housing leasing arrangements, within other mountain revenue. Revenue is recognized over time as performance obligations are satisfied as control of the good or service (e.g. access to ski areas, provision of ski school services, etc.) is transferred to the customer, except for the Company’s retail sales and dining operations revenues which are recognized at a point in time when performance obligations are satisfied by transferring control of the underlying goods to the customer. The Company records deferred revenue primarily related to the sale of pass products. Deferred revenue is generally recognized throughout the ski season as the Company’s performance obligations are satisfied as control of the service (e.g. access to ski areas throughout the ski season) is transferred to the customer. In accordance with Topic 606, the Company estimates progress towards satisfaction of its performance obligations using an output method that best depicts the transfer of control of the service to its customers.



Historically, the output method utilized by the Company measured progress toward satisfaction of the Company's performance obligations based on the estimated number of pass product holder visits relative to total expected visits, based on historical data, which the Company believed to provide a faithful depiction of its customers' pass product usage. When sufficient historical data to determine usage patterns was not available, such as in the case of new product offerings, progress was measured on a straight-line basis throughout the ski season until sufficient historical usage patterns were available. Beginning August 1, 2021, progress towards satisfaction of the Company's performance obligations for all passes is measured using an output method based on the skiable days of the season, which effectively results in revenue being recorded on a straight-line basis throughout the ski season. Total estimated skiable days is based on actual resort opening and estimated closing dates. The Company believes this method best estimates the value transferred to the customer relative to the remaining services promised under the contract. Due to the strong correlation between historical pass product usage and skiable days, the change in the Company's method of estimating progress toward satisfaction of the performance obligation alone does not have a material effect on the recognition pattern of pass product revenue.

Epic Coverage is included with the purchase of all pass products for no additional charge, and offers refunds if certain personal or resort closure events occur before or during the ski season. The estimated amount of refunds reduce the amount of pass product revenue recognized by the Company, and is remeasured at each reporting date.

Epic Mountain Rewards provides pass product holders a discount on ancillary purchases at the Company's North American owned and operated Resorts. Epic Mountain Rewards constitutes an option to purchase additional products and services at a discount, and as a result, the Company allocates a portion of the pass product transaction price to these other lines of business.

- Lodging revenue is derived from a wide variety of sources, including, among other things: revenue from owned hotel rooms and managed hotel rooms; revenue from hotel dining operations; transportation revenue which relates to the Company's Colorado resort ground transportation operations; and other lodging revenue which includes property management services, managed properties other costs reimbursements, private golf club revenue (which includes both club dues and amortization of initiation fees) and golf course fees. Lodging revenue also includes managed hotel property payroll cost reimbursements related to payroll costs at managed properties where the Company is the employer, which are reimbursed by the owner with no added margin. Therefore, these revenues and corresponding expenses have no net effect on the Company's operating income or net income. Other than revenue from dining operations, lodging revenue is mostly recognized over time as performance obligations are satisfied as control of the service (e.g. nightly hotel room access) is transferred to the customer.
- Real estate revenue primarily relates to the sale of development land parcels. Real estate revenue is generally recognized at a point in time when performance obligations have been satisfied, which is usually upon closing of the sales transaction and in an amount that reflects the consideration to which the Company expects to be entitled.

For certain contracts that have an original term length of one year or less, the Company uses the practical expedient applicable to such contracts and does not consider the time value of money. For contracts with an expected term in excess of one year, the Company has considered the provisions of Topic 606 in determining whether contracts contain a financing component. The Company presents revenues in the accompanying Consolidated Statements of Operations, net of taxes, when collected from its customers that are remitted or payable to government taxing authorities, except when products are inclusive of taxes where applicable.

#### *Disaggregation of Revenues*

The following table presents net revenues disaggregated by segment and major revenue type for the years ended July 31, 2022, 2021 and 2020 (in thousands):

	Year ended July 31,		
	2022	2021 <sup>(1)</sup>	2020 <sup>(1)</sup>
<b>Mountain net revenue:</b>			
Lift	\$ 1,310,213	\$ 1,076,578	\$ 913,091
Ski School	223,645	144,227	189,131
Dining	163,705	92,186	167,551
Retail/Rental	311,768	227,993	270,299
Other	203,783	161,814	186,548
<b>Total Mountain net revenue</b>	<b>\$ 2,213,114</b>	<b>\$ 1,702,798</b>	<b>\$ 1,726,620</b>
<b>Lodging net revenue:</b>			
Owned hotel rooms	\$ 80,579	\$ 47,509	\$ 44,992
Managed condominium rooms	97,704	72,217	76,480
Dining	48,569	17,211	31,464
Transportation	16,021	9,271	15,796
Golf	10,975	9,373	8,023
Other	46,500	43,008	44,933
	300,348	198,589	221,688
Payroll cost reimbursements	11,742	6,553	10,549
<b>Total Lodging net revenue</b>	<b>\$ 312,090</b>	<b>\$ 205,142</b>	<b>\$ 232,237</b>
<b>Total Resort net revenue</b>	<b>\$ 2,525,204</b>	<b>\$ 1,907,940</b>	<b>\$ 1,958,857</b>
<b>Total Real Estate net revenue</b>	<b>708</b>	<b>1,770</b>	<b>4,847</b>
<b>Total net revenue</b>	<b>\$ 2,525,912</b>	<b>\$ 1,909,710</b>	<b>\$ 1,963,704</b>

<sup>(1)</sup> Segment results for the years ended July 31, 2021 and 2020 have been retrospectively adjusted to reflect current period presentation. See Note 12, Segment and Geographic Area Information, for additional information.

#### *Arrangements with Multiple Performance Obligations*

Several of the Company's contracts with customers include multiple performance obligations, primarily related to bundled services such as ski school packages, lodging packages and events (e.g. weddings and conferences). For such contracts, revenue is allocated to each distinct and separate performance obligation based on its relative standalone selling price. The standalone selling prices are generally based on observable prices charged to customers or estimated based on historical experience and information.

#### *Contract Balances*

Contract liabilities are recorded primarily as deferred revenues when payments are received or due in advance of the Company's performance, including amounts which may be refundable. The deferred revenue balance is primarily related to accounts receivable or cash payments recorded in advance of satisfying the Company's performance obligations related to sales of pass products prior to the start of the ski season, private club initiation fees and other related advance purchase products, including advance purchase lift tickets, multiple-day lift tickets, ski school lessons, equipment rentals and lodging advance deposits. Due to the seasonality of the Company's operations, its largest deferred revenue balances occur during the North American pass product selling window, which generally begins in the third quarter of its fiscal year. Deferred revenue balances of a short-term nature were \$511.3 million and \$456.5 million as of July 31, 2022 and 2021, respectively, and the increase was primarily due to an increase in pass product sales for the 2022/2023 North American ski season as compared to the prior year from the beginning of the selling season through each respective fiscal year-end. Deferred revenue balances of a long-term nature, comprised primarily of long-term private club initiation fee revenue, were \$117.2 million and \$121.0 million as of July 31, 2022 and 2021, respectively. For the year ended July 31, 2022, the Company recognized approximately \$429.0 million of net revenue that was included in the deferred revenue balance as of July 31, 2021. As of July 31, 2022, the weighted average remaining period over which revenue for unsatisfied performance obligations on long-term private club contracts will be recognized was approximately 15 years.

Contract assets are recorded as trade receivables when the right to consideration is unconditional. Trade receivable balances were \$383.4 million and \$345.4 million as of July 31, 2022 and 2021, respectively. Payments from customers are based on

billing terms established in the contracts with customers, which vary by the type of customer, the location and the products or services offered. The term between invoicing and when payment is due is not significant. For certain products or services and customer types, contracts require payment before the products are delivered or services are provided to the customer. Impairment losses related to contract assets are recognized through the Company's allowance for doubtful accounts analysis. Contract asset write-offs are evaluated on an individual basis.

#### *Costs to Obtain Contracts with Customers*

The Company expects that credit card fees and sales commissions paid in order to obtain season ski pass products contracts are recoverable. Accordingly, the Company records these amounts as assets when they are paid prior to the start of the ski season.

As of July 31, 2022, \$3.8 million of costs to obtain contracts with customers were recorded within other current assets on the Company's Consolidated Balance Sheet. Deferred credit card fees and sales commissions are amortized commensurate with the recognition of ski pass product revenue. The Company recorded amortization of \$22.1 million, \$17.8 million and \$11.0 million for these costs during the years ended July 31, 2022, 2021 and 2020, respectively, which were recorded within Mountain and Lodging operating expenses on the Consolidated Statement of Operations.

Utilizing the practical expedient provided for under Topic 606, the Company has elected to expense credit card fees and sales commissions related to non-season ski pass products and services as incurred, as the amortization period is generally one year or less for the time between customer purchase and utilization. These fees are recorded within Mountain and Lodging operating expenses on the Company's Consolidated Statements of Operations.

#### **4. Leases**

The Company's operating leases consist primarily of commercial and retail space, office space, employee residential units, vehicles and other equipment. The Company determines if an arrangement is or contains a lease at contract inception or modification. The Company's lease contracts generally range from 1 year to 60 years, with some lease contracts containing one or more lease extension options, exercisable at the Company's discretion. The Company generally does not include these lease extension options in the initial lease term as it is not reasonably certain that it will exercise such options at contract inception. In addition, certain lease arrangements contain fixed and variable lease payments. The variable lease payments are primarily contingent rental payments based on: (i) a percentage of revenue related to the leased property; (ii) payments based on a percentage of sales over contractual levels; or (iii) lease payments adjusted for changes in an index or market value. These variable lease payments are typically recognized when the underlying event occurs and are included in operating expenses in the Company's Consolidated Statements of Operations in the same line item as the expense arising from the respective fixed lease payments. The Company's lease agreements may also include non-lease components, such as common area maintenance and insurance, which are accounted for separately. Future lease payments that are contingent or represent non-lease components are not included in the measurement of the operating lease liability. The Company's lease agreements do not contain any material residual value guarantees or restrictive covenants. Lease expense related to lease payments is recognized on a straight-line basis over the term of the lease.

The Company's leases do not provide a readily determinable implicit rate. As a result, the Company measures the lease liability using an estimated incremental borrowing rate which is intended to reflect the rate of interest the Company would pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms. The Company applies the estimated incremental borrowing rates at a portfolio level based on the economic environment associated with the lease.

The Company uses the long-lived assets impairment guidance to determine recognition and measurement of an ROU asset impairment, if any. The Company monitors for events or changes in circumstances that require a reassessment.

The components of lease expense for the years ended July 31, 2022 and 2021 were as follows (in thousands):

	Year ended July 31,		
	2022	2021	2020
<b>Finance leases:</b>			
Amortization of the finance ROU assets	\$ 9,011	\$ 9,753	\$ 9,753
Interest on lease liabilities	\$ 35,881	\$ 34,612	\$ 34,035
<b>Operating leases:</b>			
Operating lease expense	\$ 43,295	\$ 43,418	\$ 43,303
Short-term lease expense <sup>(1)</sup>	\$ 15,614	\$ 13,638	\$ 13,943
Variable lease expense	\$ 2,309	\$ 1,660	\$ 1,583

<sup>(1)</sup> Short-term lease expense is attributable to leases with terms of 12 months or less which are not included within the Consolidated Balance Sheets.

The following table presents the supplemental cash flow information associated with the Company's leasing activities for the years ended July 31, 2022 and 2021 (in thousands):

	Year ended July 31,		
	2022	2021	2020
<b>Cash flow supplemental information:</b>			
Operating cash outflows for operating and short-term leases	\$ 59,818	\$ 56,942	\$ 55,344
Operating cash outflows for lease- and non-lease components of finance leases	\$ 37,573	\$ 31,429	\$ 29,311
Financing cash outflows for non-lease components of finance leases	\$ —	\$ —	\$ 5,387
<b>Non-cash supplemental information:</b>			
Operating ROU assets obtained in exchange for operating lease obligations	\$ 23,190	\$ 12,615	\$ 18,013

Weighted-average remaining lease terms and discount rates are as follows:

	July 31, 2022	July 31, 2021
<b>Weighted-average remaining lease term (in years)</b>		
Operating leases	9.8	10.2
Finance leases	40.9	41.9
<b>Weighted-average discount rate</b>		
Operating leases	4.6 %	4.5 %
Finance leases	10.0 %	10.0 %

Future fixed lease payments for operating and finance leases as of July 31, 2022 reflected by fiscal year (August 1 through July 31) are as follows (in thousands):

	Operating Leases		Finance Leases	
2023	\$	45,224	\$	29,982
2024		40,656		30,582
2025		37,674		31,193
2026		34,449		31,817
2027		20,304		32,454
Thereafter		95,363		1,709,584
Total future minimum lease payments		273,670		1,865,612
Less amount representing interest		(64,885)		(1,508,005)
Total lease liabilities	\$	208,785	\$	357,607

The current portion of operating lease liabilities of approximately \$34.2 million and \$34.7 million as of July 31, 2022 and 2021, respectively, are recorded within accounts payables and accrued liabilities in the accompanying Consolidated Balance Sheets. Finance lease liabilities are recorded within long-term debt, net in the accompanying Consolidated Balance Sheets.

The Canyons finance lease obligation represents the only material finance lease entered into by the Company and was \$357.6 million and \$351.8 million as of July 31, 2022 and 2021, respectively, which represents the estimated annual fixed lease payments for the remaining initial 50 year term of the lease assuming annual increases at the floor of 2% and discounted using an interest rate of 10%. As of July 31, 2022 and 2021, respectively, the Company has recorded \$99.0 million and \$108.0 million of finance lease ROU assets in connection with the Canyons lease, net of \$84.6 million and \$75.5 million of accumulated amortization, which is included within property, plant and equipment, net in the Company's Consolidated Balance Sheets.

## 5. Net Income Per Common Share

### Earnings per Share

Basic earnings per share (“EPS”) excludes dilution and is computed by dividing net income attributable to Vail Resorts stockholders by the weighted-average shares outstanding during the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised, resulting in the issuance of shares of common stock that would then share in the earnings of Vail Resorts.

In connection with the Company’s acquisition of Whistler Blackcomb in October 2016, the Company issued consideration in the form of shares of Vail Resorts common stock (the “Vail Shares”), redeemable preferred shares of the Company’s wholly-owned Canadian subsidiary Whistler Blackcomb Holdings Inc. (“Exchangeco”) or cash (or a combination thereof). Whistler Blackcomb shareholders elected to receive 3,327,719 Vail Shares and 418,095 shares of Exchangeco (the “Exchangeco Shares”). The Exchangeco Shares could be redeemed for Vail Shares at any time until October 2023 or until the Company elects to convert any remaining Exchangeco Shares to Vail Shares, which the Company has the ability to do once total Exchangeco Shares outstanding fall below 20,904 shares (or 5% of the total Exchangeco Shares originally issued). In July 2022, the number of outstanding Exchangeco Shares fell below such threshold and on August 25, 2022, the Company elected to redeem all outstanding Exchangeco Shares, effective September 26, 2022. As of September 28, 2022, all Exchangeco Shares have been exchanged for Vail Shares. Both Vail Shares and Exchangeco Shares have a par value of \$0.01 per share, and Exchangeco Shares, while they were outstanding, were substantially the economic equivalent of the Vail Shares. The Company’s calculation of weighted-average shares outstanding includes the Exchangeco Shares.

Presented below is basic and diluted EPS for the years ended July 31, 2022, 2021 and 2020 (in thousands, except per share amounts):

	Year Ended July 31,					
	2022		2021		2020	
	Basic	Diluted	Basic	Diluted	Basic	Diluted
<b>Net income per share:</b>						
Net income attributable to Vail Resorts	\$ 347,923	\$ 347,923	\$ 127,850	\$ 127,850	\$ 98,833	\$ 98,833
Weighted-average shares outstanding	40,433	40,433	40,266	40,266	40,227	40,227
Weighted-average Exchangeco shares outstanding	32	32	35	35	46	46
Total Weighted-average shares outstanding	40,465	40,465	40,301	40,301	40,273	40,273
Effect of dilutive securities	—	222	—	527	—	565
Total shares	40,465	40,687	40,301	40,828	40,273	40,838
Net income per share attributable to Vail Resorts, Inc.	\$ 8.60	\$ 8.55	\$ 3.17	\$ 3.13	\$ 2.45	\$ 2.42

The Company computes the effect of dilutive securities using the treasury stock method and average market prices during the period. The number of shares issuable on the exercise of share based awards that were excluded from the calculation of diluted net income per share because the effect of their inclusion would have been anti-dilutive totaled approximately 6,000, 2,000 and 2,000 for the years ended July 31, 2022, 2021 and 2020, respectively.

On December 18, 2020, the Company completed an offering of \$575.0 million in aggregate principal amount of 0.0% Convertible Notes (as defined in Note 6, Long-Term Debt). The Company is required to settle the principal amount of the 0.0% Convertible Notes in cash and has the option to settle the conversion spread in cash or shares. The Company uses the treasury method to calculate diluted EPS, and if the conversion value of the 0.0% Convertible Notes exceeds their conversion price, then the Company will calculate its diluted EPS as if all the notes were converted and the Company issued shares of its common stock to settle the excess value over the conversion price. However, if reflecting the 0.0% Convertible Notes in diluted EPS in this manner is anti-dilutive, or if the conversion value of the notes does not exceed their initial conversion amount for a reporting period, then the shares underlying the notes will not be reflected in the Company’s calculation of diluted EPS. For the years ended July 31, 2022 and 2021, the average price of Vail Shares did not exceed the conversion price and therefore there was no impact to diluted EPS during those periods.

### Dividends

During the years ended July 31, 2022 and 2020, the Company paid cash dividends of \$5.58 per share and \$5.28 per share, respectively (\$225.8 million and \$212.7 million in the aggregate, respectively, including cash dividends paid to Exchangeco

shareholders). The Company did not pay cash dividends during the year ended July 31, 2021. On September 22, 2022, the Company's Board of Directors approved a cash dividend of \$1.91 per share payable on October 24, 2022 to stockholders of record as of October 5, 2022.

## 6. Long-Term Debt

Long-term debt as of July 31, 2022 and 2021 is summarized as follows (in thousands):

	Maturity		July 31, 2022	July 31, 2021
Vail Holdings Credit Agreement revolver <sup>(a)</sup>	2024	\$	—	\$ —
Vail Holdings Credit Agreement term loan <sup>(a)</sup>	2024		1,078,125	1,140,625
6.25% Notes <sup>(b)</sup>	2025		600,000	600,000
0.0% Convertible Notes <sup>(c)</sup>	2026		575,000	575,000
Whistler Credit Agreement revolver <sup>(d)</sup>	2026		11,717	44,891
EPR Secured Notes <sup>(e)</sup>	2034-2036		114,162	114,162
EB-5 Development Notes <sup>(f)</sup>	2021		—	51,500
Employee housing bonds <sup>(g)</sup>	2027-2039		52,575	52,575
Canyons obligation <sup>(h)</sup>	2063		357,607	351,820
Other <sup>(i)</sup>	2022-2034		17,860	17,941
Total debt			2,807,046	2,948,514
Less: Unamortized premiums, discounts and debt issuance costs <sup>(i)</sup>			72,997	98,222
Less: Current maturities <sup>(k)</sup>			63,749	114,117
Long-term debt, net		\$	2,670,300	\$ 2,736,175

(a) On December 18, 2020, Vail Holdings, Inc. ("VHI"), which is a wholly-owned subsidiary of the Company, along with other certain subsidiaries of the Company, as guarantors, Bank of America, N.A., as administrative agent, and certain lenders entered into a Fourth Amendment to the Vail Holdings Credit Agreement (the "Fourth Amendment"). Pursuant to the Fourth Amendment, among other terms, VHI was exempted from complying with certain financial maintenance covenants for fiscal quarters ending through January 31, 2022 (unless VHI made a one-time irrevocable election to terminate such exemption period prior to such date) (such period, the "Financial Covenants Temporary Waiver Period"), and the Company was prohibited from undertaking certain activities during such period. On October 31, 2021, VHI exited the Financial Covenants Temporary Waiver Period. As a result, the Company was required to comply with the financial maintenance covenants in the Vail Holdings Credit Agreement starting with the fiscal quarter ended October 31, 2021, and the Company is no longer subject to the covenant modifications that were applicable during the Financial Covenants Temporary Waiver Period. On August 31, 2022, the Company entered into an additional amendment to the Vail Holdings Credit Agreement (the "Fifth Amendment"), which extended the maturity date to September 23, 2026. Additionally, the Fifth Amendment contains customary LIBOR replacement language, including, but not limited to, the use of rates based on the secured overnight financing rate ("SOFR"). SOFR is a broad measure of the cost of borrowing cash in the overnight U.S. Treasury repo market and is administered by the Federal Reserve Bank of New York. The Fifth Amendment modified the calculation of interest under the Vail Holdings Credit Agreement from being calculated based on LIBOR to being calculated based on SOFR. No other material terms of the Vail Holdings Credit Agreement were amended.

As of July 31, 2022, the Vail Holdings Credit Agreement consists of a \$500.0 million revolving credit facility and a \$1.1 billion outstanding term loan facility. The term loan facility is subject to quarterly amortization of principal of approximately \$15.6 million (which began in January 2020), in equal installments, for a total of 5% of principal payable in each year and the final payment of all amounts outstanding, plus accrued and unpaid interest due upon maturity. The proceeds of the loans made under the Vail Holdings Credit Agreement may be used to fund the Company's working capital needs, capital expenditures, acquisitions, investments and other general corporate purposes, including the issuance of letters of credit. Borrowings under the Vail Holdings Credit Agreement, including the term loan facility, bear interest annually at LIBOR plus 1.25% as of July 31, 2022 (3.62% as of July 31, 2022). Interest rate margins may fluctuate based upon the ratio of the Company's Net Funded Debt to Adjusted EBITDA on a trailing four-quarter basis. The Vail Holdings Credit Agreement also includes a quarterly unused commitment fee, which is equal to a percentage determined by the Net Funded Debt to Adjusted EBITDA ratio, as each such term is defined in the Vail Holdings Credit Agreement, multiplied by the daily amount by which the Vail Holdings Credit Agreement commitment exceeds the total of outstanding loans and outstanding letters of credit (0.25% as of July 31, 2022). The Company is party to various interest rate swap agreements which hedge the LIBOR-based variable interest rate component of underlying cash flows of \$400.0 million in principal amount of its Vail Holdings Credit Agreement for the remaining term of the agreement at an effective rate of 1.46%. Subsequent to July 31, 2022 and in association with the Fifth Amendment, the interest rate swaps were also amended to transition from a hedge of LIBOR to a hedge of SOFR.

(b) On May 4, 2020, the Company completed its offering of \$600 million aggregate principal amount of 6.25% senior notes due 2025 at par (the "6.25% Notes"). The Company pays interest on the 6.25% Notes on May 15 and November 15 of each year, which commenced on November 15, 2020. The 6.25% Notes will mature on May 15, 2025. The 6.25% Notes are redeemable, in whole or in part, at any time on or after May 15, 2022 at the redemption prices specified in an indenture dated as of May 4, 2020 (the "6.25% Indenture") plus accrued and unpaid interest. The 6.25% Notes are senior unsecured obligations of the Company, are guaranteed by certain of the Company's domestic subsidiaries, and rank equally in right of payment with existing and future senior indebtedness of the Company and the guarantors (as defined in the 6.25% Indenture).

The 6.25% Indenture requires that, upon the occurrence of a Change of Control (as defined in the 6.25% Indenture), the Company shall offer to purchase all of the outstanding 6.25% Notes at a purchase price in cash equal to 101% of the outstanding principal amount of the 6.25% Notes, plus accrued and unpaid interest. If the Company or certain of its subsidiaries dispose of assets, under certain circumstances, the Company will be required to either invest the net cash proceeds from such assets sales in its business within a specified period of time, repay certain senior secured debt or debt of its non-guarantor subsidiaries, or make an offer to purchase a principal amount of the 6.25% Notes equal to the excess net cash proceeds at a purchase price of 100% of their principal amount, plus accrued and unpaid interest.

The 6.25% Indenture contains covenants that, among other things, restrict the ability of the Company and the guarantors to incur liens on assets; merge or consolidate with another company or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the Company's assets or engage in Sale and Leaseback Transactions (as defined in the 6.25% Indenture). The 6.25% Indenture does not contain any financial maintenance covenants. Certain of the covenants will not apply to the 6.25% Notes so long as the 6.25% Notes have investment grade ratings from two specified rating agencies and no event of default has occurred and is continuing under the 6.25% Indenture. The 6.25% Indenture includes customary events of default, including failure to make payment, failure to comply with the obligations set forth in the 6.25% Indenture, certain defaults on certain other indebtedness, certain events of bankruptcy, insolvency or reorganization, and invalidity of the guarantees of the 6.25% Notes issued pursuant to the 6.25% Indenture.

(c) On December 18, 2020, the Company completed an offering of \$575.0 million in aggregate principal amount of 0.0% Convertible Notes due 2026 in a private placement conducted pursuant to Rule 144A of the Securities Act of 1933, as amended (the "0.0% Convertible Notes"). The 0.0% Convertible Notes were issued under an indenture dated December 18, 2020 (the "Convertible Indenture") between the Company and U.S. Bank National Association, as Trustee. The 0.0% Convertible Notes do not bear regular interest and the principal amount does not accrete. The 0.0% Convertible Notes mature on January 1, 2026, unless earlier repurchased, redeemed or converted.

The 0.0% Convertible Notes are general senior unsecured obligations of the Company. The 0.0% Convertible Notes rank senior in right of payment to any future debt that is expressly subordinated, equal in right of payment with the Company's existing and future liabilities that are not so subordinated, and are subordinated to all of the Company's existing and future secured debt to the extent of the value of the assets securing such debt. The 0.0% Convertible Notes will also be structurally subordinated to all of the existing and future liabilities and obligations of the Company's subsidiaries, including such subsidiaries' guarantees of the 6.25% Notes.

The initial conversion rate was 2.4560 shares per \$1,000 principal amount of notes, which represents an initial conversion price of approximately \$407.17 per share, and is subject to adjustment upon the occurrence of certain specified events as



described in the Convertible Indenture, including the payment of cash dividends. As of July 31, 2022, the conversion rate of the 0.0% Convertible Notes, adjusted for cash dividends paid since the issuance date, was 2.5083 shares per \$1,000 principal amount of notes (the “Conversion Rate”), which represents a conversion price of \$398.67 per share (the “Conversion Price”). The principal amount of the 0.0% Convertible Notes is required to be settled in cash. The Company will settle the in the money component of conversions by paying cash, delivering shares of its common stock, or a combination of the two, at its option.

Holders may convert their notes, at their option, only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on March 31, 2021 if the last reported sale price per share of our common stock exceeds 130% of the Conversion Price for each of at least 20 trading days (whether or not consecutive) during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter;
- during the five consecutive business days immediately after any 10 consecutive trading day period (such 10 consecutive trading day period, the “Measurement Period”) in which the trading price per \$1,000 principal amount of notes for each trading day of the Measurement Period was less than 98% of the product of the last reported sale price per share of our common stock on such trading day and the Conversion Rate on such trading day;
- upon the occurrence of certain corporate events or distributions on our common stock, as described in the Convertible Indenture;
- if the Company calls the 0.0% Convertible Notes for redemption; or
- at any time from, and including, July 1, 2025 until the close of business on the scheduled trading day immediately before the maturity date.

The 0.0% Convertible Notes will be redeemable, in whole or in part, at the Company’s option at any time, and from time to time, on or after January 1, 2024 and on or before the 25th scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the notes to be redeemed, plus accrued and unpaid special and additional interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company’s common stock exceeds 130% of the Conversion Price for a specified period of time. If the Company elects to redeem less than all of the 0.0% Convertible Notes, at least \$50.0 million aggregate principal amount of notes must be outstanding and not subject to redemption as of the relevant redemption notice date. Calling any 0.0% Convertible Notes for redemption will constitute a make-whole fundamental change with respect to such notes, in which case the Conversion Rate applicable to the conversion of such notes will be increased in certain circumstances if such notes are converted after they are called for redemption.

In addition, upon the occurrence of a fundamental change (as defined in the Convertible Indenture), holders of the 0.0% Convertible Notes may require the Company to repurchase all or a portion of their notes at a cash repurchase price equal to the principal amount of the notes to be repurchased, plus any accrued and unpaid special and additional interest, if any, to, but excluding, the applicable repurchase date. If certain fundamental changes referred to as make-whole fundamental changes (as defined in the Convertible Indenture) occur, the Conversion Rate for the 0.0% Convertible Notes may be increased for a specified period of time.

The Convertible Indenture includes customary events of default, including failure to make payment, failure to comply with the obligations set forth in the Convertible Indenture, certain defaults on certain other indebtedness, and certain events of bankruptcy, insolvency or reorganization. The Company may elect, at its option, that the sole remedy for an event of default relating to certain failures by the Company to comply with certain reporting covenants in the Convertible Indenture will consist exclusively of the right of the holders of the 0.0% Convertible Notes to receive additional interest on the notes for up to 360 days following such failure.

The Company separately accounts for the liability and equity components of the 0.0% Convertible Notes. The liability component at issuance was recognized at estimated fair value based on the fair value of a similar debt instrument that does not have an embedded convertible feature, and was determined to be \$465.3 million and was recorded within long-term debt, net on the Company’s Consolidated Balance Sheet. The excess of the principal amount of the 0.0% Convertible Notes over the initial fair value of the liability component represented a debt discount of \$109.7 million and is being amortized to interest expense, net over the term. The balance of the unamortized debt discount was \$76.7 million as of July 31, 2022. The carrying amount of the equity component representing the conversion option was approximately \$109.7 million and was determined by deducting the initial fair value of the liability component from the total proceeds of the 0.0% Convertible Notes of \$575.0 million. Additionally, the Company recorded deferred tax liabilities of approximately \$27.5 million related to the equity component of the 0.0% Convertible Notes on the date of issuance, which decreased the recorded value of the equity component. As of July 31, 2022, the equity component is recorded within additional paid-in capital on the Company’s Consolidated Balance Sheets and is not remeasured as long as it continues to meet the conditions

for equity classification. The Company will adopt ASU 2020-06 on August 1, 2022 using the modified retrospective method. As a result of the adoption of ASU 2020-06, the Company will reclassify the equity component of its 0.0% Convertible Notes to long-term debt, net, and it will no longer record non-cash interest expense related to the amortization of the debt discount (see Note 2, Summary of Significant Accounting Policies, for additional information).

Deferred financing costs related to the 0.0% Convertible Notes of approximately \$14.9 million were allocated between the liability and equity components of the 0.0% Convertible Notes based on the proportion of the total proceeds allocated to the debt and equity components.

(d) Whistler Mountain Resort Limited Partnership (“Whistler LP”) and Blackcomb Skiing Enterprises Limited Partnership (“Blackcomb LP”), together the “WB Partnerships,” are party to a credit agreement, dated as of November 12, 2013 (as amended, the “Whistler Credit Agreement”), by and among Whistler LP, Blackcomb LP, certain subsidiaries of Whistler LP and Blackcomb LP party thereto as guarantors (the “Whistler Subsidiary Guarantors”), the financial institutions party thereto as lenders and The Toronto-Dominion Bank, as administrative agent. The Whistler Credit Agreement consists of a C\$300.0 million revolving credit facility, and during the year ended July 31, 2022, the Company entered into an amendment of the Whistler Credit Agreement which extended the maturity date of the revolving credit facility to December 15, 2026. No other material terms of the Whistler Credit Agreement were altered. The WB Partnerships’ obligations under the Whistler Credit Agreement are guaranteed by the Whistler Subsidiary Guarantors and are collateralized by a pledge of the capital stock of the Whistler Subsidiary Guarantors and a pledge of substantially all of the assets of Whistler LP, Blackcomb LP and the Whistler Subsidiary Guarantors. In addition, pursuant to the terms of the Whistler Credit Agreement, the WB Partnerships have the ability to increase the commitment amount by up to C\$75.0 million, subject to lender approval. Borrowings under the Whistler Credit Agreement are available in Canadian or U.S. dollars and bear interest annually, subject to an applicable margin based on the WB Partnerships’ Consolidated Total Leverage Ratio (as defined in the Whistler Credit Agreement), with pricing as of July 31, 2022, in the case of borrowings (i) in Canadian dollars, at the WB Partnerships’ option, either (a) at the Canadian Prime Rate plus 0.75% per annum or (b) by way of the issuance of bankers’ acceptances plus 1.75% per annum; and (ii) in U.S. dollars, at the WB Partnerships option, either at (a) the U.S. Base Rate plus 0.75% per annum or (b) Bankers Acceptance Rate plus 1.75% per annum. As of July 31, 2022, all borrowings under the Whistler Credit Agreement were made in Canadian dollars and by way of the issuance of bankers’ acceptances plus 1.75% (approximately 4.70% as of July 31, 2022). The Whistler Credit Agreement also includes a quarterly unused commitment fee based on the Consolidated Total Leverage Ratio, which as of July 31, 2022 is equal to 0.39% per annum. The Whistler Credit Agreement provides for affirmative and negative covenants that restrict, among other things, the WB Partnerships’ ability to incur indebtedness and liens, dispose of assets, make capital expenditures, make distributions and make investments. In addition, the Whistler Credit Agreement includes the restrictive financial covenants (leverage ratios and interest coverage ratios) customary for facilities of this type.

(e) On September 24, 2019, in conjunction with the acquisition of Peak Resorts (see Note 7, Acquisitions), the Company assumed various secured borrowings (the “EPR Secured Notes”) under the master credit and security agreements and other related agreements, as amended, (collectively, the “EPR Agreements”) with EPT Ski Properties, Inc. and its affiliates (“EPR”). The EPR Secured Notes include the following:

- i. *The Alpine Valley Secured Note.* The \$4.6 million Alpine Valley Secured Note provides for interest payments through its maturity on December 1, 2034. As of July 31, 2022, interest on this note accrued at a rate of 11.55%.
- ii. *The Boston Mills/Brandywine Secured Note.* The \$23.3 million Boston Mills/Brandywine Secured Note provides for interest payments through its maturity on December 1, 2034. As of July 31, 2022, interest on this note accrued at a rate of 11.07%.
- iii. *The Jack Frost/Big Boulder Secured Note.* The \$14.3 million Jack Frost/Big Boulder Secured Note provides for interest payments through its maturity on December 1, 2034. As of July 31, 2022, interest on this note accrued at a rate of 11.07%.
- iv. *The Mount Snow Secured Note.* The \$51.1 million Mount Snow Secured Note provides for interest payments through its maturity on December 1, 2034. As of July 31, 2022, interest on this note accrued at a rate of 12.14%.
- v. *The Hunter Mountain Secured Note.* The \$21.0 million Hunter Mountain Secured Note provides for interest payments through its maturity on January 5, 2036. As of July 31, 2022, interest on this note accrued at a rate of 8.88%.

The EPR Secured Notes are secured by all or substantially all of the assets of Peak Resorts and its subsidiaries, including mortgages on the Alpine Valley, Boston Mills, Brandywine, Jack Frost, Big Boulder, Mount Snow and Hunter Mountain

ski resorts. The EPR Secured Notes bear interest at specified interest rates, as discussed above, which are subject to increase each year by the lesser of (i) three times the percentage increase in the Consumer Price Index (“CPI”) or (ii) a capped index (the “Capped CPI Index”), which is 1.75% for the Hunter Mountain Secured Note and 1.50% for all other notes. The EPR Agreements provide for affirmative and negative covenants that restrict, among other things, the ability of Peak Resorts and its subsidiaries to incur indebtedness, dispose of assets, make distributions and make investments. In addition, the EPR Agreements include restrictive covenants, including maximum leverage ratio and consolidated fixed charge ratio. An additional contingent interest payment would be due to EPR if, on a calendar year basis, the gross receipts from the properties securing any of the individual EPR Secured Notes (the “Gross Receipts”) are more than the result (the “Interest Quotient”) of dividing the total interest charges for the EPR Secured Notes by a specified percentage rate (the “Additional Interest Rate”). In such a case, the additional interest payment would equal the difference between the Gross Receipts and the Interest Quotient multiplied by the Additional Interest Rate. This calculation is made on an aggregated basis for the notes secured by the Jack Frost, Big Boulder, Boston Mills, Brandywine and Alpine Valley ski resorts, where the Additional Interest Rate is 10.0%; on a standalone basis for the note secured by the Company’s Mount Snow ski resort, where the Additional Interest Rate is 12.0%; and on a standalone basis for the note secured by the Company’s Hunter Mountain ski resort, where the Additional Interest Rate is 8.0%. Peak Resorts does not have the right to prepay the EPR Secured Notes. The EPR Secured Notes were recorded at their estimated fair value in conjunction with the acquisition of Peak Resorts on September 24, 2019. The EPR Agreements grant EPR certain other rights including the option to purchase the Boston Mills, Brandywine, Jack Frost, Big Boulder or Alpine Valley resorts, which is exercisable no sooner than two years and no later than one year prior to the maturity dates of the applicable EPR Secured Note for such properties, with any closings to be held on the applicable maturity dates; and, if EPR exercises the purchase option, EPR will enter into an agreement with the Company for the lease of each acquired property for an initial term of 20 years, plus options to extend the lease for two additional periods of ten years each.

In addition, Peak Resorts is required to maintain a debt service reserve account which amounts are applied to fund interest payments and other amounts due and payable to EPR. As of July 31, 2022, the Company had funded the EPR debt service reserve account in an amount equal to approximately \$5.3 million, which was included in other current assets in the Consolidated Balance Sheet.

(f) Peak Resorts serves as the general partner for two limited partnerships, Carinthia Group 1, LP and Carinthia Group 2, LP (together, the “Carinthia Partnerships”), which were formed to raise funds through the Immigrant Investor Program administered by the U.S. Citizenship and Immigration Services (“USCIS”), pursuant to the Immigration and Nationality Act (the “EB-5 Program”). On December 27, 2016, Peak Resorts borrowed \$52.0 million from the Carinthia Partnerships to fund two capital projects at Mount Snow. The amounts were borrowed through two loan agreements, which provided \$30.0 million and \$22.0 million (together, the “EB-5 Development Notes”). On December 27, 2021, Peak Resorts repaid all remaining principal owed to the Carinthia Partnerships.

(g) The Company has recorded the outstanding debt of four Employee Housing Entities (each an “Employee Housing Entity” and collectively the “Employee Housing Entities”): Breckenridge Terrace, Tarnes, BC Housing and Tenderfoot. The proceeds of the Employee Housing Bonds were used to develop apartment complexes designated primarily for use by the Company’s seasonal employees at its Colorado mountain resorts. The Employee Housing Bonds are variable rate, interest-only instruments with interest rates tied to LIBOR plus 0% to 0.10% (2.35% to 2.45% as of July 31, 2022).

Interest on the Employee Housing Bonds is paid monthly in arrears and the interest rate is adjusted weekly. No principal payments are due on the Employee Housing Bonds until maturity. Each Employee Housing Entity’s bonds were issued in two series. The bonds for each Employee Housing Entity are backed by letters of credit issued under the Vail Holdings Credit Agreement. The table below presents the principal amounts outstanding for the Employee Housing Bonds as of July 31, 2022 (in thousands):

	Maturity	Tranche A	Tranche B	Total
Breckenridge Terrace	2039	\$ 14,980	\$ 5,000	\$ 19,980
Tarnes	2039	8,000	2,410	10,410
BC Housing	2027	9,100	1,500	10,600
Tenderfoot	2035	5,700	5,885	11,585
Total		\$ 37,780	\$ 14,795	\$ 52,575

(h) On May 24, 2013, VR CPC Holdings, Inc. (“VR CPC”), a wholly-owned subsidiary of the Company, entered into a transaction agreement with affiliate companies of Talisker Corporation (“Talisker”) pursuant to which the parties entered into a master lease agreement (the “Park City Lease”) and certain ancillary transaction documents on May 29, 2013 related to the former stand-alone Canyons Resort (“Canyons”), pursuant to which the Company assumed the resort operations of

the Canyons. The Park City Lease between VR CPC and Talisker has an initial term of 50 years with six 50-year renewal options. The Park City Lease provides for \$25 million in annual payments, which increase each year by an inflation-linked index of CPI less 1% per annum, with a floor of 2%. Vail Resorts has guaranteed the payments under the Park City Lease. The obligation at July 31, 2022 represents future lease payments for the remaining initial lease term of 50 years (including annual increases at the floor of 2%) discounted using an interest rate of 10%, and includes accumulated accreted interest expense of approximately \$52.3 million.

(i) During the year ended July 31, 2019, the Company completed two real estate sales transactions that were accounted for as financing arrangements as a result of the Company's continuing involvement with the underlying assets that were sold, including but not limited to, the obligation to repurchase finished commercial space from the development projects upon completion. The Company received approximately \$12.8 million of proceeds for these sales transactions through the year ended July 31, 2022, which are reflected within long-term debt, net. Other obligations also consist of a \$2.9 million note outstanding to the Colorado Water Conservation Board, which matures on September 16, 2028, and other financing arrangements. Other obligations, including the Colorado Water Conservation Board note, bear interest at rates ranging from 5.1% to 5.5%.

(j) In connection with the issuance of the 0.0% Convertible Notes, the Company recorded a debt discount, which represents the excess of the principal amount of the 0.0% Convertible Notes over the fair value of the liability component, as discussed above. In connection with the acquisition of Peak Resorts, the Company estimated the acquisition date fair values of the debt instruments assumed, including the EPR Secured Notes, and recorded any difference between such estimated fair values and the par value of debt instruments as unamortized premiums and discounts, which is amortized and recorded to interest expense, net on the Company's Consolidated Statements of Operations over the respective term of the applicable debt instruments. Additionally, certain costs incurred with regard to the issuance of debt instruments are capitalized and included as a reduction in the net carrying value of long-term debt, net of accumulated amortization, with the exception of costs incurred related to line-of-credit arrangements, which are included in deferred charges and other assets, net of accumulated amortization. Amortization of such deferred financing costs are recorded to interest expense, net on the Company's Consolidated Statements of Operations over the respective term of the applicable debt instruments.

(k) Current maturities represent principal payments due in the next 12 months, and exclude approximately \$6.2 million of proceeds resulting from a real estate transaction accounted for as a financing arrangement, as discussed above, which are expected to be recognized on the Company's Statement of Operations during the year ending July 31, 2023 as a result of the anticipated resolution of continuing involvement, with no associated cash outflow.

Aggregate maturities for debt outstanding, including finance lease obligations, as of July 31, 2022 reflected by fiscal year are as follows (in thousands):

	<b>Total</b>
2023 <sup>(1)</sup>	\$ 69,890
2024	63,813
2025 <sup>(2)</sup>	1,553,883
2026	575,415
2027	22,755
Thereafter	521,290
<b>Total debt</b>	<b>\$ 2,807,046</b>

<sup>(1)</sup> Includes approximately \$6.2 million of proceeds resulting from a real estate transaction accounted for as a financing arrangement, as discussed above, which are expected to be recognized on the Company's Statement of Operations during the year ending July 31, 2023 as a result of the anticipated resolution of continuing involvement, with no associated cash outflow.

<sup>(2)</sup> Subsequent to July 31, 2022, the Company entered into the Fifth Amendment to the Vail Holdings Credit Agreement, which extended the maturity date by two years and is now due in the fiscal year ending July 31, 2027. See Note 16, Subsequent Events, for additional information.

The Company recorded interest expense of \$148.2 million, \$151.4 million and \$106.7 million for the years ended July 31, 2022, 2021 and 2020, respectively, of which \$5.9 million, \$4.9 million and \$1.9 million, respectively, was amortization of

deferred financing costs. The Company was in compliance with all of its financial and operating covenants required to be maintained under its debt instruments for all periods presented.

In connection with the acquisition of Whistler Blackcomb, VHI funded a portion of the purchase price through an intercompany loan to Whistler Blackcomb of \$210.0 million, which was effective as of November 1, 2016 and requires foreign currency remeasurement to Canadian dollars, the functional currency for Whistler Blackcomb. As a result, foreign currency fluctuations associated with the loan are recorded within the Company's results of operations. The Company recognized approximately \$(2.7) million, \$8.3 million and \$(3.2) million of non-cash foreign currency (loss) gain on the intercompany loan to Whistler Blackcomb during the years ended July 31, 2022, 2021 and 2020, respectively, on the Consolidated Statements of Operations. As of July 31, 2022, the remaining balance of the intercompany loan was \$97.2 million.

## 7. Acquisitions

### *Seven Springs Mountain Resort, Hidden Valley Resort & Laurel Mountain Ski Area*

On December 31, 2021, the Company, through a wholly-owned subsidiary, acquired Seven Springs Mountain Resort, Hidden Valley Resort and Laurel Mountain Ski Area in Pennsylvania from Seven Springs Mountain Resort, Inc. and its affiliates for a cash purchase price of approximately \$116.5 million, after adjustments for certain agreed-upon terms, which the Company funded with cash on hand. The acquisition included the mountain operations of the resorts, including base area skier services (food and beverage, retail and rental, lift ticket offices and ski and snowboard school facilities), as well as a hotel, conference center and other related operations.

The following summarizes the purchase consideration and the preliminary purchase price allocation to estimated fair values of the identifiable assets acquired and liabilities assumed at the date the transaction was effective (in thousands):

	Acquisition Date Estimated Fair Value
Current assets	\$ 2,932
Property, plant and equipment	118,415
Goodwill	4,991
Identifiable intangible assets and other assets	5,335
Liabilities	(15,172)
Net assets acquired	\$ 116,501

Identifiable intangible assets acquired in the transaction were primarily related to advanced lodging bookings and trade names. The process of estimating the fair value of the property, plant, and equipment includes the use of certain estimates and assumptions related to replacement cost and physical condition at the time of acquisition. The excess of the purchase price over the aggregate estimated fair values of the assets acquired and liabilities assumed was recorded as goodwill. The goodwill recognized is attributable primarily to expected synergies, the assembled workforce of the resorts and other factors, and is not expected to be deductible for income tax purposes. The Company recognized \$2.8 million of acquisition related expenses associated with the transaction within Mountain and Lodging operating expense in its Consolidated Statement of Operations for the year ended July 31, 2022. The operating results of the acquired resorts are reported within the Mountain and Lodging segments prospectively from the date of acquisition.

The estimated fair values of assets acquired and liabilities assumed are preliminary and are based on the information that was available as of the acquisition date. The Company believes that this information provides a reasonable basis for estimating the fair values of assets acquired and liabilities assumed; however, the Company is obtaining additional information necessary to finalize those estimated fair values. Therefore, the preliminary measurements of estimated fair values reflected are subject to change. The Company expects to finalize the valuation and complete the purchase consideration allocation no later than one year from the acquisition date.

### *Peak Resorts*

On September 24, 2019, the Company, through a wholly-owned subsidiary, acquired 100% of the outstanding stock of Peak Resorts, Inc. ("Peak Resorts") at a purchase price of \$11.00 per share or approximately \$264.5 million. In addition, contemporaneous with the closing of the transaction, Peak Resorts was required to pay approximately \$70.2 million of certain outstanding debt instruments and lease obligations in order to complete the transaction. Accordingly, the total purchase price, including the repayment of certain outstanding debt instruments and lease obligations, was approximately \$334.7 million, for

which the Company borrowed approximately \$335.6 million under the Vail Holdings Credit Agreement (see Note 6, Long-Term Debt) to fund the acquisition, repayment of debt instruments and lease obligations, and associated acquisition related expenses. The acquired resorts include: Mount Snow in Vermont; Hunter Mountain in New York; Attitash Mountain Resort, Wildcat Mountain and Crotched Mountain in New Hampshire; Liberty Mountain Resort, Roundtop Mountain Resort, Whitetail Resort, Jack Frost and Big Boulder in Pennsylvania; Alpine Valley, Boston Mills, Brandywine and Mad River Mountain in Ohio; Hidden Valley and Snow Creek in Missouri; and Paoli Peaks in Indiana. The Company assumed the Special Use Permits from the U.S. Forest Service for Attitash, Mount Snow and Wildcat Mountain, and assumed the land leases for Mad River and Paoli Peaks. The acquisition included the mountain operations of the resorts, including base area skier services (food and beverage, retail and rental, lift ticket offices and ski school facilities), as well as lodging operations at certain resorts.

The following summarizes the purchase consideration and the purchase price allocation to estimated fair values of the identifiable assets acquired and liabilities assumed at the date the transaction was effective (in thousands):

	Acquisition Date Estimated Fair Value
Current assets	\$ 19,578
Property, plant and equipment	427,793
Goodwill	135,879
Identifiable intangible assets	19,221
Other assets	16,203
Assumed long-term debt	(184,668)
Other liabilities	(99,275)
Net assets acquired	\$ 334,731

Identifiable intangible assets acquired in the transaction were primarily related to trade names and property management contracts, which had acquisition date estimated fair values of approximately \$15.8 million and \$3.1 million, respectively. The process of estimating the fair value of the depreciable property, plant, and equipment includes the use of certain estimates and assumptions related to replacement cost. The excess of the purchase price over the aggregate estimated fair values of the assets acquired and liabilities assumed was recorded as goodwill. The goodwill recognized is attributable primarily to expected synergies, the assembled workforce of the resorts and other factors, and is not expected to be deductible for income tax purposes. The Company assumed various debt obligations of Peak Resorts, which were recorded at their respective estimated fair values as of the acquisition date (see Note 6, Long-Term Debt). The Company incurred \$3.1 million of acquisition related expenses associated with the transaction which were recorded within Mountain and Lodging operating expense in its Consolidated Statement of Operations for the year ended July 31, 2020. The operating results of Peak Resorts are reported within the Mountain and Lodging segments prospectively from the date of acquisition.

#### *Peak Resorts Pro Forma Financial Information*

The following presents the unaudited pro forma consolidated financial information of the Company as if the acquisition of Peak Resorts was completed on August 1, 2018 (the beginning of the fiscal year preceding the fiscal year in which the acquisition occurred). The following unaudited pro forma financial information includes adjustments for (i) depreciation on acquired property, plant and equipment; (ii) amortization of intangible assets recorded at the date of the transaction; (iii) transaction and business integration related costs; and (iv) interest expense associated with financing the transaction. This unaudited pro forma financial information is presented for informational purposes only and does not purport to be indicative of the results of future operations or the results that would have occurred had the transaction taken place on August 1, 2018 (in thousands, except per share amounts).

	Year Ended July 31, 2020
Pro forma net revenue	\$ 1,970,363
Pro forma net income attributable to Vail Resorts, Inc.	\$ 100,205
Pro forma basic net income per share attributable to Vail Resorts, Inc.	\$ 2.49
Pro forma diluted net income per share attributable to Vail Resorts, Inc.	\$ 2.45

## 8. Supplementary Balance Sheet Information

The composition of property, plant and equipment, including finance lease assets, follows (in thousands):

	July 31,	
	2022	2021
Land and land improvements	\$ 763,432	\$ 756,517
Buildings and building improvements	1,545,571	1,496,402
Machinery and equipment	1,505,236	1,417,705
Furniture and fixtures	307,867	308,432
Software	138,058	122,778
Vehicles	81,927	80,328
Construction in progress	127,282	67,710
Gross property, plant and equipment	4,469,373	4,249,872
Accumulated depreciation	(2,351,321)	(2,181,996)
Property, plant and equipment, net	\$ 2,118,052	\$ 2,067,876

Depreciation expense, which included depreciation of assets recorded under finance leases, for the years ended July 31, 2022, 2021 and 2020 totaled \$247.2 million, \$247.2 million and \$243.1 million, respectively.

The following table summarizes the composition of property, plant and equipment recorded under finance leases as of July 31, 2022 and 2021 (in thousands):

	July 31,	
	2022	2021
Land	\$ 31,818	\$ 31,818
Land improvements	49,228	49,228
Buildings and building improvements	42,160	42,160
Machinery and equipment	60,384	60,384
Gross property, plant and equipment	183,590	183,590
Accumulated depreciation	(84,556)	(75,545)
Property, plant and equipment, net	\$ 99,034	\$ 108,045

The composition of goodwill and intangible assets follows (in thousands):

	July 31,	
	2022	2021
<i>Goodwill</i>		
Goodwill	\$ 1,797,970	\$ 1,824,089
Accumulated impairments	(25,688)	(25,688)
Accumulated amortization	(17,354)	(17,354)
Goodwill, net	\$ 1,754,928	\$ 1,781,047
<i>Indefinite-lived intangible assets</i>		
Trademarks	\$ 237,483	\$ 239,786
Other	41,400	41,561
Total gross indefinite-lived intangible assets	278,883	281,347
Accumulated amortization	(24,713)	(24,713)
Indefinite-lived intangible assets, net	\$ 254,170	\$ 256,634
<i>Amortizable intangible assets</i>		
Trademarks	\$ 38,008	\$ 38,008
Other	71,767	69,397
Total gross amortizable intangible assets	109,775	107,405
Accumulated amortization	(49,887)	(44,929)
Amortizable intangible assets, net	59,888	62,476
Total gross intangible assets	388,658	388,752
Total accumulated amortization	(74,600)	(69,642)
Total intangible assets, net	\$ 314,058	\$ 319,110

Amortization expense for intangible assets subject to amortization for the years ended July 31, 2022, 2021 and 2020 totaled \$5.2 million, \$5.4 million and \$6.5 million, respectively, and is estimated to be approximately \$3.8 million annually, on average, for the next five fiscal years.

The changes in the net carrying amount of goodwill allocated between the Company's segments for the years ended July 31, 2022 and 2021 are as follows (in thousands):

	Mountain	Lodging	Goodwill, net
Balance at July 31, 2020	\$ 1,666,809	\$ 42,211	\$ 1,709,020
Effects of changes in foreign currency exchange rates	72,027	—	72,027
Balance at July 31, 2021	1,738,836	42,211	1,781,047
Acquisition (including measurement period adjustments)	2,196	2,795	4,991
Effects of changes in foreign currency exchange rates	(31,110)	—	(31,110)
Balance at July 31, 2022	\$ 1,709,922	\$ 45,006	\$ 1,754,928



The composition of accounts payable and accrued liabilities follows (in thousands):

	July 31,	
	2022	2021
Trade payables	\$ 151,263	\$ 98,261
Deferred revenue	511,306	456,457
Accrued salaries, wages and deferred compensation	64,570	54,286
Accrued benefits	45,202	47,368
Deposits	37,731	35,263
Operating lease liabilities	34,218	34,668
Other accruals	98,540	89,169
<b>Total accounts payable and accrued liabilities</b>	<b>\$ 942,830</b>	<b>\$ 815,472</b>

## 9. Fair Value Measurements

The Company utilizes FASB issued fair value guidance that establishes how reporting entities should measure fair value for measurement and disclosure purposes. The guidance establishes a common definition of fair value applicable to all assets and liabilities measured at fair value and prioritizes the inputs into valuation techniques used to measure fair value. Accordingly, the Company uses valuation techniques which maximize the use of observable inputs and minimize the use of unobservable inputs when determining fair value. The three levels of the hierarchy are as follows:

Level 1: Inputs that reflect unadjusted quoted prices in active markets that are accessible to the Company for identical assets or liabilities;

Level 2: Inputs include quoted prices for similar assets and liabilities in active and inactive markets or that are observable for the asset or liability either directly or indirectly; and

Level 3: Unobservable inputs which are supported by little or no market activity.

The table below summarizes the Company's cash equivalents, other current assets, Interest Rate Swaps and Contingent Consideration (defined below) measured at estimated fair value (all other assets and liabilities measured at fair value are immaterial) (in thousands).

Description	Estimated Fair Value Measurement as of July 31, 2022			
	Total	Level 1	Level 2	Level 3
<b>Assets:</b>				
Money Market	\$ 505,901	\$ 505,901	\$ —	\$ —
Commercial Paper	\$ 2,401	\$ —	\$ 2,401	\$ —
Certificates of Deposit	\$ 9,473	\$ —	\$ 9,473	\$ —
Interest Rate Swaps	\$ 12,301	\$ —	\$ 12,301	\$ —
<b>Liabilities:</b>				
Contingent Consideration	\$ 42,400	\$ —	\$ —	\$ 42,400

Description	Estimated Fair Value Measurement as of July 31, 2021			
	Total	Level 1	Level 2	Level 3
<b>Assets:</b>				
Money Market	\$ 253,782	\$ 253,782	\$ —	\$ —
Commercial Paper	\$ 2,401	\$ —	\$ 2,401	\$ —
Certificates of Deposit	\$ 259,945	\$ —	\$ 259,945	\$ —
<b>Liabilities:</b>				
Interest Rate Swaps	\$ 12,942	\$ —	\$ 12,942	\$ —
Contingent Consideration	\$ 29,600	\$ —	\$ —	\$ 29,600

The Company's cash equivalents, other current assets and Interest Rate Swaps are measured utilizing quoted market prices or pricing models whereby all significant inputs are either observable or corroborated by observable market data. The Company entered into the Interest Rate Swaps to hedge the LIBOR-based variable interest rate component of \$400.0 million in principal amount of its Vail Holdings Credit Agreement. Changes in the estimated fair value are recognized in change in estimated fair value of hedging instruments on the Company's Consolidated Statements of Comprehensive Income. The estimated fair value of the Interest Rate Swaps was included as an asset within deferred charges and other assets as of July 31, 2022, and as a liability within other long-term liabilities as of July 31, 2021, in the Company's Consolidated Balance Sheets.

The changes in Contingent Consideration during the years ended July 31, 2022 and 2021 were as follows (in thousands):

	<b>Contingent Consideration</b>	
Balance as of July 31, 2020	\$	17,800
Payment		(2,602)
Change in estimated fair value		14,402
Balance as of July 31, 2021		29,600
Payment		(7,480)
Change in estimated fair value		20,280
Balance as of July 31, 2022	\$	42,400

The Park City Lease provides for participating contingent payments (the "Contingent Consideration") to the landlord of 42% of the amount by which EBITDA for the Park City resort operations, as calculated under the Park City Lease, exceeds approximately \$35 million, as established at the transaction date, with such threshold amount subsequently increased annually by an inflation linked index and a 10% adjustment for any capital improvements or investments made under the Park City Lease by the Company. The estimated fair value of Contingent Consideration includes the future period resort operations of Park City in the calculation of EBITDA on which participating contingent payments are made, which is determined on the basis of estimated subsequent performance, escalated by an assumed long-term growth factor and discounted to net present value. The Company estimated the fair value of the Contingent Consideration payments using an option pricing valuation model. Key assumptions included a discount rate of 11.1%, volatility of 17.0% and future period Park City EBITDA, which are unobservable inputs and thus are considered Level 3 inputs. The Company evaluated the long-term growth assumptions related to future results at Park City as of July 31, 2022. Operating results for the year ended July 31, 2022 were significantly higher than the historical trend for Park City, in part driven by dynamics caused by COVID-19. There is inherent variability in the performance of the Company's individual resorts, including Park City, and while results for the year ended July 31, 2022 were strong for the resort, the long-term historical average of results continues to support a more normalized growth rate in the valuation. The Company will continue to monitor actual performance compared to its expectations and will update assumptions as appropriate. The Company prepared a sensitivity analysis to evaluate the effect that changes on certain key assumptions would have on the estimated fair value of the Contingent Consideration. A change in the discount rate of 100 basis points or a 5% change in estimated subsequent year performance would result in a change in the estimated fair value within the range of approximately \$3.0 million to \$6.1 million.

Contingent Consideration is classified as a liability and is remeasured to an estimated fair value at each reporting date until the contingency is resolved. During the year ended July 31, 2022, the Company made a payment to the landlord for Contingent Consideration of approximately \$7.5 million and recorded an increase in the estimated fair value of approximately \$20.3 million which was primarily associated with the estimated Contingent Consideration payment for the fiscal year ended July 31, 2022. These changes resulted in an estimated fair value of the Contingent Consideration of \$42.4 million as of July 31, 2022, which is reflected in accounts payable and accrued liabilities and other long-term liabilities in the accompanying Consolidated Balance Sheet.

## 10. Income Taxes

The Company is subject to taxation in U.S. federal, state and local jurisdictions and various non-U.S. jurisdictions, including Australia and Canada. The Company's effective tax rate is impacted by the tax laws, regulations, practices and interpretations in the jurisdictions in which it operates and may fluctuate significantly from period to period depending on, among other things, the geographic mix of the Company's profits and losses, changes in tax laws and regulations or their application and interpretation, the outcome of tax audits and changes in valuation allowances associated with the Company's deferred tax assets.

On March 27, 2020, in response to the COVID-19 pandemic, the U.S. government enacted legislation commonly referred to as the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The CARES Act includes various amendments to the U.S. tax code that impacted the Company's accounting and reporting for income taxes during the years ended July 31, 2022, 2021 and 2020, and the Company expects these amendments will continue to impact its accounting and reporting for income taxes in the future. The primary provisions of the CARES Act that the Company has been impacted by include:

- allowing a carryback of the entire amount of eligible Federal net operating losses ("NOLs") generated in calendar years 2018, 2019 and 2020 for up to five years prior to when such losses were incurred, representing a change from previous rules under the Tax Cuts & Jobs Act of 2017 (the "TCJA"), in which NOLs could not be carried back to prior years and utilization was limited to 80% of taxable income in future years. Under the CARES Act, the Company was permitted to carry back its pre-existing NOLs to tax years prior to the enactment of the TCJA and obtain an incremental benefit of \$3.8 million in the year ended July 31, 2020 related to the differential in federal tax rates between years that NOLs were generated and years that the NOLs were carried back to;
- treatment of certain qualified improvement property ("QIP") as 15-year property and allowing such QIP placed in service after December 31, 2017 to be eligible for bonus depreciation; and
- increases in the allowable business interest deduction from 30% of adjusted taxable income to 50% of adjusted taxable income for calendar year 2020.

The CARES Act also provides refundable employee retention credits and defers the requirement to remit the employer-paid portion of social security payroll taxes. As a result, during the year ended July 31, 2020, the Company recorded a benefit of approximately \$9.6 million, which primarily offset Mountain and Lodging operating expense as a result of wages paid to employees who were not providing services. Additionally, the Company deferred payment of the employer-paid portion of social security payroll taxes through the end of calendar year 2020 and remitted such amounts in equal installments during calendar years 2021 and 2022.

The Company also recognized benefits of approximately \$7.0 million, \$30.8 million and \$8.5 million during the years ended July 31, 2022, 2021 and 2020, respectively, as a result of the recent Canada Emergency Wage Subsidy and Australian JobKeeper legislation for its Canadian and Australian employees, which primarily offset Mountain and Lodging operating expense.

U.S. and foreign components of income (loss) before provision for income taxes is as follows (in thousands):

	Year Ended July 31,		
	2022	2021	2020
U.S.	\$ 387,729	\$ 148,898	\$ 89,838
Foreign	69,432	(23,715)	26,595
Income before income taxes	\$ 457,161	\$ 125,183	\$ 116,433

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and income tax purposes. Significant components of the Company's deferred tax liabilities and assets are as follows (in thousands):

	July 31,	
	2022	2021
<b>Deferred income tax liabilities:</b>		
Fixed assets	\$ 203,669	\$ 204,714
Intangible assets	119,066	100,751
Operating lease right of use assets	44,873	47,915
Convertible debt	18,780	23,783
Other	18,157	15,116
Total	404,545	392,279
<b>Deferred income tax assets:</b>		
Canyons obligation	17,291	16,080
Stock-based compensation	9,957	10,335
Investment in Partnerships	10,602	7,585
Deferred compensation and other accrued benefits	15,202	13,887
Contingent Consideration	10,719	7,430
Net operating loss carryforwards and other tax credits	8,516	12,182
Operating lease liabilities	49,530	53,755
Other, net	24,501	27,206
Total	146,318	148,460
Valuation allowance for deferred income taxes	(5,188)	(5,939)
Deferred income tax assets, net of valuation allowance	141,130	142,521
Net deferred income tax liability	\$ 263,415	\$ 249,758

The components of deferred income taxes recognized in the accompanying Consolidated Balance Sheets are as follows (in thousands):

	July 31,	
	2022	2021
Deferred income tax asset	\$ 5,049	\$ 3,059
Deferred income tax liability	268,464	252,817
Net deferred income tax liability	\$ 263,415	\$ 249,758

Significant components of the provision for income taxes are as follows (in thousands):

	Year Ended July 31,		
	2022	2021	2020
<b>Current:</b>			
Federal	\$ 62,974	\$ 20,387	\$ (13,467)
State	13,938	4,935	(731)
Foreign	21,302	(8,460)	4,141
Total current	98,214	16,862	(10,057)
<b>Deferred:</b>			
Federal	(6,910)	(16,289)	12,597
State	1,966	(2,423)	4,266
Foreign	(4,446)	2,576	572
Total deferred	(9,390)	(16,136)	17,435
Provision for income taxes	\$ 88,824	\$ 726	\$ 7,378

A reconciliation of the income tax provision for continuing operations and the amount computed by applying the United States federal statutory income tax rate to income before income taxes is as follows:

	Year Ended July 31,		
	2022	2021	2020
At U.S. federal income tax rate	21.0 %	21.0 %	21.0 %
State income tax, net of federal benefit	3.8 %	4.2 %	3.5 %
Change in uncertain tax positions	(1.2)%	(3.5)%	(3.8)%
Excess tax benefits related to stock-based compensation	(3.6)%	(14.3)%	(7.1)%
Impacts of the Tax Act and other legislative changes	— %	— %	(3.2)%
Noncontrolling interests	(1.2)%	0.8 %	(2.4)%
Foreign rate differential	0.1 %	(5.0)%	(2.4)%
Taxes related to prior year filings	0.3 %	(2.9)%	— %
Other	0.2 %	0.3 %	0.7 %
Effective tax rate	19.4 %	0.6 %	6.3 %

A reconciliation of the beginning and ending amount of unrecognized tax benefits associated with uncertain tax positions, excluding associated deferred tax benefits and accrued interest and penalties, if applicable, is as follows (in thousands):

	Year Ended July 31,		
	2022	2021	2020
Balance, beginning of year	\$ 67,857	\$ 70,299	\$ 72,222
Additions for tax positions of prior years	11,179	16,754	16,654
Lapse of statute of limitations	(16,127)	(19,196)	(18,577)
Balance, end of year	\$ 62,909	\$ 67,857	\$ 70,299

As of July 31, 2022, the Company's unrecognized tax benefits associated with uncertain tax positions relate to the treatment of the Talisker lease payments as payments of debt obligations and that the tax basis in Canyons goodwill is deductible, and are included within other long-term liabilities in the accompanying Consolidated Balance Sheets.

During the year ended July 31, 2022, the Company experienced a reduction in the uncertain tax positions due to the lapse of the statute of limitations of \$16.1 million, which was partially offset with an increase to the uncertain tax position of \$11.2 million. Accrued interest and penalties associated with the statute of limitations lapse were approximately \$5.8 million. The Company is not aware of any tax positions for which it is reasonably possible that the total amounts of unrecognized tax benefits will change materially in the next twelve months. Additionally, the Company expects a reduction to its uncertain tax positions for the fiscal year ending July 31, 2023, due to the lapse of the statute of limitations.

The Company's major tax jurisdictions in which it files income tax returns are the U.S. federal jurisdiction, various state jurisdictions, Australia and Canada. The Company's U.S. federal income tax returns are subject to tax examinations for the tax years 2018 through the current period. U.S. state, Australia and Canada income tax returns are generally subject to examination for the tax years 2018 through the current period. Additionally, to the extent the Company has NOLs that have been carried back or are available for carryforward, the tax years to which the NOL was carried back or in which the NOL was generated may still be adjusted by the taxing authorities to the extent the NOLs are utilized.

The Company has NOL carryforwards totaling \$18.4 million, primarily comprised of \$14.8 million of federal and state NOLs as a result of the acquisition of Peak Resorts in September 2019 that will expire beginning July 31, 2031 and non-U.S. NOLs of \$3.6 million that will carry forward indefinitely. In connection with Peak Resorts' initial public offering in November 2014, as well as the Company's acquisition of Peak Resorts in September 2019, Peak Resorts had two ownership changes pursuant to the provisions of the Tax Reform Act of 1986. As a result, the Company's usage of its eligible Federal NOL carryforwards will be limited each year by these ownership changes; however, management believes the full benefit of those carryforwards will be realized prior to their respective expiration dates. As of July 31, 2022, the Company has recorded a valuation allowance on \$3.6 million of the historical non-U.S. NOL carryforwards, as the Company has determined that it is more likely than not that the associated NOL carryforwards will not be realized. Additionally, the Company has foreign tax credit carryforwards of \$4.2 million, which expire by the year ending July 31, 2028. As of July 31, 2022, the Company has recorded a valuation

allowance of \$4.2 million on foreign tax credit carryforwards, as the Company has determined that it is more likely than not that these foreign tax credit carryforwards will not be realized.

The Company may be required to record additional valuation allowances if, among other things, adverse economic conditions, including those caused by the COVID-19 pandemic, negatively impact the Company's ability to realize its deferred tax assets. Evaluating and estimating the Company's tax provision, current and deferred tax assets and liabilities and other tax accruals requires significant management judgment. The Company intends to indefinitely reinvest undistributed earnings, if any, in its Canadian foreign subsidiaries. It is not practical at this time to determine the income tax liability related to any remaining undistributed earnings.

## **11. Commitments and Contingencies**

### Metropolitan Districts

The Company credit-enhances \$6.3 million of bonds issued by Holland Creek Metropolitan District ("HCMD") through a \$6.4 million letter of credit issued under the Vail Holdings Credit Agreement. HCMD's bonds were issued and used to build infrastructure associated with the Company's Red Sky Ranch residential development. The Company has agreed to pay capital improvement fees to the Red Sky Ranch Metropolitan District ("RSRMD") until RSRMD's revenue streams from property taxes are sufficient to meet debt service requirements under HCMD's bonds. The Company recorded a liability of \$1.8 million and \$2.0 million, primarily within other long-term liabilities in the accompanying Consolidated Balance Sheets, as of July 31, 2022 and 2021, respectively, with respect to the estimated present value of future RSRMD capital improvement fees. The Company estimates that it will make capital improvement fee payments under this arrangement through the year ending July 31, 2031.

### Guarantees/Indemnifications

As of July 31, 2022, the Company had various other letters of credit outstanding totaling \$79.3 million, consisting of \$53.4 million to support the Employee Housing Bonds and \$25.9 million primarily for workers' compensation, a wind energy purchase agreement and insurance-related deductibles. The Company also had surety bonds of \$13.2 million as of July 31, 2022, primarily to provide collateral for its U.S. workers compensation self-insurance programs.

In addition to the guarantees noted above, the Company has entered into contracts in the normal course of business that include certain indemnifications under which it could be required to make payments to third parties upon the occurrence or non-occurrence of certain future events. These indemnities include indemnities related to licensees in connection with third-parties' use of the Company's trademarks and logos, liabilities associated with the infringement of other parties' technology and software products, liabilities associated with the use of easements, liabilities associated with employment of contract workers and the Company's use of trustees, and liabilities associated with the Company's use of public lands and environmental matters. The duration of these indemnities generally is indefinite and generally do not limit the future payments the Company could be obligated to make.

As permitted under applicable law, the Company and certain of its subsidiaries have agreed to indemnify their directors and officers over their lifetimes for certain events or occurrences while the officer or director is, or was, serving the Company or its subsidiaries in such a capacity. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has a director and officer insurance policy that should enable the Company to recover a portion of any amounts paid.

Unless otherwise noted, the Company has not recorded any significant liabilities for the letters of credit, indemnities and other guarantees noted above in the accompanying Consolidated Financial Statements, either because the Company has recorded on its Consolidated Balance Sheets the underlying liability associated with the guarantee, the guarantee is with respect to the Company's own performance and is therefore not subject to the measurement requirements as prescribed by GAAP, or because the Company has calculated the estimated fair value of the indemnification or guarantee to be immaterial based on the current facts and circumstances that would trigger a payment under the indemnification clause. In addition, with respect to certain indemnifications it is not possible to determine the maximum potential amount of liability under these potential obligations due to the unique set of facts and circumstances likely to be involved in each particular claim and indemnification provision. Historically, payments made by the Company under these obligations have not been material.

As noted above, the Company makes certain indemnifications to licensees for their use of the Company's trademarks and logos. The Company does not record any liabilities with respect to these indemnifications.

## Commitments

The operations of Northstar are conducted on land and with operating assets owned by affiliates of EPR Properties, a real-estate investment trust, primarily under operating leases which were assumed in the acquisition of Northstar by the Company. The leases provide for the payment of a minimum annual base rent over the lease term which is recognized on a straight-line basis over the remaining lease term from the date of assumption. In addition, the leases provide for the payment of percentage rent of certain gross revenues generated at the property over a revenue threshold which is incrementally adjusted annually. The initial term of the leases expires in fiscal 2027 and allows for three 10-year extensions at the Company's option. The operations of Perisher are conducted on land under a license and lease granted by the Office of Environment and Heritage, an agency of the New South Wales government, which initially commenced in 2008, and which the Company assumed in its acquisition of Perisher. The lease and license has a term that expires in fiscal 2048 and allows for an option to renew for an additional 20 years. The lease and license provide for the payment of an initial minimum annual base rent, with annual CPI increases, and percentage rent of certain gross revenue generated at the property. The operations of Falls Creek and Hotham are conducted on land under leases granted by the Governor of the State of Victoria, Australia and its dependencies, which initially commenced in 1991 and 1992, respectively, which the Company assumed in its acquisition of Falls Creek and Hotham in April 2019. The leases have terms that expire in fiscal 2041 for Falls Creek and fiscal 2058 for Hotham, and provide for the payment of rent with both a fixed and variable component. The operations of Mad River Mountain is conducted on land under a lease granted by EPT Mad River, Inc., which initially commenced in 2005, which the Company assumed in its acquisition of Peak Resorts in September 2019. The lease has a term that expires in the year ending July 31, 2035, and provides for the payment of an initial minimum annual base rent, with annual CPI increases, and percentage rent of certain gross revenue generated at the property. The operations of Laurel Mountain are conducted on land under a concessioner lease agreement with the Commonwealth of Pennsylvania, acting through the Department of Conservation and Natural Resources ("Department"), which initially commenced in 2018, which the Company assumed in its acquisition of the Seven Springs Resorts in December 2021. The agreement has a term that expires in the year ending July 31, 2052, and provides for the payment of an initial minimum annual base rent, with bi-annual CPI increases, and additional rent based on skier visits. Additionally, the Company has entered into strategic long-term season pass alliance agreements with third-party mountain resorts in which the Company has committed to pay minimum revenue guarantees over the remaining terms of these agreements.

The Company has executed or assumed as lessee other operating leases for the rental of office and commercial space, employee residential units and land primarily through fiscal 2079. Certain of these leases have renewal terms at the Company's option, escalation clauses, rent holidays and leasehold improvement incentives. Rent holidays and rent escalation clauses are recognized on a straight-line basis over the lease term. Leasehold improvement incentives are recorded as leasehold improvements and amortized over the shorter of their economic lives or the term of the lease. For the years ended July 31, 2022, 2021 and 2020, the Company recorded lease expense (including Northstar, Perisher, Falls Creek & Hotham and Mad River Mountain), excluding executory costs, related to these agreements of \$61.2 million, \$58.7 million and \$58.8 million, respectively, which is included in the accompanying Consolidated Statements of Operations. See Note 4, Leases, for additional information regarding the Company's leasing arrangements.

## Self-Insurance

The Company is self-insured for claims under its U.S. health benefit plans and for the majority of workers' compensation claims in the U.S. Workers compensation claims in the U.S. are subject to stop loss policies. The self-insurance liability related to workers' compensation is determined actuarially based on claims filed. The self-insurance liability related to claims under the Company's U.S. health benefit plans is determined based on analysis of actual claims. The amounts related to these claims are included as a component of accrued benefits in accounts payable and accrued liabilities (see Note 8, Supplementary Balance Sheet Information).

## Legal

During the year ended July 31, 2021, several named plaintiffs filed respective complaints against the Company on behalf of the same or similar purported classes of current and former employees of the Company. The complaints generally allege violations of federal and state laws governing employee wage and hours practices, and seek damages in the form of unpaid wages, related penalties and other damages. As a result, the Company had recorded an accrual of \$13.2 million as of July 31, 2022 and 2021 on its Consolidated Balance Sheets. The parties proposed a settlement agreement to resolve these complaints, which the court approved in August 2022.

The Company is also a party to various lawsuits arising in the ordinary course of business. Management believes the Company has adequate insurance coverage and/or has accrued for all loss contingencies for asserted and unasserted matters deemed to be probable losses and reasonably estimable. As of July 31, 2022 and 2021, the accruals for such loss contingencies (excluding the employment-related litigation) were not material individually or in the aggregate.

## 12. Segment and Geographic Area Information

### Segment Information

The Company has three reportable segments: Mountain, Lodging and Real Estate. The Company refers to “Resort” as the combination of the Mountain and Lodging segments. The Mountain segment includes the operations of the Company’s mountain resorts/ski areas and related ancillary activities. The Lodging segment includes the operations of the Company’s owned hotels, RockResorts, NPS concessioner properties, condominium management, Colorado resort ground transportation operations and mountain resort golf operations. The Real Estate segment owns, develops and sells real estate in and around the Company’s resort communities. The Company’s reportable segments, although integral to the success of the others, offer distinctly different products and services and require different types of management focus. As such, these segments are managed separately.

On August 1, 2021, the Company revised its segment reporting to move certain dining and golf operations from the Lodging segment to the Mountain segment. Segment reporting results for the prior years have been adjusted retrospectively to conform to the current period presentation.

The Company reports its segment results using Reported EBITDA (defined as segment net revenue less segment operating expenses, plus segment equity investment income or loss, and for the Real Estate segment, plus gain or loss on sale of real property). The Company reports segment results in a manner consistent with management’s internal reporting of operating results to the chief operating decision maker (Chief Executive Officer) for purposes of evaluating segment performance.

Items excluded from Reported EBITDA are significant components in understanding and assessing financial performance. Reported EBITDA should not be considered in isolation or as an alternative to, or substitute for, net income, net change in cash and cash equivalents or other financial statement data presented in the accompanying Consolidated Financial Statements as indicators of financial performance or liquidity.

The Company utilizes Reported EBITDA in evaluating the performance of the Company and in allocating resources to its segments. Mountain Reported EBITDA consists of Mountain net revenue less Mountain operating expense plus Mountain equity investment income or loss. Lodging Reported EBITDA consists of Lodging net revenue less Lodging operating expense. Real Estate Reported EBITDA consists of Real Estate net revenue less Real Estate operating expense plus gain or loss on sale of real property. All segment expenses include an allocation of corporate administrative expense. Assets are not used to evaluate performance, except as shown in the table below. The accounting policies specific to each segment are the same as those described in Note 2, Summary of Significant Accounting Policies.



The following table presents key financial information by reportable segment, which is used by management in evaluating performance and allocating resources (in thousands):

	Year ended July 31,		
	2022	2021 <sup>(1)</sup>	2020 <sup>(1)</sup>
<b>Net revenue:</b>			
Mountain	\$ 2,213,114	\$ 1,702,798	\$ 1,726,620
Lodging	312,090	205,142	232,237
Total Resort net revenue	2,525,204	1,907,940	1,958,857
Real Estate	708	1,770	4,847
Total net revenue	\$ 2,525,912	\$ 1,909,710	\$ 1,963,704
<b>Segment operating expense:</b>			
Mountain	\$ 1,404,527	\$ 1,156,743	\$ 1,224,870
Lodging	286,343	213,239	232,328
Total Resort operating expense	1,690,870	1,369,982	1,457,198
Real Estate	5,911	6,676	9,182
Total segment operating expense	\$ 1,696,781	\$ 1,376,658	\$ 1,466,380
Gain on sale of real property	\$ 1,276	\$ 324	\$ 207
Mountain equity investment income, net	\$ 2,580	\$ 6,698	\$ 1,690
<b>Reported EBITDA:</b>			
Mountain	\$ 811,167	\$ 552,753	\$ 503,440
Lodging	25,747	(8,097)	(91)
Resort	836,914	544,656	503,349
Real Estate	(3,927)	(4,582)	(4,128)
Total Reported EBITDA	\$ 832,987	\$ 540,074	\$ 499,221
Real estate held for sale or investment	\$ 95,983	\$ 95,615	\$ 96,844
<b>Reconciliation of net income attributable to Vail Resorts, Inc. to Total Reported EBITDA:</b>			
Net income attributable to Vail Resorts, Inc.	\$ 347,923	\$ 127,850	\$ 98,833
Net income (loss) attributable to noncontrolling interests	20,414	(3,393)	10,222
Net income	368,337	124,457	109,055
Provision for income taxes	88,824	726	7,378
Income before provision for income taxes	457,161	125,183	116,433
Depreciation and amortization	252,391	252,585	249,572
Asset impairments	—	—	28,372
(Gain) loss on disposal of fixed assets and other, net <sup>(2)</sup>	(43,992)	5,373	(838)
Change in estimated fair value of contingent consideration	20,280	14,402	(2,964)
Investment income and other, net	(3,718)	(586)	(1,305)
Foreign currency loss (gain) on intercompany loans	2,682	(8,282)	3,230
Interest expense, net	148,183	151,399	106,721
Total Reported EBITDA	\$ 832,987	\$ 540,074	\$ 499,221

<sup>(1)</sup> Segment results for the years ended July 31, 2021 and 2020 have been retrospectively adjusted to reflect current period presentation.

<sup>(2)</sup> During the year ended July 31, 2022, the Company recognized a gain of \$32.2 million from the sale of a hotel property in Breckenridge.

## Geographic Information

Net revenue and property, plant and equipment, net by geographic region are as follows (in thousands):

Net revenue	Year ended July 31,		
	2022	2021	2020
U.S.	\$ 2,228,708	\$ 1,717,270	\$ 1,655,961
International <sup>(1)</sup>	297,204	192,440	307,743
Total net revenue	\$ 2,525,912	\$ 1,909,710	\$ 1,963,704

Property, plant and equipment, net	July 31,	
	2022	2021
U.S.	\$ 1,729,400	\$ 1,646,097
International <sup>(2)</sup>	388,652	421,779
Total property, plant and equipment, net	\$ 2,118,052	\$ 2,067,876

<sup>(1)</sup> No individual international country (i.e. except the U.S.) accounted for more than 10% of the Company's revenue for the years ended July 31, 2022 and 2021. The only individual international country to account for more than 10% of the Company's revenue for the year ended July 31, 2020 was Canada. Canada accounted for \$223.3 million of revenue for the year ended July 31, 2020.

<sup>(2)</sup> The only individual international country to account for more than 10% of the Company's property plant and equipment, net was Canada. Canada accounted for \$272.9 million and \$288.4 million of property, plant and equipment, net as of July 31, 2022 and 2021, respectively.

### 13. Share Repurchase Program

On March 9, 2006, the Company's Board of Directors approved a share repurchase program, authorizing the Company to repurchase up to 3,000,000 Vail Shares. On July 16, 2008, the Company's Board of Directors increased the authorization by an additional 3,000,000 Vail Shares, and on December 4, 2015, the Company's Board of Directors increased the authorization by an additional 1,500,000 Vail Shares for a total authorization to repurchase up to 7,500,000 Vail Shares. During the years ended July 31, 2022 and 2020, the Company repurchased 304,567 and 256,418 Vail Shares, respectively (at a total cost of \$75.0 million and \$46.4 million, respectively). The company did not repurchase any Vail Shares during the year ended July 31, 2021. Since inception of this stock repurchase program through July 31, 2022, the Company has repurchased 6,465,708 shares at a cost of approximately \$479.4 million. As of July 31, 2022, 1,034,292 Vail Shares remained available to repurchase under the existing share repurchase program, which has no expiration date. Vail Shares purchased pursuant to the repurchase program will be held as treasury shares and may be used for issuance under the Company's employee share award plan.

### 14. Stock Compensation Plan

The Company has a share award plan (the "Plan") which has been approved by the Company's stockholders. Under the Plan, up to 4.4 million shares of common stock could be issued in the form of options, stock appreciation rights, restricted shares, restricted share units, performance shares, performance share units, dividend equivalents or other share-based awards to employees, directors or consultants of the Company or its subsidiaries or affiliates. The terms of awards granted under the Plan, including exercise price, vesting period and life, are set by the Compensation Committee of the Board of Directors. All share-based awards (except for restricted shares and restricted share units) granted under the Plan have a life of ten years. Most awards vest ratably over three years; however, some have been granted with different vesting schedules. Of the awards outstanding, none have been granted to non-employees (except those granted to non-employee members of the Board of Directors of the Company) under the Plan. At July 31, 2022, approximately 2.6 million share based awards were available to be granted under the Plan.

The fair value of stock-settled stock appreciation rights ("SARs") granted in the years ended July 31, 2022, 2021 and 2020 were estimated on the date of grant using a lattice-based option valuation model that applies the assumptions noted in the table below. A lattice-based model considers factors such as exercise behavior, and assumes employees will exercise equity awards at different times over the contractual life of the equity awards. As a lattice-based model considers these factors, and is more flexible, the Company considers it to be a better method of valuing equity awards than a closed-form Black-Scholes model.

Because lattice-based option valuation models incorporate ranges of assumptions for inputs, those ranges are disclosed. Expected volatility is based on historical volatility of the Company's stock. The Company uses historical data to estimate equity award exercises and employee terminations within the valuation model; separate groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. The expected term of equity awards granted is derived from the output of the option valuation model and represents the period of time that equity awards granted are expected to be outstanding; the range given below results from certain groups of employees exhibiting different behavior. The risk-free rate for periods within the contractual life of the equity award is based on the United States Treasury yield curve in effect at the time of grant.

	Year ended July 31,		
	2022	2021	2020
Expected volatility	31.0%	30.7%	29.7%
Expected dividend yield	2.1%	3.0%	2.8%
Expected term (average in years)	6.4-6.8	6.6-6.9	6.5-7.1
Risk-free rate	0.1-1.2%	0.1-0.6%	1.8-2.0%

The Company records actual forfeitures related to unvested awards upon employee terminations.

A summary of aggregate SARs award activity under the Plan as of July 31, 2022, 2021 and 2020, and changes during the years then ended is presented below (in thousands, except exercise price and contractual term):

	Awards	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at August 1, 2019	1,171	\$ 111.12		
Granted	146	\$ 245.26		
Exercised	(247)	\$ 67.19		
Forfeited or expired	(9)	\$ 252.75		
Outstanding at July 31, 2020	1,061	\$ 138.59		
Granted	205	\$ 233.01		
Exercised	(370)	\$ 84.20		
Forfeited or expired	(23)	\$ 236.31		
Outstanding at July 31, 2021	873	\$ 181.17		
Granted	97	\$ 360.69		
Exercised	(278)	\$ 93.32		
Forfeited or expired	(13)	\$ 271.04		
Outstanding at July 31, 2022	679	\$ 241.13	6.6 years	\$ 15,486
Vested and expected to vest at July 31, 2022	668	\$ 240.59	6.6 years	\$ 15,424
Exercisable at July 31, 2022	449	\$ 218.23	5.7 years	\$ 14,460

The weighted-average grant-date estimated fair value of SARs granted during the years ended July 31, 2022, 2021 and 2020 was \$96.20, \$52.30 and \$58.25, respectively. The total intrinsic value of SARs exercised during the years ended July 31, 2022, 2021 and 2020 was \$69.1 million, \$82.0 million and \$35.0 million, respectively. The Company had 160,000, 96,000 and 91,000 SARs that vested during the years ended July 31, 2022, 2021 and 2020, respectively. These awards had a total estimated fair value of \$16.2 million, \$0.1 million and \$2.6 million at the date of vesting for the years ended July 31, 2022, 2021 and 2020, respectively.

A summary of the status of the Company's nonvested SARs as of July 31, 2022 and changes during the year then ended is presented below (in thousands, except fair value amounts):

	Awards	Weighted-Average Grant-Date Fair Value
Nonvested at July 31, 2021	302	\$ 57.22
Granted	97	\$ 96.20
Vested	(160)	\$ 58.98
Forfeited	(9)	\$ 72.13
Nonvested at July 31, 2022	230	\$ 71.62

A summary of the status of the Company's nonvested restricted share units as of July 31, 2022 and changes during the year then ended is presented below (in thousands, except fair value amounts):

	Awards	Weighted-Average Grant-Date Fair Value
Nonvested at July 31, 2021	143	\$ 224.94
Granted	68	\$ 336.57
Vested	(68)	\$ 229.99
Forfeited	(18)	\$ 260.32
Nonvested at July 31, 2022	125	\$ 277.78

The Company granted 68,000 restricted share units during the year ended July 31, 2022 with a weighted-average grant-date estimated fair value of \$336.57. The Company granted 94,000 restricted share units during the year ended July 31, 2021 with a weighted-average grant-date estimated fair value of \$222.17. The Company granted 83,000 restricted share units during the year ended July 31, 2020 with a weighted-average grant-date estimated fair value of \$217.46. The Company had 68,000, 66,000 and 63,000 restricted share units that vested during the years ended July 31, 2022, 2021 and 2020, respectively. These units had a total estimated fair value of \$23.7 million, \$15.0 million and \$14.8 million at the date of vesting for the years ended July 31, 2022, 2021 and 2020, respectively.

As of July 31, 2022, there was \$30.3 million of total unrecognized compensation expense related to nonvested share-based compensation arrangements granted under the Plan, of which \$18.2 million, \$10.6 million and \$1.5 million of expense is expected to be recognized in the years ending July 31, 2023, 2024 and 2025, respectively, assuming no share-based awards are granted in the future or forfeited. The tax benefit realized or expected to be realized from SARs exercised and restricted stock units vested was \$23.0 million, \$24.0 million and \$12.3 million for the years ended July 31, 2022, 2021 and 2020, respectively.

The Company has a policy of using either authorized and unissued shares or treasury shares, including shares acquired by purchase in the open market, to satisfy equity award exercises.

## 15. Retirement and Profit Sharing Plans

The Company maintains a defined contribution retirement plan (the "Retirement Plan"), qualified under Section 401(k) of the Internal Revenue Code, for its U.S. employees. Under this Retirement Plan, U.S. employees are eligible to make before-tax contributions on the first day of the calendar month following the later of: (i) their employment commencement date or (ii) the date they turn 21. Participants may contribute up to 100% of their qualifying annual compensation up to the annual maximum specified by the Internal Revenue Code. When the Company participates in 401(k) contribution matching, it matches an amount equal to 50% of each participant's contribution up to 6% of a participant's bi-weekly qualifying compensation starting the pay period containing the first day of the month after obtaining the later of: (i) 12 months of employment with at least 1,000 service hours from the commencement date or (ii) if 1,000 hours within the first 12 months was not completed, then after the employee completed a cumulative 1,500 service hours. In April 2020, the Company announced a temporary six month suspension of its 401(k) contribution matching as a result of the impacts of COVID-19 and resulting resort closures, which subsequently resumed in October 2020. The Company's matching contribution is entirely discretionary and may be reduced or eliminated at any time.

Total Retirement Plan expense recognized by the Company for the years ended July 31, 2022, 2021 and 2020 was \$8.5 million, \$6.5 million and \$5.8 million, respectively.

## 16. Subsequent Events

On August 3, 2022, through a wholly-owned subsidiary, the Company acquired a 55% controlling interest in Andermatt-Sedrun from ASA. Andermatt-Sedrun operates mountain and ski-related assets, including lifts, most of the restaurants and a ski school operation at the ski area. The Company invested CHF 149.3 million (\$155.7 million), comprised of a CHF 110.0 million (\$114.4 million) investment into Andermatt-Sedrun for use in capital investments to enhance the guest experience on the mountain (which was prepaid to fund the acquisition and is recorded in other current assets on the Company's Consolidated Balance Sheet as of July 31, 2022) and CHF 39.3 million (\$41.3 million) paid to ASA (which was paid on August 3, 2022, commensurate with closing). ASA has retained a 40% ownership stake, with a group of existing shareholders comprising the remaining 5% ownership. The acquisition was funded with cash on hand. As of August 3, 2022, the value of the total consideration paid to the seller was \$155.4 million. Initial accounting for the acquisition is not yet complete, including the determination of the acquisition-date fair value of assets acquired and liabilities assumed, as the Company is currently in the process of completing the assessment of valuation inputs and assumptions.

On August 31, 2022, the Company entered into the Fifth Amendment of the Vail Holdings Credit Agreement, which extended the maturity date to September 23, 2026. Additionally, the Fifth Amendment contains customary LIBOR replacement language, including, but not limited to, the use of rates based on SOFR. The Fifth Amendment modified the calculation of interest under the Vail Holdings Credit Agreement from being calculated based on LIBOR to being calculated based on SOFR. No other material terms of the Vail Holdings Credit Agreement were amended.

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

None.

### ITEM 9A. CONTROLS AND PROCEDURES.

#### Disclosure Controls and Procedures

Management of the Company, including the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this Form 10-K. The term "disclosure controls and procedures" means controls and other procedures established by the Company that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

Based upon their evaluation of the Company's disclosure controls and procedures, the CEO and the CFO concluded that, as of the end of the period covered by this Form 10-K, the disclosure controls are effective to provide reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure and are effective to provide reasonable assurance that such information is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms.

The Company, including its CEO and CFO, does not expect that the Company's controls and procedures will prevent or detect all error and all fraud. A control system, no matter how well conceived or operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

#### Management's Annual Report on Internal Control Over Financial Reporting

The report of management required by this item is contained in Item 8. of this Form 10-K under the caption "Management's Report on Internal Control over Financial Reporting."

#### Attestation Report of the Independent Registered Public Accounting Firm

The attestation report required by this item is contained in Item 8. of this Form 10-K under the caption "Report of Independent Registered Public Accounting Firm."

## **Changes in Internal Control Over Financial Reporting**

On December 31, 2021, we completed our acquisition of the Seven Springs Resorts. The Seven Springs Resorts were not previously subject to the rules and regulations promulgated under the Sarbanes-Oxley Act of 2002, as amended (“Sarbanes-Oxley”), and accordingly were not required to establish and maintain an internal control infrastructure meeting the standards promulgated under Sarbanes-Oxley. Our assessment of and conclusion on the effectiveness of our internal control over financial reporting as of July 31, 2022 did not include certain elements of the internal controls of the Seven Springs Resorts. This exclusion is in accordance with the Securities and Exchange Commission’s general guidance that an assessment of a recently acquired business may be omitted from our scope in the year of acquisition.

Excluding the Seven Springs Resorts, there were no changes in the Company’s internal control over financial reporting during the year ended July 31, 2022 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

### **ITEM 9B. OTHER INFORMATION.**

None.

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

Not applicable.

## **PART III**

We expect to file with the SEC in October 2022 (and, in any event, not later than 120 days after the close of our last fiscal year), a definitive Proxy Statement, pursuant to SEC Regulation 14A in connection with our Annual Meeting of Shareholders to be held in December 2022.

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

The information required by this item is incorporated herein by reference from the Company’s definitive Proxy Statement for the 2022 annual meeting of stockholders under the sections entitled “Information with Respect to Nominees,” “Management” and “Corporate Governance.”

### **ITEM 11. EXECUTIVE COMPENSATION.**

The information required by this item is incorporated herein by reference from the Company’s definitive Proxy Statement for the 2022 annual meeting of stockholders under the section entitled “Executive Compensation.”

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

The information required by this item is incorporated herein by reference from the Company’s definitive Proxy Statement for the 2022 annual meeting of stockholders under the sections entitled “Security Ownership of Directors and Executive Officers,” “Information as to Certain Stockholders” and “Executive Compensation - Securities Authorized for Issuance under Equity Compensation Plans.”

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

The information required by this item is incorporated herein by reference from the Company's definitive Proxy Statement for the 2022 annual meeting of stockholders under the sections entitled "Determinations Regarding Independence" and "Transactions with Related Persons."

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

The information required by this item is incorporated herein by reference from the Company's definitive Proxy Statement for the 2022 annual meeting of stockholders under the section entitled "Proposal 2. Ratification of the Selection of Independent Registered Public Accounting Firm."

**PART IV****ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.**

## a) Index to Financial Statements.

- (1) See Item 8. "Financial Statements and Supplementary Data" for the index to the Financial Statements.
- (2) Schedules have been omitted because they are not required or not applicable, or the required information is shown in the financial statements or notes to the financial statements.
- (3) See the Index to Exhibits below.

The following exhibits are either filed or furnished herewith (as applicable) or, if so indicated, incorporated by reference to the documents indicated in parentheses, which have previously been filed or furnished (as applicable) with the Securities and Exchange Commission.

Posted Exhibit Number	Description
2.1	<a href="#"><u>Transaction Agreement, dated as of May 24, 2013, between VR CPC Holdings, Inc. and ASC Utah LLC, Talisker Land Holdings, LLC, Talisker Canyons Lands LLC, Talisker Canyons Leaseco LLC, American Skiing Company Resort Properties LLC, Talisker Canyons Propco LLC and Talisker Canyons Finance Co LLC. (Incorporated by reference to Exhibit 2.1 on Form 8-K of Vail Resorts, Inc. filed on May 30, 2013) (File No. 001-09614).</u></a>
2.2	<a href="#"><u>Purchase and Sale Agreement, dated as of September 11, 2014, between VR CPC Holdings, Inc. and Greater Park City Company, Powdr Corp., Greater Properties, Inc., Park Properties, Inc. and Powdr Development Company. (Incorporated by reference to Exhibit 2.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2014) (File No. 001-09614).</u></a>
2.3	<a href="#"><u>Arrangement Agreement, dated as of August 5, 2016, between Vail Resorts, Inc., 1068877 B.C. Ltd. and Whistler Blackcomb Holdings Inc. (Incorporated by reference to Exhibit 2.1 on Form 8-K of Vail Resorts, Inc. filed on August 8, 2016) (File No. 001-09614).</u></a>
2.4	<a href="#"><u>Agreement and Plan of Merger, dated as of July 20, 2019, by and among Vail Holdings, Inc., VRAD Holdings, Inc. and Peak Resorts, Inc., and solely with respect to Section 9.14, Vail Resorts, Inc. (Incorporated by reference to Exhibit 2.1 on Form 8-K of Vail Resorts, Inc. filed on July 22, 2019) (File No. 001-09614).</u></a>
3.1	<a href="#"><u>Amended and Restated Certificate of Incorporation of Vail Resorts, Inc., dated January 5, 2005. (Incorporated by reference to Exhibit 3.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended January 31, 2005) (File No. 001-09614).</u></a>
3.2	<a href="#"><u>Certificate of Amendment of Amended and Restated Certificate of Incorporation of Vail Resorts, Inc., dated December 7, 2011. (Incorporated by reference to Exhibit 3.1 on Form 8-K of Vail Resorts, Inc. filed on December 8, 2011) (File No. 001-09614).</u></a>
3.3	<a href="#"><u>Certificate of Designations of Special Voting Preferred Stock of Vail Resorts, Inc., dated October 17, 2016. (Incorporated by reference to Exhibit 3.1 on Form 8-K of Vail Resorts, Inc. filed on October 17, 2016) (File No. 001-09614).</u></a>

Posted Exhibit Number	Description
3.4	<a href="#"><u>Amended and Restated Bylaws of Vail Resorts, Inc., dated December 7, 2011. (Incorporated by reference to Exhibit 3.2 on Form 8-K of Vail Resorts, Inc. filed on December 8, 2011) (File No. 001-09614).</u></a>
4.1	<a href="#"><u>Indenture, dated May 4, 2020, by and among Vail Resorts, Inc., the Guarantors named therein and U.S. Bank National Association, as Trustee (Incorporated by reference to Exhibit 4.1 of Form 8-K of Vail Resorts, Inc. filed on May 4, 2020) (File No. 001-09614).</u></a>
4.2	<a href="#"><u>Indenture, dated December 18, 2020, by and between Vail Resorts, Inc. and U.S. Bank National Association, as Trustee (including the form of 0.00% Convertible Senior Note due 2026). (Incorporated by reference to Exhibit 4.1 on Form 8-K of Vail Resorts, Inc. filed on December 18, 2020) (File No. 001-09614).</u></a>
4.3	<a href="#"><u>Description of Securities (Incorporated by reference to Exhibit 4.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2020 (File No. 001-09614)</u></a>
10.1	<a href="#"><u>Forest Service Unified Permit for Heavenly ski area, dated April 29, 2002 (File No. 001-09614).</u></a>
10.2(a)	<a href="#"><u>Forest Service Unified Permit for Keystone ski area, dated December 30, 1996. (Incorporated by reference to Exhibit 99.2(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.2(b)	<a href="#"><u>Amendment No. 2 to Forest Service Unified Permit for Keystone ski area. (Incorporated by reference to Exhibit 99.2(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.2(c)	<a href="#"><u>Amendment No. 3 to Forest Service Unified Permit for Keystone ski area. (Incorporated by reference to Exhibit 10.3 (c) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.2(d)	<a href="#"><u>Amendment No. 4 to Forest Service Unified Permit for Keystone ski area. (Incorporated by reference to Exhibit 10.3 (d) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.2(e)	<a href="#"><u>Amendment No. 5 to Forest Service Unified Permit for Keystone ski area. (Incorporated by reference to Exhibit 10.3 (e) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.3(a)	<a href="#"><u>Forest Service Unified Permit for Breckenridge ski area, dated December 31, 1996. (Incorporated by reference to Exhibit 99.3(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.3(b)	<a href="#"><u>Amendment No. 1 to Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 99.3(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.3(c)	<a href="#"><u>Amendment No. 2 to Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 10.4 (c) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.3(d)	<a href="#"><u>Amendment No. 3 to Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 10.4 (d) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.3(e)	<a href="#"><u>Amendment No. 4 to Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 10.4 (e) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.3(f)	<a href="#"><u>Amendment No. 5 to Forest Service Unified Permit for Breckenridge ski area. (Incorporated by reference to Exhibit 10.4 (f) on Form 10-Q of Vail Resorts, Inc. for the quarter ended January 31, 2006) (File No. 001-09614).</u></a>
10.4(a)	<a href="#"><u>Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 99.4(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.4(b)	<a href="#"><u>Exhibits to Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 99.4(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.4(c)	<a href="#"><u>Amendment No. 1 to Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 10.5(c) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.4(d)	<a href="#"><u>Amendment No. 2 to Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 10.5(d) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.4(e)	<a href="#"><u>Amendment to Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 10.5(e) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.4(f)	<a href="#"><u>Amendment No. 3 to Forest Service Unified Permit for Beaver Creek ski area. (Incorporated by reference to Exhibit 10.4 (f) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2008) (File No. 001-09614).</u></a>
10.5(a)	<a href="#"><u>Forest Service Unified Permit for Vail ski area, dated November 23, 1993. (Incorporated by reference to Exhibit 99.5(a) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.5(b)	<a href="#"><u>Exhibits to Forest Service Unified Permit for Vail ski area. (Incorporated by reference to Exhibit 99.5(b) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.5(c)	<a href="#"><u>Amendment No. 2 to Forest Service Unified Permit for Vail ski area. (Incorporated by reference to Exhibit 99.5(c) on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2002) (File No. 001-09614).</u></a>
10.5(d)	<a href="#"><u>Amendment No. 3 to Forest Service Unified Permit for Vail ski area. (Incorporated by reference to Exhibit 10.6 (d) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.5(e)	<a href="#"><u>Amendment No. 4 to Forest Service Unified Permit for Vail ski area. (Incorporated by reference to Exhibit 10.6 (e) on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2005) (File No. 001-09614).</u></a>
10.6*	<a href="#"><u>Vail Resorts, Inc. Amended and Restated 2002 Long Term Incentive and Share Award Plan. (Incorporated by reference to Exhibit 99.1 on Form 8-K of Vail Resorts, Inc. filed on December 10, 2009) (File No. 001-09614).</u></a>



Posted Exhibit Number	Description
10.7*	<a href="#"><u>Form of Restricted Share Unit Agreement. (Incorporated by reference to Exhibit 10.2 on Form 8-K of Vail Resorts, Inc. filed on December 7, 2015) (File Number 001-09614).</u></a>
10.8*	<a href="#"><u>Form of Share Appreciation Rights Agreement. (Incorporated by reference to Exhibit 10.3 on Form 8-K of Vail Resorts, Inc. filed on December 7, 2015) (File Number 001-09614)</u></a>
10.9*	<a href="#"><u>Vail Resorts Deferred Compensation Plan, effective as of January 1, 2005. (Incorporated by reference to Exhibit 10.22 on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2009) (File No. 001-09614).</u></a>
10.10(a)*	<a href="#"><u>Executive Employment Agreement made and entered into October 15, 2008 by and between Vail Resorts, Inc. and Robert A. Katz. (Incorporated by reference to Exhibit 10.1 of the report on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2008) (File No. 001-09614).</u></a>
10.10(b)*	<a href="#"><u>First Amendment to Executive Employment Agreement, dated September 30, 2011, by and between Vail Resorts, Inc. and Robert A. Katz. (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. filed September 30, 2011) (File No. 001-09614).</u></a>
10.10(c)*	<a href="#"><u>Second Amendment to Executive Employment Agreement, dated April 11, 2013, by and between Vail Resorts, Inc. and Robert A. Katz. (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended April 30, 2013) (File No. 001-09614).</u></a>
10.11*	<a href="#"><u>Executive Employment Agreement, between Vail Resorts, Inc. and Kirsten A. Lynch effective November 1, 2021. (Incorporated by reference to Exhibit 10.1 of the report on Form 8-K of Vail Resorts, Inc. filed on November 1, 2021) (File No. 001-09614).</u></a>
10.12	<a href="#"><u>Form of Indemnification Agreement. (Incorporated by reference to Exhibit 10.1 of the report on Form 8-K of Vail Resorts, Inc. filed on October 13, 2021) (File No. 001-09614).</u></a>
10.13	<a href="#"><u>Master Agreement of Lease, dated May 29, 2013, between VR CPC Holdings, Inc. and Talisker Canyons Leaseco LLC. (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. filed on May 30, 2013) (File No. 001-09614).</u></a>
10.14*	<a href="#"><u>Guaranty of Vail Resorts, Inc., dated May 29, 2013, in connection with the Master Agreement of Lease between VR CPC Holdings, Inc. and Talisker Canyons Leaseco LLC. (Incorporated by reference to Exhibit 10.2 on Form 8-K of Vail Resorts, Inc. filed on May 30, 2013) (File No. 001-09614).</u></a>
10.15*	<a href="#"><u>Vail Resorts, Inc. Management Incentive Plan (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2021) (File No. 001-09614).</u></a>
10.16*	<a href="#"><u>Vail Resorts, Inc. 2015 Omnibus Incentive Plan (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. filed on December 7, 2015) (File Number 001-09614).</u></a>
10.17*	<a href="#"><u>Form of Restricted Share Unit Agreement (effective September 23, 2020) (Incorporated by reference to Exhibit 10.17 on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2020) (File Number 001-09614).</u></a>
10.18*	<a href="#"><u>Form of Share Appreciation Rights Agreement (effective September 23, 2020) (Incorporated by reference to Exhibit 10.18 on Form 10-K of Vail Resorts, Inc. for the year ended July 31, 2020) (File Number 001-09614).</u></a>
10.19(a)	<a href="#"><u>Eighth Amended and Restated Credit Agreement, Annex A to that certain Amendment Agreement, dated as of August 15, 2018, among Vail Holdings, Inc., as borrower, Bank of America, N.A., as administrative agent, U.S. Bank National Association and Wells Fargo, National Association, as co-syndication Agents, and the Lenders party thereto (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2018) (File No. 001-09614).</u></a>
10.19(b)	<a href="#"><u>First Amendment to the Eighth Amended and Restated Credit Agreement, dated as of April 15, 2019, among Vail Holdings, Inc., as borrower, and Bank of America, N.A., as administrative agent, on its own behalf and on behalf of the Lenders party thereto (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended April 30, 2019) (File No. 001-09614).</u></a>
10.19(c)	<a href="#"><u>Second Amendment to the Eighth Amended and Restated Credit Agreement, dated as of September 23, 2019, among Vail Holdings, Inc., as borrower, and Bank of America, N.A., as administrative agent, on its own behalf and on behalf of the Lenders party thereto. (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 31, 2019) (File No. 001-09614).</u></a>
10.19(d)	<a href="#"><u>Third Amendment to the Eighth Amended and Restated Credit Agreement, dated as of April 28, 2020, among Vail Holdings, Inc., as borrower, and Bank of America, N.A., as administrative agent, on its own behalf and on behalf of the Lenders party thereto (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended April 30, 2020) (File No. 001-09614).</u></a>
10.19(e)	<a href="#"><u>Fourth Amendment to the Eighth Amended and Restated Credit Agreement, dated as of December 18, 2020, between Vail Holdings, Inc., as borrower, Vail Resorts, Inc. and certain subsidiaries of Vail Resorts, Inc., as guarantors, and Bank of America, N.A., as administrative agent, on its own behalf and on the behalf of the Lenders party thereto. (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. filed on December 18, 2020) (File No. 001-09614).</u></a>

Posted Exhibit Number	Description
10.19(f)	<a href="#">Fifth Amendment to the Eighth Amended and Restated Credit Agreement, dated as of August 31, 2022, between Vail Holdings, Inc., as borrower, Vail Resorts, Inc. and certain subsidiaries of Vail Resorts, Inc., as guarantors, and Bank of America, N.A., as administrative agent, on its own behalf and on the behalf of the Lenders party thereto.</a>
10.20(a)	<a href="#">Amended and Restated Credit Agreement and the amendments thereto, dated as of November 12, 2013, among Whistler Mountain Resort Limited Partnership and Blackcomb Skiing Enterprises Limited Partnership, as borrowers, the Guarantors Party thereto, the Financial Institutions named therein, The Toronto-Dominion Bank, as administrative agent, TD Securities, as lead arranger and sole bookrunner, and Royal Bank of Canada, Bank of Montreal, Wells Fargo Bank, N.A., Canadian Branch, and Bank of America, N.A., Canadian Branch, as co-documentation agents (Incorporated by reference to Exhibit 10.3 on Form 10-Q of Vail Resorts, Inc. for the quarter ended October 30, 2016) (File No. 001-09614).</a>
10.20(b)	<a href="#">Third Amending Agreement, dated as of February 10, 2017, among Whistler Mountain Resort Limited Partnership and Blackcomb Skiing Enterprises Limited Partnership, as borrowers, the Guarantors Party thereto, and The Toronto-Dominion Bank, as administrative agent, on its own behalf and on behalf of the Lenders (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended January 31, 2017) (File No. 001-09614).</a>
10.20(c)	<a href="#">Fourth Amending Agreement, dated as of November 30, 2018, among Whistler Mountain Resort Limited Partnership and Blackcomb Skiing Enterprises Limited Partnership, as borrowers, the Guarantors Party thereto, and The Toronto-Dominion Bank, as administrative agent, on its own behalf and on behalf of the lenders (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended January 31, 2019) (File No. 001-09614).</a>
10.20(d)	<a href="#">Fifth Amending Agreement, dated as of November 21, 2019, among Whistler Mountain Resort Limited Partnership and Blackcomb Skiing Enterprises Limited Partnership, as borrowers, the Guarantors Party thereto, and The Toronto-Dominion Bank, as administrative agent, on its own behalf and on behalf of the Lenders (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended January 31, 2019) (File No. 001-09614).</a>
10.20(e)	<a href="#">Sixth Amending Agreement, dated as of December 6, 2021, among Whistler Mountain Resort Limited Partnership and Blackcomb Skiing Enterprises Limited Partnership, as borrowers, the Guarantors Party thereto, and The Toronto-Dominion Bank, as administrative agent, on its own behalf and on behalf of the Lenders (Incorporated by reference to Exhibit 10.1 on Form 10-Q of Vail Resorts, Inc. for the quarter ended January 31, 2022) (File No. 001-09614).</a>
10.21	<a href="#">Whistler Mountain Master Development Agreement, dated as of February 23, 2017, between Her Majesty the Queen in Right of the Province of British Columbia and Whistler Mountain Resort Limited Partnership (Incorporated by reference to Exhibit 10.1 on Form 8-K of Vail Resorts, Inc. filed on February 27, 2017) (File No. 001-09614).</a>
10.22	<a href="#">Blackcomb Mountain Master Development Agreement, dated as of February 23, 2017, between Her Majesty the Queen in Right of the Province of British Columbia and Blackcomb Skiing Enterprises Limited Partnership (Incorporated by reference to Exhibit 10.2 on Form 8-K of Vail Resorts, Inc. filed on February 27, 2017) (File No. 001-09614).</a>
21	<a href="#">Subsidiaries of Vail Resorts, Inc.</a>
23	<a href="#">Consent of Independent Registered Public Accounting Firm.</a>
24	Power of Attorney. Included on signature pages hereto.
31.1	<a href="#">Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2	<a href="#">Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32	<a href="#">Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS	XBRL Instance Document - the instance document does not appear in the interactive data file as its XBRL tags are embedded within the inline XBRL document.
101.SCH	XBRL Schema Document.
101.CAL	XBRL Calculation Linkbase Document.
101.DEF	XBRL Definition Linkbase Document.
101.LAB	XBRL Label Linkbase Document.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.
104	The cover page from this Annual Report on Form 10-K, formatted in inline XBRL.

\*Management contracts and compensatory plans and arrangements.

**ITEM 16. FORM 10-K SUMMARY.**

None.



/s/ Kirsten A. Lynch Kirsten A. Lynch	Chief Executive Officer (Principal Executive Officer)
/s/ Michael Z. Barkin Michael Z. Barkin	Executive Vice President and Chief Financial Officer (Principal Financial Officer)
/s/ Nathan Gronberg Nathan Gronberg	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)
/s/ Robert A. Katz Robert A. Katz	Executive Chairperson of the Board Director
/s/ Susan L. Decker Susan L. Decker	Director
/s/ Nadia Rawlinson Nadia Rawlinson	Director
/s/ John T. Redmond John T. Redmond	Director
/s/ Michele Romanow Michele Romanow	Director
/s/ Hilary A. Schneider Hilary A. Schneider	Director
/s/ D. Bruce Sewell D. Bruce Sewell	Director
/s/ John F. Sorte John F. Sorte	Director
/s/ Peter A. Vaughn Peter A. Vaughn	Director

**FIFTH AMENDMENT TO  
EIGHTH AMENDED AND RESTATED CREDIT AGREEMENT**

This FIFTH AMENDMENT TO EIGHTH AMENDED AND RESTATED CREDIT AGREEMENT (this “**Amendment**”) is dated as of August 31, 2022, but effective as of the Effective Date (hereinafter defined), among **VAIL HOLDINGS, INC.**, a Colorado corporation (the “**Company**”), the **Lenders** (as defined in the Credit Agreement referenced below) party hereto, and **BANK OF AMERICA, N.A.**, as Administrative Agent (hereinafter defined).

**RECITALS**

A. The Company has entered into that certain Eighth Amended and Restated Credit Agreement dated as of August 15, 2018, with Bank of America, N.A., as Administrative Agent (in such capacity, the “**Administrative Agent**”), and certain other agents and lenders party thereto (as amended by that certain First Amendment to Eighth Amended and Restated Credit Agreement dated as of April 15, 2019, as further amended by that certain Second Amendment to Eighth Amended and Restated Credit Agreement dated as of September 23, 2019, as further amended by that certain Third Amendment to Eighth Amended and Restated Credit Agreement dated as of April 28, 2020, as further amended by that certain Fourth Amendment to Eighth Amended and Restated Credit Agreement dated as of December 18, 2020, and as further amended, restated, or otherwise modified from time to time, the “**Credit Agreement**”; capitalized terms used but not defined herein have the meanings set forth in the Credit Agreement), providing for a term loan, revolving credit loans and letters of credit.

B. The Company has requested certain amendments to the Credit Agreement.

Subject to the terms and conditions set forth herein, the Company, the Lenders party hereto, the Guarantors (by execution of the attached Guarantors’ Consent and Agreement), and Administrative Agent agree as follows:

**1. Amendments of the Credit Agreement.** On the Effective Date:

(i) the Credit Agreement is hereby amended to delete the red stricken text (indicated in the same manner as the following example: ~~stricken text~~) and to add the blue double underlined text (indicated in the same manner as the following example: underlined text) as and where indicated in **Annex A** attached hereto.

(ii) *Schedule 1-A* to the Credit Agreement is hereby amended and restated as set forth on **Schedule 1-A** attached hereto.

(iii) *Exhibit A-2* to the Credit Agreement is hereby amended and restated as set forth on **Exhibit A-2** attached hereto.

(iv) *Exhibit C-1* to the Credit Agreement is hereby amended and restated as set forth on **Exhibit C-1** attached hereto.

(v) *Exhibit C-2* to the Credit Agreement is hereby amended and restated as set forth on ***Exhibit C-2*** attached hereto.

(vi) *Exhibit E* to the Credit Agreement is hereby amended and restated as set forth on ***Exhibit E*** attached hereto.

**2. Representations and Warranties.** As a material inducement to the Lenders and Administrative Agent to execute and deliver this Amendment, the Company represents and warrants to the Lenders and Administrative Agent (with the knowledge and intent that Administrative Agent and the Lenders party hereto are relying upon the same in entering into this Amendment) that: (a) the Company and the Guarantors have all requisite authority and power to execute, deliver, and perform their respective obligations under this Amendment and the Guarantors' Consent and Agreement, as the case may be, which execution, delivery, and performance have been duly authorized by all necessary action, require no Governmental Approvals, and do not violate the respective certificates of incorporation or organization, bylaws, or operating agreement, or other organizational or formation documents of such entities; (b) upon execution and delivery by the Company, the Guarantors, Administrative Agent, and the Lenders party hereto, this Amendment will constitute the legal and binding obligation of each of the Company, and the Guarantors, enforceable against such entities in accordance with the terms of this Amendment, *except* as that enforceability may be limited by general principles of equity or by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally; (c) before and after giving effect to this Amendment, all representations and warranties in the Loan Papers are true and correct as though made on the date hereof, *except* to the extent that any of them speak to a specific date or the facts on which any of them are based have been changed by transactions contemplated or permitted by the Credit Agreement; and (d) after giving effect to this Amendment, no Default or Potential Default has occurred and is continuing.

**3. Conditions Precedent to Effective Date.** This Amendment shall be effective on the date (the "***Effective Date***") upon which Administrative Agent receives each of the following items:

(a) counterparts of this Amendment executed by the Company, Administrative Agent and the Lenders;

(b) the Guarantors' Consent and Agreement executed by each Guarantor;

(c) payment of all fees payable on or prior to the Effective Date pursuant to the Credit Agreement and Fee Letter (as amended by that certain Fee Letter Amendment dated of even date hereof);

(d) a legal opinion of Gibson, Dunn & Crutcher, LLP, special New York counsel to the Company and the Restricted Companies, in form and substance satisfactory to Administrative Agent; and

(e) a certificate of each Company dated as of the Effective Date signed by a Responsible Officer of the Company and each Guarantor (A) certifying and attaching the resolutions adopted by each such entity approving or consenting to this Amendment, and (B) in the case of the Company, certifying that, before and after giving effect to this Amendment, (1) the representations and warranties contained in *Section 8* of the Credit Agreement and the other Loan Papers are true and correct on and as of the Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and (2) no Default or Potential Default exists or would result from this Amendment.

**4. Condition Subsequent.** Within thirty (30) days after the Effective Date (or such later date as may be agreed to by Administrative Agent in its sole discretion), the Company shall deliver to Administrative

Agent, to the extent not otherwise delivered pursuant to **Sections 3(d)** above, a legal opinion of Gibson, Dunn & Crutcher, LLP covering each Guarantor formed in Colorado, in form and substance satisfactory to Administrative Agent. The failure by the Company to perform or cause to be performed such condition subsequent on or before the date applicable thereto shall constitute an immediate Event of Default without further grace period.

**5. Conversion to SOFR.** After the Effective Date and following delivery of a Loan Notice, each conversion of Loans from one Type to another, or a continuation of Loans, shall be a request for a new Loan bearing interest at the Term SOFR Rate or Daily SOFR Rate, as requested by the Company; *provided*, that, in any case, to the extent any Eurocurrency Rate Loan (as defined in the Credit Agreement immediately prior to the effectiveness of this Amendment) is outstanding on the Effective Date, such Loan shall continue to bear interest at the Eurocurrency Rate (as defined in the Credit Agreement immediately prior to the effectiveness of this Amendment) until the end of the current Interest Period applicable to such Loan. If the Company fails to give a timely notice requesting a conversion or continuation of any such Eurocurrency Rate Loan, then the applicable Loan shall be made as, or converted to, a Daily SOFR Rate Loan at the end of the current Interest Period applicable to such Loan.

**6. Expenses.** The Company shall pay all reasonable out-of-pocket fees and expenses paid or incurred by Administrative Agent incident to this Amendment, including, without limitation, the reasonable fees and expenses of Administrative Agent's counsel in connection with the negotiation, preparation, delivery, and execution of this Amendment and any related documents.

**7. Ratifications.** The Company and each Guarantor (by executing the Guarantors' Consent and Agreement attached hereto) (a) ratifies and confirms all provisions of the Loan Papers; (b) ratifies and confirms that all Guaranties, assurances, and Liens granted, conveyed, or assigned to Administrative Agent, for the benefit of the Lenders, under the Loan Papers are not released, reduced, or otherwise adversely affected by this Amendment and continue to guarantee, assure, and secure full payment and performance of Company's present and future Obligations to Administrative Agent and the Lenders; and (c) agrees to perform such acts and duly authorize, execute, acknowledge, deliver, file, and record such additional documents, and certificates as Administrative Agent may reasonably request in order to create, perfect, preserve, and protect those guaranties, assurances, and liens.

**8. Miscellaneous.** Unless stated otherwise herein, (a) the singular number includes the plural, and *vice versa*, and words of any gender include each other gender, in each case, as appropriate, (b) headings and captions shall not be construed in interpreting provisions of this Amendment, (c) this Amendment shall be governed by and construed in accordance with the laws of the State of New York, (d) if any part of this Amendment is for any reason found to be unenforceable, all other portions of it shall nevertheless remain enforceable, (e) this Amendment may be executed in any number of counterparts with the same effect as if all signatories had signed the same document, and all of those counterparts shall be construed together to constitute the same document and facsimile and electronic (e.g. pdf) signatures shall constitute originals for all intents and purposes hereof, (f) this Amendment is a "Loan Paper" referred to in the Credit Agreement, and the provisions relating to Loan Papers in *Section 15* of the Credit Agreement are incorporated herein by reference, (g) this Amendment, the Credit Agreement, as amended by this Amendment, and the other Loan Papers constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof, and (h) except as provided in this Amendment, the Credit Agreement, the Notes, and the other Loan Papers are unchanged and are ratified and confirmed.



9. **Parties.** This Amendment binds and inures to the benefit of the Company, the Guarantors, Administrative Agent, the Lenders, and their respective successors and assigns.

10. **Electronic Signatures.** This Amendment and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Amendment (each a “**Communication**”), including Communications required to be in writing, may, if agreed by Administrative Agent, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The Company agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the Company to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the Company enforceable against the Company in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to Administrative Agent. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by Administrative Agent of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. Administrative Agent may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“**Electronic Copy**”), which shall be deemed created in the ordinary course of Administrative Agent’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by Administrative Agent pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (a) to the extent Administrative Agent has agreed to accept such Electronic Signature, Administrative Agent shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the Company without further verification and (b) upon the request of Administrative Agent any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, “**Electronic Record**” and “**Electronic Signature**” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

The parties hereto have executed this Amendment in multiple counterparts as of the date first above written.

***Remainder of Page Intentionally Blank.  
Signature Pages to Follow.***

**VAIL HOLDINGS, INC.**, as the Company

By: /s/ Michael Z. Barkin

Name: Michael Z. Barkin

Title: Executive Vice President and  
Chief Financial Officer

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: /s/ Roger Davis  
Name: Roger Davis  
Title: Senior Vice President

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**BANK OF AMERICA, N.A.,**  
as an L/C Issuer, a Revolver Lender and a Term Loan Lender

By: /s/ Roger Davis  
Name: Roger Davis  
Title: Senior Vice President

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**U.S. BANK NATIONAL ASSOCIATION**, as a Revolver Lender and a Term Loan Lender

By: /s/ Greg Blanchard  
Name: Greg Blanchard  
Title: Vice President

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, as an L/C Issuer, a  
Revolver Lender and a Term Loan Lender

By: /s/ Faraj Elmagbari  
Name: Faraj Elmagbari  
Title: Senior Vice President

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**TRUIST BANK (as successor by merger to SUNTRUST BANK)**, as a Revolver Lender and a Term Loan Lender

By: /s/ Katie Lundin  
Name: Katie Lundin  
Title: Director

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**BANK OF THE WEST,**  
as a Revolver Lender and a Term Loan Lender

By: /s/ Christopher Golec  
Name: Christopher Golec  
Title: Director

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement



**BOKE, NA DBA BOK FINANCIAL**, as a Revolver Lender and a Term Loan Lender

By: /s/ Matthew J. Mason  
Name: Matthew J. Mason  
Title: Senior Vice President

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**BMO HARRIS BANK N.A.**, as a Revolver Lender and a Term Loan Lender

By: /s/ Brian Russ

Name: Brian Russ

Title: Director

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**HSBC BANK USA, NATIONAL ASSOCIATION**, as a Revolver Lender and a  
Term Loan Lender

By: /s/ Jay Fort  
Name: Jay Fort  
Title: Senior Vice President

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**PNC BANK, NATIONAL ASSOCIATION**, as a Revolver Lender and a Term  
Loan Lender

By: /s/ Karl Thomasma  
Name: Karl Thomasma  
Title: Senior Vice President

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**HSBC BANK AUSTRALIA LIMITED**, as a Term Loan Lender,

For and on behalf of **HSBC BANK AUSTRALIA LIMITED** by its duly authorised attorney pursuant to a power of attorney in the presence of

By: /s/ Jeremy White

Name: Jeremy White

Title: Attorney

/s/ Timothy O'Donnell

Name: Timothy O'Donnell

Title: Witness

Signature Page to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

## GUARANTORS' CONSENT AND AGREEMENT

As an inducement to Administrative Agent and Lenders to execute, and in consideration of and as a condition to Administrative Agent's and Lenders' execution of the foregoing Fifth Amendment to Eighth Amended and Restated Credit Agreement (the "**Fifth Amendment**"), the undersigned hereby consent to the Fifth Amendment, and agree that (a) the Fifth Amendment shall in no way release, diminish, impair, reduce or otherwise adversely affect the respective obligations and liabilities of each of the undersigned under each Guaranty described in the Credit Agreement, or any agreements, documents or instruments executed by any of the undersigned to create liens, security interests or charges to secure any of the indebtedness under the Loan Papers, all of which obligations and liabilities are, and shall continue to be, in full force and effect, and (b) the Guaranty executed by each Guarantor is ratified, and the "*Guaranteed Debt*" (as defined in each Guaranty) includes, without limitation, the "*Obligations*" (as defined in the Credit Agreement). This consent and agreement shall be binding upon the undersigned, and the respective successors and assigns of each, shall inure to the benefit of Administrative Agent and Lenders, and the respective successors and assigns of each, and shall be governed by and construed in accordance with the laws of the State of New York.

The Vail Corporation  
2006 Cimarron, LLC  
By: Crested Butte, LLC  
All Media Associates, Inc.  
All Media Holdings, Inc.  
Arrabelle at Vail Square, LLC  
By: Vail Resorts Development Company  
Beaver Creek Associates, Inc.  
Beaver Creek Consultants, Inc.  
Beaver Creek Food Services, Inc.  
Booth Creek Ski Holdings, Inc.  
BCRP Inc.  
Breckenridge Resort Properties, Inc.  
CB Commercial Properties '07, LLC  
By: Crested Butte, LLC  
Colorado Mountain Express, Inc.  
Colter Bay Convenience Store, LLC  
By: Grand Teton Lodge Company  
Colter Bay General Store, LLC  
By: Grand Teton Lodge Company  
Crested Butte, LLC  
Crystal Peak Lodge of Breckenridge, Inc.  
DTPC, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.  
EpicSki, Inc.  
Flagg Ranch Company  
Gillett Broadcasting, Inc.  
Grand Teton Lodge Company  
Heavenly Valley, Limited Partnership  
By: VR Heavenly I, Inc.

Guarantors' Consent and Agreement to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

HVLP Kirkwood Services, LLC  
By: Heavenly Valley, Limited Partnership  
By: VR Heavenly I, Inc.  
Jackson Hole Golf and Tennis Club, Inc.  
Jackson Lake Lodge Corporation  
Jenny Lake Lodge, Inc.  
Jenny Lake Store, LLC  
By: Grand Teton Lodge Company  
JHL&S LLC  
By: Teton Hospitality Services, Inc.  
Keystone Conference Services, Inc.  
Keystone Development Sales, Inc.  
Keystone Food & Beverage Company  
Keystone Resort Property Management Company  
Keystone Ranch Water Company  
Lake Tahoe Lodging Company  
Lodge Properties Inc.  
Lodge Realty, Inc.  
La Posada Beverage Service, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.  
Mt. CB Real Estate, LLC  
By: Crested Butte, LLC  
National Park Hospitality Company  
Northstar Group Commercial Properties LLC  
By: VR Acquisition, Inc.  
Northstar Group Restaurant Properties, LLC  
By: VR Acquisition, Inc.  
Okemo Limited Liability Company  
By: Triple Peaks LLC  
By: VR NE Holdings, LLC  
By: VR US Holdings, Inc.  
Okemo Mountain Food and Beverage, Inc.  
One Ski Hill Place, LLC  
By: Vail Resorts Development Company  
Property Management Acquisition Corp., Inc.  
RCR Vail, LLC  
By: Vail Resorts Development Company  
Rockresorts Arrabelle, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.  
Rockresorts Cordillera Lodge Company, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.  
Rockresorts DR, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.  
Rockresorts Equinox, Inc.

Rockresorts Hotel Jerome, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.

Rockresorts International, LLC  
By: Vail RR, Inc.

Rockresorts, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.

Rockresorts International Management Company  
By: Rockresorts International, LLC  
By: Vail RR, Inc.

Rockresorts Ski Tip, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.

Rockresorts Wyoming, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.

Soho Development, LLC  
By: Vail Associates Holdings, Ltd.

SSI Venture, Inc.

SSV Online Holdings, Inc.

SSV Online LLC  
By: SSV Holdings, Inc.

SSV Holdings, Inc.

Stampede Canteen, LLC  
By: Grand Teton Lodge Company

Teton Hospitality Services, Inc.

The Chalets at the Lodge at Vail, LLC  
By: Vail Resorts Development Company

The Sunapee Difference, LLC  
By: Triple Peaks, LLC  
By: VR NE Holdings, LLC  
By: VR US Holdings, Inc.

The Village at Breckenridge Acquisition Corp., Inc.

Trimont Land Company

Triple Peaks LLC  
By: VR NE Holdings, LLC  
By: VR US Holdings, Inc.

Vail/Arrowhead, Inc.

Vail Associates Holdings, Ltd.

Vail Associates Investments, Inc.

Vail Associates Real Estate, Inc.

Vail/Beaver Creek Resort Properties, Inc.

Vail Food Services, Inc.

Vail Hotel Management Company, LLC  
By: Rockresorts International, LLC  
By: Vail RR, Inc.

Vail Resorts Development Company



Vail Resorts Lodging Company  
Vail RR, Inc.  
Vail Summit Resorts, Inc.  
Vail Trademarks, Inc.  
VAMHC, Inc.  
VR Acquisition, Inc.  
VR CPC Holdings, Inc.  
VR CPC Services, LLC  
    By: VR CPC Holdings, Inc.  
VR Heavenly Concessions, Inc.  
VR Heavenly I, Inc.  
VR Heavenly II, Inc.  
VR Holdings, Inc.  
VR US Holdings, Inc.  
VR US Holdings II, LLC  
    By: VR US Holdings, Inc.  
VR WM Holdings, LLC  
    By: VR US Holdings, Inc.  
VR NE Holdings, LLC  
    By: VR US Holdings, Inc.  
VR NW Holdings, Inc.

By: /s/ Nathan Gronberg  
    Name: Nathan Gronberg  
    Title: Vice President, Controller and Chief Accounting Officer

Vail Resorts, Inc.  
VR PA Holdings, Inc.  
VRSS Holdings, LLC  
    By: VR PA Holdings, Inc.

By: /s/ Michael Z. Barkin  
    Name: Michael Z. Barkin  
    Title: Executive Vice President and Chief Financial Officer

Guarantors' Consent and Agreement to  
Fifth Amendment to Eight Amended and Restated Credit Agreement

**ANNEX A**

[See attached]

**SCHEDULE 1-A**

[Reserved]

**EXHIBIT A -2**

[Reserved]

**EXHIBIT C-1**

**LOAN NOTICE**

---

Bank of America, N.A., as Administrative Agent

Attn: Arlene Minor

Fax: 214-290-9412

Reference is made to the Eighth Amended and Restated Credit Agreement dated as of August 15, 2018 (as amended, supplemented, extended, or restated from time to time, the "**Credit Agreement**"), among Vail Holdings, Inc., a Colorado corporation, the Lenders, and Bank of America, N.A., as Administrative Agent for itself and the other Lenders. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The undersigned hereby gives you notice pursuant to *Section 2.2(a)* of the Credit Agreement that it requests:

A borrowing of Loans  A conversion or continuation of Loans

Such Loans to be:

Term Loans  Revolver Loans

on \_\_\_\_\_ (a Business Day),

in the amount of \$\_\_\_\_\_,\*

comprised of \_\_\_\_\_ (Type of Loan requested),\*\*

with an Interest Period of \_\_\_\_\_ months (for Term Reference Rate Loans).\*\*\*

Please deposit the requested Loan in our account with you [and then wire transfer amounts from that account as follows:  
.]

[Borrower hereby certifies that the following statements are true and correct on the date hereof, and will be true and correct on the Loan Date specified above after giving effect to such Loan: (a) all of the representations and warranties of the Companies in the Loan Papers are true and correct in all material respects (*except* to the extent that (i) they speak to a specific date or (ii) the facts on which they are based have been changed by transactions contemplated or permitted by the Credit Agreement); and (b) no Material Adverse Event, Default, or Potential Default exists or will result from the proposed funding of Loans requested herein.]\*\*\*\*

Very truly yours,  
VAIL HOLDINGS, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\* Not less than \$500,000 or a greater integral multiple of \$100,000 (if a Daily SOFR Rate Loan); not less than \$1,000,000 or a greater integral multiple of \$100,000 (if a Term Reference Rate Loan).

\*\* Term Reference Loan or Daily SOFR Rate Loan.

\*\*\* Term Reference Loan -- 1, 3, or 6 months.

In no event may the Interest Period end after the applicable Termination Date.

\*\*\*\* Insert paragraph for any Loan Notice provided prior to a borrowing of Loans

**EXHIBIT C -2**

[Reserved]

**EXHIBIT E**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption (this “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “**Assignor**”) and [Insert name of Assignee] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as may be amended, restated, supplemented or otherwise modified to the date hereof, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in **Annex 1** attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below: (a) all of the Assignor’s Rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding Rights and obligations of the Assignor under the respective facilities identified below (including, without limitation, the L/Cs included in such facilities); and (b) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other Right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity related to the Rights and obligations sold and assigned pursuant to **clause (i)** above (the Rights and obligations sold and assigned pursuant to **clauses (i)** and **(ii)** above being referred to herein collectively as, the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_

[Assignor [is] [is not] a Defaulting Lender]

2. Assignee: \_\_\_\_\_

[Assignee is an Affiliate/Approved Fund of [identify Lender]]<sup>1</sup>

3. Borrower: \_\_\_\_\_

4. Administrative Agent: Bank of America, N.A., as administrative agent under the Credit Agreement

5. Credit Agreement: Eighth Amended and Restated Credit Agreement dated as of August 15, 2018, among Vail Holdings, Inc., a Colorado corporation, Lenders party thereto, Bank of America, N.A., as Administrative Agent, and the other agents party thereto

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<sup>1</sup> Select or delete as applicable.



6. Assigned Interest

Facility Assigned	Aggregate Amount of Commitments/Loans for all Lenders under such Facility <sup>2</sup>	Amount of Commitments /Loans Assigned under such Facility <sup>2</sup>	Percentage Assigned of Commitments/Loans <sup>3</sup>
	\$	\$	%
	\$	\$	%
	\$	\$	%

7. Trade Date: \_\_\_\_\_<sup>4</sup>

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

<sup>2</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>3</sup> Set forth to at least 9 decimals as a percentage of the Commitments/Loans of all Lenders under such Facility/Subfacility.

<sup>4</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

**ASSIGNOR:**

[Name of Assignor]

By: \_\_\_\_\_

Name:

Title:

**ASSIGNEE:**

[Name of Assignee]

By: \_\_\_\_\_

Name:

Title:

[Consented to and]<sup>1</sup> Accepted:

BANK OF AMERICA, N.A., as Administrative Agent

By: \_\_\_\_\_

Name:

Title:

[Consented to:]<sup>2</sup>

L/C ISSUER:

By: \_\_\_\_\_

Name:

Title:

L/C ISSUER:

By: \_\_\_\_\_

Name:

Title:

BORROWER:

By: \_\_\_\_\_

Name:

Title:

---

<sup>1</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>2</sup> To be added only if the consent of the L/C Issuers and/or Borrower is required by the terms of the Credit Agreement.

**ANNEX 1 TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ASSUMPTION

**1. Representations and Warranties.**

**1.1 Assignor.** The Assignor: (a) represents and warrants that: (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any Lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby, and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to: (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Paper, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Papers or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Paper, or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Paper.

**1.2 Assignee.** The Assignee: (a) represents and warrants that: (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to *Section 9.1(a)* and *9.1(b)* thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that: (i) it will, independently and without reliance upon the Administrative Agent, the Assignor or any other 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 the Loan Papers, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Papers are required to be performed by it as a Lender.

**2. Payments.** From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

**3. General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the Law of the State of New York.

CONFORMED THROUGH ~~FOURTH~~FIFTH AMENDMENT  
CUSIP NUMBERS: 91879UAD2 (DEAL)  
91879UAE0 (REVOLVER)  
91879UAF7 (TERM)

**EIGHTH AMENDED AND RESTATED CREDIT AGREEMENT**

Dated as of August 15, 2018, as amended by:  
First Amendment dated April 15, 2019,  
Second Amendment dated September 23, 2019,  
Third Amendment dated April 28, 2020,  
Fourth Amendment dated December 18, 2020 [and](#)  
[Fifth Amendment dated August 31, 2022](#)

among

**VAIL HOLDINGS, INC.**  
as Borrower

**BANK OF AMERICA, N.A.**  
as Administrative Agent

**U.S. BANK NATIONAL ASSOCIATION**  
and  
**WELLS FARGO BANK, NATIONAL ASSOCIATION**  
as Co-Syndication Agents

and

The Lenders Party Hereto

**BOFA SECURITIES, INC.,**  
**U.S. BANK NATIONAL ASSOCIATION,**  
and  
**WELLS FARGO SECURITIES, LLC**  
as Joint Lead Arrangers and Joint Bookrunners

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## EIGHTH AMENDED AND RESTATED CREDIT AGREEMENT

This Eighth Amended and Restated Credit Agreement is entered into as of August 15, 2018, among Vail Holdings, Inc., a Colorado corporation (“**Borrower**”), Lenders (defined below), and Bank of America, N.A., as Administrative Agent (as defined below) for itself and the other Lenders.

### RECITALS

A. Reference is made to that certain Seventh Amended and Restated Credit Agreement dated as of May 1, 2015, among ~~the~~ Borrower, Bank of America, N.A., as administrative agent, and the lenders therein named (the “**Existing Credit Agreement**”).

B. The parties wish to amend and restate the Existing Credit Agreement on the terms and conditions of this Agreement.

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Existing Credit Agreement is hereby amended and restated to read in its entirety as follows:

### **SECTION 1 DEFINITIONS AND TERMS.**

#### 1.1 Definitions.

**2018 Acquisitions** means, collectively, the acquisition of Triple Peaks, LLC by VR NE Holdings, LLC pursuant to the Purchase Agreement, dated June 4, 2018, among VR NE Holdings, LLC, Triple Peaks Finance, LLC, Jackson Gore Development, LLC, Okemo Land Holdings, LLC, Okemo Golf, LLC and Resort Asset Management, LLC; and the acquisition of all of the assets of Stevens Pass Resort by VR NW Holdings, Inc. pursuant to the Purchase and Sale Contract, dated as of June 4, 2018, between CLP Stevens Pass, LLC and VR NW Holdings, Inc.

**2019 VRI Senior Subordinated Indenture** means the Indenture, dated as of April 25, 2011, among VRI, as issuer, The Bank of New York Mellon Trust Company, N.A. as trustee, and certain of VRI’s Subsidiaries, as guarantors, as supplemented from time to time.

**2019 VRI Subordinated Notes** means the 6.50% Senior Subordinated Notes issued under the 2019 VRI Senior Subordinated Indenture.

**Act** has the meaning specified in **Section 15.17**.

**Additional Critical Assets** means Critical Assets acquired by the Companies after the Closing Date.

**Adjusted EBITDA** means, without duplication, for any period of determination, the sum of (a) EBITDA of the Restricted Companies, *plus* (b) insurance proceeds received in cash by the Restricted Companies under policies of business interruption insurance (or under policies of insurance which cover losses or claims of the same character or type) in a maximum amount not to exceed the EBITDA of the Restricted Companies for the most-recently-ended four fiscal quarters attributable to the applicable property or asset (as agreed upon by Administrative Agent and pro rated over a period of determination as deemed appropriate by Administrative Agent), *plus* (c) non-cash losses of the Restricted Companies from foreign exchange conversions and mark-to-market adjustments to foreign exchange hedge agreements (or

other derivatives), *plus* (d) cash dividends or distributions based on income from any Unrestricted Subsidiary to a Restricted Subsidiary in an amount not to exceed the EBITDA of such Unrestricted Subsidiary for the most-recently-ended four fiscal quarters, *plus* (e) extraordinary, unusual, or non-recurring charges, costs, and expenses of the Restricted Companies, including, without limitation, such charges, costs, and expenses for (i) financing fees, financial, and other advisory fees, accounting fees, legal fees (and similar advisory and consulting fees), and related costs and expenses incurred by the Restricted Companies in connection with permitted acquisitions and permitted asset sales (whether or not consummated), (ii) the restructuring, integration or reorganization of any Restricted Company or the Restricted Companies, (iii) the settlement of litigation or other claims against any Restricted Company, (iv) the severance of employees of any Restricted Company (in an aggregate amount for any such expenses in **clauses (i) through (iv)** of this **clause (e)** with respect to the most-recently-ended four fiscal quarters not to exceed 10% of EBITDA of the Restricted Companies for the most-recently-ended four fiscal quarters), and (v) charges, costs and expenses associated with the PCMR Litigation (including ongoing litigation expenses and settlement costs), *plus* (f) non-cash costs of sales of real estate by the Restricted Companies in an amount not to exceed negative real estate EBITDA of Restricted Companies for such period, *plus* (g) non-recurring losses included in the calculation of EBITDA of the Restricted Companies, *minus* (h) non-recurring gains included in the calculation of EBITDA of the Restricted Companies, *minus* (i) non-cash gains of the Restricted Companies from foreign exchange conversions and mark-to-market adjustments to foreign exchange hedge agreements (or other derivatives), *minus* (j) for any payments by the Northstar Subsidiaries in respect of the portion of the Northstar Leases, if any, that is classified as a Capital Lease, the amount of such payment that would have been recorded as an operating lease expense had such portion of the Northstar Leases been classified as an operating lease. **Adjusted EBITDA**, for all purposes under this Agreement, shall (x) include, on a pro forma basis without duplication, all EBITDA of the Restricted Companies from assets acquired in accordance with this Agreement (including, without limitation, Restricted Subsidiaries formed or acquired in accordance with **Section 9.10** hereof, and Unrestricted Subsidiaries re-designated as Restricted Subsidiaries in accordance with **Section 9.11(b)** hereof, and if Borrower or any Restricted Company acquires, leases or otherwise gains control of the Park City base area from Park City Mountain Resort or the land subject to the PCMR Litigation, such event shall be treated as an acquisition for purposes of the definition of Adjusted EBITDA) during any applicable period, calculated as if such assets were acquired on the first day of such period and including actual and identifiable cost synergies (provided by Borrower to Administrative Agent in writing) from acquisitions in an aggregate amount for such period not to exceed 10% of the EBITDA of the Restricted Companies for the most-recently-ended four fiscal quarters, and (y) exclude, on a pro forma basis, all EBITDA of the Restricted Companies from assets disposed in accordance with this Agreement during such period (including, without limitation, Restricted Subsidiaries re-designated as Unrestricted Subsidiaries in accordance with **Section 9.11(a)** hereof), calculated as if such assets were disposed on the first day of such period.

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

**Administrative Agent** means Bank of America, N.A., a national banking association, and its permitted successor as administrative agent for Lenders under this Agreement.

**Administrative Agent's Office** means Administrative Agent's address and, as appropriate, account as set forth on **Schedule 1**, or such other address or account as Administrative Agent may from time to time notify to Borrower and Lenders.

**Administrative Questionnaire** means an Administrative Questionnaire in a form supplied by Administrative Agent.

**Affiliate** means with respect to any Person (the “**Relevant Person**”) (a) any other Person that directly, or indirectly through one or more intermediaries, controls the relevant Person (a “**Controlling Person**”), or (b) any Person (*other than* the Relevant Person) which is controlled by or is under common control with a Controlling Person. As used herein, the term “*control*” means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

**Agreement** means this Eighth Amended and Restated Credit Agreement, and all schedules and exhibits thereto, as renewed, extended, amended, supplemented, or restated from time to time.

**Agreement Currency** has the meaning specified in **Section 15.22**.

**Alternative Currency** means (a), with respect to L/Cs, Australian Dollars, and (b) with respect to Term Loans, Canadian Dollars.

**Alternative Currency Equivalent** means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the Alternative Currency as determined by Administrative Agent or the Australian L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of the Alternative Currency with Dollars.

**Anti-Corruption Laws** means the United States Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act 2010 and any other applicable U.S. federal or state laws concerning or related to bribery or corruption.

**Applicable Margin** means, for any day, the margin of interest over the Base Rate or Eurocurrency Term Reference Rate, as the case may be, that is applicable when any interest rate is determined under this Agreement. The Applicable Margin is subject to adjustment (upwards or downwards, as appropriate) based on the ratio of Net Funded Debt to Adjusted EBITDA, as follows:

	Ratio of Net Funded Debt to Adjusted EBITDA	Applicable Margin for Eurocurrency Term Reference Rate Loans and Daily SOFR Rate Loan	Applicable Margin Base Rate Loans
I	Less than 1.50 to 1.00	1.125%	0.125%
II	Greater than or equal to 1.50 to 1.00, but less than 2.00 to 1.00	1.250%	0.250%
III	Greater than or equal to 2.00 to 1.00, but less than 3.00 to 1.00	1.500%	0.500%
IV	Greater than or equal to 3.00 to 1.00, but less than 4.00 to 1.00	2.000%	1.000%
V	Greater than or equal to 4.00 to 1.00	2.500%	1.500%

~~During the Temporary Waiver Period, the ratio of Net Funded Debt to Adjusted EBITDA shall be fixed at Level V. Prior to the start of and following the expiration of the Temporary Waiver Period and thereafter, the~~The ratio of Net Funded Debt to Adjusted EBITDA shall be calculated on a consolidated basis for the Companies in accordance with GAAP for the most recently completed fiscal quarter of the Companies for which results are available. The ratio shall be determined from the Current Financials and any related Compliance Certificate and any change in the Applicable Margin resulting from a change in such ratio shall be effective as of the date of delivery of such Compliance Certificate. However, if Borrower fails to

furnish to Administrative Agent the Current Financials and any related Compliance Certificate when required pursuant to **Section 9.1**, then the ratio shall be deemed to be at Level V until Borrower furnishes the required Current Financials and any related Compliance Certificate to Administrative Agent. Furthermore, if the Companies' audited Financial Statements delivered to Administrative Agent for any fiscal year pursuant to **Section 9.1(a)** result in a different ratio, such revised ratio (whether higher or lower) shall govern effective as of the date of such delivery.

**Applicable Percentage** means, for any day, the commitment fee percentage applicable under **Section 5.4** when commitment fees are determined under this Agreement. The Applicable Percentage is subject to adjustment (upwards or downwards, as appropriate) based on the ratio of Net Funded Debt to Adjusted EBITDA, as follows:

	Ratio of Net Funded Debt to Adjusted EBITDA	Applicable Percentage
I	Less than 1.50 to 1.00	0.200%
II	Greater than or equal to 1.50 to 1.00, but less than 2.00 to 1.00	0.250%
III	Greater than or equal to 2.00 to 1.00, but less than 3.00 to 1.00	0.300%
IV	Greater than or equal to 3.00 to 1.00, but less than 4.00 to 1.00	0.350%
V	Greater than or equal to 4.00 to 1.00	0.400%

~~During the Temporary Waiver Period, the ratio of Net Funded Debt to Adjusted EBITDA shall be fixed at Level V. Prior to the start of and following the expiration of the Temporary Waiver Period and thereafter, the~~The ratio of Net Funded Debt to Adjusted EBITDA shall be determined as described in the definition of Applicable Margin.

**Applicable Time** means, with respect to any Loan or L/C in Alternative Currency, the local time in the place of settlement for Alternative Currency as may be determined by Administrative Agent or the Australian L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

**Approved Fund** means any Fund 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.

**Approved Jurisdictions** means the U.S., Australia, the Netherlands, Canada and such other jurisdiction approved in writing by ~~the~~ Administrative Agent from time to time.

**Assignee Group** means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

**Assignment and Assumption** means an Assignment and Assumption substantially in the form of **Exhibit E** hereto or any other form (including electronic documentation generated by use of an electronic platform) approved by Administrative Agent.

**Attorney Costs** has the meaning set forth in **Section 7.1(m)**.

**Australian Dollar** means the lawful currency of Australia.

**Australian L/C Issuer** means Bank of America, N.A.

**Auto-Extension L/C** has the meaning set forth in **Section 2.3(b)(iii)**.

**Availability** means, on any date of determination, (a) the Revolver Commitment on such date *minus* (b) the Revolver Commitment Usage on such date.

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

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

**Bank of America** means Bank of America, N.A., a national banking association, in its individual capacity and not as Administrative Agent, and its permitted successors and assigns.

**Base Rate** means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate *plus* 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “*prime rate*,” and (c) Eurocurrency Rate Term SOFR for an interest period of one month *plus* 1%; and ~~if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement~~(d) one percent (1.00%). The “*prime rate*” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions, and other 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 such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

**Base Rate Loan** means a Loan bearing interest at the *sum* of the Base Rate *plus* the Applicable Margin.

**Beneficial Ownership Certification** means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

**Beneficial Ownership Regulation** means 31 C.F.R. § 1010.230.

**Bond Documents** means (a) when used in connection with any Bond L/C, those certain Bonds or other certificates of indebtedness with respect to which such Bond L/C has been issued as credit support, together with any remarketing agreement, trust indenture, purchased bond custody agreement, funding agreement, pledge agreement, and other documents executed pursuant to or in connection with such bonds or other certificates of indebtedness, and all amendments or supplements thereto, and (b) in all other cases, collectively, all Bond Documents as defined in the preceding *clause (a)* relating to Bond L/Cs then outstanding.

**Bond L/Cs** means all L/Cs issued by any L/C Issuer at the request of (a) Borrower and any Housing District in support of Bonds issued by such Housing District, or (b) Borrower and any Metro District in support of Bonds issued by such Metro District, which L/Cs satisfy the conditions set forth in **Section 2.3(i)(i)** herein, and renewals or extensions thereof.

**Bond Purchase Drawing** has the meaning set forth in **Section 2.3(i)(ii)**.



**Bond Rights** has the meaning set forth in **Section 2.3(i)(iv)**.

**Bonds** means revenue bonds issued by (a) any Housing District or other Person for the purpose of financing, directly or indirectly, the development of housing projects designated for employees of the Companies, or (b) any Metro District or other Person for the purpose of financing, directly or indirectly, the operation, construction, and maintenance of infrastructure projects, which projects are related to the Companies' business activities in the region in which the projects are being developed, and for which a Restricted Company has issued credit support in the form of a Bond L/C for such revenue bonds.

**Borrower** is defined in the preamble to this Agreement.

**Borrower Materials** has the meaning specified in **Section 9.1**.

**Business Day** means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to be closed under the Laws of, or are in fact closed in, Dallas, Texas or New York, New York, ~~or if such day relates to any Eurocurrency Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.~~

~~**Canadian Dollar** means the lawful currency of Canada.~~

**Canyons-Park City Lease** means that certain Master Agreement of Lease, dated as of May 29, 2013, by and between Talisker Canyons LeaseCo LLC, as lessor, and VR CPC Holdings, Inc., as lessee, as the same may be amended from time to time.

**Capital Lease** means any capital lease or sublease that has been (or under GAAP should be) capitalized on a balance sheet.

**Cash Collateralize** means to pledge and deposit with or deliver to Administrative Agent, for the benefit of Administrative Agent, ~~or L/C Issuers or Swing Line Lenders~~ (as applicable), and the Lenders, as collateral for L/C Exposure, ~~Obligations in respect of Swing Line Loans;~~ or obligations of Lenders to fund participations in respect ~~of either~~ thereof (as the context may require), cash or deposit account balances, or if the applicable L/C Issuer ~~or Swing Line Lender~~ benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to Administrative Agent and such L/C Issuer ~~or Swing Line Lender (as applicable)~~. Cash Collateral shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**Change in Law** means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation, or treaty, (b) any change in any Law, rule, regulation, or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, guideline, or directive (whether or not having the force of Law) by any Governmental Authority; *provided*, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives thereunder or issued in connection therewith, and (y) 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 regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, or issued.

**Change of Control Transaction** means an event or series of events by which:

(a) any “*person*” or “*group*” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent, or other fiduciary or administrator of any such plan) becomes the “*beneficial owner*” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of 40% or more of the equity securities of VRI entitled to vote for members of the board of directors or equivalent governing body of VRI on a fully-diluted basis;

(b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of VRI cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in **clause (i)** above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in **clauses (i) and (ii)** above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(c) any Person or two or more Persons acting in concert shall have acquired, by contract or otherwise, control over the equity securities of VRI entitled to vote for members of the board of directors or equivalent governing body of VRI on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right) representing 51% or more of the combined voting power of such securities.

**Closing Date** means the first date that all conditions precedent set forth in **Section 7.1** have been satisfied or waived in accordance with such Section.

**CME** means [CME Group Benchmark Administration Limited](#).

**Code** means the *Internal Revenue Code of 1986*, as amended from time to time, and related rules and regulations from time to time in effect.

**Collateral** means the property and assets described in **Sections 6.2** and **6.3**.

**Commitment** means a Term Loan Commitment, L/C ~~Commitment, Swing Line~~ Commitment or a Revolver Commitment, as the context may require.

**Commitment Percentage** means (a) with respect to any Term Loan Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Loan Facility represented by (i) on or prior to the Closing Date, such Term Loan Lender’s Term Loan Commitment at such time, subject to adjustment as provided in **Section 3.15**, and (ii) thereafter, the principal amount of such Term Loan Lender’s Term Loans at such time, subject to adjustment as provided in **Section 2.5** and **Section 3.15**, and (b) with respect to any Revolver Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolver Facility represented by such Revolver Lender’s Revolver Commitment at such time, subject to adjustment as provided in **Section 2.5** and **Section 3.15**. If the commitment of each Revolver Lender to make Revolver Loans and the obligation of each L/C Issuer to make L/C Credit Extensions have been terminated pursuant to **Section 13.1** or if the Revolver Commitment has expired, then the Commitment Percentage of each Revolver Lender shall be determined based on the Commitment Percentage of such Revolver Lender most recently in effect, giving effect to any subsequent assignments.

The initial Commitment Percentage of each Lender in respect of the Revolver Facility and the Term Loan Facility, as applicable, is set forth opposite the name of such Lender on **Schedule 1** or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

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

**Communication** has the meaning set forth in **Section 15.19**.

**Companies** means VRI and each of VRI's Restricted and Unrestricted Subsidiaries now or hereafter existing, and **Company** means any of the Companies.

**Completion Guaranty** means, with respect to any Real Estate Project of an Unrestricted Subsidiary, a completion guaranty or similar agreement entered into by a Restricted Company pursuant to which such Restricted Company (a) guarantees the timely completion of construction of such construction project in accordance with applicable plans and specifications, the payment of all costs incurred in connection with the construction of such construction project, the payment of the premiums of all insurance required to be maintained in connection with the Real Estate Project, or such other matters customarily included by institutional lenders in a completion guaranty, or (b) otherwise indemnifies a construction lender or other party from loss resulting from a failure to timely complete and pay all costs incurred in connection with construction of any project financed by such lender or other party in accordance with the applicable plans and specifications.

**Compliance Certificate** means a certificate substantially in the form of **Exhibit D** and signed by Borrower's Chief Financial Officer, together with the calculation worksheet described therein.

**Concessioner Subsidiaries** means, collectively, (a) Grand Teton Lodge Company, a Wyoming corporation, (b) Flagg Ranch Company, a Colorado corporation, and (c) each other Restricted Subsidiary (other than Borrower) that is awarded a concession contract or similar agreement by the National Park Service (each, a "**Concession Contract**") that prohibits the Equity Interests of such Restricted Subsidiary from being pledged to Administrative Agent under the Loan Papers; provided, that (i) a true and correct copy of the applicable Concession Contract has been delivered to Administrative Agent and such Concession Contract has not expired or been terminated, (ii) the Equity Interests of such Restricted Subsidiary have not, and will not, be pledged to any other Person, (iii) such Restricted Subsidiary does not, and will not own, any material assets or property other than the Concession Contract, the revenues generated by such Concession Contract, and the improvements, assets, and Rights necessary to perform its obligations under such Concession Contract, (iv) such Restricted Subsidiary has executed a Guaranty, and (v) Administrative Agent has agreed to the designation of such Restricted Subsidiary as a Concessioner Subsidiary in writing.

**Confirmation of Guaranty** means a Confirmation of Guaranty executed and delivered by any Guarantor that has executed a Guaranty in favor of Administrative Agent, for the benefit of Lenders (including, without limitation, a Confirmation of Guaranty, dated of even date herewith and substantially in the form of **Exhibit B-2** hereto).

**Confirmation of Pledge Agreement** means a Confirmation of Pledge Agreement executed and delivered by any Restricted Company that has executed a Pledge Agreement in favor of Administrative Agent, for the benefit of Lenders (including, without limitation, a Confirmation of Pledge Agreement, dated of even date herewith and substantially in the form of **Exhibit F-2** hereto).

**Conforming Changes** means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate, Daily Simple SOFR, or Term SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “Daily Simple SOFR”, “SOFR”, “Term SOFR”, and “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of Administrative Agent (after consultation with Borrower), to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

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

**Consolidated Net Income** means, with respect to any Person, the aggregate of the **Section 10.9** Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided that* (a) the net income (but not loss) of any Person that is not a Restricted Subsidiary of such Person or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid in cash by such Person during such period to the referent Person or a Restricted Subsidiary thereof, (b) premiums paid and the write-off of any unamortized balance of original issue discount in connection with a redemption of, or tender offer for, the 2019 VRI Subordinated Notes and amortization of debt issuance costs shall be excluded, (c) the cumulative effect of a change in accounting principles shall be excluded and (d) non-cash compensation expenses incurred in respect of stock option plans shall be excluded.

**Credit Party** has the meaning specified in **Section 14.3**.

**Critical Assets** means all improvements, assets, and Rights essential to ski resort operations owned or acquired by any Company; *provided that* the assets of the Whistler Acquisition Subsidiaries and the Peak Resorts Acquisition Subsidiaries shall not be deemed “Critical Assets”.

**Current Financials** means, initially, the consolidated Financial Statements of the Companies for the period ended April 30, 2018, and thereafter, the consolidated Financial Statements of the Companies most recently delivered to Administrative Agent under **Sections 9.1(a)** or **9.1(b)**, as the case may be.

**Customary Recourse Exceptions** means, with respect to any Non-Recourse Debt of an Unrestricted Subsidiary, exclusions from the exculpation provisions with respect to such Non-Recourse Debt for the bankruptcy of such Unrestricted Subsidiary, fraud, misapplication of cash, environmental claims, waste, willful destruction, and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financings of real estate.

~~**Daily Floating LIBOR** means, for any day, a fluctuating rate per annum equal to the LIBO Rate or a comparable or successor rate, which rate is approved by Administrative Agent, as published on the applicable Bloomberg screen page (or other commercially available source providing such quotations as~~

~~designated by Administrative Agent from time to time) at approximately 11:00 a.m., London time, on such day for Dollar deposits with a term equivalent to one (1) month; provided, that to the extent a comparable or successor rate is approved by Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by Administrative Agent and disclosed to Borrower; and provided, further (i) from the Fourth Amendment Closing Date through the end of the Temporary Waiver Period, if Daily Floating LIBOR shall be less than 0.25%, such rate shall be deemed 0.25% for purposes of this Agreement (except with respect to the Term Hedged Tranche) and (ii) at all other times (and at all times with respect to the Term Hedged Tranche), if Daily Floating LIBOR shall be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement~~Simple SOFR means, with respect to any applicable determination date, (a) the SOFR published on the fifth (5<sup>th</sup>) U.S. Government Securities Business Day preceding such day by the SOFR Administrator on the Federal Reserve Bank of New York's website (or any successor source); provided, however, that if such day is not a U.S. Government Securities Business Day, then Daily Simple SOFR means such rate so published on the fifth (5<sup>th</sup>) U.S. Government Securities Business Day preceding the first (1<sup>st</sup>) U.S. Government Securities Business Day immediately prior thereto; plus (b) the SOFR Adjustment. If the rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of the Loans and Loan Papers.

~~Daily Floating LIBOR~~SOFR Rate Loan means a Loan ~~at such time as it is made and/or maintained at a rate of hereunder with respect to which the~~ interest ~~based upon~~rate is calculated by reference to Daily ~~Floating LIBOR~~Simple SOFR.

**Debt** of any Person means at any date, without duplication (and calculated in accordance with GAAP), (a) all obligations of such Person for borrowed money (whether as a direct obligation on a promissory note, bond, zero coupon bond, debenture, or other similar instrument, or as an unfulfilled reimbursement obligation on a drawn letter of credit or similar instrument, or otherwise), including, without duplication, all Capital Lease obligations (*other than* the interest component of such obligations) of such Person, (b) all obligations of such Person to pay the deferred purchase price of property or services, *other than* (i) obligations under employment contracts or deferred employee compensation plans and (ii) trade accounts payable and other expenses or payables arising in the ordinary course of business, (c) all Debt of others secured by a Lien on any asset of such Person (or for which the holder of the Debt has an existing Right, contingent or otherwise, to be so secured), whether or not such Debt is assumed by such Person, and (d) all guaranties and other contingent obligations (as a general partner or otherwise) of such Person with respect to Debt of others; *provided, that* repayment or reimbursement obligations of the Restricted Companies with respect to Permitted Recourse Obligations shall not be considered Debt unless and until an event or circumstance occurs that triggers such Restricted Company's direct payment liability or reimbursement obligation (as opposed to contingent or performance obligations) to the lender or other party to whom such Permitted Recourse Obligation is actually owed, in which case the amount of such direct payment liability to such lender or other party shall constitute Debt; *provided, that* the satisfaction of performance obligations by any Restricted Company on behalf of any Unrestricted Subsidiary under a Completion Guaranty shall not constitute Debt.

**Debtor Relief Laws** means the *Bankruptcy Reform Act of 1978*, as amended from time to time, and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments, or similar Laws affecting creditors' Rights from time to time in effect.

**Default** is defined in **Section 12**.

**Default Rate** means (a) when used with respect to Obligations other than L/C Fees, an interest rate equal to (i) the Base Rate *plus* (ii) the Applicable Margin, if any, applicable to Base Rate Loans *plus* (iii) 2% per annum; *provided however*, that with respect to a ~~Eurocurrency~~ Term Reference Rate Loan or Daily SOFR Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to L/C Fees calculated based on the Applicable Margin, a rate equal to the Applicable Margin plus 2% per annum.

**Defaulting Lender** means, subject to **Section 3.15(b)**, any Lender that (a) has failed to fund any portion of the Revolver Loans or the Term Loans, unless such Lender notifies Administrative Agent in writing that such failure is the result of such Lender's determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied; ~~or participations in L/C Exposure, or participations in Swing Line Loans required to be funded by it~~ hereunder within two Business Days of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, unless the subject of a good faith dispute, (c) has notified Borrower or Administrative Agent in writing that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such writing or public statement relates to such Lender's obligation to fund a Revolver Loan or a Term Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied) or under other agreements in which it commits to extend credit, (d) has failed, within three Business Days after request by Administrative Agent, to confirm in writing to Administrative Agent that it will comply with its funding obligations (provided, that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (d)** upon Administrative Agent's receipt of such written confirmation), or (e) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors, or similar Person charged with reorganization or liquidation of its business, or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment, or (iv) become the subject of a Bail-in Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority, so long as such ownership interest does not result in or provide such Lender with immunity from jurisdiction of courts within the United States from enforcement of judgments or writs of attachment on assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow, or disaffirm any contract or agreement made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of **clauses (a)** through **(e)** above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 3.15(b)**) as of the date established therefor by Administrative Agent in a written notice of such determination, which shall be delivered by Administrative Agent to Borrower, the L/C Issuers, ~~the Swing Line Lenders~~ and each other Lender promptly following such determination.

**Delayed Draw Availability Period** means the period from the Closing Date to the earlier of (a) December 31, 2018 and (b) the date the Term Loan Lenders make any additional Term Loan in connection with the 2018 Acquisitions.

**Designated Condominium Sale** means the sale or other disposition of any condominium unit owned on the Closing Date, or prior to the Closing Date if the proceeds from such sale or other disposition have not been distributed as of the Closing Date, by any Company situated in the Ritz-Carlton Residences, Vail, Colorado and One Ski Hill Place, Breckenridge, Colorado.

**Designated Jurisdiction** means any country that is the subject of a Sanction.

**Disqualified Equity Interests** means capital stock or other Equity Interests that by their terms (or by the terms of any debt or security into which they are convertible or for which they are exchangeable) or upon the happening of any event, mature or are mandatorily redeemable pursuant to a sinking fund, demand of the holder, or otherwise, in whole or in part, including, without limitation, any Equity Interests issued in exchange for or in redemption of any Subordinated Debt.

**Distribution** means, with respect to any shares of any capital stock or other Equity Interests issued by VRI or any Subsidiary of VRI, (a) the retirement, redemption, purchase, or other acquisition for value of such capital stock or other Equity Interests by such Person (including, without limitation, in connection with the merger or consolidation of any Company), (b) the payment of any dividend (whether in cash, securities, or property) on or with respect to such capital stock or other Equity Interests by such Person (including, without limitation, in connection with the merger or consolidation of any Company), (c) any loan or advance by that Person to, or other investment by that Person in, the holder of any such capital stock or other Equity Interests, and (d) any other payment by that Person with respect to such capital stock or other Equity Interests, including any sinking fund or general deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, or termination of any such capital stock or other Equity Interests, or on account of any return of capital to such Person's stockholders, partners, or members (or the equivalent Person), if any; *provided*, that neither the conversion of convertible debt securities (whether settled in shares, cash or a combination thereof) nor the purchase of an Equity Hedge in connection with the issuance of convertible debt securities shall be considered a Distribution.

**Dollars** and **\$** mean lawful money of the United States.

**Dollar Equivalent** means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in the Alternative Currency, the equivalent amount thereof in Dollars as determined by Administrative Agent or the Australian L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with the Alternative Currency.

**EBITDA** means, for any period of calculation with respect to any Person (or group of Persons whose Financial Statements are consolidated in accordance with GAAP), Net Income before interest expense, Taxes based on or measured by income, and Non-Cash Operating Charges, in each case to the extent deducted in determining Net Income.

**EEA Financial Institution** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**EEA Member Country** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**EEA Resolution Authority** means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**Electronic Copy** has the meaning set forth in **Section 15.19**.

**Electronic Record** has the meaning set forth in **Section 15.19**.

**Electronic Signature** has the meaning set forth in **Section 15.19**.

**Eligible Assignee** means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) Administrative Agent, ~~and~~ the L/C Issuers, ~~and the Swing Line Lenders~~, and (ii) unless a Default has occurred and is continuing, Borrower (each such approval not to be unreasonably withheld or delayed); *provided that* notwithstanding the foregoing, **Eligible Assignee** shall not include Borrower, any of Borrower's Affiliates, or the Companies.

**Employee Plan** means an employee pension benefit plan covered by *Title IV* of ERISA and established or maintained by any Company or any ERISA Affiliate.

**Environmental Law** means any Law that relates to the pollution or protection of ambient air, water or land or to Hazardous Substances.

**Equity Hedge** means any call or capped call option (or substantively equivalent derivative transaction) on VRI's common stock purchased by VRI in connection with the issuance of any convertible debt securities.

**Equity Interests** means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options, or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities (other than debt securities) convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights, or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member, or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights, or other interests are outstanding on any date of determination; *provided*, that convertible debt securities shall not constitute Equity Interests prior to any conversion thereof.

**ERISA** means the *Employee Retirement Income Security Act of 1974*, as amended, and related rules and regulations.

**ERISA Affiliate** means any trade or business (whether or not incorporated) that, together with any Company, is treated as a single employer under *section 414(b)* or *(c)* of the Code or, solely for purposes of *section 302* of ERISA and *section 412* of the Code, is treated as a single employer under *section 414* of the Code.

**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.

**Eurocurrency Rate means:**

~~(a) for Loans denominated in Dollars:~~



~~(i) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBO Rate”) or a comparable or successor rate, which rate is approved by Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first (1<sup>st</sup>) day of such Interest Period) with a term equivalent to such Interest Period; and~~

~~(ii) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) the LIBO Rate, at approximately 11:00 a.m., London time determined two Business Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day;~~

~~(b) for Loans denominated in Canadian Dollars, for any Interest Period, the rate per annum equal to the Canadian Dealer Offered Rate (“CDOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 10:00 a.m. (Toronto, Ontario time) on the Rate Determination Date with a term equivalent to such Interest Period~~

~~provided, that to the extent a comparable or successor rate is approved by Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by Administrative Agent and disclosed to Borrower; and provided, further (i) from the Fourth Amendment Closing Date through the end of the Temporary Waiver Period, if the Eurocurrency Rate shall be less than 0.25%, such rate shall be deemed 0.25% for purposes of this Agreement (except with respect to the Term Hedged Tranche) and (ii) at all other times (and at all times with respect to the Term Hedged Tranche), if the Eurocurrency Rate shall be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.~~

~~**Eurocurrency Rate Loan** means (a) with respect to Loans (other than Swing Line Loans), a Loan bearing interest at the sum of Eurocurrency Rate plus the Applicable Margin, and (b) with respect to Swing Line Loans (or participations therein), a Loan bearing interest at Daily Floating LIBOR plus the Applicable Margin. All Loans denominated in an Alternative Currency must be Eurocurrency Rate Loans.~~

**Exchangeco** means 1068877 B.C. Ltd., a corporation existing under the Laws of the Province of British Columbia.

**Excluded Swap Obligation** means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to **Section 9.12** and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guaranties of such Guarantor’s Swap Obligations by other Restricted Companies) and the regulations thereunder at the time the Guaranty of such Guarantor, or the grant by such Guarantor of such security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps

for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

**Excluded Taxes** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under **Section 15.14**), or (ii) pursuant to **Section 4.1(a)(ii)**, or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with **Section 4.1(e)** and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

**Existing Credit Agreement** is defined in the Recitals of this Agreement.

**Existing Critical Assets** means each of the Critical Assets owned by the Companies on the Closing Date.

**Existing Housing Bonds** means the following Bonds issued by Housing Districts before June 10, 2003 (the date of the Third Amended and Restated Agreement), and re-issuances of such Housing Bonds in accordance with the related Bond Documents: (a) \$10,600,000 of Eagle County, Colorado, Taxable Housing Facilities Revenue Bonds (BC Housing, LLC Project) Series 1997A and 1997B, (b) \$19,980,000 of Breckenridge Terrace LLC Taxable Housing Facilities Revenue Notes (Breckenridge Terrace Project), Series 1999A and 1999B, (c) \$10,410,000 of Eagle County, Colorado, Taxable Housing Facilities Revenue Bonds (The Tarnes at BC, LLC Project), Series 1999A and 1999B, and (d) \$11,585,000 of the Tenderfoot Seasonal Housing, LLC Taxable Housing Facilities Revenue Notes (Tenderfoot Seasonal Housing, LLC Project), Series 2000A and 2000B, and renewals or extensions of each of the foregoing (but not increases thereof) on or after June 10, 2003.

**Existing Housing Districts** means, collectively, Tenderfoot Seasonal Housing LLC, The Tarnes at BC Housing LLC, BC Housing LLC (Riveredge), and Breckenridge Terrace LLC, and **Existing Housing District** means any one of the Existing Housing Districts.

**Existing L/C** means each Bond L/C and other letter of credit issued by an L/C Issuer for the account of any of the Companies and described on **Part A** of **Schedule 2.3**.

**Existing Metro Districts** means, collectively, Holland Creek Metropolitan District and Red Sky Ranch Metropolitan District, and **Existing Metro District** means any one of the Existing Metro Districts.

**Facility Amount** means the Total Commitment (including any increase in the aggregate Commitments pursuant to **Section 2.5**) plus the aggregate amount of all Incremental Term Loan Facilities.

**FATCA** means *Sections 1471 through 1474* of the Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply

with), and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to *Section 1471(b)(1)*.

**Federal Funds Rate** means, for any day, the rate per annum ~~equal to calculated by the weighted average of the rates on overnight Federal Reserve Bank of New York based on such day's federal funds transactions with members of by depository institutions (as determined in such manner as the Federal Reserve System arranged by Federal funds brokers on such day, as Bank of New York shall set forth on its public website from time to time) and~~ published ~~by on the Federal Reserve Bank of New York on the Business Day~~ next succeeding ~~such day Business Day by the Federal Reserve Bank of New York as the federal funds effective rate;~~ *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 as so determined would be less than zero, such dayrate shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by Administrative Agent deemed to be zero for purposes of this Agreement.~~

**Fee Letter** means ~~the any fee letter agreement dated August 15, 2018, among Borrower, Administrative Agent and BofA Securities, Inc., as successor to Merrill Lynch, Pierce, Fenner & Smith Incorporated/or Arranger.~~

**Financial Hedge** means a transaction between any Company and any Lender or an Affiliate of any Lender (or another Person reasonably acceptable to Administrative Agent), which is intended to reduce or eliminate the risk of fluctuations in one or more interest rates, foreign currencies, commodity prices, equity prices, or other financial measures, whether or not such transaction is governed by or subject to any master agreement conforming to ISDA standards and which is legal and enforceable under applicable Law.

**Financial Statements** of a Person means balance sheets, profit and loss statements, reconciliations of capital and surplus, and statements of cash flow prepared (a) according to GAAP, and (b) *other than* as stated in **Section 1.3**, in comparative form to prior year-end figures or corresponding periods of the preceding fiscal year, as applicable.

**Foreign Lender** means a Lender that is not a U.S. Person. For purposes of this definition, the United States, each state thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

**Forest Service Permit Agreements** means (a) that certain Second Amended and Restated Multiparty Agreement Regarding Forest Service Special Use Permit No. 4056-01; (b) that certain Second Amended and Restated Multiparty Agreement Regarding Forest Service Special Use Permit No. 4065-03; (c) that certain Second Amended and Restated Multiparty Agreement Regarding Forest Service Special Use Permit No. 5289-01; (d) that certain Second Amended and Restated Multiparty Agreement Regarding Forest Service Special Use Permit No. 5289-04; (e) that certain Amended and Restated Multiparty Agreement Regarding Forest Service Special Use Permit No. ELD508901; (f) any similar agreement or instrument relating to Term Special Use Permit Holder No. AMA282; (g) any similar agreement or instrument relating to any Forest Service Permit and authorized or contemplated by the provisions of the documents executed in connection with the issuance of the Vail Bonds; and (h) all renewals, extensions and restatements of, and amendments and supplements to, any of the foregoing.

**Forest Service Permits** means (a) Ski Area Term Special Use Permit Holder No. 4056-01 issued by the Service to Borrower for the Vail ski area on November 23, 1993, and expiring on October 31, 2031; (b) Term Special Use Permit No. Holder 4065-03 issued by the Service to Borrower's wholly-owned subsidiary, Beaver Creek Associates, Inc., for the Beaver Creek ski area on November 17, 1999, and expiring on December 31, 2038; (c) Term Special Use Permit Holder No. 5289-01 for Keystone ski area issued by the Service to Ralston Resorts, Inc., now known as Vail Summit Resorts, on December 30, 1996, and expiring on December 30, 2032; (d) Term Special Use Permit Holder No. 5289-04 for Breckenridge ski area issued by the Service to Ralston Resorts, Inc., now known as Vail Summit Resorts, on December 31, 1996, and expiring on December 31, 2029; (e) Term Special Use Permit Holder No. EDL508901 for Heavenly ski area issued by the Service to Heavenly Valley, Limited Partnership on May 7, 2002, and expiring on May 1, 2042; (f) Term Special Use Permit Holder No. AMA282 for Kirkwood ski area issued by the Service to Heavenly Valley, Limited Partnership, d/b/a Kirkwood Mountain Resort on April 11, 2012, and expiring on March 19, 2052; and (g) any replacements of any of the foregoing.

**Fourth Amendment Closing Date** means December 18, 2020.

**Fronting Exposure** means, at any time there is a Defaulting Lender, ~~(a) with respect to the applicable L/C Issuer, such Defaulting Lender's Commitment Percentage of the Dollar Equivalent of the outstanding L/C Exposure other than L/C Exposure as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans~~ as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

**Fund** means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding, or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**Funded Debt** means, without duplication, on any date of determination, *the sum of* the following, calculated on a consolidated basis for the Restricted Companies in accordance with GAAP: (a) all obligations for borrowed money (whether as a direct obligation on a promissory note, bond, zero coupon bond, debenture, or other similar instrument, as a direct (as opposed to contingent) payment obligation arising under a guaranty, or as an unfulfilled reimbursement obligation on a drawn letter of credit or similar instrument, or otherwise), *plus* (b) all Capital Lease obligations (*other than* (x) the interest component of such obligations and (y) obligations under the Northstar Leases (to the extent such leases constitute Capital Leases)) of any Restricted Company, *plus* (c) reimbursement obligations and undrawn amounts under Bond L/Cs supporting Bonds (other than Existing Housing Bonds) issued by Unrestricted Subsidiaries, *plus* (d) payment obligations with respect to Permitted Recourse Obligations which constitutes Debt hereunder, *provided, that Funded Debt* shall expressly exclude Debt under Existing Housing Bonds.

**Funding Loss** means any loss or expense that any Lender reasonably incurs because (a) Borrower fails or refuses (for any reason whatsoever, *other than* a default by Administrative Agent or Lender claiming such loss or expense) to take any Loan that it has requested under this Agreement, or (b) Borrower pays any Revolver Loan or Term Loan that is a Eurocurrency Term Reference Rate Loan or converts any Revolver Loan or Term Loan that is a Eurocurrency Term Reference Rate Loan to a Base Rate Loan, in each case, before the last day of the applicable Interest Period.

**GAAP** means generally accepted accounting principles of the Accounting Principles Board of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession) that are applicable from time to time.

**Gillett** means Gillett Broadcasting, Inc., a Delaware corporation, a direct Subsidiary of VRI.

**Governmental Authority** means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**Guarantor** means each Person executing a Guaranty.

**Guaranty** means, collectively, a guaranty substantially in the form of **Exhibit B-1**, executed and delivered by any Person pursuant to the requirements of the Loan Papers, each Confirmation of Guaranty executed in connection therewith, and any other amendment, modification, supplement, restatement, ratification, or reaffirmation of any Guaranty made in accordance with the Loan Papers.

**Hazardous Substance** means any substance that is defined or classified as a hazardous waste, hazardous material, pollutant, contaminant, or toxic or hazardous substance under any Environmental Law.

~~**Hedge Change Notice** has the meaning set forth in **Section 10.21(b)**.~~

**High-Yield Debt** means any senior unsecured indebtedness for borrowed money in the form of high-yield debt securities for which a Company is directly and primarily obligated and that is issued pursuant to documentation with terms that are no more restrictive upon such Company than the terms of this Agreement; *provided* that High-Yield Debt shall not include convertible debt securities.

**Honor Date** has the meaning set forth in **Section 2.3(c)(i)**.

**Housing Districts** means, collectively, (a) the Existing Housing Districts, and (b) any other Person which issues Bonds after the Closing Date to finance the development of housing projects for employees of the Companies; and **Housing District** means one of the Housing Districts.

**Incremental Term Loan** means any amount disbursed by any Lender to Borrower pursuant to the Incremental Term Loan Facility.

**Incremental Term Loan Facility** has the meaning set forth in **Section 2.5**.

**Indemnified Taxes** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Restricted Company under any Loan Papers and (b) to the extent not otherwise described in **clause (a)**, Other Taxes.

**Intellectual Property** means (a) common law, federal statutory, state statutory, and foreign trademarks or service marks (including, without limitation, all registrations and pending applications and the goodwill of the business symbolized by or conducted in connection with any such trademark or service mark), trademark or service mark licenses and all proceeds of trademarks or service marks

(including, without limitation, license royalties and proceeds from infringement suits), (b) U.S. and foreign patents (including, without limitation, all pending applications, continuations, continuations-in-part, divisions, reissues, substitutions, and extensions of existing patents or applications), patent licenses, and all proceeds of patents (including, without limitation, license royalties and proceeds from infringement suits), (c) copyrights (including, without limitation, all registrations and pending applications), copyright licenses, and all proceeds of copyrights (including, without limitation, license royalties and proceeds from infringement suits), and (d) trade secrets, *but does not include* (i) any licenses (including, without limitation, liquor licenses) or any permits (including, without limitation, sales Tax permits) issued by a Governmental Authority and in which (y) the licensee's or permittee's interest is defeasible by such Governmental Authority and (z) the licensee or permittee has no right beyond the terms, conditions, and periods of the license or permit, or (ii) trade names or "dba"s to the extent they do not constitute trademarks or service marks.

**Interest Period** means, as to each Revolver Loan or Term Loan that is a [EurocurrencyTerm Reference](#) Rate Loan, the period commencing on the date such Revolver Loan or Term Loan is disbursed or converted to or continued as a Revolver Loan or Term Loan that is a [EurocurrencyTerm Reference](#) Rate Loan and ending on the date one [\(1\)](#), three [\(3\)](#), or six [\(6\)](#) months thereafter, as selected by Borrower in its Loan Notice; *provided, that*:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Termination Date.

**Internal Control Event** means a material weakness in, or fraud that involves management or other employees who have a significant role in, Borrower's internal controls over financial reporting, in each case as described in the Securities Laws.

**Investment Limit (Joint Ventures)** means, on any date of determination, the sum of (a) \$75,000,000, *plus* (b) 10% of Total Assets, *plus* (c) net reductions in investments permitted by **Section 10.8(m)** as a result of (i) dispositions of any such investments sold or otherwise liquidated or repaid to the extent of the net cash proceeds and the fair market value of any assets or property (as determined in good faith by the Board of Directors of VRI) received by a Restricted Company, or (ii) dividends reducing any such investment, repayment of the outstanding principal amount of loans or advances, or other transfers of assets to VRI or any Restricted Subsidiary of VRI, or (iii) the portion (proportionate to VRI's direct or indirect interest in the equity therein) of the fair market value of the net assets of a joint venture in which a Restricted Company has made an investment permitted by **Section 10.8(m)** immediately prior to the time such Person is designated or becomes a Restricted Subsidiary of VRI in accordance with **Sections 9.10** or **9.11(b)**, *minus* (d) loans made in accordance with **Section 10.8(r)**.

**Investment Limit (Similar Businesses)** means, on any date of determination, the sum of (a) \$100,000,000, *plus* (b) 15% of Total Assets, *plus* (c) net reductions in investments permitted by **Section 10.8(l)** as a result of (i) dispositions of any such investments sold or otherwise liquidated or repaid to the

extent of the net cash proceeds and the fair market value of any assets or property (as determined in good faith by the Board of Directors of VRI) received by a Restricted Company, (ii) dividends reducing any such investment, repayment of the outstanding principal amount of loans or advances, or other transfers of assets to VRI or any Restricted Subsidiary of VRI, or (iii) the portion (proportionate to VRI's direct or indirect interest in the equity of a Person) of the fair market value of the net assets of an Unrestricted Subsidiary immediately prior to the time such Unrestricted Subsidiary is designated or becomes a Restricted Subsidiary of VRI in accordance with **Sections 9.10** or **9.11(b)**.

~~**ISDA Definitions** means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.~~

**ISP** means, with respect to any L/C, the “*International Standby Practices 1998*” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

**Issuer Documents** means with respect to any L/C, the L/C Agreement and any other document, agreement, and instrument entered into by the applicable L/C Issuer and Borrower (or any other Company) or in favor of such L/C Issuer and relating to such L/C.

**Joint Lead Arrangers** BofA Securities, Inc., U.S. Bank National Association and Wells Fargo Securities, LLC, in their respective capacities as joint lead arrangers and joint bookrunners.

**Laws** means all applicable statutes, laws, treaties, ordinances, rules, regulations, orders, writs, injunctions, decrees, and judgments.

**L/C** means each Existing L/C and other letter of credit issued by an L/C Issuer under this Agreement providing for the payment of cash upon the honoring of a presentation thereunder. An L/C may be a standby or commercial letter of credit. L/Cs may be issued in Dollars or in the Alternative Currency.

**L/C Agreement** means an application and agreement for the issuance or amendment of an L/C in the form from time to time in use by the applicable L/C Issuer.

**L/C Borrowing** means an extension of credit resulting from a drawing under any L/C that has not been reimbursed on the date when made or refinanced as a Revolver Loan.

**L/C Commitment** means, as to each L/C Issuer, the commitment of such L/C Issuer to issue Letters of Credit in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such L/C Issuer's name on **Schedule 1** under the caption “*Letter of Credit Sublimit*”.

**L/C Credit Extension** means, with respect to any L/C, the issuance thereof, the extension of the expiry date thereof, or the increase of the amount thereof.

**L/C Expiration Date** means the day that is seven (7) days prior to the Termination Date for the Revolver Facility then in effect (or, if such day is not a Business Day, the next preceding Business Day).

**L/C Exposure** means, on any date of determination, without duplication, the *sum* of (a) the aggregate amount available to be drawn under all outstanding L/Cs (including, without limitation, any

reinstatement of or increase in the face amount thereof effected pursuant to the terms of any Bond L/C), plus (b) the aggregate unpaid reimbursement obligations of Borrower with respect to drawings, drafts, or other forms of demand honored under any L/C (including, without limitation, all L/C Borrowings and unpaid reimbursement obligations under any Bond L/C). For purposes of computing the amount available to be drawn under any L/C, the amount of such L/C shall be determined in accordance with **Section 1.7**. For all purposes of this Agreement, if on any date of determination an L/C has expired by its terms but any amount may still be drawn thereunder by reason of the operation of *Rule 3.14* of the ISP, such L/C shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

**L/C Fees** has the meaning set forth in **Section 3.10(b)**.

**L/C Issuers** means Bank of America, Wells Fargo Bank, National Association and the Australian L/C Issuer, in their respective capacities as issuers of L/Cs hereunder, and any additional Lender approved by Administrative Agent and Borrower that has agreed to act as an “L/C Issuer”, or any successor issuer of L/Cs hereunder; and **L/C Issuer** means one of the L/C Issuers.

**L/C Subfacility** means a subfacility under the Agreement for the issuance of L/Cs, as described in **Section 2.3**, under which the L/C Exposure may never exceed the L/C Sublimit.

**L/C Sublimit** means the lesser of (a) \$200,000,000 and (b) the Revolver Commitment (as the same may be increased or reduced in accordance with the Loan Papers). The L/C Sublimit is part of, and not in addition to, the Revolver Commitment.

**Lenders** means (a) each of the lenders named on the attached **Schedule 1** (and as the context so requires, the Swing Line Lenders) and, subject to this Agreement, their respective successors and assigns (but not any Participant who is not otherwise a party to this Agreement), and (b) additional lenders who become party to this Agreement in accordance with **Section 2.5** hereof.

**Lending Office** means as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Borrower and Administrative Agent.

~~**LIBO Rate** has the meaning set forth in the definition of “Eurocurrency Rate”.~~

~~**LIBOR Replacement Date** has the meaning specified in **Section 4.3(c)**.~~

~~**LIBOR Screen Rate** means the LIBO Rate quote on the applicable screen page Administrative Agent designates to determine LIBO Rate (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time).~~

~~**LIBOR Successor Rate** has the meaning specified in **Section 4.3(c)**.~~

~~**LIBOR Successor Rate Conforming Changes** means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent determines that~~



~~adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Paper);~~

**Lien** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease, or other title retention agreement relating to such asset.

**Litigation** means any action, suit, proceeding, claim, or dispute by or before any Governmental Authority.

**Loan** means any amount disbursed by any Lender to Borrower or on behalf of any Company under the Loan Papers, either as an original disbursement of funds, the continuation of an amount outstanding, or payment under an L/C.

**Loan Date** is defined in **Section 2.2(a)**.

**Loan Notice** means a request executed by a Responsible Officer substantially in the form of **Exhibit C-1** or such other form as may be approved by Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by Administrative Agent).

**Loan Papers** means (a) this Agreement, (b) the Notes, (c) each Guaranty, (d) all L/Cs and L/C Agreements, (e) the Security Documents, and (f) all renewals, extensions, restatements of, amendments and supplements to, and confirmations or ratifications of, any of the foregoing.

**Material Adverse Event** means any (a) material impairment of the ability of the Restricted Companies as a whole to perform their payment or other material obligations under the Loan Papers or material impairment of the ability of Administrative Agent or any Lender to enforce any of the material obligations of the Restricted Companies as a whole under the Loan Papers; (b) material and adverse effect on the operations, business, properties, liabilities (actual or contingent), or condition (financial or otherwise) of the Restricted Companies as a whole; or (c) a material adverse effect upon the legality, validity, or binding effect against the Restricted Companies of any Loan Paper to which such Restricted Companies are parties (determined with respect to the Loan Papers of the Restricted Companies taken as a whole); ~~provided, that for purposes of determining the existence of a Material Adverse Event pursuant to clauses (a) and (b) above, any actual impact, direct or indirect, arising as a result of or related to (or could reasonably be expected to arise out of or result from) COVID-19 during the period from March 15, 2020 through the Temporary Waiver Period, shall be excluded and shall not constitute, result in or otherwise have (or reasonably be expected to constitute, result or otherwise have) a Material Adverse Event.~~

**Material Agreement** means, for any Person, any agreement (excluding purchase orders for material, services, or inventory in the ordinary course of business) to which that Person is a party, by which that Person is bound, or to which any assets of that Person may be subject, that is not cancelable by that Person upon 30 or fewer days' notice without liability for further payment, *other than* nominal penalty, and that requires that Person to pay more than \$2,000,000 during any 12-month period.

**Maximum Amount** and **Maximum Rate** respectively mean, for a Lender, the maximum non-usurious amount and the maximum non-usurious rate of interest that, under applicable Law, such Lender is permitted to contract for, charge, take, reserve, or receive on the Obligation held by such Lender.

**Maximum Facility Amount** means, on any date of determination, the greater of (a) \$2,250,000,000, and (b) the product of (i) 3.25 and (ii) Adjusted EBITDA for the four fiscal quarters ending on the last day of the immediately preceding fiscal quarter.

**Metro Districts** means, collectively, (a) the Existing Metro Districts, and (b) any other Person which issues Bonds after the Closing Date to finance the operation, construction, and maintenance of infrastructure projects in municipalities, which projects are related to the Companies' business activities in the region in which the projects are being developed; and **Metro District** means one of the Metro Districts.

**Moody's** means Moody's Investor's Service, Inc.

**Multiemployer Plan** means a multiemployer plan as defined in Sections 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code to which any Company or any ERISA Affiliate is making, or has made, or is accruing, or has accrued, an obligation to make contributions.

**Net Funded Debt** means, on any date of determination, an amount equal to (a) Funded Debt *minus* (b) the amount of Unrestricted Cash in excess of \$10,000,000.

**Net Income** means, for any period with respect to any Person (or group of Persons whose Financial Statements are consolidated in accordance with GAAP), the net income of such Person or Persons from continuing operations after extraordinary items (excluding gains or losses from the disposition of assets) for that period determined in accordance with GAAP; *provided however, that* for purposes of calculating Net Income of the Restricted Companies under this Agreement:

(a) if any Restricted Company owns an interest in a Person that is not consolidated in the consolidated financial statements of VRI and its Restricted Subsidiaries in accordance with GAAP (a "**Non-Consolidated Entity**"), then such equity interest shall not be accounted for under the equity method of accounting, but the "**Net Income**" of such Restricted Company shall be increased to the extent cash is distributed to such Restricted Company by any such Non-Consolidated Entity during such period and shall be decreased to the extent cash is contributed in the form of equity to such Non-Consolidated Entity in order to fund losses of such Non-Consolidated Entity during such period;

(b) premiums paid and the write-off of any unamortized balance of original issue discount in connection with a redemption of, or tender offer for, debt that is consummated in accordance with the Loan Papers, and the amortization and write-off of any unamortized balance of debt issuance costs, shall be excluded; and

(c) any income or expense that increases or decreases Net Income and occurs as a result of any change in the amount of contingent consideration reflected on the balance sheet of VRI shall be excluded.

**Non-Cash Operating Charges** means depreciation expense, amortization expense, and any other non-cash charges determined in accordance with GAAP (including, without limitation, non-cash

compensation expenses incurred in respect of stock option plans, including, without limitation, pursuant to FAS 123R).

**Non-Consenting Lender** means any Lender that does not approve any consent, waiver or **amendment** that (a) requires the approval of all Lenders or all affected Lenders, in accordance with the terms of **Section 15.9** and (b) has been approved by the Required Lenders.

**Non-Recourse Debt** means, for any Unrestricted Subsidiary, any Debt of such Unrestricted Subsidiary with respect to which the holder of such Debt (a) may not look to such Unrestricted Subsidiary directly for repayment, other than to the extent of any security therefor, or (b) may look to such Unrestricted Subsidiary directly for repayment (but not to any direct or indirect constituent equity holder of such Unrestricted Subsidiary, *other than* with respect to Permitted Recourse Obligations entered into by such direct or indirect constituent equity holder).

**Nonextension Notice Date** has the meaning set forth in **Section 2.3(b)(iii)**.

**Northstar Leases** means, collectively, (a) that certain Amended and Restated Lease Agreement, dated as of October 25, 2010, by and between CNL Income Northstar, LLC, as lessor, and Trimont Land Company, a California corporation, as lessee, (b) that certain Amended and Restated Personal Property Lease Agreement by and between CNL Income Northstar TRS Corp., a Delaware corporation, as lessor, and Trimont Land Company, a California corporation, as lessee, dated as of October 25, 2010, and (c) that certain Amended and Restated Lease Agreement, dated as of October 25, 2010, by and between CNL Income Northstar Commercial, LLC, a Delaware limited liability company, as lessor, and Northstar Group Commercial Properties, LLC, a Delaware limited liability company, as lessee, each as amended from time to time.

**Northstar Subsidiaries** means, collectively, VR Acquisition, Inc., a California corporation, BCRP, Inc., a Delaware corporation, Booth Creek Ski Holdings, Inc., a Delaware corporation, Trimont Land Company, a California corporation, Northstar Group Commercial Properties, LLC, a Delaware limited liability company, and Northstar Group Restaurant Properties, LLC, a Delaware limited liability company.

**Notes** means, collectively, the Revolver ~~Notes, the Swing Line~~-Notes and the Term Loan Notes, and **Note** means any of the Notes.

**Obligation** means all present and future indebtedness and obligations, and all renewals, increases, and extensions thereof, or any part thereof, now or hereafter owed to Administrative Agent, the L/C Issuers, and any Lender ~~(including, without limitation, the Swing Line Lenders)~~ by the Companies under the Loan Papers, *together with* all interest accruing thereon, fees, costs, and expenses (including, without limitation, all attorneys' fees and expenses incurred in the enforcement or collection thereof) payable under the Loan Papers or in connection with the protection of Rights under the Loan Papers; *provided, that*, all references to the **Obligation** in the Security Documents, the Guaranty, and **Section 3.10** herein shall, in addition to the foregoing, also include all present and future indebtedness, liabilities, and obligations (and all renewals and extensions thereof or any part thereof) now or hereafter owed to any Lender or any Affiliate of a Lender arising from, by virtue of, or pursuant to any Financial Hedge entered into by any Restricted Company; *provided, that* Obligation shall exclude any Excluded Swap Obligations.

**OFAC** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**Other Connection Taxes** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Paper, or sold or assigned an interest in any Loan or Loan Papers).

**Other Taxes** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Papers, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 4.6**).

**Outstanding Amount** means (a) with respect to Term Loans; ~~and Revolver Loans and Swing Line~~ Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans; ~~and Revolver Loans and Swing Line~~ Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Exposure on any date, the Dollar Equivalent amount of the aggregate outstanding amount of such L/C Exposure on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Exposure as of such date, including as a result of any reimbursements by Borrower of Unreimbursed Amounts.

**Participant** has the meaning specified in **Section 15.11(d)**.

**Participant Register** has the meaning specified in **Section 15.11(d)**.

**PBGC** means the Pension Benefit Guaranty Corporation, or any successor thereof, established under ERISA.

**PCMR Litigation** means Case No. 120500157, 3rd District Court, Summit County, Utah and all related proceedings involving Talisker Land Holdings, LLC, Talisker Land Resolution LLC, VR CPC Holdings, Inc., Flera, LLC, Talisker Canyons LeaseCo LLC, TCFC Finance Co. LLC (formerly Talisker Canyons Finance Co. LLC), United Park City Mines Company, Greater Properties, Inc. or Greater Park City Company (formerly Treasure Mountain Resort Company).

**Peak Resorts** means Peak Resorts, Inc., a corporation existing under the Laws of the State of Missouri.

**Peak Resorts Acquisition** means the acquisition of the Peak Resorts Acquisition Subsidiaries by the Company pursuant to the Peak Resorts Acquisition Agreement and repayment of certain indebtedness of the Peak Resorts Acquisition Subsidiaries.

**Peak Resorts Acquisition Agreement** means the Agreement and Plan of Merger, dated as of July 20, 2019, by and among the Company, VRAD Holdings, Inc., Peak Resorts and, solely with respect to Section 9.14 thereof, VRI.

**Peak Resorts Acquisition Subsidiaries** means, collectively, Peak Resorts and any direct or indirect Subsidiary of Peak Resorts existing on the Second Amendment Closing Date.

**Permitted Debt** means:

(a) the Obligation;

(b) Debt of any Company which is listed on **Part B** of **Schedule 2.3**;

(c) Debt of any Company arising from endorsing negotiable instruments for collection in the ordinary course of business;

(d) Subordinated Debt (and guaranties by Restricted Companies of Subordinated Debt of other Restricted Companies, if such guaranties are subordinated to the payment and collection of the Obligation on the same terms as such Subordinated Debt or otherwise upon terms satisfactory to Administrative Agent), *so long as* after giving effect to the incurrence of such Debt, the Companies are in pro forma compliance with the financial covenants set forth in **Section 11** herein and no Default or Potential Default exists or would result after giving effect thereto;

(e) Debt of any Company arising under or pursuant to the Existing Housing Bonds to which any such Company is a party;

(f) Debt of any Company arising under or pursuant to Bonds (other than Existing Housing Bonds) to which any such Company is a party, *so long as* after giving effect to the incurrence of such Debt and, without duplication, Debt incurred by Borrower or any other Company in support thereof, (i) the Companies are in pro forma compliance with the financial covenants set forth in **Section 11** herein, and (ii) no Default or Potential Default exists or would result after giving effect thereto;

(g) (i) Non-Recourse Debt of Unrestricted Subsidiaries, and (ii) other Debt of Unrestricted Subsidiaries, whether or not recourse to the Restricted Companies, so long as any guaranties or other contingent obligations of the Restricted Companies in respect of such Debt is permitted pursuant to **clause (h)(ii)** below;

(h) guaranties and other contingent obligations of Restricted Companies with respect to (i) Debt of Restricted Companies, (ii) Debt of Unrestricted Subsidiaries permitted hereunder in an amount not to exceed the Investment Limit (Similar Businesses), and (iii) Debt of joint ventures in which a Restricted Company has made an investment permitted under **Section 10.8(m)** in an amount not to exceed the Investment Limit (Joint Ventures);

(i) fees and other amounts payable under the Forest Service Permits in the ordinary course of business;

(j) inter-company Debt between Restricted Companies;

(k) Debt of the Restricted Companies in a maximum aggregate amount not to exceed \$75,000,000 at any time for (i) Capital Lease obligations (excluding, for the avoidance of doubt, Capital Lease obligations permitted under **clause (m)** below), (ii) obligations to pay the deferred purchase price of property or services, and (iii) obligations under surety bonds or similar instruments;

(l) Secured Debt in a maximum aggregate amount (after giving effect to any such Debt previously incurred and then outstanding) not to exceed the difference between the Maximum Facility Amount and the Facility Amount when incurred, *so long as* Borrower, Administrative Agent, and the lender thereof (or applicable agent or trustee therefor) have entered into intercreditor arrangements in form and substance reasonably satisfactory to Administrative Agent;

(m) (i) if the Northstar Leases and Canyons-Park City Lease are Capital Leases, the obligations of the Northstar Subsidiaries and VR CPC Holdings, Inc., respectively, thereunder, and (ii) obligations of Restricted Subsidiaries under other Capital Leases of assets or properties owned by any Restricted Subsidiary, *provided, that* (A) such Restricted Subsidiary has complied with the terms of **Section 9.10**, (B) no Default or Potential Default exists or would result after giving effect thereto, (C) the Companies are in pro forma compliance with the financial covenants set forth in **Section 11**, and (D) such Restricted Subsidiary did not own such assets or property or Critical Assets on the Closing Date;

(n) Debt of the Restricted Companies in connection with the acquisition of assets or a new Restricted Subsidiary (including Debt that was incurred by the prior owner of such assets or by such Restricted Subsidiary prior to such acquisition by the Restricted Companies); *provided, that* the aggregate principal amount of Debt pursuant to this **clause (n)** does not exceed \$100,000,000 at any time outstanding;

(o) Debt of any Restricted Company organized outside the United States in an aggregate principal amount which does not exceed \$50,000,000 at any time outstanding; and

(p) in addition to Debt permitted under **clauses (a)** through **(o)** above, senior unsecured Debt (including High-Yield Debt) of the Restricted Companies; *provided, that* (x) the maximum aggregate amount of such Debt that has a stated maturity prior to the Termination Date for the Revolver Facility shall not exceed \$250,000,000 at any time; and (y) the maximum aggregate amount of such Debt incurred by Restricted Subsidiaries other than Borrower shall not exceed \$50,000,000 at any time.

**Permitted Liens** means:

(a) Liens created by the Security Documents or other Liens securing the Obligation, and *so long as* the Obligation is ratably secured therewith, Liens securing Debt incurred by any Company under any Financial Hedge with any Lender or an Affiliate of any Lender to the extent permitted under **Section 10.8(i)**;

(b) Liens created by, or pursuant to, the Forest Service Permit Agreements for the benefit of the holders of the Vail Bonds and Liens on the amounts in the “*Bond Fund*” established and maintained in accordance with the provisions of the documents executed in connection with the issuance of the Vail Bonds (and Liens created on all or any portion of the same assets in connection with any refinancing of such bonds in accordance with the terms of this Agreement);

(c) Liens on assets of Unrestricted Subsidiaries securing Debt of Unrestricted Subsidiaries permitted by **clause (g)** of the definition of “*Permitted Debt*”;

(d) Liens on the Collateral securing Debt of Borrower permitted by **clause (l)** of the definition of “*Permitted Debt*”;

(e) Liens on assets of any Company securing Permitted Debt arising under or pursuant to any Bond Documents to which any such Company is a party, but only to the extent such Liens secure the assets financed by such Permitted Debt (and proceeds thereof);

(f) purchase money liens which encumber only the assets acquired;

(g) pledges or deposits made to secure payment of workers' compensation, unemployment insurance or other forms of governmental insurance or benefits (other than ERISA) or to participate in any fund in connection with workers' compensation, unemployment insurance, pensions (other than ERISA) or other social security programs;

(h) good-faith pledges or deposits made to secure performance of bids, tenders, contracts (*other than* for the repayment of borrowed money), or leases, or to secure statutory obligations, surety or appeal bonds, or indemnity, performance, or other similar bonds in the ordinary course of business;

(i) encumbrances and restrictions on the use of real property which do not materially impair the use thereof;

(j) the following, if either (1) no amounts are due and payable and no Lien has been filed or agreed to, or (2) the validity or amount thereof is being contested in good faith by lawful proceedings diligently conducted, reserve or other provision required by GAAP has been made, levy and execution thereon have been (and continue to be) stayed or payment thereof is covered in full (subject to the customary deductible) by insurance: (i) Liens for Taxes; (ii) Liens upon, and defects of title to, property, including any attachment of property or other legal process prior to adjudication of a dispute on the merits; (iii) Liens imposed by operation of Law (including, without limitation, Liens of mechanics, materialmen, warehousemen, carriers, and landlords, and similar Liens); and (iv) adverse judgments on appeal;

(k) any interest or title of a lessor or licensor in assets being leased or licensed to a Company;

(l) licenses, leases, or subleases granted to third Persons which do not interfere in any material respect with the business conducted by the Companies;

(m) any Lien on any asset of any entity that becomes a Subsidiary of VRI, which Lien exists at the time such entity becomes a Subsidiary of VRI, *so long as* (i) any such Lien was not created in contemplation of such acquisition, merger, or consolidation, and (ii) any such Lien does not and shall not extend to any asset other than the assets secured immediately prior to the acquisition in formation of such Subsidiary;

(n) in respect of Water Rights, the provisions of the instruments evidencing such Water Rights and any matter affecting such Water Rights which does not affect the Companies' rights to sufficient quantity and quality of water to conduct business as in effect on the date hereof or any expansion planned as of the date hereof (including, without limitation, any Lien of the Colorado Water Conservation Board, or its successors and assigns, on stock owned by any Company in a Colorado ditch and reservoir company formed in accordance with the Colorado Corporation Code, as amended);

(o) in respect of the Forest Service Permits, the provisions of the instruments evidencing such permits and all rights of the U.S. and its agencies with respect thereto or with respect to the land affected thereby;

(p) Liens on cash accounts not to exceed \$250,000 in the aggregate at the FirstBank of Vail established in connection with collateralizing a portion, if any, of certain second mortgage loans made by such bank, and guaranteed by Borrower, as part of the Vail Associates Home Mortgage Program for Borrower's employees; and

(q) Liens on assets of any Restricted Company organized outside the United States securing Debt permitted under *clause (o)* of the definition of “**Permitted Debt**”.

**Permitted Recourse Obligations** means, collectively, for any Restricted Company, obligations or liabilities arising with respect to Customary Recourse Exceptions, Completion Guaranties, and letters of credit or similar arrangements entered into in support of obligations of an Unrestricted Subsidiary with respect to its Real Estate Project.

**Person** means any individual, partnership, joint venture, other entity, or Governmental Authority.

**Platform** has the meaning specified in **Section 9.1**

**Pledge Agreement** means, collectively, (a) a pledge agreement substantially in the form of **Exhibit F-1**, executed and delivered by any Person pursuant to the requirements of the Loan Papers, together with (b) any related Confirmation of Pledge Agreement and any other amendment, modification, supplement, restatement, ratification, or reaffirmation of any Pledge Agreement made in accordance with the Loan Papers.

**Potential Default** means the occurrence of any event or existence of any circumstance that would, upon notice or lapse of time or both, become a Default.

~~**Pre-Adjustment Successor Rate** has the meaning specified in **Section 4.3(c)**.~~

**Principal Debt** means, at any time, the sum of the Revolver Principal Debt and Term Loan Principal Debt.

**Public Lender** has the meaning specified in **Section 9.1**.

**Purchase Price** means, with respect to any acquisition or merger consummated in accordance with the provisions of **Section 10.11** herein, all (a) direct and indirect cash payments, and (b) deferred cash payments determined by Borrower to be reasonably likely to be payable following the closing date of such acquisition or merger, which payments pursuant to **clauses (a)** and **(b)** herein are made to or for the benefit of the Person being acquired (or whose assets are being acquired), its shareholders, or its Affiliates in connection with such acquisition or merger, including, without limitation, the amount of any Debt being assumed in connection with such acquisition or merger (and subject to the limitations on Permitted Debt hereunder) or seller financing, and excluding, without limitation, payments to Affiliates of the Person being acquired (or whose assets are being acquired) for usual and customary transitional services or other operating services provided by such Affiliates of the Person being acquired (or whose assets are being acquired) pursuant to agreements that have been entered into in good faith by the parties thereto.

**Qualified ECP Guarantor** means, in respect of any Swap Obligation, Borrower and each Guarantor with total assets exceeding \$10,000,000 at the time the relevant guaranty or grant of the relevant security interest became effective with respect to such Swap Obligation or that qualifies at such time as an “*eligible contract participant*” under the Commodity Exchange Act or any regulation promulgated thereunder and can cause another person to qualify as an “*eligible contract participant*” at such time by entering into a keepwell under §1a(18)(A)(v)(II) of the Commodity Exchange Act.



**Quarterly Date** means each January 31, April 30, July 31, and October 31; *provided, that* if any such Quarterly Date is not a Business Day, the provisions of **Section 15.2** shall apply to payments required on such day.

**Rate Determination Date** means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by ~~the~~ Administrative Agent; *provided* that, to the extent such market practice is not administratively feasible for ~~the~~ Administrative Agent, such other day as otherwise reasonably determined by ~~the~~ Administrative Agent).

**Real Estate Project** means the acquisition, development, and operation or resale of any real estate asset or group of related real estate assets (and directly related activities) by any Unrestricted Subsidiary.

**Recipient** means Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Restricted Company hereunder.

~~**Related Adjustment** means, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such LIBOR Successor Rate:~~

~~(A) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (x) is published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion or (y) solely with respect to Term SOFR, if not currently published, which was previously so recommended for Term SOFR and published on an information service acceptable to the Administrative Agent; or~~

~~(B) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto);~~

**Related Parties** means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, and advisors of such Person and of such Person's Affiliates.

**Relevant Governmental Body** means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

**Representatives** means representatives, officers, directors, employees, attorneys, and agents.

**Required Lenders** means Lenders holding more than (a) 50% of the Total Commitment, prior to the termination of the Total Commitment, or (b) 50% of the Principal Debt, after the termination of the Total Commitment (with the aggregate amount of each Revolver Lender's risk participation and funded participation in L/Cs ~~and Swing Line Loans~~ being deemed "held" by such Revolver Lender for purposes of this definition); *provided, that* the Commitment of, and the portion of the Principal Debt held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

**Required Revolver Lenders** means Revolver Lenders holding more than (a) 50% of the Revolver Commitment, prior to the termination of the Revolver Commitment, or (b) 50% of the Revolver Principal Debt, after the termination of the Revolver Commitment (with the aggregate amount of each Revolver Lender's risk participation and funded participation in L/Cs ~~and Swing Line Loans~~ being deemed "held" by such Revolver Lender for purposes of this definition); *provided, that* the Revolver Commitment of, and the portion of the Revolver Principal Debt held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolver Lenders.

**Required Term Loan Lenders** means at least two (2) Term Loan Lenders holding more than 50% of the Term Loan Principal Debt; *provided, that* the Term Loan Commitment of, and the portion of the Term Loan Principal Debt held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Term Loan Lenders.

**Rescindable Amount** has the meaning as defined in **Section 2.2(d)**.

**Resolution Authority** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**Responsible Officer** means (a) the Chairman, President, Chief Executive Officer, Chief Financial Officer or Executive Vice President and Chief Financial Officer, Executive Vice President, General Counsel and Secretary, or Senior Vice President, Controller and Chief Accounting Officer of Borrower (including any person holding any such position on an interim basis), (b) solely for purposes of the delivery of Loan Notices; or L/C Agreements ~~or Swing Line Loan Notices~~ pursuant to **Section 2**, any officer of Borrower so designated by any officer referenced in **clause (a)** above in a notice to Administrative Agent, and (c) solely for purposes of the delivery of any incumbency certificates, any Secretary or Assistant Secretary of the applicable Restricted Company.

**Restricted Companies** means VRI and all of VRI's Restricted Subsidiaries; and **Restricted Company** means any of the Restricted Companies.

**Restricted Subsidiaries** means (a) Gillett, (b) Borrower and (c) all of Borrower's Subsidiaries (*other than* Unrestricted Subsidiaries); and **Restricted Subsidiary** means any of the Restricted Subsidiaries.

**Revaluation Date** means (a) with respect to any L/C, each of the following: (i) each date of issuance, amendment and/or extension of a L/C denominated in the Alternative Currency, (ii) each date of any payment by the Australian L/C Issuer under any L/C denominated in the Alternative Currency, and (iii) such additional dates as Administrative Agent or the Australian L/C Issuer shall determine or the Required Revolver Lenders shall require, and (b) with respect to any Term Loan, each of the following: (i) each date of a borrowing of a Eurocurrency Term Reference Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Term Reference Rate Loan denominated in an Alternative Currency pursuant to **Section 2.2**, and (iii) such additional dates as ~~the~~ Administrative Agent shall determine or the Required Lenders shall require.

**Revolver Commitment** means, as to each Revolver Lender, its obligation to (a) make Revolver Loans to Borrower pursuant to **Section 2.1**, and (b) purchase participations in the L/C Exposure, ~~and (c) purchase participations in Swing Line Loans~~, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolver Lender's name on **Schedule 1** under the caption "*Revolver Commitment*" or opposite such caption in the Assignment and Assumption

pursuant to which such Revolver Lender becomes a party hereto, as applicable (which amount is subject to increase, reduction, or cancellation in accordance with the Loan Papers).

**Revolver Commitment Usage** means, at the time of any determination thereof, the *sum* of (a) the aggregate Outstanding Amount of all Revolver Loans, *plus, without duplication*, (b) the L/C Exposure.

**Revolver Facility** means the credit facility as described in and subject to the limitations set forth in **Section 2.1(a)** hereof, including the L/C Subfacility.

**Revolver Lenders** means, collectively, on any date of determination, Lenders having a Revolver Commitment under the Revolver Facility or that are owed Revolver Principal Debt, and **Revolver Lender** means any one of the Revolver Lenders.

**Revolver Loan** means any Loan made under the Revolver Facility, *other than a Swing Line Loan or* an L/C Borrowing. All Revolver Loans shall be denominated in Dollars.

**Revolver Note** means a promissory note in substantially the form of **Exhibit A-1**, and all renewals and extensions of all or any part thereof.

**Revolver Principal Debt** means, at any time, the aggregate unpaid principal balance of all Revolver Loans, together with the aggregate unpaid reimbursement obligations of Borrower in respect of drawings under any L/C (including, without limitation, any L/C Borrowing).

**Rights** means rights, remedies, powers, privileges, and benefits.

**S&P** means Standard & Poor's Ratings Group (a division of The McGraw Hill Companies, Inc.).

**Same Day Funds** means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by ~~the~~ Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

**Sanction** means any international economic sanction administered or enforced by a United States Governmental Authority (including, without limitation, OFAC), a Canadian Governmental Authority, an Australian Governmental Authority, the United Nations Security Council, the European Union ~~or~~, Her Majesty's Treasury (["HMT"](#)), [the Hong Kong Monetary Authority or other relevant sanctions authority](#).

~~**Sanctioned Person** means a Person named on the list of ["Specially Designated Nationals and Blocked Persons"](#) maintained by OFAC available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, or as otherwise published from time to time~~

[Scheduled Unavailability Date](#) has the meaning specified in [Section 4.3](#).

**Second Amendment Closing Date** means September 23, 2019.

**Section 10.9 Capital Lease Obligation** means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized on a balance sheet in accordance with GAAP.

**Section 10.9 Capital Stock** means (a) in the case of a corporation, corporate stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

**Section 10.9 Customary Recourse Exceptions** means, with respect to any Section 10.9 Non-Recourse Indebtedness of an Unrestricted Subsidiary, exclusions from the exculpation provisions with respect to such Section 10.9 Non-Recourse Indebtedness for the bankruptcy of such Unrestricted Subsidiary, fraud, misapplication of cash, environmental claims, waste, willful destruction, and other circumstances customarily excluded by institutional lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financings of real estate.

**Section 10.9 Guarantee** means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Section 10.9 Indebtedness.

**Section 10.9 Hedging Obligations** means, with respect to any Person, the obligations of such Person under (a) currency exchange or interest rate swap, cap or collar agreements and (b) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange or interest rates.

**Section 10.9 Indebtedness** means, with respect to any Person, without duplication, (a) any indebtedness of such Person, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or bankers' acceptances or representing Section 10.9 Capital Lease Obligations or the balance deferred and unpaid of the purchase price of any property (which purchase price is due more than one year after taking title to such property) or services or representing any Section 10.9 Hedging Obligations, except any such balance that constitutes an accrued expense or trade payable, if and to the extent any of the foregoing indebtedness (other than letters of credit and Section 10.9 Hedging Obligations) would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP; (b) all indebtedness of others secured by a Lien on any asset of such Person (whether or not such indebtedness is assumed by such Person the amount of such obligation, to the extent it is without recourse to such Person, being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured); (c) to the extent not otherwise included, the Section 10.9 Guarantee by such Person of any Section 10.9 Indebtedness of any other Person; *provided, however*, that (i) the amount outstanding at any time of any Section 10.9 Indebtedness issued with original issue discount is the face amount of such indebtedness less the remaining unamortized portion of the original issue discount of such Section 10.9 Indebtedness at such time as determined in conformity with GAAP; (ii) Section 10.9 Indebtedness shall not include any liability for federal, state, local or other taxes; and (iii) obligations of VRI or any Restricted Subsidiary with respect to Permitted Recourse Obligations shall not constitute Section 10.9 Indebtedness unless and until an event or circumstance occurs that triggers VRI's or a Restricted Subsidiary's direct payment liability or reimbursement obligation (as opposed to contingent or performance obligations) to the lender or other party to whom such Permitted Recourse Obligation is actually owed, in which case the amount of such direct payment liability to such lender or other party shall constitute Section 10.9 Indebtedness; and (d) with respect to any Restricted Subsidiary of VRI, Section 10.9 Preferred Stock of such Person (in an amount equal to the greater of (x) the sum of all

obligations of such Person with respect to redemption, repayment or repurchase thereof and (y) the book value of such Section 10.9 Preferred Stock as reflected on the most recent financial statements of such Person).

**Section 10.9 Net Income** means, with respect to any Person, the net income (or loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Section 10.9 Preferred Stock dividends, excluding, however, (a) any gain (or loss), together with any related provision for taxes on such gain (or loss), realized in connection with (i) any disposition of assets (including, without limitation, dispositions pursuant to Section 10.9 Sale and Leaseback Transactions) or (ii) the disposition of any securities by such Person or any of its Subsidiaries or the extinguishment of any Section 10.9 Indebtedness of such Person or any of its Subsidiaries and (b) any extraordinary or nonrecurring gain or income (or loss, expense or charge), together with any related provision for taxes on such extraordinary or nonrecurring gain or income (or loss, expense or charge).

**Section 10.9 Non-Recourse Indebtedness** means any Section 10.9 Indebtedness of an Unrestricted Subsidiary with respect to which the holder of such Section 10.9 Indebtedness (a) may not look to such Unrestricted Subsidiary directly for repayment, other than to the extent of any security therefor, or (b) may look to such Unrestricted Subsidiary directly for repayment (but not to any direct or indirect holder of the Section 10.9 Capital Stock of such Unrestricted Subsidiary, other than with respect to Permitted Recourse Obligations entered into by such direct or indirect holder).

**Section 10.9 Preferred Stock** of any Person means Section 10.9 Capital Stock of such Person of any class or classes (however designated) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Section 10.9 Capital Stock of any other class of such Person.

**Section 10.9 Sale and Leaseback Transaction** means an arrangement relating to property now owned or hereafter acquired whereby VRI or a Restricted Subsidiary transfers such property to a Person and VRI or a Restricted Subsidiary leases it from such Person.

**Secured Debt** means Debt of a Restricted Company that is secured by the Collateral on a *pari passu* basis.

**Securities Laws** means the Securities Act of 1933, the Securities Exchange Act of 1934, and the applicable accounting and auditing principles, rules, standards, and practices promulgated, approved, or incorporated by the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions, or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

**Security Documents** means, collectively, (a) each Pledge Agreement, each Confirmation of Pledge Agreement, any security agreement, mortgage, deed of trust, control agreement, or other agreement or document, together with all related financing statements and stock powers, in form and substance reasonably satisfactory to Administrative Agent and its legal counsel, executed and delivered by any Person in connection with this Agreement to create a Lien in favor of Lenders on any of its real or personal property, as amended, modified, supplemented, restated, ratified, or reaffirmed; and (b) with respect to each Bond L/C, the trust indenture entered into in connection with such Bond L/C, and such other agreements and documents delivered by the Issuer (as defined in the applicable Bond L/C) and the applicable Trustee, pursuant to which such Issuer's interest in the Trust Estate (as defined in the applicable trust indenture) and, upon payment in full of the applicable Bonds, such Trustee's interest in

the applicable Bond Documents, are assigned to the applicable L/C Issuer as security for payment of such Bonds.

**Service** means the U.S. Department of Agriculture Forest Service or any successor agency.

**Similar Business** means any business conducted by VRI or any of its Subsidiaries on the Closing Date or any other recreation, leisure, and/or hospitality business, including, without limitation, ski mountain resort operations or any business or activity that is reasonably similar thereto, a reasonable extension, development, or expansion thereof, or reasonably ancillary thereto.

**SOFR** ~~with respect to any Business Day~~ means the ~~secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark~~ Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator) ~~on the Federal Reserve Bank of New York's website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body.~~

**SOFR Adjustment** means 0.10% (10 basis points).

**SOFR Administrator** means the Federal Reserve Bank of New York, as the administrator of SOFR, or any successor administrator of SOFR designated by the Federal Reserve Bank of New York or other person acting as the SOFR Administrator at such time.

**Solvent** means, as to a Person, that (a) the aggregate fair market value of its assets exceeds its liabilities (whether contingent, subordinated, unmatured, unliquidated, or otherwise), (b) it has sufficient cash flow to enable it to pay its Debts as they mature, and (c) it does not have unreasonably small capital to conduct its businesses.

**Spot Rate** for a currency means the rate determined by ~~the~~ Administrative Agent or Australian L/C Issuer, as the case may be, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that ~~the~~ Administrative Agent or Australian L/C Issuer, as the case may be, may obtain such spot rate from another financial institution designated by ~~the~~ Administrative Agent or Australian L/C Issuer, as the case may be, if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that ~~the~~ Administrative Agent or Australian L/C Issuer, as the case may be, may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Term Loan or L/C denominated in the Alternative Currency.

**Subordinated Debt** means any unsecured indebtedness for borrowed money for which a Company is directly and primarily obligated, *so long as* such Debt (a) does not have any stated maturity before the latest maturity of any part of the Obligation, and (b) is subordinated, upon terms satisfactory to Administrative Agent, to the payment and collection of the Obligation.

**Subsidiary** means, with respect to any Person, any corporation, or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

**Successor Rate** has the meaning specified in [Section 4.3](#).

**Swap Obligations** means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of *Section 1a(47)* of the Commodity Exchange Act.

~~**Swing Line Borrowing** means a borrowing of a Swing Line Loan pursuant to *Section 2.4*.~~

~~**Swing Line Commitment** means, as to each Swing Line Lender, the commitment of such Swing Line Lender to provide Swing Line Loans in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Swing Line Lender’s name on *Schedule 1* under the caption “Swing Line Sublimit”.~~

~~**Swing Line Lenders** means, collectively, Bank of America and U.S. Bank National Association, in their respective capacities as providers of Swing Line Loans, and any additional Lender approved by Administrative Agent and Borrower that has agreed to act as a “Swing Line Lender”, and any successor swing line lender hereunder; and **Swing Line Lender** means any one of the Swing Line Lenders.~~

~~**Swing Line Loan** has the meaning set forth in *Section 2.4(a)*.~~

~~**Swing Line Loan Notice** means a notice of a Swing Line Borrowing pursuant to *Section 2.4(b)*, which, if in writing, is substantially in the form of *Exhibit C-2* or such other form as approved by Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by Administrative Agent).~~

~~**Swing Line Note** means a promissory note in substantially the form of *Exhibit A-2*, and all renewals and extensions of all or any part thereof.~~

~~**Swing Line Subfacility** means a subfacility under the Agreement (the portion of the Loans **attributable** to which may never exceed in the aggregate the Swing Line Sublimit) as described in, and subject to the limitations of, *Section 2.4* hereof.~~

~~**Swing Line Sublimit** means, on any date, an amount equal to the lesser of (a) \$75,000,000 and (b) the Revolver Commitment (as the same may be increased or reduced in accordance with the Loan Papers). The Swing Line Sublimit is part of, and not in addition to, the Revolver Commitment.~~

**Taxes** means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, or other charges imposed by any Governmental Authority, including any interest, additions to tax, or penalties applicable thereto.

**Temporary Cash Investments** means investments of the Restricted Companies permitted under *clauses (b) through (g), (p), and (q)* of *Section 10.8* hereof.

~~**Temporary Waiver Period** means (x) for purposes of the financial covenants contained in *Section 11*, the period of time beginning (and including) July 31, 2020, and ending on the earlier of (i) (and including) January 31, 2022, and (ii) the date on which the Borrower delivers a written notice to the Administrative Agent electing to terminate the Temporary Waiver Period (the “**Financial Covenants Temporary Waiver Period**”) and (y) for all other purposes, the period of time beginning (and including) July 31, 2020 and ending on (and excluding) the date the Administrative Agent receives the Companies’ Compliance Certificate for the Companies’ first fiscal quarter ending after the end of the Financial Covenants Temporary Waiver Period for which the Companies are in compliance with the financial covenants contained in *Section 11*.~~

~~**Term Hedged Tranche** means the portion of any Term Loans for which Borrower has entered into Financial Hedges for purposes of hedging its exposure to fluctuations in the Eurocurrency Rate, as set forth on **Schedule 1-A** as of the Third Amendment Closing Date, and as may be adjusted from time to time pursuant to **Section 10.21(b)**.~~

~~**Term Loan** means any Loan made under the Term Loan Facility, which shall for avoidance of doubt include both the Term Hedged Tranche and the Term Unhedged Tranche. All Term Loans shall be denominated in Dollars.~~

~~**Term Loan Borrowing** means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurocurrency Term Reference Rate Loans, having the same Interest Period made by each of the Term Loan Lenders pursuant to **Section 2.1(b)**.~~

~~**Term Loan Commitment** means, as to each Term Loan Lender, its obligation to make Term Loans to the Borrower pursuant to **Section 2.1(b)** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Loan Lender's name on **Schedule 1** under the caption "**Term Loan Commitment**" or opposite such caption in the Assignment and Assumption pursuant to which such Term Loan Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.~~

~~**Term Loan Facility** means the credit facility as described in and subject to the limitations set forth in **Section 2.1(b)** hereof.~~

~~**Term Loan Lenders** means, collectively, on any date of determination, Lenders having a Term Loan Commitment under the Term Loan Facility or that are owed any Term Loan Principal Debt, and **Term Loan Lender** means any one of the Term Loan Lenders.~~

~~**Term Loan Note** means a promissory note substantially in the form of **Exhibit A-3**, and all renewals and extensions of all or any part thereof.~~

~~**Term Loan Principal Debt** means, at any time, the aggregate unpaid principal balance of all Loans under the Term Loan Facility.~~

~~**Term SOFR** means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of "Interest Period" and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion. **Reference Rate** means:~~

- ~~a. for any Interest Period with respect to a Term SOFR Rate Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days ("**Term SOFR**") prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. Eastern Time on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment; and~~
- ~~b. for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day;~~



provided, that to the extent a comparable or successor rate is approved by Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by Administrative Agent and disclosed to Borrower; and provided, further, if the Term Reference Rate shall be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

Term Reference Rate Loan means a Loan bearing interest at the sum of Term Reference Rate plus the Applicable Margin. All Loans denominated in an Alternative Currency must be Term Reference Rate Loans.

Term SOFR has the meaning specified in the definition of “Term Reference Rate.”

~~Term Unhedged Tranche~~ means the portion of any Term Loans for which Borrower has not entered into Financial Hedges for purposes of hedging its exposure to fluctuations in the Eurocurrency Rate, as set forth on **Schedule 1-A** as of the Third Amendment Closing Date, and as may be adjusted from time to time pursuant to **Section 10.21(b)**

Term SOFR Rate Loan means a Loan made hereunder with respect to which the interest rate is calculated by reference to clause (a) (i) of the definition of “Term Reference Rate.”

Term SOFR Replacement Date has the meaning specified in **Section 4.3**.

Term SOFR Screen Rate means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time).

**Termination Date** means (a) for purposes of the Revolver Facility, the earlier of (i) September 23, ~~2024~~2026; and (ii) the effective date upon which Revolver Lenders’ Revolver Commitments are otherwise canceled or terminated, and (b) for purposes of the Term Loan Facility, (i) the earlier of September 23, ~~2024~~2026, and (ii) the effective date of any other termination, cancellation or acceleration of the Term Loan Facility.

**Third Amendment Closing Date** means April 28, 2020.

**Threshold Amount** means \$25,000,000.

**Total Assets** means, as of any date of determination for the Restricted Companies on a consolidated basis, the book value of all assets of the Restricted Companies (as determined in accordance with GAAP).

**Total Commitment** means, at any time, the sum of all Commitments in effect for all Lenders in respect of the Revolver Facility and the Term Loan Facility (as reduced or canceled under this Agreement).

**Total Leverage Ratio** means, as of any date of determination, the ratio of (a) Funded Debt on the last day of the fiscal quarter immediately preceding such date, to (b) Adjusted EBITDA for the four fiscal quarters ending on such last day.

**Trustee** means any Trustee designated as the beneficiary of a Bond L/C.

**Type** means any type of Loan determined with respect to the applicable interest option.

**UK Financial Institution** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**UK Resolution Authority** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**Unreimbursed Amount** has the meaning set forth in **Section 2.3(c)(i)**.

**Unrestricted Cash** means, on any date of determination, the aggregate amount of all cash and Temporary Cash Investments of the Restricted Companies not subject to any Lien or restriction (except for Liens of depository institutions securing payment of customary service charges, transfer fees, account maintenance fees, and charges for returned or dishonored items, and restrictions with respect to compensating balances).

**Unrestricted Subsidiary** means any existing Subsidiary or newly-formed Subsidiary created by Borrower pursuant to **Section 9.10** (which may be a partnership, joint venture, corporation, limited liability company, or other entity) (a) which does not own any Forest Service Permit, the stock of any Restricted Company, or any Critical Assets (except as otherwise permitted under this Agreement), (b) which has (and whose other partners, joint venturers, members, or shareholders have) no Debt or other material obligation which is recourse to any Restricted Company or to the assets of any Restricted Company (*other than* (i) pursuant to Permitted Recourse Obligations and (ii) as otherwise permitted in **clause (g)** of the definition of “Permitted Debt”), and (c) which is specifically identified in this definition or has been designated by Borrower as an Unrestricted Subsidiary by notice to Administrative Agent under **Section 9.11** hereof. The Unrestricted Subsidiaries are reflected on **Schedule 8.2** hereto (as the same may be updated from time to time).

**U.S.** means the United States of America.

**U.S. Government Securities Business Day** means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

**U.S. Person** means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

**U.S. Tax Compliance Certificate** has the meaning specified in **Section 4.1(e)(ii)(B)(III)**.

**Vail Bonds** means the Eagle County, Colorado Sports Facilities Revenue Refunding Bonds Series 1998, in the original principal amount of \$41,200,000, and any refinancing thereof to the extent the structure of any such refinancing is substantially similar to the structure of the Debt refinanced thereby, and the principal amount refinanced does not exceed the original principal amount of such Debt.

**Vail Summit Resorts** means Vail Summit Resorts, Inc. (f/k/a “*Ralston Resorts, Inc.*”), a Colorado corporation and a Wholly Owned Subsidiary of Borrower.

**VHF B.V.** means Vail Holdings Finance, B.V., a besloten vennootschap existing under the Laws of The Netherlands.

**VRI** means Vail Resorts, Inc., a Delaware corporation and the direct owner of Borrower.

**Water Rights** means all water rights and conditional water rights that are appurtenant to real property owned by the Companies or that have been used or are intended for use in connection with the conduct of the business of the Companies, including but not limited to (a) ditch, well, pipeline, spring, and reservoir rights, whether or not adjudicated or evidenced by any well or other permit, (b) all rights with respect to groundwater underlying any real property owned by the Companies, (c) any permit to construct any water well, water from which is intended to be used in connection with such real property, and (d) all right, title, and interest of the Companies under any decreed or pending plan of augmentation or water exchange plan.

**WBHI** means Whistler Blackcomb Holdings Inc., a corporation existing under the Laws of the Province of British Columbia.

**Whistler Acquisition** means the acquisition of WBHI by VRI pursuant to the Whistler Acquisition Agreement.

**Whistler Acquisition Agreement** means the Arrangement Agreement, dated as of August 5, 2016 by and among WBHI, VRI and Exchangeco.

**Whistler Acquisition Subsidiaries** means, collectively, VHF B.V. and any direct or indirect Subsidiary of ~~the~~ Borrower not organized under the Laws of the United States that owns a direct or indirect Equity Interest in WBHI.

**Wholly Owned** when used in connection with any Subsidiary means any corporation, partnership, limited liability company, or other entity of which all of the equity securities or other ownership interests are owned, directly or indirectly, by VRI, Borrower, or one or more of their Wholly Owned Restricted Subsidiaries.

**Write-Down and Conversion Powers** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

#### 1.2 Number and Gender of Words.

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words “*herein*,” “*hereto*,” “*hereof*,” and “*hereunder*” and words of similar import when used in any Loan Paper shall refer to such Loan Paper as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit, and Schedule references are to the Loan Papers in which such reference appears.

(iii) The term “*including*” is by way of example and not limitation.

(iv) The terms “*documents*” and “*papers*” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements, and other writings, however evidenced, whether in physical or electronic form.

(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*.”

(d) Section headings herein and in the other Loan Papers are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Papers.

### 1.3 Accounting Principles.

(a) Under the Loan Papers and any documents delivered thereunder, unless otherwise stated, (i) all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited Financial Statements delivered pursuant to **Section 9.1**, (ii) all accounting principles applied in a current period must be comparable in all material respects to those applied during the preceding comparable period, and (iii) while VRI has any consolidated Restricted Subsidiaries, all accounting and financial terms and compliance with financial covenants must be on a consolidating and consolidated basis, as applicable. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Debt of the Companies shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Paper, and either Borrower or Required Lenders shall so request, Administrative Agent, Lenders, and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Required Lenders); *provided that*, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein, and (ii) Borrower shall provide to Administrative Agent and Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) All references herein to consolidated financial statements of VRI and its Subsidiaries or its Restricted Subsidiaries, or to the determination of “*Adjusted EBITDA*” or “*Funded Debt*” for VRI and its Subsidiaries or its Restricted Subsidiaries on a consolidated basis, or any similar reference, shall, in each case, be deemed to include each variable interest entity that VRI is required to consolidate pursuant to FASB Interpretation No. 46 – Consolidation of Variable Interest Entities: an interpretation of ARB No. 51 (January 2003) or is otherwise required to consolidate in accordance with GAAP; *provided, that* in determining such amounts, (i) the Funded Debt and Adjusted EBITDA of the Existing Housing Districts in respect of the Existing Housing Bonds shall be excluded, and (ii) the Funded Debt and Adjusted EBITDA of the Existing Metro Districts in respect of any Bonds issued prior to January 28, 2005 (the date of the Existing Agreement) shall be excluded.

(d) Any non-cash reduction in Net Income as a result of an increase in the liability of participating rent under the Canyons-Park City Lease will be treated as a Non-Cash Operating Charge for purposes of the calculation of “*EBITDA*” and shall not be considered interest expense for any purpose under this Agreement.

#### 1.4 Rounding.

Any financial ratios required to be maintained by the Companies pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

#### 1.5 References to Agreements and Laws.

Unless otherwise expressly provided herein, (a) references to organization documents, agreements (including the Loan Papers), and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements, and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements, and other modifications are not prohibited by any Loan Papers, and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting such Law.

#### 1.6 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Central time (daylight or standard, as applicable).

#### 1.7 L/C Amounts.

Unless otherwise specified, all references herein to the amount of an L/C at any time shall be deemed to mean the Dollar Equivalent of the stated amount of such L/C in effect at such time; *provided, however*, that with respect to any L/C that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such L/C shall be deemed to be the Dollar Equivalent of the maximum stated amount of such L/C after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

#### 1.8 Whistler Acquisition Subsidiaries and Peak Acquisition Subsidiaries.

Notwithstanding any requirement to the contrary in this Agreement, the Whistler Acquisition Subsidiaries and the Peak Resorts Acquisition Subsidiaries shall be deemed “*Unrestricted Subsidiaries*”; provided that the Whistler Acquisition Subsidiaries and the Peak Resorts Acquisition Subsidiaries shall be treated as “*Restricted Subsidiaries*” for the purposes of the definition of Adjusted EBITDA for all purposes under this Agreement and Net Funded Debt and interest on Funded Debt attributable to the Whistler Acquisition Subsidiaries and the Peak Resorts Acquisition Subsidiaries shall be included in the calculation of the financial covenants set forth in **Sections 11.1** and **11.2** (provided, in each case, only Borrower’s equity ownership percentage of Adjusted EBITDA, Net Funded Debt and interest on Funded Debt attributable to the Whistler Acquisition Subsidiaries shall be included in such calculation). Borrower shall pledge 65% of the Equity Interest of VHF B.V. and 100% of the Equity Interests of Peak Resorts to Administrative Agent, for the benefit of Lenders.

#### 1.9 Rates; Currency Equivalents.

(a) The Australian L/C Issuer shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of L/C Credit Extensions and Outstanding Amounts denominated in the Alternative Currency. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Borrower hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Papers shall be such Dollar Equivalent amount as so determined by the Australian L/C Issuer.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of an L/C, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such L/C is denominated in the Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of the Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Australian L/C Issuer.

#### 1.10 Interest Rates.

Administrative Agent does not warrant, nor accept responsibility, nor shall Administrative Agent have any liability with respect to the administration, submission or any other matter related to ~~the rates in the definition of “Eurocurrency Rate”~~any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any ~~of~~ such rate (including, without limitation, any LIBOR Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any ~~LIBOR Successor Rate~~ Conforming Changes. Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to Borrower. Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at

[law or in equity\), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate \(or component thereof\) provided by any such information source or service.](#)

## **SECTION 2 COMMITMENT.**

### **2.1 Credit Facility.**

(a) Subject to the provisions in the Loan Papers, each Revolver Lender hereby severally and not jointly agrees to lend to Borrower its Commitment Percentage of one or more Revolver Loans in an aggregate principal amount outstanding at any time up to such Revolver Lender's Revolver Commitment; *provided that*: (i) each Revolver Loan must occur on a Business Day and no later than the Business Day immediately preceding the Termination Date for the Revolver Facility; (ii) each Revolver Loan must be in an amount not less than (A) \$500,000 or a greater integral multiple of \$100,000 (if a [BaseDaily SOFR](#) Rate Loan), or (B) \$1,000,000 or a greater integral multiple of \$100,000 (if a [EurocurrencyTerm Reference](#) Rate Loan); and (iii) on any date of determination, after giving effect to the requested Revolver Loan, (A) the Revolver Commitment Usage may not exceed the Revolver Commitment then in effect, and (B) the aggregate Outstanding Amount of the Revolver Loans of any Revolver Lender, *plus* such Revolver Lender's Commitment Percentage of the Outstanding Amount of all L/C Exposure, ~~plus such Revolver Lender's Commitment Percentage of the Outstanding Amount of all Swing Line Loans~~ shall not exceed such Revolver Lender's Revolver Commitment. Revolver Loans may be repaid or reborrowed from time to time in accordance with the terms and provisions of the Loan Papers.

(b) Term Loan Lenders made Term Loans to Borrower on May 1, 2015, October 14, 2016, and during the Delayed Draw Availability Period. Subject to and in reliance upon the terms, conditions, representations, and warranties in the Loan Papers, each Term Loan Lender severally, but not jointly, made one or more Term Loans in Dollars to Borrower on the Second Amendment Closing Date, in an aggregate amount together with the Term Loans made on May 1, 2015, October 14, 2016, and during the Delayed Draw Availability Period not to exceed such Term Loan Lender's Commitment Percentage of the Term Loan Facility. Each Term Loan Borrowing shall consist of Term Loans made simultaneously by the Term Loan Lenders in accordance with their respective Commitment Percentage of the Term Loan Facility. Amounts borrowed under this **Section 2.1(b)** and repaid or prepaid may not be reborrowed.

### **2.2 Loan Procedure.**

(a) Each borrowing of Revolver Loans or Term Loans hereunder, conversion of Revolver Loans or Term Loans from one Type to the other, and continuation of Revolver Loans or Term Loans that are [EurocurrencyTerm Reference](#) Rate Loans shall be made upon Borrower's irrevocable notice to Administrative Agent, which may be given by (A) telephone or (B) a Loan Notice; provided that any telephone notice must be confirmed immediately by delivery to Administrative Agent of a Loan Notice. Each Loan Notice must be received by Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Revolver Loans or Term Loans of, conversion to, or continuation of Revolver Loans or Term Loans that are [EurocurrencyTerm Reference](#) Rate Loans or of any conversion of Revolver Loans or Term Loans that are ~~[EurocurrencyTerm Reference](#)~~ Rate Loans to [BaseDaily SOFR](#) Rate Loans, and (ii) on the requested date of any [BaseDaily SOFR](#) Rate Loan. Each borrowing of,

conversion to, or continuation of Revolver Loans or Term Loans that are Eurocurrency Term Reference Rate Loans shall be in amounts set forth in **Section 2.1**. Each Loan Notice shall specify (i) whether Borrower is requesting a Revolver Loan or a Term Loan, (ii) whether Borrower is requesting a Loan, a conversion of Loans from one Type to the other, or a continuation of Loans as Eurocurrency either Term Reference Rate Loans or Daily SOFR Rate Loans, (iii) the requested date of the borrowing (such date, a “**Loan Date**”), conversion, or continuation, as the case may be (which shall be a Business Day), (iv) the principal amount of Loans to be borrowed, converted, or continued, (v) the Type of Loans to be borrowed or to which existing Revolver Loans or Term Loans are to be converted, and (vi) if applicable, the duration of the Interest Period with respect thereto. If Borrower fails to specify a Type of Loan in a Loan Notice or if Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Revolver Loans or Term Loans shall be made as, or converted to, BaseDaily SOFR Rate Loans; *provided, however*, that in the case of a failure to timely request a continuation of Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Term Reference Rate Loans in their original currency with an Interest Period of one month. Any such automatic conversion to BaseDaily SOFR Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Revolver Loans that are Eurocurrency Term Reference Rate Loans. If Borrower requests a borrowing of, conversion to, or continuation of Loans that are Eurocurrency Term Reference Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Administrative Agent shall promptly notify each Lender of its receipt of any Loan Notice and its contents.

(b) Each Lender shall remit its Commitment Percentage of each requested Revolver Loan or Term Loan to Administrative Agent’s principal office in Dallas, Texas, in funds that are available for immediate use by Administrative Agent by 12:00 noon on the applicable Loan Date, in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Loan Notice. Subject to receipt of such funds, Administrative Agent shall (unless to its actual knowledge any of the applicable conditions precedent have not been satisfied by Borrower or waived by Required Lenders, Required Revolver Lenders or Required Term Loan Lenders, as applicable) make such funds available to Borrower as directed in the Loan Notice; *provided however*, that if on the date of such Loan Notice with respect to a Revolver Loan, there are L/C Borrowings outstanding, then the proceeds of such Revolver Loans shall be provided, *first*, to the payment in full of any such L/C Borrowing, and *then*, to Borrower as provided herein.

(c) Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of any Loan that such Lender will not make available to Administrative Agent such Lender’s share of such Loan (or, in the case of any BaseDaily SOFR Rate Loan, prior to 12:00 noon on the date of such BaseDaily SOFR Rate Loan), Administrative Agent may assume that such Lender has made such share available on such date in accordance with **Section 2.2(b)** and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Loan available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate



determined by Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing, or similar fees customarily charged by Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by Borrower, the interest rate applicable to ~~Base~~Daily SOFR Rate Loans. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Revolver Loan or Term Loan to Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Loan. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent. A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this **subsection (c)** shall be conclusive, absent manifest error.

(d) Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of Lenders or any L/C Issuer hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to Lenders or the applicable L/C Issuer, as the case may be, the amount due. ~~In such event, if~~With respect to any payment that Administrative Agent makes for the account of the Lenders or any L/C Issuer hereunder as to which Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) Borrower has not in fact made such payment; (2) Administrative Agent has made a payment in excess of the amount so paid by Borrower (whether or not then owed); or (3) Administrative agent has for any reason otherwise erroneously made such payment; then each Lender or ~~the applicable~~such L/C Issuer, as the case may be, severally agrees to repay to Administrative Agent forthwith on demand the ~~amount~~Rescindable Amount so distributed to such Lender or ~~the applicable~~such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this **subsection (d)** shall be conclusive, absent manifest error.

(e) The obligations of Lenders hereunder to make Revolver Loans and Term Loans, to fund participations in L/Cs ~~and Swing Line Loans~~, and to make payments pursuant to **Section 15.4(c)** are several and not joint. The failure of any Lender to make any Loan, to fund any such participation, or to make any payment under **Section 15.4(c)** on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation, or to make its payment under **Section 15.4(c)**.

(f) Without limitation of any other conditions herein, a Loan or continuation of or conversion to Term SOFR Rate Loans shall not be permitted if:

(i) an Event of Default or a Default has occurred and is continuing and has not been waived by the Required Lenders or all Lenders, as applicable;

(ii) after giving effect to the requested Loan or continuation of or conversion to Term SOFR Rate Loans under the Revolver Facility or Term Loan Facility, as applicable, the sum of all Loans under such facility would exceed the Commitments under the such facility;

(iii) after giving effect to all Loans, no more than ten (10) Term Reference Rate Interest Periods may be in effect at one time;

(iv) the amount of Term SOFR Rate Loans requested in the request for Borrowing or continuation of or conversion to Term SOFR Rate Loans is not in a principal amount of at least \$1,000,000 or a whole multiple of \$100,000 in excess thereof;

(v) the requested interest period does not conform to the definition of Interest Period herein; or

(vi) any of the circumstances referred to in **Section 4.3** hereof shall apply with respect to the requested Loan or continuation of or conversion to Term SOFR Rate Loans.

(g) Borrower may not request an advance of, or conversion to, Base Rate Loans unless Daily SOFR Rate Loans and Term SOFR Rate Loans are unavailable, as further provided herein.

(h) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by Borrower, Administrative Agent, and such Lender.

(i) With respect to Daily Simple SOFR and Term SOFR, Administrative 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; provided that, with respect to any such amendment effected, Administrative Agent shall post each such amendment implementing such Conforming Changes to Borrower and the Lenders reasonably promptly after such amendment becomes effective.

### 2.3 L/C Subfacility.

(a) ***The L/C Commitment.***

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the other Revolver Lenders set forth in this **Section 2.3**, (1) from time to time on any Business Day during the period from the Closing Date until the L/C Expiration Date, to issue L/Cs in Dollars or with respect to the Australian L/C Issuer, the Alternative Currency, for the account of Borrower or its Subsidiaries in an aggregate amount not to exceed such L/C Issuer's L/C Commitment,

and to amend or renew L/Cs previously issued by it, in accordance with **subsection (b)** below, and (2) to honor sight drafts under the L/Cs; and (B) Revolver Lenders severally agree to participate in L/Cs issued for the account of Borrower; *provided that* no L/C Issuer shall be obligated to make any L/C Credit Extension with respect to any L/C, and no Revolver Lender shall be obligated to participate in any L/C, if as of the date of such L/C Credit Extension (after giving effect to any proposed L/C Credit Extension on such date), (x) the Revolver Commitment Usage would exceed the Revolver Commitment, (y) the aggregate Outstanding Amount of the Revolver Loans of such Revolving Lender, *plus* such Revolver Lender's Commitment Percentage of the Outstanding Amount of all L/C Exposure, ~~plus such Revolving Lender's Commitment Percentage of the Outstanding Amounts of all Swing Line Loans~~ would exceed such Revolver Lender's Revolver Commitment, or (z) the Outstanding Amount of the L/C Exposure would exceed the L/C Sublimit. Each request by Borrower for the issuance or amendment of an L/C shall be deemed to be a representation by Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrower's ability to obtain L/Cs shall be fully revolving; accordingly Borrower may, during the foregoing period, obtain L/Cs to replace L/Cs that have expired or that have been drawn upon and reimbursed. All Existing L/Cs shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuers shall not issue any L/C if:

(A) subject to **Section 2.3(b)(iii)**, the expiry date of such requested L/C would occur more than twelve months after the date of issuance or last renewal, unless Required Revolver Lenders have approved such expiry date or unless the requested L/C is a Bond L/C, in which case the Bond L/C will expire in accordance with the terms set forth in the applicable Bond L/C as approved by the applicable L/C Issuer and Administrative Agent in accordance with **Section 2.3(i)**; or

(B) the expiry date of the requested L/C would occur after the L/C Expiration Date, unless (x) all the Revolver Lenders and the applicable L/C Issuer have approved such expiry date or (y) such L/C is cash collateralized on terms and pursuant to arrangements satisfactory to the applicable L/C Issuer.

(iii) The L/C Issuers shall not be under any obligation to issue any L/C if:

(A) any order, judgment, or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the applicable L/C Issuer from issuing such L/C, or any Law applicable to the applicable L/C Issuer or any request or directive (whether or not having the force of Law) from any Governmental Authority with jurisdiction over the applicable L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such L/C in particular or shall impose upon the applicable L/C Issuer with respect to such L/C any restriction, reserve, or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the applicable L/C Issuer any

unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such L/C would violate one or more policies of the applicable L/C Issuer applicable to letters of credit generally;

(C) such L/C is to be denominated in a currency other than Dollars (or the Alternative Currency with respect to L/Cs issued by the Australian L/C Issuer);

(D) any Revolver Lender is at that time a Defaulting Lender, unless the applicable L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with Borrower or such Revolver Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to **Section 3.15(a)(iv)**) with respect to the Defaulting Lender arising from either the L/C then proposed to be issued or that L/C and all other L/C Exposure as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(E) the Australian L/C Issuer does not as of the issuance date of the requested L/C issue L/Cs in the Alternative Currency.

(iii) No L/C Issuer shall be under any obligation to amend any L/C if (A) such L/C Issuer would have no obligation at such time to issue such L/C in its amended form under the terms hereof, or (B) the beneficiary of such L/C does not accept the proposed amendment to such L/C.

(iv) No L/C Issuer shall amend any L/C if such L/C Issuer would not be permitted at such time to issue the L/C in its amended form under the terms hereof.

(v) Each L/C Issuer shall act on behalf of the Revolver Lenders with respect to any L/C issued by it and the documents associated therewith, and such L/C Issuer shall have all of the benefits and immunities (A) provided to Administrative Agent in **Section 14** with respect to any acts taken or omissions suffered by such L/C Issuer in connection with each L/C issued by it or proposed to be issued by it and L/C Agreements pertaining to such L/C as fully as if the term "Administrative Agent" as used in **Section 14** included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to such L/C Issuer.

(b) ***Procedures for Issuance and Amendment of Letters of Credit: Auto-Extension Letters of Credit.***

(i) Each L/C shall be issued or amended, as the case may be, upon the request of Borrower delivered to the applicable L/C Issuer (with a copy to Administrative Agent) in the form of an L/C Agreement, appropriately completed and signed by a Responsible Officer of Borrower. Such L/C Agreement may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the applicable L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such L/C Agreement must be received by the applicable L/

C Issuer and Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the applicable L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of an L/C, such L/C Agreement shall specify in form and detail satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested L/C (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) the purpose and nature of the requested L/C and such other matters as the applicable L/C Issuer (or, in the case of the Bond L/Cs, the applicable L/C Issuer or Administrative Agent) may require. In the case of a request for an amendment of any outstanding L/C, such L/C Agreement shall specify in form and detail satisfactory to the applicable L/C Issuer (A) the L/C to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the applicable L/C Issuer (or, in the case of the Bond L/Cs, the applicable L/C Issuer or Administrative Agent) may require. Additionally, Borrower shall furnish to the applicable L/C Issuer and Administrative Agent such other documents and information pertaining to such requested L/C issuance or amendment, including any Issuer Documents, as such L/C Issuer or Administrative Agent may require.

(ii) Promptly after receipt of any L/C Agreement, the applicable L/C Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such L/C Agreement from Borrower and, if not, such L/C Issuer will provide Administrative Agent with a copy thereof. Unless the applicable L/C Issuer has received written notice from any Revolver Lender, Administrative Agent or Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable L/C, that one or more applicable conditions contained in **Article VII** shall not be satisfied, then, subject to the terms and conditions hereof, such L/C Issuer shall, on the requested date, issue an L/C for the account of Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with such L/C Issuer's usual and customary business practices. Immediately upon the issuance of each L/C, each Revolver Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such L/C in an amount equal to the product of such Revolver Lender's Commitment Percentage times the amount of such L/C.

(iii) If Borrower so requests in any applicable L/C Agreement, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue an L/C that has automatic extension provisions (each, an "**Auto-Extension L/C**"); *provided that* any such Auto-Extension L/C must permit the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such L/C) by giving prior notice to the beneficiary thereof not later than a day (the "**Nonextension Notice Date**") in each such twelve-month period to be agreed upon at the time such L/C is issued. Unless otherwise directed by the applicable L/C Issuer, Borrower shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension L/C has been issued, Revolver Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the

extension of such L/C at any time to an expiry date not later than the L/C Expiration Date; *provided, however*, that the applicable L/C Issuer shall not permit any such extension if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such L/C in its revised form (as extended) under the terms hereof (by reason of the provisions of **Section 2.3(a)(ii)**, **Section 2.3(a)(iii)** or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Nonextension Notice Date (1) from Administrative Agent that Required Revolver Lenders have elected not to permit such extension or (2) from Administrative Agent, any Revolver Lender, or Borrower that one or more of the applicable conditions specified in **Section 7.2** is not then satisfied, and in each such case directing the applicable L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any L/C or any amendment to an L/C to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to Borrower and Administrative Agent a true and complete copy of such L/C or amendment.

**(c) Drawings and Reimbursements; Funding of Participations.**

(i) Upon receipt from the beneficiary of any L/C of any notice of a drawing under such L/C, the applicable L/C Issuer shall notify Borrower and Administrative Agent thereof. In the case of an L/C denominated in the Alternative Currency, Borrower shall reimburse the Australian L/C Issuer in the Alternative Currency, unless (A) the Australian L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, Borrower shall have notified the Australian L/C Issuer promptly following receipt of the notice of drawing that Borrower will reimburse the Australian L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under an L/C denominated in the Alternative Currency, the Australian L/C Issuer shall notify Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the date of any payment by the applicable L/C Issuer under an L/C to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the Australian L/C Issuer under an L/C to be reimbursed in the Alternative Currency (each such date, an “**Honor Date**”), Borrower shall reimburse such L/C Issuer through Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. In the event that (A) a drawing denominated in the Alternative Currency is to be reimbursed in Dollars pursuant to the second sentence in this **Section 2.3(c)(i)** and (B) the Dollar amount paid by Borrower, whether on or after the Honor Date, shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, Borrower agrees, as a separate and independent obligation, to indemnify the Australian L/C Issuer for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing. If Borrower fails to so reimburse such L/C Issuer by such time, Administrative Agent shall promptly notify each Revolver Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of an L/C denominated in the Alternative Currency) (the “**Unreimbursed Amount**”), and the amount of such Revolver Lender’s Commitment Percentage thereof. In such event, Borrower shall be deemed to have requested a

**BaseDaily SOFR** Rate Loan hereunder to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in **Section 2.1** for the principal amount of **BaseDaily SOFR** Rate Loans, but subject to the amount of the unutilized portion of the Revolver Commitment and the conditions set forth in **Section 7.2** (other than the delivery of a Loan Notice). Any notice given by any L/C Issuer or Administrative Agent pursuant to this **Section 2.3(c)(i)** may be given by telephone if immediately confirmed in writing; *provided that* the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolver Lender (including any Revolver Lender acting as an L/C Issuer) shall upon any notice pursuant to **Section 2.3(c)(i)** make funds available (and Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable L/C Issuer in Dollars at Administrative Agent's Office in an amount equal to its Commitment Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by Administrative Agent; whereupon, subject to the provisions of **Section 2.3(c)(iii)**, each Revolver Lender that so makes funds available shall be deemed to have made a **BaseDaily SOFR** Rate Loan hereunder to Borrower in such amount. Administrative Agent shall remit the funds so received to the applicable L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolver Loan because the conditions set forth in **Section 7.2** cannot be satisfied or for any other reason, Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolver Lender's payment to Administrative Agent for the account of the applicable L/C Issuer pursuant to **Section 2.3(c)(ii)** shall be deemed payment in respect of its participation in such L/C Borrowing in satisfaction of its participation obligation under this **Section 2.3**.

(iv) Until each Revolver Lender funds its portion of a Revolver Loan or participation in an L/C Borrowing pursuant to this **Section 2.3(c)** to reimburse the applicable L/C Issuer for any amount drawn under any L/C, interest in respect of such Revolver Lender's Commitment Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Revolver Lender's obligation to reimburse the L/C Issuers for amounts drawn under L/Cs (whether by making a Revolver Loans or funding its participation in an L/C Borrowing), as contemplated by this **Section 2.3(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense, or other right which such Revolver Lender may have against the applicable L/C Issuer, Borrower, or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Potential Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolver Lender's obligation to make Revolver Loans pursuant to this **Section 2.3(c)** is subject to the conditions set forth in **Section 7.2** (other than delivery by Borrower of a Loan Notice). No funding of a participation in an L/C Borrowing shall relieve or otherwise impair the obligation of

Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under any L/C, together with interest as provided herein.

(vi) If any Revolver Lender fails to make available to Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Revolver Lender pursuant to the foregoing provisions of this **Section 2.3(c)** by the time specified in **Section 2.3(c)(ii)**, then, without limiting the other provisions of this Agreement, the applicable L/C Issuer shall be entitled to recover from such Revolver Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the applicable L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing, or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Revolver Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolver Lender's participation in the L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Revolver Lender (through Administrative Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

(d) **Repayment of Participations.**

(i) At any time after an L/C Issuer has made a payment under any L/C and has received from any Revolver Lender such Revolver Lender's funding of its participation in the related L/C Borrowing in accordance with **Section 2.3(c)**, if Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Revolver Lender its Commitment Percentage thereof in Dollars (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolver Lender's participation in the L/C Borrowing was outstanding) in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of any L/C Issuer pursuant to **Section 2.3(c)(i)** is required to be returned under any of the circumstances described in **Section 15.12** (including pursuant to any settlement entered into by the applicable L/C Issuer in its discretion), each Revolver Lender shall pay to Administrative Agent for the account of the applicable L/C Issuer its Commitment Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolver Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Revolver Lenders under this **clause (d)** shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of Borrower to reimburse the applicable L/C Issuer for each drawing under each L/C and to repay each L/C Borrowing shall be absolute, unconditional, and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:



(i) any lack of validity or enforceability of such L/C, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense, or other right that Borrower may have at any time against any beneficiary or any transferee of such L/C (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such L/C or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate, or other document presented under such L/C proving to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such L/C;

(iv) waiver by any L/C Issuer of any requirement that exists for such L/C Issuer's protection and not the protection of Borrower or any waiver by such L/C Issuer which does not in fact materially prejudice Borrower;

(v) honor of a demand for payment presented electronically even if such L/C requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such L/C if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the applicable L/C Issuer under such L/C against presentation of a draft or certificate that does not strictly comply with the terms of such L/C; or any payment made by the applicable L/C Issuer under such L/C to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver, or other representative of or successor to any beneficiary or any transferee of such L/C, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower; or

(ix) any adverse change in the relevant exchange rates or in the availability of the Alternative Currency to Borrower or any Subsidiary or in the relevant currency markets generally.

Borrower shall promptly examine a copy of each L/C and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify the applicable L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against the applicable L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuers** Each Revolver Lender and Borrower agree that, in paying any drawing under an L/C, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates, and documents expressly required by the L/C) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, any Related Party of Administrative Agent, or any of the respective correspondents, participants, or assignees of the L/C Issuers shall be liable to any Revolver Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of Revolver Lenders, Required Revolver Lenders, Required Term Loan Lenders or Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity, or enforceability of any document or instrument related to any L/C or L/C Agreement. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any L/C; *provided, however*, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under any other agreement. None of the L/C Issuers, any Related Party of Administrative Agent, or any of the respective correspondents, participants, or assignees of any L/C Issuer shall be liable or responsible for any of the matters described in **clauses (i) through (v) of Section 2.3(e)**; *provided, however*, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against an L/C Issuer, and an L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any L/C after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of an L/C. In furtherance and not in limitation of the foregoing, an L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and an L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign an L/C or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Each L/C Issuer may send an L/C or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) **Applicability of ISP and UCP.** Unless otherwise expressly agreed by the applicable L/C Issuer and Borrower when an L/C is issued (including any such agreement applicable to an Existing L/C), (i) the rules of the ISP shall apply to each standby L/C and each Bond L/C, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits ("**UCP**"), as most recently published by the International Chamber of Commerce at the time of issuance, shall apply to each commercial L/C. Notwithstanding the foregoing, each L/C Issuer shall not be responsible to Borrower for, and such L/C Issuer's rights and remedies against Borrower shall not be impaired by, any action or inaction of such L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any L/C or this Agreement, including the Law or any order of a jurisdiction where such L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association

(BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any L/C chooses such law or practice.

(h) **Conflict with L/C Agreement.** In the event of any conflict between the terms hereof and the terms of any L/C Agreement, the terms hereof shall control.

(i) **Bond L/Cs.** Notwithstanding any provision to the contrary set forth in this **Section 2.3**:

(i) (A) The Bond L/Cs shall be subject to the terms and conditions of this Agreement and applicable Law; *provided however*, that (1) such Bond L/Cs may have expiration dates later than thirteen months from the date of issuance, so long as such date is not later than the L/C Expiration Date; and (2) the terms of such Bond L/Cs must be acceptable to the applicable L/C Issuer and Administrative Agent, and, (I) subject to the provisions of **Section 2.3(i)(ii)** and **2.3(i)(iii)**, may provide for the reinstatement of drawn portions of the Bond L/C, whether or not reimbursement has been received (which may have the effect of increasing the amount of such Bond L/C), (II) may provide for automatic extensions thereof, so long as such terms comply with the auto extension provisions set forth in **Section 2.3(b)(iii)** hereof, and (III) may contain provisions whereby the applicable L/C Issuer is granted certain Rights in collateral and voting Rights under the related Bond Documents, which Rights are expressly assigned by the applicable L/C Issuer to Administrative Agent for the benefit of Revolver Lenders pursuant to **Section 2.3(i)(iv)** herein.

(B) Borrower may request that an L/C Issuer issue Bond L/Cs by providing at least 30 days prior written notice of such request to the applicable L/C Issuer, and by delivering a certificate at least 30 days prior to the issuance of any Bond L/C to Administrative Agent demonstrating the Companies' pro forma compliance with the financial covenant set forth in **Section 11.1** herein, after giving effect to the issuance of any such Bonds and, without duplication, any Debt incurred by Borrower or any Company in support thereof, and certifying that no Default or Potential Default exists or would result after giving effect thereto.

(ii) In the event that the proceeds of any drawing under any Bond L/C are used to pay the purchase price of Bonds tendered or deemed tendered by the owner thereof pursuant to the related Bond Documents (such drawing, including the drawing of any accrued interest on the tendered Bonds, a "**Bond Purchase Drawing**"), then the stated amount of such Bond L/C will be temporarily reduced by the amount of such drawing, subject to automatic reinstatement (whether or not reimbursement for any drawings thereunder has been received or the conditions set forth in **Section 7.2** have been satisfied, and without further approval from Revolver Lenders) pursuant to the provisions of the applicable Bond L/C by an amount equal to the Bond Purchase Drawing, so long as (A) the applicable L/C Issuer (or Administrative Agent, as assignee of such L/C Issuer) has been properly accounted for on the securities depository's records as the beneficial owner of such Bonds purchased with the proceeds (or portion thereof) of the Bond L/C, or (B) such Bonds have been delivered to the appropriate custodian and registered as directed by such L/C Issuer (or Administrative Agent, as assignee of such L/C Issuer), or (C) to the extent provided for in the applicable Bond L/C, such Bonds have been remarketed in accordance with the terms of the applicable Bond Documents and

released by the applicable L/C Issuer; *provided however*, that if the repurchased Bonds are not transferred to such L/C Issuer (or Administrative Agent, as assignee of such L/C Issuer) as required in **clauses (A)** and **(B)** preceding, then the applicable L/C Issuer shall notify Administrative Agent (who shall subsequently notify Revolver Lenders) of such failure. Unless otherwise directed by Required Revolver Lenders, the applicable L/C Issuer shall then deliver notice to the applicable Trustee prior to the fifth Business Day after any such Bond Purchase Drawing that the amount of such drawing will not be reinstated.

(iii) If the interest portion of any Bond L/C is drawn by the applicable Trustee to make scheduled interest payments on the outstanding principal amount of the Bonds, then the stated amount of such Bond L/C will be temporarily reduced by the amount of such drawing, subject to automatic reinstatement of the interest portion of such Bond L/C (whether or not reimbursement for any drawings thereunder has been received or the conditions set forth in **Section 7.2** have been satisfied, and without further approval from Revolver Lenders) pursuant to the provisions of the applicable Bond L/C. Subject to compliance with **Section 2.3(b)** herein, the stated amount of the related Bond L/C may be increased as required by the related Bond Documents (to reflect an increase in the maximum rate of interest or number of days of accrued interest covered by such Bond L/C or otherwise).

(iv) All liens and security interests securing reimbursement obligations and other obligations owed to the applicable L/C Issuer of any Bond L/C under the related Bond Documents (including, without limitation, any L/C Borrowing), any rights in and to any Bonds or other certificates of indebtedness issued to such L/C Issuer under the related Bond Documents, and any voting rights or other rights created in favor of such L/C Issuer under or pursuant to or in connection with any related Bond Documents (collectively, the “**Bond Rights**”), now or hereafter existing in favor of such L/C Issuer, are hereby assigned and conveyed by the applicable L/C Issuer to Administrative Agent for the ratable benefit of Revolver Lenders. Notwithstanding anything to the contrary set forth in any Bond L/C, any Bonds, or certificates of indebtedness purchased from the owner thereof by the applicable Trustee with funds received pursuant to a drawing under any Bond L/C shall be registered in the name of Administrative Agent and shall be delivered to or held by Administrative Agent or such other entity as may be specified by the applicable L/C Issuer and approved by Administrative Agent in a written instrument delivered to the applicable Trustee, for the benefit of the applicable L/C Issuer, Administrative Agent, and the other Revolver Lenders. Each L/C Issuer of a Bond L/C agrees to execute all such other assignments, conveyances, financing statements, and other documents required by Administrative Agent to effect the requirements of this **Section 2.3(i)(iv)**; *provided that*, Revolver Lenders, Administrative Agent, and such L/C Issuer agree that in the event any Bonds or certificates of indebtedness are issued to such L/C Issuer (or Administrative Agent as the assignee of such L/C Issuer) as a result of a drawing by the applicable Trustee under the Bond L/C for which such L/C Issuer is not immediately reimbursed, and subsequently the Bonds are remarketed and such L/C Issuer is reimbursed for all amounts so advanced (which reimbursement may be a repayment of any Revolver Loan disbursed by Revolver Lenders as payment of the related L/C reimbursement obligations under **Section 2.3(c)** or a repayment of an L/C Borrowing), then any Bonds or certificates of indebtedness shall be released by Administrative Agent

and delivered to such Trustee without any further authorization from Revolver Lenders or such L/C Issuer.

(v) To the extent Rights (including, without limitation, voting rights, rights to provide notice and elect remedies, and rights to approve waivers, consents, or amendments of the related Bond Documents) are created in favor of the L/C Issuers of any Bond L/C, such Rights (other than ministerial, non discretionary Rights) may only be exercised with the consent, or in accordance with the directions, of Required Revolver Lenders.

(vi) In the event of any conflict between the terms and provisions of this **Section 2.3** relating to Bond L/Cs and the terms and provisions of any Loan Paper relating to L/Cs (other than Bond L/Cs), the terms and provisions of this **Section 2.3** shall control.

(j) **L/Cs Issued for Subsidiaries.** Notwithstanding that an L/C issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of Borrower or a Metro District, Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such L/C. Borrower hereby acknowledges that the issuance of L/Cs for the account of Subsidiaries of Borrower or a Metro District inures to the benefit of Borrower, and that Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

#### ~~2.4 Swing Line Loans:~~

~~(a) **The Swing Line.** Subject to the terms and conditions set forth herein, each Swing Line Lender agrees (severally, not jointly), in reliance upon the agreements of the other Revolver Lenders set forth in this **Section 2.4**, to make loans (each such loan, a "**Swing Line Loan**") to Borrower from time to time on any Business Day prior to the Termination Date for the Revolver Facility in an aggregate amount up to such Swing Line Lender's Swing Line Commitment, notwithstanding the fact that such Swing Line Loans, when aggregated with the Commitment Percentage of the Outstanding Amount of Revolver Loans and L/C Exposure of such Revolver Lender acting as Swing Line Lender, may exceed the amount of such Revolver Lender's Revolver Commitment; *provided, however,* that after giving effect to any Swing Line Loan, (i) the aggregate Outstanding Amount of all Swing Line Loans made by the Swing Line Lenders shall not exceed the Swing Line Sublimit, (ii) the Revolver Commitment Usage shall not exceed the Revolver Commitment, and (iii) the aggregate Outstanding Amount of the Revolver Loans of any Revolver Lender, *plus* such Revolver Lender's Commitment Percentage of the Outstanding Amount of all L/C Exposure, *plus* such Revolver Lender's Commitment Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolver Lender's Revolver Commitment, and *provided, further,* that Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, Borrower may borrow under this **Section 2.4**, prepay under **Section 3.2**, and reborrow under this **Section 2.4**. Each Swing Line Loan shall be a Daily Floating LIBOR Loan. Immediately upon the making of a Swing Line Loan, each Revolver Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolver Lender's Commitment Percentage *times* the amount of such Swing Line Loan. Notwithstanding anything to the contrary in this **clause (a)**, a~~

Swing Line Lender shall not be obligated to make Swing Line Loans (x) at a time when any Revolver Lender is a Defaulting Lender or (y) if such Swing Line Lender reasonably believes that a Revolver Lender will become a Defaulting Lender.

~~(b) **Borrowing Procedures.** Each Swing Line Borrowing shall be made upon Borrower's irrevocable notice to either Swing Line Lender and Administrative Agent, which may be given by (A) telephone or (B) a Swing Line Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the applicable Swing Line Lender and Administrative Agent of a Swing Line Loan Notice. Each such notice must be received by the applicable Swing Line Lender and Administrative Agent not later than 12:00 noon on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$1,000,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the applicable Swing Line Lender of any telephonic Swing Line Loan Notice, such Swing Line Lender will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has also received such Swing Line Loan Notice and, if not, such Swing Line Lender will notify Administrative Agent (by telephone or in writing) of the contents thereof. Unless such Swing Line Lender has received notice (by telephone or in writing) from Administrative Agent (including at the request of any Revolver Lender) prior to 1:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing such Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of **Section 2.4(a)**, or (B) that one or more of the applicable conditions specified in **Section 7** is not then satisfied, then, subject to the terms and conditions hereof, such Swing Line Lender will, not later than 2:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to Borrower.~~

~~(c) **Refinancing of Swing Line Loans:**~~

~~(i) Each Swing Line Lender, as applicable, at any time in its sole and absolute discretion may request, on behalf of Borrower (which hereby irrevocably authorizes each Swing Line Lender to so request on its behalf), that each Revolver Lender make a Base Rate Loan in an amount equal to such Revolver Lender's Commitment Percentage of the Outstanding Amount of the Swing Line Loans owed to such Swing Line Lender. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of **Section 2.2**, without regard to the minimum and multiples specified in **Section 2.1** for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolver Commitment and the conditions set forth in **Section 7.2**. The applicable Swing Line Lender shall furnish Borrower with a copy of the applicable Loan Notice promptly after delivering such notice to Administrative Agent. Each Revolver Lender shall make an amount equal to its Commitment Percentage of the amount specified in such Loan Notice available to Administrative Agent in immediately available funds for the account of the applicable Swing Line Lender at Administrative Agent's Office not later than 12:00 noon on the day specified in such Loan Notice, whereupon, subject to **Section 2.4(c)(ii)**, each Revolver Lender that so makes funds available shall be deemed to have made a Base Rate Loan to Borrower in such amount. Administrative Agent shall remit the funds so received to the applicable Swing Line Lender.~~

~~(ii) If for any reason any Swing Line Loan cannot be refinanced by a Revolver Loan in accordance with **Section 2.4(c)(i)**, the request for Base Rate Loans~~

submitted by the applicable Swing Line Lender as set forth herein shall be deemed to be a request by such Swing Line Lender that each Revolver Lender fund its risk participation in the relevant Swing Line Loans and each Revolver Lender's payment to Administrative Agent for the account of such Swing Line Lender pursuant to ~~Section 2.4(c)(i)~~ shall be deemed payment in respect of such participation.

~~(iii) — If any Revolver Lender fails to make available to Administrative Agent for the account of the applicable Swing Line Lender any amount required to be paid by such Revolver Lender pursuant to the foregoing provisions of this Section 2.4(c) by the time specified in Section 2.4(c)(i), such Swing Line Lender shall be entitled to recover from such Revolver Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by such Swing Line Lender in accordance with banking industry rules on interbank compensation. A certificate of such Swing Line Lender submitted to any Revolver Lender (through Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.~~

~~(iv) — Each Revolver Lender's obligation to make Revolver Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.4(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense, or other right which such Revolver Lender may have against the applicable Swing Line Lender, Borrower, or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or Potential Default, or (C) any other occurrence, event, or condition, whether or not similar to any of the foregoing; provided, however, that each Revolver Lender's obligation to make Revolver Loans pursuant to this Section 2.4(c) is subject to the conditions set forth in Section 7.2. No such funding of risk participations shall relieve or otherwise impair the obligation of Borrower to repay Swing Line Loans, together with interest as provided herein.~~

~~(d) — **Repayment of Participations:**~~

~~(i) — At any time after any Revolver Lender has purchased and funded a risk participation in a Swing Line Loan, if the applicable Swing Line Lender receives any payment on account of such Swing Line Loan, such Swing Line Lender will distribute to such Revolver Lender its Commitment Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolver Lender's risk participation was funded) in the same funds as those received by such Swing Line Lender.~~

~~(ii) — If any payment received by the applicable Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by such Swing Line Lender under any of the circumstances described in Section 15.12 (including pursuant to any settlement entered into by such Swing Line Lender in its discretion), each Revolver Lender shall pay to such Swing Line Lender its Commitment Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal~~

~~Funds Rate. Administrative Agent will make such demand upon the request of such Swing Line Lender. The obligations of Revolver Lenders under this clause shall survive the payment in full of the Obligation and the termination of this Agreement.~~

~~(e) **Interest for Account of Swing Line Lenders.** Each Swing Line Lender shall be responsible for invoicing Borrower for interest on its respective Swing Line Loans. Until each Revolver Lender funds its Base Rate Loan or risk participation pursuant to this **Section 2.4** to refinance such Revolver Lender's Commitment Percentage of any Swing Line Loan, interest in respect of such Commitment Percentage of such Swing Line Loan shall be solely for the account of the applicable Swing Line Lender.~~

~~(f) **Payments Directly to Swing Line Lenders.** Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the applicable Swing Line Lender.~~

## 2.4 [Reserved].

## 2.5 Increase in Revolver Commitments; Incremental Term Loan Facility.

(a) **Request for Increase in Revolver Commitments or Incremental Term Loan Facility.** Provided there exists no Default or Potential Default, upon notice to Administrative Agent (which shall promptly notify Lenders), Borrower may, from time to time, request either (i) an increase in the Revolver Commitments, or (ii) the addition of one or more new term loan facilities under this Agreement (each, an "**Incremental Term Loan Facility**", and collectively, the "**Incremental Term Loan Facilities**"), such that, after giving effect thereto, the sum of the Total Commitment and aggregate principal amount of loans under the Incremental Term Loan Facilities do not exceed the Maximum Facility Amount *minus* the amount of Debt incurred and outstanding pursuant to **clause (l)** of the definition of "*Permitted Debt*"; *provided, that* any such request shall be in a minimum amount of \$10,000,000, and greater integral multiples of \$500,000 thereof.

(b) **Additional Lenders.** To achieve the full amount of a requested increase and subject to the approval of Administrative Agent, and each L/C Issuer, ~~and each Swing Line Lender~~ (which approvals shall not be unreasonably withheld), Borrower may:

(i) in connection with any increase in the Revolver Commitments, (A) invite additional Eligible Assignees to become Revolver Lenders pursuant to an agreement in form and substance satisfactory to Administrative Agent and its counsel (each, a "**Joinder Agreement**"), and (B) request one or more Revolver Lenders to increase their respective Revolver Commitments hereunder, but each such Revolver Lender shall not be deemed to have agreed to increase its Revolver Commitment unless such Revolver Lender notifies Administrative Agent prior to any deadline specified by Borrower (in consultation with Administrative Agent) of its agreement to increase its Revolver Commitment and the amount of the increase of such Revolver Lender's Revolver Commitment; and

(ii) in connection with the addition of any Incremental Term Loan Facility under this Agreement, invite Eligible Assignees or one or more Lenders to become lenders under such Incremental Term Loan Facility pursuant to **clause (e)** below.



(c) **Effective Date and Allocations.** If the Revolver Commitments are increased or an Incremental Term Loan Facility is added to this Agreement in accordance with this Section, then Administrative Agent and Borrower shall determine the effective date (the “**Increase Effective Date**”) and the final allocation thereof. Administrative Agent shall promptly notify Borrower, Lenders (including, without limitation, any Eligible Assignee becoming a Lender) and lenders under the Incremental Term Loan Facilities of the final allocation of such increase and the Increase Effective Date.

(d) **Conditions to Effectiveness of Increase in Revolver Commitments.** As a condition precedent to any increase in the Revolver Commitments, Borrower shall deliver to Administrative Agent:

(i) Joinder Agreements executed by Borrower, Administrative Agent, and each Eligible Assignee becoming a new Revolver Lender hereunder pursuant to **Section 2.5(c)** hereof, together with a completed Administrative Questionnaire;

(ii) with respect to any Revolver Lender requesting a Note, a Note executed by Borrower; and

(iii) a certificate of each Company dated as of the Increase Effective Date signed by a Responsible Officer of Borrower and each Guarantor (A) certifying and attaching the resolutions adopted by each such entity approving or consenting to such increase, and (B) in the case of Borrower, certifying that, before and after giving effect to such increase, (1) the representations and warranties contained in **Section 8** and the other Loan Papers are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and (2) no Default or Potential Default exists or would result therefrom. Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to **Section 4.5**) to the extent necessary to keep the outstanding Loans ratable with any revised Commitment Percentages arising from any non-ratable increase in the Commitments under this Section.

(e) **Conditions to Effectiveness of Addition of an Incremental Term Loan Facility.** As a condition precedent to the addition of each Incremental Term Loan Facility, Borrower shall deliver to Administrative Agent:

(i) an amendment, in form and substance satisfactory to Administrative Agent and each lender under such Incremental Term Loan Facility, executed by Borrower, Administrative Agent and each lender under such Incremental Term Loan Facility, which shall include provisions relating to the maturity, pricing, and amortization of the term loan and voting rights of the lenders under such Incremental Term Loan Facility, and such other changes as Administrative Agent and the lenders under such Incremental Term Loan Facility shall deem necessary to effect the increase requested hereby;

(ii) with respect to any lender under such Incremental Term Loan Facility requesting a promissory note, such promissory note executed by Borrower;

(iii) a completed Administrative Questionnaire from each lender under such Incremental Term Loan Facility; and

(iv) a certificate of each Company dated as of the Increase Effective Date signed by a Responsible Officer of Borrower and each Guarantor (A) certifying and attaching the resolutions adopted by each such entity approving or consenting to such increase, and (B) in the case of Borrower, certifying that, before and after giving effect to such increase, (1) the representations and warranties contained in **Section 8** and the other Loan Papers are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date (provided, that Borrower shall only be required to make certain representations and warranties with respect to any Incremental Term Loan Facility used to consummate an acquisition permitted under **Section 10.11**), and (2) no Default or Potential Default exists or would result therefrom.

(f) **Conflicting Provisions.** This Section shall supersede any provisions in **Sections 3.12** or **15.9** to the contrary.

### **SECTION 3 TERMS OF PAYMENT.**

#### **3.1 Notes and Payments.**

(a) The Loans made by each Lender and any L/C Credit Extension shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans or L/C Credit Extension made by Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligation. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender ~~or either Swing Line Lender, as the case may be,~~ made through Administrative Agent, Borrower shall promptly execute and deliver to such Lender (through Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such account or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in **clause (a)** herein, each Revolver Lender and Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolver Lender of participations in L/Cs. In the event of any conflict between the accounts and records maintained by Administrative Agent and the accounts and records of any Revolver Lender in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

(c) Borrower must make each payment on the Obligation, without condition or deduction for any counterclaim, defense, recoupment, or setoff. All payments except with respect

to principal of and interest on Loans denominated in an Alternative Currency by Borrower hereunder shall be made in Dollars to Administrative Agent, for the account of the respective Lenders to which such payment is owed, at Administrative Agent's principal office in Dallas, Texas, in funds that will be available for immediate use by Administrative Agent by 1:00 p.m. on the day due; otherwise, but subject to **Section 3.8**, those funds continue to accrue interest as if they were received on the next Business Day. All payments by Borrower with respect to principal of and interest on Loans denominated in an Alternative Currency must be made by the Applicable Time; otherwise, but subject to **Section 3.8**, those funds continue to accrue interest as if they are received on the next Business Day. Except as otherwise expressly provided herein, all payments by ~~the~~ Borrower hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to ~~the~~ Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by ~~the~~ Administrative Agent on the dates specified herein. If, for any reason, ~~any~~ Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, ~~such~~ Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount.

Administrative Agent shall promptly distribute to each Lender its Commitment Percentage (or other payment share as provided herein) of such payment to which that Lender is entitled on the same day Administrative Agent receives the funds from Borrower if Administrative Agent receives the payment before 1:00 p.m., and otherwise before 1:00 p.m. on the following Business Day. If and to the extent that Administrative Agent does not make payments to Lenders when due, unpaid amounts shall accrue interest at the Federal Funds Rate from the due date until (but not including) the payment date.

### 3.2 Interest and Principal Payments; Prepayments; Voluntary Commitment Reductions.

(a) Accrued interest on each Revolver Loan or Term Loan that is a Eurocurrency Term Reference Rate Loan is due and payable on the last day of its Interest Period and on the Termination Date. If any Interest Period with respect to a Revolver Loan or Term Loan that is a Eurocurrency Term Reference Rate Loan is a period greater than three months, then accrued interest is also due and payable on the date three months after the commencement of the Interest Period. Accrued interest on each Base Rate Loan ~~and each Swing Line Loan~~ is due and payable on each Quarterly Date and on the Termination Date. Accrued interest on each Daily SOFR Rate Loan is due and payable on the last day of each calendar month and on the Termination Date

(b) The Revolver Principal Debt is due and payable on the Termination Date for the Revolver Facility.

(c) ~~Borrower shall repay the outstanding principal amount of each Swing Line Loan on the earlier to occur of (i) the date that is fifteen (15) Business Days after such Swing Line Loan is made, and (ii) the Termination Date for the Revolver Facility~~[Reserved].

(d) The Term Loan Principal Debt is due and payable in equal quarterly installments, such that five percent (5%) of the Term Loan Principal Debt outstanding on the Second Amendment Closing Date is repaid in each consecutive period of four (4) Quarterly Dates, with the first such payment due on January 31, 2020, and continuing on each consecutive Quarterly

Date thereafter. ~~Each quarterly installment of the Term Loan Principal Debt shall be applied first, to the Term Unhedged Tranche until the Term Loan Principal Debt with respect to the Term Unhedged Tranche has been fully paid and second, to the Term Hedged Tranche until the Term Loan Principal Debt with respect to the Term Hedged Tranche has been fully paid.~~ A final payment is due on the Termination Date for the Term Loan Facility in an amount equal to all Term Loan Principal Debt then outstanding.

(e) If the Revolver Commitment Usage ever exceeds the Revolver Commitment, ~~or if the aggregate unpaid principal amount of all outstanding Swing Line Loans ever exceeds the Swing Line Commitment,~~ then Borrower shall immediately prepay Revolver Loans and/or Cash Collateralize the L/C Exposure in an aggregate amount equal to such excess; *provided, however,* that Borrower shall not be required to Cash Collateralize the L/C Exposure pursuant to this **Section 3.2(e)** unless, after prepayment in full of the Revolver Loans, the Revolver Commitment Usage exceeds the Revolver Commitment then in effect.

(f) Without premium or penalty and upon giving at least two Business Days prior written and irrevocable notice to Administrative Agent (who shall promptly notify Revolver Lenders of its receipt of such notice and its contents), Borrower may terminate all or reduce part of the unused portion of the Revolver Commitment. Each partial reduction (unless the remaining portion of such commitment is less) must be in an amount of not less than \$5,000,000 or a greater integral multiple of \$1,000,000, and shall be ratable among all Revolver Lenders according to their respective Commitment Percentages. Once terminated or reduced, such commitments may not be reinstated or increased. Borrower shall not terminate or reduce the Revolver Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the Revolver Commitment Usage would exceed the Revolver Commitment. If, after giving effect to any reduction of the Revolver Commitment; ~~or the L/C Sublimit, or the Swing Line Sublimit,~~ exceeds the amount of the Revolver Commitment, such sublimits shall be automatically reduced by the amount of such excess. Administrative Agent will promptly notify Revolver Lenders of any such notice of termination or reduction of the Revolver Commitment.

(g) Borrower may voluntarily prepay all or any part of the Revolver Principal Debt ~~(other than Revolver Principal Debt under the Swing Line Subfacility, which may be prepaid in accordance with clause (h) below)~~ or the Term Loan Principal Debt at any time without premium or penalty, subject to the following conditions:

(i) Administrative Agent must receive Borrower's written payment notice (which must be in a form acceptable to Administrative Agent and which shall specify (1) the payment date, and (2) the Type and amount of the Loan(s) to be paid; such notice shall constitute an irrevocable and binding obligation of Borrower to make a payment on the designated date) by 11:00 a.m. on (x) the ~~first~~<sup>third</sup> Business Day preceding the date of payment of a Revolver Loan or a Term Loan that is a ~~Eurocurrency~~<sup>Term Reference</sup> Rate Loan, and (y) the date of payment of a Daily SOFR Rate Loan or Base Rate Loan;

(ii) each partial payment must be in a minimum amount of at least \$500,000 if a Daily SOFR Rate Loan or Base Rate Loan or \$1,000,000 if a Revolver Loan or a Term Loan that is a ~~Eurocurrency~~<sup>Term Reference</sup> Rate Loan or, in either case, a greater integral multiple of \$100,000;

- (iii) all accrued interest on the principal amount so to be prepaid must also be paid in full on the date of payment;
- (iv) Borrower shall pay any related Funding Loss upon demand; and
- (v) unless a Default or Potential Default has occurred and is continuing (or would arise as a result thereof), any prepayment of the Revolver Principal Debt may be reborrowed by Borrower, subject to the terms and conditions of the Loan Papers.

Administrative Agent will promptly notify each Lender of its receipt of a payment notice from Borrower, and of the amount of such Lender's Commitment Percentage of such prepayment.

~~(h) Borrower may, upon notice to the applicable Swing Line Lender (with a copy to Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans owed to such Swing Line Lender, in whole or in part without premium or penalty; provided, that (i) such notice must be in a form acceptable to the applicable Swing Line Lender and be received by the applicable Swing Line Lender and Administrative Agent not later than 12:00 noon on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$100,000, or a greater integral multiple thereof. Each such notice shall specify the date and amount of such prepayment. Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein~~[\[Reserved\]](#).

### 3.3 Interest Options.

Except where specifically otherwise provided, ~~(a)~~ Revolver Loans and Term Loans bear interest at an annual rate equal to the lesser of ~~(a)~~ (i) the Base Rate *plus* the Applicable Margin ~~or Eurocurrency~~for Base Rate Loans, ~~(ii)~~ [the Daily Simple SOFR Rate](#) *plus* the Applicable Margin ~~for Daily SOFR Rate Loans,~~ ~~(iii)~~ [the Term Reference Rate](#) *plus* [the Applicable Margin](#) for Term Reference Rate Loans for the Interest Period, if any, selected by Borrower (in each case as designated or deemed designated by Borrower), as the case may be, and ~~(ii)~~ ~~the Maximum Rate,~~ and ~~(b)~~ ~~Swing Line Loans bear interest at an annual rate equal to the lesser of (i) Daily Floating LIBOR~~ [plus the Applicable Margin](#) and ~~(ii)~~ [the Maximum Rate](#). Each change in the Base Rate, [the Term Reference Rate](#), Daily ~~Floating LIBOR~~[Simple SOFR](#), and the Maximum Rate is effective, without notice to Borrower or any other Person, upon the effective date of change.

### 3.4 Quotation of Rates.

A Responsible Officer of Borrower may call Administrative Agent before delivering a ~~Loan Notice or Swing Line~~ Loan Notice to receive an indication of the interest rates then in effect, but the indicated rates do not bind Administrative Agent or Lenders or affect the interest rate that is actually in effect when Borrower delivers its ~~Loan Notice or Swing Line~~ Loan Notice or on the Loan Date.

### 3.5 Default Rate.

While any Default exists, then upon the request of Required Lenders (except in the case of a Default resulting from the failure to pay Principal Debt when due, in which case, such increase shall be automatic), Borrower shall pay interest on the Principal Debt at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law. If any amount (other than principal of any Loan) payable by Borrower under any Loan Paper is not paid when due (without

regard to any applicable grace periods), whether at stated maturity, by acceleration, or otherwise, then upon the request of Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

### 3.6 Interest Recapture.

If the designated interest rate applicable to any Loan exceeds the Maximum Rate, the interest rate on that Loan is limited to the Maximum Rate, but any subsequent reductions in the designated rate shall not reduce the interest rate thereon below the Maximum Rate until the total amount of accrued interest equals the amount of interest that would have accrued if that designated rate had always been in effect. If at maturity (stated or by acceleration), or at final payment of the Notes, the total interest paid or accrued is less than the interest that would have accrued if the designated rates had always been in effect, then, at that time and to the extent permitted by Law, Borrower shall pay an amount equal to the difference between (a) the lesser of the amount of interest that would have accrued if the designated rates had always been in effect *and* the amount of interest that would have accrued if the Maximum Rate had always been in effect, and (b) the amount of interest actually paid or accrued on the Notes.

### 3.7 Interest Calculations; Retroactive Adjustments of Applicable Margin.

(a) All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days (even when those loans are determined by ~~the LIBO Rate~~ Term SOFR), as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided that* any Loan that is repaid on the same day on which it is made shall, subject to **Section 3.1(c)**, bear interest for one day.

(b) If, as a result of any restatement of or other adjustment to the financial statements of Borrower or for any other reason, Borrower or the Lenders determine that (i) the ratio of Net Funded Debt to Adjusted EBITDA, as calculated by Borrower pursuant to **Section 11.1** as of any applicable date, was inaccurate, and (ii) a proper calculation thereof would have resulted in higher pricing and fees for such period, then Borrower shall immediately and retroactively be obligated to pay to Administrative Agent for the account of the applicable Lenders or L/C Issuers, as the case may be, promptly on demand by Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under Debtor Relief Law, automatically and without further action by Administrative Agent, any Lender, or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of Administrative Agent, any Lender, or any L/C Issuer, as the case may be, under **Section 2.3(c)(iii)**, **5.3**, or **3.3** or under **Section 12**. Borrower's obligations under this paragraph shall survive the termination of the Total Commitment and the repayment of all other Obligations hereunder.

### 3.8 Maximum Rate.

Regardless of any provision contained in any Loan Paper or any document related thereto, no Lender is entitled to contract for, charge, take, reserve, receive, or apply, as interest on all or any part of the Obligation any amount in excess of the Maximum Rate, and, if Lenders ever do so, then any excess shall be treated as a partial payment of principal and any remaining excess shall be refunded to Borrower. In determining if the interest paid or payable exceeds the Maximum Rate, Borrower and Lenders shall, to the maximum extent permitted under applicable Law, (a) treat all Loans as but a single extension of credit (and Lenders and Borrower agree that is the case and that provision in this Agreement for multiple Loans is for convenience only), (b) characterize any nonprincipal payment as an expense, fee, or premium rather than as interest, (c) exclude voluntary payments and their effects, and (d) amortize, prorate, allocate, and spread the total amount of interest throughout the entire contemplated term of the Obligation. However, if the Obligation is paid in full before the end of its full contemplated term, and if the interest received for its actual period of existence exceeds the Maximum Amount, Lenders shall refund any excess (and Lenders shall not, to the extent permitted by Law, be subject to any penalties provided by any Laws for contracting for, charging, taking, reserving, or receiving interest in excess of the Maximum Amount).

### 3.9 Interest Periods.

When Borrower requests any [Eurocurrency Term Reference](#) Rate Loan, Borrower may elect the applicable Interest Period. No more than ten (10) [Eurocurrency Term Reference](#) Rate Interest Periods may be in effect at one time.

### 3.10 Order of Application.

(a) If no Default or Potential Default exists, payments, and prepayments of the Obligation shall be applied first to fees then due, second to accrued interest then due and payable on the Principal Debt, and then to the remaining Obligation in the order and manner as Borrower may direct.

(b) If a Default or Potential Default exists, any payment or prepayment (including proceeds from the exercise of any Rights) shall be applied to the Obligation in the following order: (i) to the payment of all fees, expenses, and indemnities for which Administrative Agent has not been paid or reimbursed in accordance with the Loan Papers; (ii) to the ratable payment of all fees, expenses, and indemnities (other than L/C fees set forth in [Section 5.3](#) hereof (collectively, "[L/C Fees](#)")) for which Lenders have not been paid or reimbursed in accordance with the Loan Papers (as used in this [clause \(ii\)](#), a "[ratable payment](#)" for any Lender shall be, on any date of determination, that proportion which the portion of the total fees, expenses, and indemnities owed to such Lender bears to the total aggregate fees, expenses, and indemnities owed to all Lenders on such date of determination); (iii) to the ratable payment of accrued and unpaid interest on the Principal Debt and L/C Fees (as used in this [clause \(iii\)](#), "[ratable payment](#)" means, for any Lender, on any date of determination, that proportion which the accrued and unpaid interest on the Principal Debt owed to such Lender bears to the total accrued and unpaid interest on the Principal Debt owed to all Lenders); (iv) to the ratable payment of the Principal Debt (as used in this [clause \(iv\)](#), "[ratable payment](#)" means for any Lender, on any date of determination, that proportion which the Principal Debt owed to such Lender bears to the Principal Debt owed to all Lenders); (v) to Administrative Agent for the account of the applicable L/C Issuer, to Cash Collateralize that portion of L/C Exposure comprised of the aggregate undrawn amount of L/Cs; (vi) to the payment of the remaining Obligation in the order and manner Required Lenders deem appropriate; and (vii) the balance, if any, after all of the Obligation has been indefeasibly paid in full, to Borrower or as otherwise required by Law.

Subject to **Section 2.3(c)**, amounts used to Cash Collateralize the aggregate undrawn amount of L/Cs pursuant to **clause (v)** above shall be applied to satisfy drawings under such L/Cs as they occur. If any amount remains on deposit as Cash Collateral after all L/Cs have either been fully drawn or expired, such remaining amount shall be applied to the other Obligation, if any, in the order set forth above.

Subject to the provisions of **Section 14** and *provided that* Administrative Agent shall not in any event be bound to inquire into or to determine the validity, scope, or priority of any interest or entitlement of any Lender and may suspend all payments or seek appropriate relief (including, without limitation, instructions from Required Lenders, Required Revolver Lenders or Required Term Loan Lenders or an action in the nature of interpleader) in the event of any doubt or dispute as to any apportionment or distribution contemplated hereby, Administrative Agent shall promptly distribute such amounts to each Lender in accordance with the Agreement and the related Loan Papers.

### 3.11 Payments Generally.

(a) **Failure to Satisfy Conditions Precedent.** If any Lender makes available to Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of **Sections 2** or **3**, and such funds are not made available to Borrower by Administrative Agent because the conditions set forth in **Section 7** are not satisfied or waived in accordance with the terms hereof, Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(b) **Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

### 3.12 Sharing of Payments, Etc.

If any Lender (a "**Benefitted Lender**") shall at any time receive any payment of all or part of the Loans owing to it, or interest thereon, or receive any Collateral in respect thereof (whether voluntarily or involuntarily, by set-off, or otherwise), in a greater proportion than any such payment to or Collateral received by any other Lender, if any, in respect of such other Lender's Loans owing to it, or interest thereon, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Loans owing to it, or shall provide such other Lenders with the benefits of any such Collateral, or the proceeds thereof, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such Collateral or proceeds ratably with each Lender; *provided, however, that* (i) if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest, and (ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in **Section 3.14** or (z) any payment obtained by a Revolver Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Exposure ~~or Swing Line Loans~~ to any assignee or participant, other than to Borrower or any Subsidiary thereof (as to which the provisions of



this Section shall apply). Borrower agrees that any Lender so purchasing a participation from a Lender pursuant to this **Section 3.12** may, to the fullest extent permitted by Law, exercise all of its Rights of payment (including the Right of setoff) with respect to such participation as fully as if such Person were the direct creditor of Borrower in the amount of such participation.

### 3.13 Booking Loans.

To the extent permitted by Law, any Lender may make, carry, or transfer its Loans at, to, or for the account of any of its branch offices or the office of any of its Affiliates. However, no Affiliate is entitled to receive any greater payment under **Section 4.3** than the transferor Lender would have been entitled to receive with respect to those Loans.

### 3.14 Cash Collateral.

(a) **Certain Credit Support Events.** Upon the request of Administrative Agent (i) if the L/C Issuer has honored any full or partial drawing request under any L/C and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the L/C Expiration Date, any L/C Obligation for any reason remains outstanding, Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, immediately upon the request of Administrative Agent; ~~or the L/C Issuer, or the Swing Line Lender;~~ Borrower shall deliver to Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to **Section 3.15(a)(iv)** and any Cash Collateral provided by the Defaulting Lender). If at any time Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Exposure, Borrower will, forthwith upon demand by Administrative Agent, pay to Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any L/C for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the applicable L/C Issuer.

(b) **Grant of Security Interest.** All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of Administrative Agent, the L/C Issuer, and the Lenders ~~(including the Swing Line Lender),~~ and agrees to maintain, a first priority security interest in all such cash, deposit accounts, and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to **Section 3.14(c)**. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, Borrower or the relevant Defaulting Lender will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency or in the amount of such third party rights or claims to which the Cash Collateral is subject, as applicable.

(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this **Section 3.14, Section 2.3, Section 3.2, Section 3.15**, or Section 13 in respect of L/C ~~or Swing Line Loans~~ shall be held and applied to the satisfaction of the specific L/C Obligations, ~~Swing Line Loans~~, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with **Section 15.11(b)(vi)**)) or (ii) Administrative Agent's and the L/C Issuers' good faith determination that there exists excess Cash Collateral; *provided, however*, the Person providing Cash Collateral and the L/C Issuer ~~or Swing Line Lender, as applicable~~, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

### 3.15 Defaulting Lenders.

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) **Waivers and Amendments.** That Defaulting Lender's right to approve or disapprove any amendment, waiver, or consent with respect to this Agreement shall be restricted as set forth in **Section 15.9** and in the definitions of "**Required Lenders**", "**Required Revolver Lenders**" and "**Required Term Loan Lenders**".

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees, or other amounts received by Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Sections 12** or **13** or otherwise, and including any amounts made available to Administrative Agent by that Defaulting Lender pursuant to **Section 15.13**), shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer ~~or Swing Line Lender~~ hereunder; *third*, if so determined by Administrative Agent or requested by the L/C Issuer ~~or Swing Line Lender~~, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any ~~Swing Line Loan or L/C~~; *fourth*, as Borrower may request (so long as no Default or Potential Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders; ~~or~~ the L/C Issuer ~~or Swing Line Lender~~ as a result of any judgment of a court of competent jurisdiction obtained by any Lender; ~~or~~ the L/C Issuer ~~or Swing Line Lender~~ against that Defaulting Lender as a result of that

Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Potential Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in **Section 7.2** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments, or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 3.15(a)(ii)** shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees.**

(A) No Defaulting Lender shall be entitled to receive any fee payable under **Section 5.4** for any period during which such Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive L/C Fees for any period during which such Lender is a Defaulting Lender only to the extent allocable to its Commitment Percentage of the stated amount of all L/Cs for which it has provided Cash Collateral pursuant to **Section 3.14**.

(C) With respect to any L/C Fees not required to be paid to any Defaulting Lender pursuant to **clause (A)** or **(B)** above, Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Borrowing ~~or Swing Line Loans~~ that has been reallocated to such Non-Defaulting Lender pursuant to **clause (iv)** below, (y) pay to the applicable L/C Issuer ~~and Swing Line Lender, as applicable~~, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's ~~or Swing Line Lender's~~ Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) **Reallocation of Commitment Percentages to Reduce Fronting Exposure.** During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance, or fund participations in L/Cs ~~or Swing Line Loans~~ pursuant to **Sections 2.3** and **2.4**, the "Commitment Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of that Defaulting Lender; *provided*, that, the aggregate obligation of each non-Defaulting Lender to acquire, refinance, or fund participations in L/Cs ~~and Swing Line Loans~~ shall not exceed the excess, if any, of (1) the Commitment of that non-Defaulting Lender over (2) the aggregate Outstanding Amount

of the Loans of that Lender. Subject to **Section 15.24**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

(b) **Defaulting Lender Cure**. If Borrower, Administrative Agent, ~~the Swing Line Lenders~~ and the L/C Issuers agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Revolver Loans and Term Loans and funded and unfunded participations in L/Cs ~~and Swing Line Loans~~ to be held on a pro rata basis by the Lenders in accordance with their Commitment Percentages (without giving effect to **Section 3.15(a)(iv)**), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## **SECTION 4 TAXES, YIELD PROTECTION, AND ILLEGALITY**

### **4.1 Taxes.**

**(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.***

(i) Any and all payments by or on account of any obligation of any Restricted Company under any Loan Paper shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of Administrative Agent) require the deduction or withholding of any Tax from any such payment by Administrative Agent or a Restricted Company, then Administrative Agent or such Restricted Company shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to **subsection (e)** below.

(ii) If any Restricted Company or Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) Administrative Agent shall withhold or make such deductions as are determined by Administrative Agent to be required based upon the information and documentation it has received pursuant to **subsection (e)** below, (B) Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Restricted Company shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this **Section 4.1**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Restricted Company or Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Restricted Company or Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to **subsection (e)** below, (B) such Restricted Company or Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Restricted Company shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this **Section 4.1**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

**(b) Payment of Other Taxes by Borrower.** Without limiting the provisions of **subsection (a)** above, the Restricted Companies shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) **Tax Indemnifications.**

(i) Each of the Restricted Companies shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 4.1** payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest, and reasonable expenses arising therefrom or with respect thereto), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender or an L/C Issuer (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error. Each of the Restricted Companies shall, and does hereby, jointly and severally indemnify Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to Administrative Agent as required pursuant to **Section 4.1(c)(ii)** below.

(ii) Each Lender and each L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) Administrative Agent against any Indemnified Taxes attributable to such Lender or such L/C Issuer (but only to the extent that any Restricted Company has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Restricted Companies to do so), (y) Administrative Agent and the Restricted Companies, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of **Section 15.11** relating to the maintenance of a Participant Register and (z) Administrative Agent and the Restricted Companies, as applicable, against any Excluded Taxes attributable to such Lender or such L/C Issuer, in each case, that are payable or paid by Administrative Agent or a Restricted Company in connection with any Loan Paper, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender and each L/C Issuer hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or such L/C Issuer, as the case may be, under this Agreement or any other Loan Paper against any amount due to Administrative Agent under this **clause (ii)**.

(d) **Evidence of Payments.** Upon request by Borrower or Administrative Agent, as the case may be, after any payment of Taxes by Borrower or by Administrative Agent to a Governmental Authority as provided in this **Section 4.1**, Borrower shall deliver to Administrative Agent or Administrative Agent shall deliver to Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to Borrower or Administrative Agent, as the case may be.

(e) **Status of Lenders; Tax Documentation.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Paper shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 4.1(e)(ii)(A)**, **4.1(e)(ii)(B)** and **4.1(e)(ii)(D)** below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Paper, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Paper, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under *Section 881(c)* of the Code, (x) a certificate substantially in the form of **Exhibit G-1** to the effect that such Foreign Lender is not a “bank” within the meaning of *Section 881(c)(3)(A)* of the Code, a “10 percent shareholder” of Borrower within the meaning of *Section 881(c)(3)(B)* of the Code, or a “controlled foreign corporation” described in *Section 881(c)(3)(C)* of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed originals of IRS Form W-8BEN; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit G-2** or **Exhibit G-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit G-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Paper 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 Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by *Section 1471(b)(3)(C)(i)* of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **clause (D)**, “FATCA” shall include any amendments made to FATCA after the date of this Agreement.



(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this **Section 4.1** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, Borrower and Administrative Agent shall treat (and Lenders hereby authorize Administrative Agent to treat) this Agreement as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(f) **Treatment of Certain Refunds.** Unless required by applicable Laws, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or a L/C Issuer, or have any obligation to pay to any Lender or such L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Restricted Company or with respect to which any Restricted Company has paid additional amounts pursuant to this **Section 4.1**, it shall pay to the Restricted Company an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Restricted Company under this **Section 4.1** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Restricted Company, upon the request of the Recipient, agrees to repay the amount paid over to the Restricted Company (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Restricted Company pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Restricted Company or any other Person.

(g) **Survival.** Each party’s obligations under this **Section 4.1** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender or an L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

#### 4.2 Illegality.

If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain, or fund Eurocurrency Rate Loans whose interest is determined by reference to SOFR, Term SOFR, or Daily Simple SOFR, or to determine or charge interest rates based upon Eurocurrency Rate SOFR, Term SOFR or Daily Floating LIBOR Simple SOFR, or any Governmental Authority has imposed material restrictions on the authority of such Lender

to ~~purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the applicable interbank market~~ engage in reverse repurchase of U.S. Treasury securities transactions of the type included in the determination of SOFR, then, on notice thereof by such Lender to Borrower through Administrative Agent, (a) any obligation of such Lender to make or continue Eurocurrency either Term SOFR Rate Loans or ~~to convert Base Rate Loans to Eurocurrency Rate Loans, or to make Daily Floating LIBOR Loans, shall be suspended~~ Daily SOFR Rate Loans shall be suspended and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), prepay (without penalty or premium other than amounts payable pursuant to Section 4.5) or, if applicable, convert all Eurocurrency Term SOFR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor (or, in the case of Daily Floating LIBOR Loans, on the next Business Day for Eurocurrency Rate Loans), if such Lender may lawfully continue to maintain such Eurocurrency Term SOFR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Term SOFR Rate Loans, (ii) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), immediately prepay or, if applicable, convert all Daily Floating LIBOR SOFR Rate Loans, or participations in Swing Line Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Term SOFR component of the Base Rate), and (iii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR, Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to Term SOFR component thereof until Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 4.5.

#### 4.3 Inability to Determine Rates.

(a) If, in connection with any request for a Eurocurrency Term SOFR Rate Loan or a Daily SOFR Rate Loan, or a conversion ~~to~~ of Daily SOFR Rate Loans to Term SOFR Rate Loans or a continuation thereof of any of such advances, as applicable, (i) Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurocurrency Rate Loan no Successor Rate has been determined in accordance with Section 4.3(b), and the circumstances under Section 4.3(b)(i) or the Scheduled Unavailability Date has occurred, or (B) (xii) adequate and reasonable means do not otherwise exist for determining Eurocurrency Rate Term SOFR for any requested Interest Period with respect to a proposed Eurocurrency Term SOFR Rate Loan (whether in Dollars or an Alternative Currency) or in connection with an existing or proposed Base Rate Loan, or (iii) adequate and (y) the circumstances described in Section 4.3(c)(i) do not apply (in each case with respect to clause (i) above, "Impacted Loans") reasonable means do not otherwise exist for determining Daily Simple SOFR in connection with an existing or proposed Daily SOFR Rate Loan, or (ii) Administrative Agent or

the Required Lenders determine that for any reason ~~Eurocurrency Rate~~ that Term SOFR for any requested Interest Period or Daily ~~Floating LIBOR~~ Simple SOFR with respect to a proposed ~~Eurocurrency Rate Loan~~ advance does not adequately and fairly reflect the cost to such Lenders of funding such ~~Loan~~ advance, Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, (x) the obligation of ~~the~~ Lenders to make or maintain ~~Eurocurrency~~ Term SOFR Rate Loans, Daily SOFR Rate Loans, or to convert Daily SOFR Rate Loans to Term SOFR Rate Loans, shall be suspended (to the extent of the affected ~~Eurocurrency~~ Term SOFR Rate Loans, Daily SOFR Rate Loans, or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to ~~Eurocurrency Rate~~ the Term SOFR component of the Base Rate, the utilization of ~~Eurocurrency Rate~~ the Term SOFR component in determining the Base Rate shall be suspended, in each case until Administrative Agent ~~(or, in the case of a determination by Required Lenders described in Section 4.3(b), until Administrative Agent~~ upon ~~the~~ instruction of Required Lenders) revokes such notice. Upon receipt of such notice, (1) Borrower may revoke any pending request for a ~~Loan~~ borrowing of, or conversion to, or continuation of ~~Eurocurrency~~ Term SOFR Rate Loans or Daily SOFR Rate Loans (to the extent of the affected ~~Eurocurrency~~ Term SOFR Rate Loans, Daily SOFR Rate Loans, or Interest Periods), or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

~~(b) Notwithstanding the foregoing, if Administrative Agent has made the determination described in clause (i) of Section 4.3(a), Administrative Agent, in consultation with Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) Administrative Agent revokes the notice delivered with respect to the Impacted any outstanding Term SOFR Rate Loans shall be deemed to have been converted to Base Rate Loans under clause (i) of immediately at the first sentence end of Section 4.3(a), (ii) Administrative Agent or the affected Lenders notify Administrative Agent and Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its their respective applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides Administrative Agent and Borrower written notice thereof Interest Period, and (3) any outstanding Daily SOFR Rate Loans shall immediately be deemed to have been converted to Base Rate Loans.~~

~~(b) (e)~~ Notwithstanding anything to the contrary in this Agreement or any other Loan Papers, if ~~the~~ Administrative Agent determines (which determination shall be conclusive absent manifest error), or ~~the~~ Borrower or Required Lenders notify ~~the~~ Administrative Agent (with, in the case of the Required Lenders, a copy to ~~the~~ Borrower) that ~~the~~ Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining ~~LIBO Rate for any Interest Period hereunder or any other tenor~~ one (1) month, three (3) month or six (6) month interest periods of ~~LIBO Rate~~ Term SOFR, including, ~~without limitation,~~ because the ~~LIBOR~~ Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) ~~the~~ CME or any successor administrator of the LIBOR Term SOFR Screen Rate or a Governmental Authority having jurisdiction over ~~the~~ Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which ~~LIBO Rate~~ one (1) month, three (3) month or six (6) month interest periods of Term SOFR or the LIBOR Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of ~~loans~~ Dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to ~~the~~ Administrative Agent, that will continue to provide ~~LIBO Rates~~ such interest periods of Term SOFR after such specific date (~~such specific~~ the latest date on which one (1) month, three (3) month or six (6) month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the “**Scheduled Unavailability Date**”); ~~or~~

~~(iii) — the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBO Rate are no longer representative; or~~

~~(iv) — syndicated loans currently being executed, or that include language similar to that contained in this Section 4.3, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBO Rate;~~

then, ~~in the case of clauses (i)–(iii) above~~, on a date and time determined by ~~the~~ Administrative Agent (any such date, the “**LIBOR Term SOFR Replacement Date**”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated ~~and shall occur reasonably promptly upon the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above~~ and, solely with respect to ~~clause (iib)~~ clause (iib) above, no later than the Scheduled Unavailability Date, ~~LIBO Rate~~ Term SOFR will be replaced hereunder and under any Loan Paper Document with, ~~subject to the proviso below, the first available alternative set forth in the order below~~ Daily Simple SOFR for any payment period for interest calculated that can be determined by ~~the~~ Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Paper Document (the “**LIBOR Successor Rate**”; and any such rate before giving effect to the Related Adjustment, the “**Pre-Adjustment Successor Rate**”):

~~(x) Term SOFR plus the Related Adjustment; and~~

~~(y) SOFR plus the Related Adjustment;~~

~~and in the case of clause (iv) above, the Borrower and Administrative Agent may amend this Agreement solely for the purpose of replacing LIBO Rate under this Agreement and under any other Loan Paper in accordance with the definition of “LIBOR Successor Rate” and such amendment will become effective at 5:00 p.m., on the fifth Business Day after the Administrative Agent shall have notified all Lenders and the Borrower of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Lenders comprising the Required~~

Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to the implementation of a LIBOR Successor Rate pursuant to such clause;

~~provided that, if the Administrative Agent determines that Term SOFR has become available, is administratively feasible for the Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate shall be Term SOFR plus the relevant Related Adjustment.~~

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of (x) any occurrence of any of the events, periods or circumstances under ~~clauses (i) through (iii)~~ above, (y) a LIBOR Replacement Date and (z) the LIBOR Successor Rate.

Any LIBOR Successor Rate shall be applied in a manner consistent with market practice; ~~provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.~~

~~Notwithstanding anything else herein, if at any time (i) from the Fourth Amendment Closing Date through the end of the Temporary Waiver Period any LIBOR Successor Rate as so determined would otherwise be less than 0.25%, the LIBOR Successor Rate will be deemed to be 0.25% for the purposes of this Agreement and the other Loan Papers, and (ii) at any other time any LIBOR Successor Rate as so determined would otherwise be less than 0.00%, the LIBOR Successor Rate will be deemed to be 0.00 % for the purposes of this Agreement and the other Loan Papers.~~

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Paper, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

If the events or circumstances of the type described in ~~Section 4.3(c)(i)-(iii)~~ have occurred with respect to the LIBOR Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of "LIBOR Successor Rate."

[If the Successor Rate is Daily Simple SOFR, all interest payments will be payable on the last day of each calendar month.](#)

~~(d) Notwithstanding anything to the contrary herein, (i) after any such determination by the Administrative Agent or receipt by the Administrative Agent of any such notice described under Section 4.3(c)(i)-(iii), as applicable, if the Administrative~~

Agent determines that ~~none of the LIBOR Successor Rates~~ Daily Simple SOFR is not available on or prior to the ~~LIBOR~~ Term SOFR Replacement Date, or (ii) if the events or circumstances ~~described in Section 4.3(c)(iv) have occurred but none of the LIBOR Successor Rates is available, or~~ (iii) if the events or circumstances of the type described in ~~Section 4.3(c)(i)-(iii)~~ clauses (a) or (b) above have occurred with respect to Daily Simple SOFR or the ~~LIBOR~~ Successor Rate then in effect ~~and the Administrative Agent determines that none of the LIBOR Successor Rates is available~~, then in each case, the Administrative Agent and ~~the~~ Borrower may amend this Agreement solely for the purpose of replacing ~~LIBO Rate~~ Term SOFR, Daily Simple SOFR, and/or any then current ~~LIBOR~~ Successor Rate in accordance with this Section 4.3 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with ~~another alternate~~ an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar ~~U.S. dollar~~ Dollar denominated ~~syndicated~~ syndicated and agented in the United States for such alternative ~~benchmarks~~ benchmark, and, in each case, including any ~~Related Adjustments and any other~~ mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar ~~U.S. dollar~~ Dollar denominated ~~syndicated~~ syndicated and agented in the United States for such ~~benchmarks~~ benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by ~~the~~ Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a ~~LIBOR~~ "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth (5th) Business Day after ~~the~~ Administrative Agent shall have posted such proposed amendment to all Lenders and ~~the~~ Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to ~~the~~ Administrative Agent written notice that such Required Lenders object to such amendment.

~~(e) If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with clauses (c) or (d) of this Section 4.3(c) and the circumstances under clauses (c)(i) or (c)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), the~~

Administrative Agent will promptly ~~so~~ (in one or more notices) notify ~~the~~ Borrower and each Lender of the implementation of any Successor Rate. ~~Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency~~

Any Successor Rate Loans shall be ~~suspended, (to the extent of the affected Eurocurrency Rate Loans, Interest Periods, interest payment dates or payment periods), and (y) the Eurocurrency applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for Administrative Agent, such~~ Successor Rate component shall no longer be utilized applied in determining the Base Rate, until the ~~LIBOR Successor Rate has been determined in accordance with clauses (c) or (d) of this Section. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Rate Loans, Interest Periods, interest payment dates or payment periods) or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans (subject to the~~

~~foregoing clause (y)) in the amount specified therein~~ a manner as otherwise reasonably determined by Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than 0.00%, the Successor Rate will be deemed to be 0.00 % for the purposes of this Agreement and the other Loan Papers.

In connection with the implementation of a Successor Rate, Administrative 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; provided that, with respect to any such amendment effected, Administrative Agent shall post each such amendment implementing such Conforming Changes to Borrower and the Lenders reasonably promptly after such amendment becomes effective.

#### 4.4 Increased Costs: Reserves on Eurocurrency Rate Loans.

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify, or deem applicable any reserve, special deposit, compulsory loan, insurance charge, or similar requirement against assets of, deposits with, or for the account of, or credit extended, or participated in by, any Lender ~~(except any reserve requirement contemplated by Section 4.4(e))~~ or the L/C Issuers;

(ii) subject any Lender or any L/C Issuer to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in **clauses (b)** through **(d)** of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer or ~~the London~~ any interbank market any other condition, cost, or expense affecting this Agreement or ~~Eurocurrency Rate~~ Loans made by such Lender or any L/C or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any ~~Eurocurrency Rate~~ Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing, or maintaining any L/C (or of maintaining its obligation to participate in or to issue any L/C), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest, or any other amount) then, upon request of such Lender or such L/C Issuer, Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or the applicable L/C Issuer or any Lending Office of such Lender or such Lender's or the applicable L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such

Lender's or the applicable L/C Issuer's capital or on the capital of such Lender's or the applicable L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitment of such Lender or the Loans made by, or participations in L/Cs held by, such Lender, or the L/Cs issued by the applicable L/C Issuer, to a level below that which such Lender or the applicable L/C Issuer or such Lender's or the applicable L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the applicable L/C Issuer's policies and the policies of such Lender's or the applicable L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time, upon demand of such Lender or the applicable L/C Issuer, Borrower will pay to such Lender or the applicable L/C Issuer, as the case may be, such additional amount as will compensate such Lender or the applicable L/C Issuer or such Lender's or the applicable L/C Issuer's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or any L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the applicable L/C Issuer or its holding company, as the case may be, as specified in **subsection (a) or (b)** of this Section and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender or the applicable L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or either L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the applicable L/C Issuer's right to demand such compensation, *provided, that* that Borrower shall not be required to compensate a Lender or the applicable L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the applicable L/C Issuer, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the applicable L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

~~(e) **Reserves on Eurocurrency Rate Loans.** Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan; *provided, that* Borrower shall have received at least 10 days prior notice (with a copy to Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the last day of the relevant Interest Period, such additional interest shall be due and payable 10 days from receipt of such notice.~~

#### 4.5 Compensation for Losses.

Upon demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost, or expense incurred by it as a result of:



(a) any continuation, conversion, payment, or prepayment of any Loan ~~other than a Base Rate Loan~~ bearing interest at Term SOFR on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by Borrower (for a reason other than the failure of such Lender to make ~~a Loan~~ an advance at Term SOFR) to prepay, borrow, continue, or convert any Loan other than a Base Rate Loan on the date or in the amount notified by Borrower;

(c) any assignment of ~~a Eurocurrency Rate Loan~~ Loans bearing interest at Term SOFR on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to **Section 15.14**; or

(d) any failure by Borrower to make payment of any Loan or of any drawing under any L/C (or interest due thereon) denominated in the Alternative Currency on its scheduled due date or any payment thereof in a different currency;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan bearing interest at Term SOFR or from fees payable to terminate the deposits from which such funds were obtained. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

#### ~~For purposes of calculating~~

~~The amounts payable by Borrower to Lenders under this Section 4.5, each Lender shall never be deemed to have funded each Eurocurrency less than zero or greater than is permitted by applicable Law. For the avoidance of doubt, no amounts will be owing under this Section in connection with the prepayment of any Daily SOFR Rate Loan made by it at Eurocurrency or Base Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded (if any).~~

#### 4.6 Mitigation Obligations; Replacement of Lenders.

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under **Section 4.4**, or Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 4.1**, or if any Lender gives a notice pursuant to **Section 4.2**, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches, or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 4.1** or **4.4**, as the case may be, in the future, or eliminate the need for the notice pursuant to **Section 4.2**, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under **Section 4.4**, or if Borrower is required to pay any additional amount to any Lender or any Governmental

Authority for the account of any Lender pursuant to **Section 4.1**, Borrower may replace such Lender in accordance with **Section 15.14**.

#### 4.7 Survival.

All of Borrower's obligations under this **Section 4** shall survive termination of the Total Commitment and repayment of the Obligation hereunder.

### **SECTION 5 FEES.**

#### 5.1 Treatment of Fees.

The fees described in this **Section 5** (a) are not compensation for the use, detention, or forbearance of money, (b) are in addition to, and not in lieu of, interest and expenses otherwise described in this Agreement, (c) are payable in accordance with **Section 3.1(c)**, (d) are non-refundable, and (e) to the fullest extent permitted by Law, bear interest, if not paid when due, at the Default Rate.

#### 5.2 Fee Letter.

Borrower shall pay to the Joint Lead Arrangers and Administrative Agent, for their respective accounts or for the respective accounts of Lenders, as the case may be, fees in the amounts and at the times specified in the applicable Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

#### 5.3 L/C Fees.

(a) **L/C Fees.** Borrower shall pay to Administrative Agent for the account of each Revolver Lender in accordance with its Commitment Percentage (i) a fee for each commercial L/C equal to 1/8 of 1% per annum times the Dollar Equivalent of the actual daily maximum amount available to be drawn under each such L/C, and (ii) a fee for each standby L/C equal to the Applicable Margin for Eurocurrency Term Reference Rate Loans times the Dollar Equivalent of the actual daily maximum amount available to be drawn under each such L/C; *provided, however*, any L/C Fees otherwise payable for the account of a Defaulting Lender with respect to any L/C as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable L/C Issuer pursuant to **Section 2.3** shall be payable, to the maximum extent permitted by applicable Law, to the other Revolver Lenders in accordance with the upward adjustments in their respective Commitment Percentages allocable to such L/C pursuant to **Section 3.15(a)(iv)**, with the balance of such fee, if any, payable to the applicable L/C Issuer for its own account. Such fee for each L/C shall be due and payable quarterly in arrears on each Quarterly Date, commencing with the first such date to occur after the issuance of such L/C, and on the expiration date of such L/C. If there is any change in the Applicable Margin during any quarter, the actual daily amount of each standby L/C shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, upon the request of Required Revolver Lenders, while any Default exists, the fees set forth herein with respect to L/Cs shall accrue at the Default Rate.

(b) **Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers.** Borrower shall pay directly to each L/C Issuer, for its own account, a fronting fee in an amount specified in the applicable Fee Letter executed by Borrower and such L/C Issuer, or such

other amount as may be agreed upon by Borrower and such L/C Issuer, or, with respect to commercial L/Cs, in an amount agreed upon by Borrower and such L/C Issuers. Such fronting fee shall be due and payable (i) with respect to standby L/Cs, on the tenth Business Day after the end of each January, April, July, and October in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such L/C, on the L/C Expiration Date, and thereafter on demand, or (ii) with respect to commercial L/Cs, upon the issuance thereof and with respect to any amendment increasing the amount of such commercial L/C, on the amount of such increase, and payable upon the effectiveness of such amendment. For purposes of computing the daily amount available to be drawn under any L/C, the amount of such L/C shall be determined in accordance with **Section 1.7**. In addition, Borrower shall pay directly to the applicable L/C Issuer for its own account, in Dollars the customary issuance, presentation, amendment, and other processing fees, and other standard costs and charges of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(c) **Calculation of L/C Fees.** Each L/C (*other than* a fee payable upon the issuance of the L/C) shall be calculated on the basis of a year of 360 days and the actual number of days elapsed.

#### 5.4 Revolver Commitment Fee.

Borrower shall pay to Administrative Agent for the account of each Revolver Lender in accordance with its Commitment Percentage, a commitment fee equal to the Applicable Percentage times the daily amount by which the Revolver Commitment exceeds the Revolver Commitment Usage (~~excluding from Revolver Commitment Usage, for the purposes hereof, the outstanding principal balance of Swing Line Loans~~). The commitment fee shall accrue at all times from the Closing Date to the Termination Date for the Revolver Facility, including at any time during which one or more of the conditions in **Section 7** is not met, and shall be due and payable quarterly in arrears on each Quarterly Date, commencing with the first such date to occur after the Closing Date, and on the Termination Date for the Revolver Facility. The commitment fee shall be calculated quarterly in arrears on the basis of the actual days elapsed (including the first day but excluding the last day) in a calendar year of 360 days, and if there is any change in the Applicable Percentage during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Percentage separately for each period during such quarter that such Applicable Percentage was in effect.

### **SECTION 6 GUARANTY AND SECURITY.**

#### 6.1 Guaranty.

Full and complete payment of the Obligation under the Loan Papers shall be guaranteed in accordance with a Guaranty executed by each Restricted Company (other than Borrower) organized under the Laws of the United States (or any state thereof).

#### 6.2 Collateral.

Full and complete payment of the Obligation under the Loan Papers shall be secured by (a) all capital stock or other equity interests issued to a Restricted Company by any Restricted Subsidiary organized under the Laws of the United States (or any state thereof), other than the North Star Subsidiaries and the Concessioner Subsidiaries, and (b) 65% of all capital stock or other equity interests issued to a Restricted Company organized under the Laws of the United States (or any state thereof) by any Restricted Subsidiary organized under the Laws of any country *other than* the United States.

### 6.3 Additional Collateral and Guaranties.

Administrative Agent may, without notice or demand and without affecting any Person's obligations under the Loan Papers, from time to time (a) receive and hold additional collateral from any Person for the payment of all or any part of the Obligation (including, without limitation, collateral assigned to Administrative Agent pursuant to **Section 2.3(i)(iv)** herein) and exchange, enforce, or release all or any part of such additional collateral (in accordance with **Section 14.9**), and (b) accept and hold any endorsement or guaranty of payment of all or any part of the Obligation and release any endorser or guarantor, or any Person who has given any other security for the payment of all or any part of the Obligation, or any other Person in any way obligated to pay all or any part of the Obligation (in accordance with **Section 14.9**).

### 6.4 Additional Documents or Information.

Each Company will execute or cause to be executed, stock powers, control agreements, and other writings in the form and content reasonably required by Administrative Agent, and shall deliver (or grant Administrative Agent the authority to file on behalf of each Company) financing statements requested by Administrative Agent. Borrower shall pay all costs of (a) filing any financing, continuation, amendment, or terminations statements, or (b) other actions taken by Administrative Agent relating to the Collateral, including, without limitation, costs, and expenses of any Lien search required by Administrative Agent.

## **SECTION 7 CONDITIONS PRECEDENT.**

### 7.1 Initial Advance.

Lenders will not be obligated to fund the initial Loans hereunder, and the L/C Issuers will not be obligated to issue the initial L/Cs hereunder, unless Administrative Agent has received each of the items in **clauses (a)** through **(k)** below, each in form and substance satisfactory to Administrative Agent and each of the Lenders, and the conditions in **clauses (l)** and **(m)** below have been satisfied (*other than* each item listed on **Schedule 7.1**, which items are hereby permitted to be delivered or satisfied after the Closing Date, but not later than the respective dates for delivery or satisfaction specified on **Schedule 7.1**):

(a) an executed counterpart of this Agreement, sufficient in number for distribution to Administrative Agent, each Lender, and Borrower;

(b) (i) with respect to any Revolver Lender requesting a Revolver Note pursuant to **Section 3.1(a)**, a Revolver Note, payable to the order of such requesting Revolver Lender, as contemplated in **Section 3.1(a)**, and (ii) with respect to any Term Loan Lender requesting a Term Loan Note pursuant to **Section 3.1(a)**, a Term Loan Note, payable to the order of such requesting Term Loan Lender, as contemplated in **Section 3.1(a)**, ~~and (iii) if requested by either Swing Line Lender pursuant to **Section 3.1(a)**, a Swing Line Note, payable to such Swing Line Lender;~~

(c) from any Restricted Company (*other than* Borrower) organized under the Laws of the United States (or any state thereof) (i) that has not previously executed a Guaranty, a Guaranty executed by such Restricted Company, or (ii) that has previously executed a Guaranty, a Confirmation of Guaranty executed by such Restricted Company;

(d) from any Restricted Company organized under the Laws of the United States (or any state thereof) holding capital stock or other equity interests of any Restricted Subsidiary (other than stock in the North Star Subsidiaries and the Concessioner Subsidiaries), (i) that has not previously executed a Pledge Agreement, a Pledge Agreement executed by such Person, pledging the portion of such capital stock or other equity interests required pursuant to **Section 6.2**, or (ii) that has previously executed a Pledge Agreement, a Confirmation of Pledge Agreement executed by such Person;

(e) an Officers' Certificate for each Restricted Company, relating to articles of incorporation or organization, bylaws, regulations, or operating agreements, resolutions, and incumbency, as applicable;

(f) Certificates of Existence and Good Standing (Account Status) for each domestic Restricted Company from its state of organization, each dated as of a recent date;

(g) Legal opinions of Emily Barbara, Senior Counsel, Corporate Governance & Securities of VRI, Gibson, Dunn & Crutcher, LLP, special New York counsel to the Restricted Companies, and such local counsel as Administrative Agent shall request, each in form and substance satisfactory to Administrative Agent;

(h) a certificate signed by a Responsible Officer certifying that (i) all of the representations and warranties of the Companies in the Loan Papers are true and correct in all material respects (except to the extent qualified by materiality, in which case they shall be true and correct); (ii) no Default or Potential Default exists under the Existing Agreement; (iii) no Default or Potential Default exists or would result from the execution and delivery of the Loan Papers or the proposed funding of the Loans or issuance of L/Cs on the Closing Date; (iv) there has been no event or circumstance since July 31, 2017 that has had or could be reasonably expected to result in, either individually or in the aggregate, a Material Adverse Event; and (v) except as set forth on **Schedule 8.7**, there is no action, suit, investigation, or proceeding pending or, to the knowledge of Borrower, threatened, in any court or before any arbitrator or Governmental Authority that could reasonably be expected to result in a Material Adverse Event;

(i) evidence that all insurance required to be maintained pursuant to the Loan Papers has been obtained and is in effect;

(j) with respect to any Lender that reasonably requests at least 5 days prior to the Closing Date, **the** Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act, in each case at least 3 days prior to the Closing Date.

(k) at least 5 days prior to the Closing Date, **any** Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to **such** Borrower;

(l) payment of all fees payable on or prior to the Closing Date to Administrative Agent, any Related Party of Administrative Agent, and any Lender as provided for in **Section 5**; and

(m) unless waived by Administrative Agent, payment in full of all reasonable fees, expenses, and disbursements of Haynes and Boone, LLP and, without duplication, the reasonably allocated cost of internal legal services and all reasonable expenses and disbursements of internal counsel (collectively, “**Attorney Costs**”) of Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of Attorney Costs as shall constitute Administrative Agent’s reasonable estimate of Attorney Costs incurred or to be incurred by it through the closing proceedings (*provided, that* such estimate shall not thereafter preclude a final settling of accounts between Borrower and Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of **Section 14.5**, for purposes of determining compliance with the conditions specified in this **Section 7.1**, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted, or been satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender, unless Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

## 7.2 Each Loan.

The obligation of each Lender to make any Loan (other than a conversion of Loans to the other Type or a continuation of Revolver Loans as **EurocurrencyTerm Reference** Rate Loans) is subject to the following conditions precedent: (a) Administrative Agent shall have timely received a Loan Notice (~~or in the case of a Swing Line Loan, a Swing Line Loan Notice~~) or the applicable L/C Issuer shall have timely received the applicable L/C Agreement; (b) the applicable L/C Issuer shall have received any applicable L/C fee; (c) all of the representations and warranties of the Companies in the Loan Papers are true and correct in all material respects (unless they speak to a specific date or are based on facts which have changed by transactions contemplated or permitted by this Agreement); (d) no Material Adverse Event, Default or Potential Default exists or would result from the proposed funding of such Loans or issuance of L/Cs; and (e) the funding of the Loans or issuance of the L/Cs is permitted by Law. Upon Administrative Agent’s reasonable request, Borrower shall deliver to Administrative Agent evidence substantiating any of the matters in the Loan Papers that are necessary to enable Borrower to qualify for the Loans or L/Cs. Each condition precedent in this Agreement is material to the transactions contemplated by this Agreement, and time is of the essence with respect to each condition precedent. Subject to the prior approval of Required Lenders, Required Revolver Lenders or Required Term Loan Lenders, as the case may be, Lenders may fund any Loan, and the applicable L/C Issuer may issue any L/C, without all conditions being satisfied, but, to the extent permitted by Law, that funding and issuance shall not be deemed to be a waiver of the requirement that each condition precedent be satisfied as a prerequisite for any subsequent funding or issuance, unless Required Lenders, Required Revolver Lenders or Required Term Loan Lenders, as applicable, specifically waive each item in writing. Each Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation as **EurocurrencyTerm Reference** Rate Loans), ~~each Swing Line Loan Notice~~, and each L/C Agreement submitted by Borrower shall be deemed to be a representation and warranty that the conditions specified in this **Section 7.2** have been satisfied on and as of the date of the applicable Loan or issuance of the applicable L/C. Notwithstanding anything to the contrary set forth in this **Section 7.2**, Lenders will not be obligated to honor any Loan Notice (including a Loan Notice converting Base Rate Loans ~~to Eurocurrency or Daily SOFR Rate Loans to Term Reference~~ Rate Loans or continuing **EurocurrencyTerm Reference** Rate Loans) ~~or Swing Line Loan Notice~~ if a Default or Potential Default

exists or would result after giving effect to the proposed funding, conversion, or continuation of such Loans or issuance of L/Cs. In the case of a Loan to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of ~~the~~ Administrative Agent, the Required Term Loan Lenders (in the case of any Term Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any L/C to be denominated in an Alternative Currency) would make it impracticable for such Loan to be denominated in the relevant Alternative Currency.

## **SECTION 8 REPRESENTATIONS AND WARRANTIES.**

Borrower (and each Guarantor by execution of a Guaranty) represents and warrants to Administrative Agent and Lenders as set forth below; *provided however*, that representations and warranties of any such Guarantor shall be made solely as to such Guarantor and its Subsidiaries:

### **8.1 Regulation U.**

No Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any “margin stock” within the meaning of *Regulations U or X* of the Board of Governors of the Federal Reserve System, as amended. No part of the proceeds of any Loan will be used, directly or indirectly, for a purpose which violates any Law, including, without limitation, the provisions of *Regulations U or X* (as enacted by the Board of Governors of the Federal Reserve System, as amended). Following the application of the proceeds of each Loan, each L/C Borrowing, or each drawing under each L/C, not more than 25% of the value of the assets (either of Borrower only or the Companies on a consolidated basis) subject to the provisions of **Section 10.5**, **Section 10.10**, and **Section 10.11** or subject to any restriction contained in any agreement or instrument between Borrower and any Lender or any Affiliate of any Lender relating to Debt and within the scope of **Section 12.8** will be margin stock.

### **8.2 Corporate Existence, Good Standing, Authority, and Compliance.**

Each Company is duly organized, validly existing, and in good standing under the Laws of the jurisdiction in which it is incorporated or organized as identified on **Schedule 8.2** (or any revised **Schedule 8.2** delivered by Borrower to Lenders evidencing changes permitted by **Sections 9.10, 9.11, 10.10, or 10.11**). Except where failure is not a Material Adverse Event, each Restricted Company (a) is duly qualified to transact business and is in good standing as a foreign corporation or other entity in each jurisdiction where the nature and extent of its business and properties require due qualification and good standing as identified on **Schedule 8.2** (or any such revised **Schedule 8.2**), and (b) possesses all requisite authority, permits, licenses, consents, approvals, and power to (i) own or lease its assets and conduct its business as is now being, or is contemplated by this Agreement to be, conducted, and (ii) execute, deliver, and perform its obligations under the Loan Papers to which it is party.

### **8.3 Subsidiaries.**

VRI has no Subsidiaries, *other than* as disclosed on **Schedule 8.2** (or on any revised **Schedule 8.2** delivered by Borrower to Lenders evidencing changes permitted by **Sections 9.10, 9.11, 10.10, or 10.11**). All of the outstanding shares of capital stock (or similar voting interests) of the Restricted Companies are duly authorized, validly issued, fully paid, and nonassessable. All of the outstanding shares of capital stock of the Restricted Companies *other than* VRI are owned of record and beneficially as set forth thereon, free and clear of any Liens, restrictions, claims, or Rights of another Person, *other than* Permitted

Liens, and are not subject to any warrant, option, or other acquisition Right of any Person or subject to any transfer restriction, *other than* restrictions imposed by securities Laws and general corporate Laws. All Unrestricted Subsidiaries meet the requirements of “*Unrestricted Subsidiaries*” as set forth in the definition thereof. All Unrestricted Subsidiaries that are being re-designated as “*Restricted Subsidiaries*” on the Closing Date are in compliance with **Section 9.11(b)** as of the Closing Date.

#### 8.4 Authorization and Contravention.

The execution and delivery by, and enforcement against, each Restricted Company of each Loan Paper or related document to which it is a party and the performance by it of its obligations thereunder (a) are within its organizational power, (b) have been duly authorized by all necessary action, (c) require no action by or filing with any Governmental Authority (*other than* any action or filing that has been taken or made on or before the Closing Date), (d) do not violate any provision of its organizational documents, (e) do not violate any provision of Law or any order of any Governmental Authority applicable to it, *other than* violations that individually or collectively are not a Material Adverse Event, (f) do not violate any Material Agreements to which it is a party, or (g) do not result in the creation or imposition of any Lien on any asset of any Company.

#### 8.5 Binding Effect.

Upon execution and delivery by all parties thereto, each Loan Paper which is a contract will constitute a legal and binding obligation of each Restricted Company party thereto, enforceable against it in accordance with its terms, *except* as enforceability may be limited by applicable Debtor Relief Laws and general principles of equity.

#### 8.6 Financial Statements.

The Current Financials were prepared in accordance with GAAP and, together with the notes thereto, present fairly, in all material respects, the consolidated financial condition, results of operations, and cash flows of the Companies as of, and for the portion of the fiscal year ending on, the date or dates thereof (subject only to normal year-end adjustments), and show all material indebtedness and other liabilities, direct, or contingent, of the Companies as of such date or dates, including liabilities for Taxes, material commitments and Debt. Since the date of the Current Financials, there has been no event or circumstance, either individually or in the aggregate, that has resulted in or could reasonably be expected to result in a Material Adverse Event.

#### 8.7 Litigation.

Except as disclosed on **Schedule 8.7**, (a) no Company (*other than* as a creditor or claimant) is subject to, or aware of the threat of, any Litigation (i) that is reasonably likely to be determined adversely to any Company and, if so adversely determined, shall result in a Material Adverse Event, or (ii) that purports to affect or pertain to this Agreement or any other Loan Paper, or any of the transactions contemplated hereby, (b) no outstanding or unpaid judgments against any Company exist, and (c) no Company is a party to, or bound by, any judicial or administrative order, judgment, decree, or consent decree relating to any past or present practice, omission, activity, or undertaking which constitutes a Material Adverse Event.

#### 8.8 Taxes.



All Tax returns of each Company required to be filed have been filed (or extensions have been granted) before delinquency, *other than* returns for which the failure to file is not a Material Adverse Event or, in any event, likely to result in a Lien on the assets of the Companies securing any liability of the Companies (individually or when aggregated with any liability of the Companies contemplated elsewhere in this Section and in **Sections 8.9** and **Section 8.10** herein that is reasonably likely to be secured by Liens) in excess of the Threshold Amount, and all Taxes shown as due and payable in such returns have been paid before delinquency, *other than* Taxes for which the criteria for Permitted Liens (as specified in **clause (j)** of the definition of “*Permitted Liens*”) have been satisfied, for which nonpayment is not a Material Adverse Event or, in any event, likely to result in a Lien on the assets of the Companies securing any liability of the Companies (individually or when aggregated with any liability of the Companies contemplated elsewhere in this Section and in **Section 8.9** and **Section 8.10** herein that reasonably likely to be secured by Liens) in excess of the Threshold Amount, or which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided. There is no proposed Tax assessment against any Company that would, if made, result in a Material Adverse Event or, in any event, result in a Lien on the assets of such Company or Companies securing any liability (individually or when aggregated with any liability of the Companies contemplated elsewhere in this Section and in **Section 8.9** and **Section 8.10** herein that is reasonably likely to be secured by Liens) in excess of the Threshold Amount.

#### 8.9 Environmental Matters.

Except as disclosed on **Schedule 8.9** and except for conditions, circumstances, or violations that are not, individually or in the aggregate, a Material Adverse Event or, in any event, likely to result in a Lien on the assets of the Companies securing liability of the Companies (individually or when aggregated with any liability of the Companies contemplated elsewhere in this Section and in **Section 8.8** and **Section 8.10** herein that is reasonably likely to be secured by Liens) in excess of the Threshold Amount, no Company (a) knows of any environmental condition or circumstance adversely affecting any Company’s properties or operations, (b) has, to its knowledge, received any written report of any Company’s violation of any Environmental Law, or (c) knows that any Company is under any obligation imposed by a Governmental Authority to remedy any violation of any Environmental Law. Except as disclosed on **Schedule 8.9**, each Company believes that its properties and operations do not violate any Environmental Law, *other than* violations that are not, individually or in the aggregate, a Material Adverse Event or, in any event, likely to result in a Lien on the assets of the Companies securing liability of the Companies (individually or when aggregated with any liability of the Companies contemplated elsewhere in this Section and in **Section 8.8** and **Section 8.10** herein that is reasonably likely to be secured by Liens) in excess of the Threshold Amount. No facility of any Company is used for, or to the knowledge of any Company has been used for, treatment or disposal of any Hazardous Substance or storage of Hazardous Substances, *other than* in material compliance with applicable Environmental Laws.

#### 8.10 Employee Plans.

Each Employee Plan is in compliance in all material respects with, and has been administered in compliance with, the applicable provisions of ERISA, the Code, and any other applicable law. No Employee Plan is subject to the “*at-risk*” requirements in *section 303* of ERISA and *section 430* of the Code. Except where the occurrence or existence, individually or in the aggregate, is not a Material Adverse Event or, in any event, likely to result in a Lien on the assets of any Company or the Companies securing liability of any Company or the Companies (individually or when aggregated with any liability of the Companies contemplated elsewhere in this Section and in **Section 8.8** and **Section 8.9** herein that is reasonably likely to be secured by Liens) in excess of the Threshold Amount, (a) no Employee Plan or

Multiemployer Plan, as applicable, has any “*unpaid minimum required contribution*” (as described in *section 4971(c)(4)* of the Code), whether or not waived, or any “*accumulated funding deficiency*” (as defined in *section 302* of ERISA or *section 412* of the Code), (b) no Company nor any ERISA Affiliate has incurred liability under ERISA to the PBGC in connection with any Employee Plan (*other than* required insurance premiums, all of which have been paid), (c) no Company nor any ERISA Affiliate has withdrawn in whole or in part from participation in a Multiemployer Plan, (d) no Company nor any ERISA Affiliate, nor any Multiemployer Plan to which any Company or any ERISA Affiliate contributes to or has contributed to, has received notice concerning the determination that the Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of *Title IV* of ERISA, (e) no Company nor any ERISA Affiliate has engaged in any “*prohibited transaction*” (as defined in *section 406* of ERISA or *section 4975* of the Code), and (f) no “*reportable event*” (as defined in *section 4043* of ERISA) has occurred with respect to an Employee Plan, excluding events for which the notice requirement is waived under applicable PBGC regulations.

#### 8.11 Properties and Liens.

(a) Each Company has good and marketable title in fee simple to, or a valid leasehold interest in, all material property reflected on the Current Financials (*other than* for property that is obsolete or that has been disposed of in the ordinary course of business or as otherwise permitted by **Section 10.10** or **Section 10.11**).

(b) Except for Permitted Liens, no Lien exists on any property of any Company (including, without limitation, the Forest Service Permits and the Water Rights), and the execution, delivery, performance, or observance of the Loan Papers will not require or result in the creation of any Lien on any Company’s property.

(c) As of the date hereof, the Forest Service Permits constitute all of the material licenses, permits, or leases from the U.S. held by the Companies for use in connection with their respective skiing businesses.

(d) Each of the Water Rights is, to the knowledge of the Companies, in full force and effect and, to the knowledge of the Companies, there is no material default or existing condition which with the giving of notice or the passage of time or both would cause a material default under any Water Right that is material to the operation of the Companies. Subject to the available supply and to the terms and conditions of the applicable decrees, the Companies’ Water Rights provide a dependable, legal and physical snowmaking, irrigation, and domestic water supply for the operation of the Companies’ businesses.

(e) As of the Closing Date, (i) the Companies own the Critical Assets set forth on **Schedule 8.11**, and (ii) each Existing Critical Asset is owned by a Restricted Subsidiary of Borrower.

#### 8.12 Government Regulations.

No Company or Controlling Person is or is required to be registered as an “*investment company*” under the Investment Company Act of 1940.

#### 8.13 Transactions with Affiliates.

Except as set forth in **Schedule 8.13** and *except* for other transactions which do not, in the aggregate, cost the Restricted Companies more than \$2,000,000 in any fiscal year, no Restricted Company is a party to any transaction with any Affiliate (*other than* another Restricted Company), *except* upon fair and reasonable terms not materially less favorable than it could obtain or could become entitled to in an arm's-length transaction with a Person that was not its Affiliate.

#### 8.14 Debt.

No Company is an obligor on any Debt, *other than* Permitted Debt.

#### 8.15 Material Agreements.

All Material Agreements to which any Restricted Company is a party are in full force and effect, and no default or potential default (a) exists on the part of any Restricted Company thereunder that is a Material Adverse Event or (b) would result from the consummation of the transactions contemplated by this Agreement or any other Loan Paper.

#### 8.16 Labor Matters.

There are no binding agreements of any type with any labor union, labor organization, collective bargaining unit or employee group to which any Company is bound, *other than* agreements which may be entered into after the Closing Date which do not constitute a Material Adverse Event. No actual or threatened strikes, labor disputes, slow downs, walkouts, or other concerted interruptions of operations by the employees of any Company that constitute a Material Adverse Event exist. Hours worked by and payment made to employees of the Companies have not been in violation of the *Fair Labor Standards Act*, as amended, or any other applicable Law dealing with labor matters, *other than* any violations, individually or collectively, that are not a Material Adverse Event. All payments due from any Company for employee health and welfare insurance have been paid or accrued as a liability on its books, *other than* any nonpayments that are not, individually or collectively, a Material Adverse Event.

#### 8.17 Solvency.

On the Closing Date, on each Loan Date, and on each date of an L/C Credit Extension, Borrower, and each Guarantor are, and after giving effect to the requested Loan, will be, Solvent.

#### 8.18 Intellectual Property.

Each Company owns (or otherwise holds rights to use) all material Intellectual Property, licenses, permits, and trade names necessary to continue to conduct its businesses as presently conducted by it and proposed to be conducted by it immediately after the Closing Date. To its knowledge, each Company is conducting its business without infringement or claim of infringement of any license, patent, copyright, service mark, trademark, trade name, trade secret, or other intellectual property right of others, *other than* any infringements or claims that, if successfully asserted against or determined adversely to any Company, would not, individually or collectively, constitute a Material Adverse Event, and to the best of each Company's knowledge, no slogan or other advertising device, product, process, method, substance, or part or other material now employed, or now contemplated to be employed, by such Company infringes upon any rights held by any other Person. To the knowledge of any Company as of the date hereof, no infringement or claim of infringement by others of any material Intellectual Property, license,

permit, trade name, or other intellectual property of any Company exists, *other than* claims which will not result in a Material Adverse Event.

#### 8.19 Full Disclosure.

Each material fact or condition relating to the Loan Papers or the financial condition, business, or property of any Company has been disclosed to Administrative Agent. All reports, financial statements, certificates, and other information furnished by any Company to Administrative Agent in connection with the Loan Papers on or before the Closing Date was, taken as a whole, true and accurate in all material respects or based on reasonable estimates on the date the information is stated or certified.

#### 8.20 Insurance.

The properties of the Companies are insured with financially sound and reputable insurance companies not Affiliates of the Companies, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Companies operate.

#### 8.21 Compliance with Laws.

Each Company is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction, or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Event.

#### 8.22 OFAC

No Company, or, to the knowledge of any Company, any director, officer, employee, agent or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (a) currently the subject or target of any Sanctions, ~~and no Company is~~ (b) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction. Each Company has conducted their businesses in compliance in all material respects with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

#### 8.23 Anti-Corruption Laws

Each Company is in compliance in all material respects with Anti-Corruption Laws applicable to such Company, and each Company has instituted and maintains compliance policies and procedures applicable to such Company with respect to applicable Anti-Corruption Laws.

#### 8.24 Taxpayer Identification Number

The true and correct U.S. taxpayer identification number of Borrower and each Restricted Subsidiary is set forth on **Schedule 8.24**.

#### 8.25 Affected Financial Institution.

Neither Borrower nor any Guarantor is an Affected Financial Institution.

#### 8.26 Beneficial Ownership.

As of the Closing Date, the information included in each Beneficial Ownership Certification, if applicable, is true and correct in all respects.

### **SECTION 9 AFFIRMATIVE COVENANTS.**

So long as Lenders are committed to fund Loans and the L/C Issuers are committed to issue L/Cs under this Agreement, and thereafter until the Obligation is paid in full, Borrower covenants and agrees as follows:

#### 9.1 Items to be Furnished.

Borrower shall cause the following to be furnished to each Lender:

(a) With respect to each fiscal year of the Companies, within 5 Business Days after the date required to be filed with the Securities and Exchange Commission as part of the Companies' periodic reporting, Financial Statements showing the consolidated financial condition and results of operations of the Companies as of, and for the year ended on, that last day, accompanied by: (A) the unqualified opinion of a "Registered Public Accounting Firm" (as such term is specified in the Securities Laws) of nationally-recognized standing, based on an audit using generally accepted auditing standards and applicable Securities Laws, that the Financial Statements were prepared in accordance with GAAP and present fairly, in all material respects, the consolidated financial condition and results of operations of the Companies; *provided*, that such opinion may include appropriate qualifications related to any actual or potential impact, direct or indirect, arising as a result of or related to (or could reasonably be expected to arise out of or result from) COVID-19 on the Companies' consolidated financial condition, (B) any management letter prepared by the accounting firm delivered in connection with its audit, (C) a certificate from the accounting firm to Administrative Agent indicating that during its audit it obtained no knowledge of any Default or Potential Default, or if it obtained knowledge, the nature and period of existence thereof, and (D) a Compliance Certificate with respect to the Financial Statements.

(b) With respect to each fiscal quarter of the Companies (other than the last fiscal quarter of each fiscal year), within 5 Business Days after the date required to be filed with the Securities and Exchange Commission as part of the Companies periodic reportings, Financial Statements showing the consolidated financial condition and results of operations of the Companies for such fiscal quarter and for the period from the beginning of the current fiscal year to the last day of such fiscal quarter, accompanied by a Compliance Certificate with respect to the Financial Statements; ~~provided that during the Temporary Waiver Period, Borrower shall include in such Compliance Certificate, for informational purposes only, calculations of the financial covenants set forth in Section 11.~~

(c) Promptly after receipt, a copy of each interim or special audit report, management letter, and recommendations issued by independent accountants with respect to any Company or its financial records.

(d) Notice, promptly after any Company knows or has reason to know, of (i) the existence and status of any Litigation that, if determined adversely to any Company, would be a Material Adverse

Event, (ii) any change in any material fact or circumstance represented or warranted by any Restricted Company in connection with any Loan Paper, (iii) the receipt by any Company of notice of any violation or alleged violation of any Environmental Law or ERISA (which individually or collectively with other violations or allegations is reasonably likely to constitute a Material Adverse Event), (iv) a Default or Potential Default, specifying the nature thereof and what action the Restricted Companies have taken, are taking, or propose to take, (v) any breach or nonperformance of, or default under, a Material Agreement of a Restricted Company that is reasonably likely to result in a Material Adverse Event, (vi) any material change in accounting policies or financial reporting practices by any Restricted Company, (vii) the occurrence of any Internal Control Event, or (viii) the occurrence of any event pursuant to which any “*person*” or “*group*” (as such terms are used in *Sections 13(d)* and *14(d)* of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent, or other fiduciary or administrator of any such plan) is granted or otherwise obtains or receives the right to acquire (such right, an “*option right*”), whether such right is exercisable immediately or only after the passage of time, directly or indirectly, 5% or more of the equity securities of VRI entitled to vote for members of the board of directors or equivalent governing body of VRI on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right). Each notice pursuant to **Section 9.1(d)(iv)** shall describe with particularity any and all provisions of this Agreement and any other Loan Paper that have been breached.

(e) Promptly after filing, copies of all material reports or filings filed by or on behalf of any Company with any securities exchange or the Securities and Exchange Commission (including, without limitation, copies of each Form 10-K, Form 10-Q, and Form S-8 filed by, or on behalf of, VRI with the Securities and Exchange Commission within 15 days after filing).

(f) Documents required to be delivered pursuant to **Section 9.1(a)** and **(b)** and **Section 9.1(e)** (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto on Borrower’s website on the Internet at the website address listed on **Schedule 1**, or (ii) on which such documents are posted on Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); *provided, that:* (x) Borrower shall deliver paper copies of such documents to Administrative Agent or any Lender that requests Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by Administrative Agent or such Lender, and (y) Borrower shall notify Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance Borrower shall be required to provide paper copies of the Compliance Certificates required by **Section 9.1(a)** and **(b)** to Administrative Agent. Except for such Compliance Certificates, Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Borrower hereby acknowledges that (a) Administrative Agent may, but shall not be obligated to, make available to Lenders and L/C Issuers materials and/or information provided by or on behalf of Borrower hereunder (collectively, “**Borrower Materials**”) by posting Borrower Materials on DebtDomain, IntraLinks, SyndTrak or another similar electronic system (the “**Platform**”), and (b) certain

of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information with respect to Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “**PUBLIC**” which, at a minimum, shall mean that the word “**PUBLIC**” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “**PUBLIC**,” Borrower shall be deemed to have authorized Administrative Agent, Joint Lead Arrangers, the L/C Issuers and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in **Section 15.15**); (y) all Borrower Materials marked “**PUBLIC**” are permitted to be made available through a portion of the Platform designated “*Public Side Information*,” and (z) Administrative Agent and Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “**PUBLIC**” as being suitable only for posting on a portion of the Platform not designated “*Public Side Information*.”

(g) Subject to the confidentiality provisions set forth in **Section 15.15**, promptly upon reasonable request by Administrative Agent or any Lender (through Administrative Agent), information (not otherwise required to be furnished under the Loan Papers) respecting the business affairs, assets, and liabilities of the Companies (including, but not limited to, seasonal operating statistics, annual budgets, etc.) and opinions, certifications, and documents in addition to those mentioned in this Agreement.

(h) With respect to the post-closing items set forth on **Schedule 7.1**, if any, deliver, or cause to be delivered, to Administrative Agent, all agreements, documents, instruments, or other items listed on **Schedule 7.1** on or prior to the date specified for delivery thereof on **Schedule 7.1**.

(i) Promptly following any request therefor, provide information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation.

## 9.2 Use of Proceeds.

Borrower will use all of the proceeds of (a) Revolving Loans, L/Cs, and L/C Borrowings for working capital, to make advances and other investments permitted by **Section 10.8**, to make acquisitions permitted under **Section 10.11**, to make capital expenditures permitted under **Section 10.18**, and for other general corporate purposes, and (b) Term Loans to redeem the 2019 VRI Subordinated Notes and the Vail Bonds and to consummate the Whistler Acquisition, the 2018 Acquisitions and the Peak Resorts Acquisition. No part of the proceeds of any L/C draft or drawing, any L/C Borrowing, or any Loan will be used, directly or indirectly, for a purpose that violates any Law, including without limitation, the provisions of *Regulation U*.

## 9.3 Books and Records.

Each Company will maintain books, records, and accounts necessary to prepare financial statements in accordance with GAAP and in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Company.

## 9.4 Inspections.

Upon reasonable request, and subject to the confidentiality provisions set forth in **Section 15.15**, each Company will allow Administrative Agent (or its Representatives) to inspect any of its properties, to review reports, files, and other records, and to make and take away copies, to conduct tests or investigations, and to discuss any of its affairs, conditions, and finances with its other creditors, directors, officers, employees, or representatives from time to time, during reasonable business hours; *provided that* when a Default exists, Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of Borrower at any time during normal business hours and with two (2) Business Days advance notice. Any of Lenders (or their Representatives) may accompany Administrative Agent during such inspections.

#### 9.5 Taxes.

Each Restricted Company will promptly pay when due any and all Taxes, *other than* Taxes which are being contested in good faith by lawful proceedings diligently conducted, against which reserve or other provision required by GAAP has been made; *provided, however, that* all such Taxes shall, in any event, be paid prior to any levy for execution in respect of any Lien on any property of a Restricted Company.

#### 9.6 Payment of Obligations.

Each Company will pay (or renew and extend) all of its obligations at such times and to such extent as may be necessary to prevent a Material Adverse Event (*except* for obligations, *other than* Funded Debt, which are being contested in good faith by appropriate proceedings).

#### 9.7 Maintenance of Existence, Assets, and Business.

(a) Except as otherwise permitted by **Section 10.11**, each Company will (i) maintain its organizational existence and good standing in its state of organization and its authority to transact business in all other states where failure to maintain its authority to transact business is a Material Adverse Event; (ii) maintain all Water Rights, licenses, permits (including, without limitation, the Forest Service Permits), and franchises necessary for its business where failure to maintain is a Material Adverse Event; (iii) preserve or renew all of its Intellectual Property, the non-preservation of which could reasonably be expected to result in a Material Adverse Event; and (iv) keep all of its assets that are useful in and necessary to its business in good working order and condition (ordinary wear and tear excepted) and make all necessary repairs and replacements.

(b) Subject to dispositions permitted pursuant to **Section 10.10** hereof, each Existing Critical Asset and any Additional Critical Assets owned by any Company shall be owned by either a Wholly Owned Restricted Subsidiary of Borrower or a Restricted Subsidiary of Borrower, *so long as* (i) such Restricted Subsidiary has provided a Guaranty and Pledge Agreement in accordance with the provisions set forth in **Sections 6.1, 6.2, 9.10, or 9.11** herein, as the case may be, (ii) the stock or other equity interests in such Restricted Subsidiary owned by a Restricted Company (other than stock in the Northstar Subsidiaries and Grand Teton Lodge Company) have been pledged to Administrative Agent, for the benefit of Lenders, pursuant to a Pledge Agreement, and (iii) such Restricted Subsidiary has otherwise complied with the terms and provisions set forth in the Loan Papers, including, without limitation, **Section 10.16** herein; *provided, that* Unrestricted Subsidiaries may own Additional Critical Assets, *so long as* on the date an Unrestricted Subsidiary acquires an Additional Critical Asset, (x) the EBITDA of all Unrestricted Subsidiaries holding Additional Critical Assets does not exceed 7.5% of Adjusted



EBITDA, on a consolidated basis, for the most-recently-ended four fiscal quarters, and (y) the aggregate fair market value of such assets and all other Additional Critical Assets owned by Unrestricted Subsidiaries (in each case as determined on the applicable acquisition date, without giving subsequent effect to increases or decreases in value), does not exceed 7.5% of Total Assets as of the last day of the most-recently-ended fiscal quarter.

(c) No Restricted Company party to a Pledge Agreement will change its name in any manner (*except* by registering additional trade names), unless such Restricted Company shall have given Administrative Agent prior notice thereof. Borrower shall promptly notify Administrative Agent of any change in name of any other Company (*except* the registering of additional tradenames).

#### 9.8 Insurance.

Each Company will maintain with financially sound, responsible, and reputable insurance companies or associations (or, as to workers' compensation or similar insurance, with an insurance fund or by self-insurance authorized by the jurisdictions in which it operates) insurance concerning its properties and businesses against casualties and contingencies and of types and in amounts (and with co-insurance and deductibles) as is customary in the case of similar businesses. At Administrative Agent's request, each Company will deliver to Administrative Agent certificates of insurance for each policy of insurance and evidence of payment of all premiums.

#### 9.9 Environmental Laws.

Each Company will (a) conduct its business so as to comply in all material respects with all applicable Environmental Laws and shall promptly take required corrective action to remedy any non-compliance with any Environmental Law, *except* where failure to comply or take action would not be a Material Adverse Event, and (b) establish and maintain a management system designed to ensure compliance with applicable Environmental Laws and minimize material financial and other risks to each Company arising under applicable Environmental Laws or as the result of environmentally related injuries to Persons or property, *except* where failure to comply would not be a Material Adverse Event. Borrower shall deliver reasonable evidence of compliance with the foregoing covenant to Administrative Agent within 30 days after any written request from Required Lenders, which request shall be made only if Required Lenders reasonably believe that a failure to comply with the foregoing covenant would be a Material Adverse Event.

#### 9.10 Subsidiaries.

The Companies may create or acquire additional Subsidiaries (including Unrestricted Subsidiaries); provided *that* (a) each Person organized under the Laws of the United States (or any state thereof) that becomes a Restricted Subsidiary after the Closing Date (whether as a result of an acquisition permitted under **Section 10.11**, creation, the failure of such Subsidiary to meet the requirements of an "*Unrestricted Subsidiary*" as set forth in the definition thereof, or otherwise) shall execute and deliver to Administrative Agent a Guaranty within 30 days after becoming a Restricted Subsidiary, (b) except as otherwise provided in **Section 6.2**, each Restricted Company organized under the Laws of the United States (or any state thereof) that becomes the holder of the capital stock or equity interest of each Person that becomes a Restricted Subsidiary after the Closing Date (whether as a result of an acquisition permitted under **Section 10.11**, creation, the failure of such Subsidiary to meet the requirements of an "*Unrestricted Subsidiary*" as set forth in the definition thereof, or otherwise) shall execute and deliver to Administrative Agent a Pledge Agreement, together with any related Security Documents reasonably

required by Administrative Agent, pledging such capital stock or equity interests required to be pledged by it under this Agreement within 30 days after such Person becomes a Subsidiary, (c) Borrower shall deliver to Administrative Agent a revised **Schedule 8.2** reflecting such new Subsidiary within 30 days after it becomes a Subsidiary, and (d) no Default or Potential Default exists or arises after giving pro forma effect to the creation, acquisition, or addition of such Subsidiary; *provided, that* for purposes of determining compliance, (x) Debt of each Subsidiary created or acquired shall be deemed to have been incurred on the date of such acquisition or creation, and (y) Adjusted EBITDA for the most-recently-ended four fiscal quarters shall include on a *pro forma* basis for such period the EBITDA of each Restricted Subsidiary created or acquired.

#### 9.11 Designation and Re-designation of Subsidiaries.

(a) Borrower may designate any Subsidiary as an Unrestricted Subsidiary and may re-designate any Restricted Subsidiary as an Unrestricted Subsidiary; *provided, that* (i) Borrower shall deliver to Administrative Agent a revised **Schedule 8.2** reflecting the designation of such Subsidiary as an Unrestricted Subsidiary or the re-designation of such Restricted Subsidiary as an Unrestricted Subsidiary within 30 days after it becomes an Unrestricted Subsidiary, (ii) such Subsidiary otherwise meets (or would meet concurrently with the effectiveness of such re-designation) the requirements of an “*Unrestricted Subsidiary*” as set forth in the definition thereof, and (iii) no Default or Potential Default exists or will arise after giving pro forma effect to such designation or re-designation; *provided, that* for purposes of determining compliance (x) with **Section 10.8** hereof, all outstanding loans, advances, and investments in such designated or re-designated Subsidiary shall be deemed to have been made on (and shall be valued as of) the date of such designation or re-designation, as applicable, and (y) Adjusted EBITDA for the most-recently-ended four fiscal quarters shall exclude on a *pro forma* basis for such period the EBITDA of such designated or re-designated Subsidiary. Subject to **Section 15.9(g)**, Administrative Agent shall execute documentation reasonably required to release any Restricted Subsidiary which is re-designated by Borrower as an Unrestricted Subsidiary from its Guaranty.

(b) Borrower may re-designate any Unrestricted Subsidiary as a Restricted Subsidiary; *provided, that* (i) such Subsidiary shall have complied with **Section 9.10** hereof, (ii) Borrower shall deliver to Administrative Agent a revised **Schedule 8.2** reflecting the re-designation of such Unrestricted Subsidiary as a Restricted Subsidiary within 30 days after it becomes a Restricted Subsidiary, (iii) after giving effect to such re-designation, such Subsidiary is in compliance with **Section 10.16**, and (iv) no Default or Potential Default exists or will arise after giving pro forma effect to such re-designation; *provided, that* for purposes of determining compliance, (x) all existing Debt of, and loans, advances, or investments made by, such re-designated Subsidiary shall be deemed to have been incurred on the date of such re-designation, and (y) Adjusted EBITDA for the most-recently-ended four fiscal quarters shall include on a *pro forma* basis for such period the EBITDA of such re-designated Subsidiary.

#### 9.12 Keepwell Requirements.

Each Qualified ECP Guarantor, jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor to honor all of its obligations under this Agreement or any other Loan Paper in respect of Swap Obligations (*provided, that* each Qualified ECP Guarantor shall only be liable under this **Section 9.12** for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this **Section 9.12**, or otherwise under this Agreement or any other Loan Paper, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until

the full and final payment of the Obligations (other than contingent Obligations for which no claim has been made), termination of the Commitments of all Lenders and L/C Issuers, and termination of all L/Cs (or cash collateralization thereof as acceptable to the applicable L/C Issuer). Each Qualified ECP Guarantor intends that this **Section 9.12** constitute, and this **Section 9.12** shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Guarantor for all purposes of *Section 1a(18)(A)(v)(II)* of the Commodity Exchange Act.

9.13 Anti-Corruption Laws; Sanctions.

Each Company will comply in all material respects with Anti-Corruption Laws applicable to such Company and other applicable anti-corruption legislation, and each Company will maintain compliance policies and procedures applicable to such Company with respect to applicable Anti-Corruption Laws and Sanctions.

**SECTION 10 NEGATIVE COVENANTS.**

So long as Lenders are committed to fund Loans and the L/C Issuers are committed to issue L/Cs under this Agreement, and thereafter until the Obligation is paid in full, Borrower covenants and agrees as follows:

10.1 Taxes.

No Company shall use any portion of the proceeds of any Loan to pay the wages of employees, unless a timely payment to or deposit with the U.S. of all amounts of Tax required to be deducted and withheld with respect to such wages is also made.

10.2 Payment of Obligations.

No Company shall voluntarily prepay principal of, or interest on, or tender for, repurchase, redeem, repay, defease, or discharge, Subordinated Debt or High-Yield Debt; *provided, that* Borrower or VRI may:

(a) tender for, repurchase (including, without limitation, in open market transactions or private negotiated transactions), redeem, defease, or discharge Subordinated Debt or High-Yield Debt, *so long as* (i) on and as of the date of each such redemption, no Default or Potential Default then exists or arises, and (ii) Borrower has delivered to Administrative Agent a certificate reflecting Availability and Unrestricted Cash in an aggregate amount of *at least* \$150,000,000 immediately after giving effect to such tender, repurchase, redemption, defeasance or discharge; and

(b) repay Subordinated Debt or High-Yield Debt (i) with the proceeds of a Term Loan or an Incremental Term Loan, or (ii) in connection with the concurrent issuance of (A) Subordinated Debt, *so long as* (1) on and as of the date of such refinancing, no Default or Potential Default then exists or arises, (2) the Subordinated Debt issued in connection with such refinancing (“**Replacement Subordinated Debt**”) satisfies the requirements for permitted Subordinated Debt as set forth in the Loan Papers, including, without limitation, the requirements imposed by the definition of “*Subordinated Debt*” in **Section 1.1** and by **Section 10.16**, and (3) such Replacement Subordinated Debt has a final maturity date later than the final maturity date of the Debt so refinanced, or (B) High-Yield Debt, *so long as* on and as

of the date of such refinancing, no Default or Potential Default then exists or arises and such High Yield Debt has a final maturity date later than the final maturity date of the Debt so refinanced.

### 10.3 Employee Plans.

Except where, individually or in the aggregate, a Material Adverse Event would not result or a Lien on the assets of any Company or the Companies securing liability of any Company or the Companies (individually or when aggregated with any liability of the Companies contemplated elsewhere in this Section and in **Section 8.8** and **Section 8.9** herein that is reasonably likely to be secured by Liens) in excess of the Threshold Amount is likely to result, no Company or any ERISA Affiliate shall permit any of the events or circumstances described in **Section 8.10** to exist or occur.

### 10.4 Debt.

No Company shall create, incur or suffer to exist any Debt, other than Permitted Debt.

### 10.5 Liens.

No Company shall create, incur, or suffer or permit to be created or incurred or to exist any Lien upon any of its assets, *other than* Permitted Liens.

### 10.6 Transactions with Affiliates.

Except for transactions which do not, in the aggregate, cost the Restricted Companies more than \$2,000,000 in any fiscal year, no Restricted Company shall enter into or suffer to exist any transaction with any Affiliate (*other than* another Restricted Company), or guaranty, obtain any letter of credit or similar instrument in support of, or create, incur, or suffer to exist any Lien upon any of its assets as security for, any Debt or other obligation of any Affiliate (*other than* Debts or other obligations of another Restricted Company) unless (a) such transaction is an advance or equity contribution to an Unrestricted Subsidiary permitted by **Sections 10.8(j)** or **10.8(l)** or to a Person (other than a Company) in which a Restricted Company has made an investment permitted by **Section 10.8(m)**, (b) such transaction is described in **Section 10.9** or on **Schedule 8.13**, (c) such transaction is an investment in employee residences permitted by **Section 10.8(n)(iii)**, or (d) such transaction is upon fair and reasonable terms not materially less favorable than it could obtain or could become entitled to in an arm's-length transaction with a Person that was not its Affiliate; *provided, that* any Restricted Company may enter into Permitted Recourse Obligations or guarantees or other credit support permitted by **clause (h)(ii)** of the definition of "*Permitted Debt*" in support of obligations of Unrestricted Subsidiaries, *so long as* no Default or Potential Default then exists or arises.

### 10.7 Compliance with Laws and Documents.

No Company shall (a) violate the provisions of any Laws or rulings of any Governmental Authority applicable to it or of any Material Agreement to which it is a party if that violation alone, or when aggregated with all other violations, would be a Material Adverse Event, (b) violate the provisions of its organizational documents if such violation would cause a Material Adverse Event, or (c) repeal, replace, or amend any provision of its organizational documents if that action would be a Material Adverse Event.

### 10.8 Loans, Advances and Investments.

No Restricted Company shall make or suffer to exist any loan, advance, extension of credit or capital contribution to, make any investment in, purchase or commit to purchase any stock or other securities or evidences of Debt of, or interests in, any other Person, or permit to exist Permitted Recourse Obligations constituting Debt, *other than*:

(a) expense accounts for and other loans or advances to its directors, officers, and employees in the ordinary course of business in accordance with applicable Law;

(b) marketable obligations issued or unconditionally guaranteed by an Approved Jurisdiction or issued by an agency of an Approved Jurisdiction and backed by the full faith and credit of such Approved Jurisdiction, in each case maturing within one year from the date of acquisition;

(c) short-term investment grade domestic and eurodollar certificates of deposit or time deposits that are fully insured by the Federal Deposit Insurance Corporation or similar agency of an Approved Jurisdiction or are issued by commercial banks organized under the Laws of an Approved Jurisdiction or any state or province of an Approved Jurisdiction having combined capital, surplus, and undivided profits of not less than \$100,000,000 (as shown on its most recently published statement of condition);

(d) commercial paper and similar obligations rated “P-1” by Moody’s or “A-1” by S&P;

(e) readily marketable Tax-free municipal bonds of a domestic issuer rated “A-2” or better by Moody’s or “A” or better by S&P, and maturing within one year from the date of issuance;

(f) mutual funds or money market accounts investing primarily in items described in clauses (b) through (e) above;

(g) demand deposit accounts maintained in the ordinary course of business;

(h) current trade and customer accounts receivable that are for goods furnished or services rendered in the ordinary course of business and that are payable in accordance with customary trade terms;

(i) Financial Hedges existing on the date hereof which have previously been approved by Administrative Agent and other Financial Hedges entered into after the date hereof under terms reasonably acceptable to Administrative Agent;

(j) loans, advances, and investments of the Restricted Companies existing as of April 30, 2018 (i) in the Existing Housing Districts, Existing Metro Districts, and Keystone/IntraWest LLC, which investments are identified on **part (a) of Schedule 10.8**, and (ii) in Persons other than Restricted Companies, Existing Housing Districts, Existing Metro Districts, and Keystone IntraWest LLC, which loans and investments are identified on **part (b) of Schedule 10.8**;

(k) additional loans, advances, and investments in Restricted Companies, including, without limitation, investments in Persons that become Restricted Subsidiaries upon transactions consummated in compliance with **Section 10.11** herein;

(l) loans, advances, and investments in Similar Businesses (including, without limitation, any loans, advances, and investments made in any Unrestricted Subsidiaries in a Similar Business and the

amount of any Permitted Recourse Obligations constituting Debt and other credit support and contingent obligations with respect to Debt of such Unrestricted Subsidiaries), so long as (i) no Default or Potential Default exists or arises, and (ii) the aggregate amount of all loans, advances, and investments made pursuant to this **clause (l)** (determined with respect to each such loan and advance based on the value thereof on the date of determination, determined with respect to each such investment based on the value thereof on the date made, and determined with respect to each such Permitted Recourse Obligation constituting Debt and other credit support and contingent obligation based on the maximum potential financial exposure therefrom on the date of determination) does not exceed the Investment Limit (Similar Businesses);

(m) loans, advances, and investments in joint ventures in which a Restricted Company has an Equity Interest (including, without limitation, credit support and contingent obligations with respect to Debt of such joint ventures), so long as (i) no Default or Potential Default exists or arises, and (ii) the aggregate amount of all loans, advances, and investments made pursuant to this **clause (m)** (determined with respect to each such loan and advance based on the value thereof on the date of determination, determined with respect to each such investment based on the value thereof on the date made, and determined with respect to each such credit support and contingent obligation based on the maximum potential financial exposure therefrom on the date of determination) does not exceed the Investment Limit (Joint Ventures);

(n) the following investments:

(i) a capital contribution, in an amount not to exceed \$650,000, in Boulder/Beaver LLC;

(ii) workers compensation reserve account, established pursuant to a self-insurance permit from the Department of Labor or comparable agency in any state in which the Companies' businesses are located, invested exclusively in items described in **clauses (b) through (f)** above; and

(iii) loans and contributions to employees for investments in employee residences as part of such employees' compensation packages not to exceed \$10,000,000 in the aggregate;

(o) so long as no Default or Potential Default exists or arises, investments set forth on **part (c)** of **Schedule 10.8**, which investments are made (i) as a result of the exercise of put options by the owners thereof, and (ii) in accordance with the agreements set forth on **part (c)** of **Schedule 10.8** as in effect on the Closing Date;

(p) short-term repurchase agreements with major banks and authorized dealers, fully collateralized to at least 100% of market value by marketable obligations issued or unconditionally guaranteed by an Approved Jurisdiction or issued by any agency of an Approved Jurisdiction and backed by the full faith and credit of such Approved Jurisdiction;

(q) short-term variable rate demand notes that invest in tax-free municipal bonds of domestic issuers rated "A-2" or better by Moody's or "A" or better by S&P that are supported by irrevocable letters of credit issued by commercial banks organized under the laws of an Approved Jurisdiction or any state or province of an Approved Jurisdiction having combined capital, surplus, and undivided profits of not less than \$100,000,000;

(r) so long as no Default or Potential Default exists or arises, loans to Persons in which a Restricted Company does not have an Equity Interest, so long as the aggregate amount of all loans made pursuant to this **clause (r)** (determined with respect to each such loan based on the value thereof on the date of determination) does not exceed \$15,000,000;

(s) Permitted Recourse Obligations not constituting Debt; *provided, that*, for the avoidance of doubt, if an event or circumstance occurs that triggers a direct payment liability or reimbursement obligation (as opposed to a contingent or performance obligation) of any Restricted Company to a lender or other party to whom such Permitted Recourse Obligation is owed, then such Permitted Recourse Obligation will no longer be permitted pursuant to this **clause (s)**;

(t) loans, advances, and investments in Similar Businesses (including, without limitation, any loans, advances, and investments made in any Unrestricted Subsidiaries in a Similar Business and the amount of any Permitted Recourse Obligations constituting Debt and other credit support and contingent obligations with respect to Debt of such Unrestricted Subsidiaries) or joint ventures in which a Restricted Company has an Equity Interest (including, without limitation, credit support and contingent obligations with respect to Debt of such joint ventures), so long as (i) no Default or Potential Default exists or arises, (ii) Borrower has delivered to Administrative Agent a certificate reflecting Availability and Unrestricted Cash in an aggregate amount of *at least* \$150,000,000 immediately after giving effect to such loan, advance, or investment, and (iii) the Total Leverage Ratio is less than 3.75 to 1.00;

(u) (i) loans, advances, investments in the Whistler Acquisition Subsidiaries required to consummate the Whistler Acquisition and (ii) loans, advances, investments in the Peak Resorts Acquisition Subsidiaries to consummate the Peak Resorts Acquisition;

(v) loans, advances, and investments in Unrestricted Subsidiaries as contemplated by the Whistler Acquisition Agreement, in an equivalent amount to any Distributions made by ~~the~~ Borrower and permitted pursuant to **Section 10.9**, in order to enable an equivalent Distribution to be made to the holders of the Equity Interests of Exchangeco or any successor entity thereto; and

(w) Equity Hedges in connection with the issuance of convertible debt securities.

#### 10.9 Distributions.

Except as set forth on **Schedule 10.9**, no Company shall make any Distribution, *except* as follows:

(a) VRI may make payments of approximately \$100,000 accruing to certain option holders;

(b) any Company may make Distributions to a Restricted Company and any Unrestricted Subsidiary may make Distributions ratably to the holders of its Equity Interests or otherwise in accordance with the organizational documents of such Unrestricted Subsidiary;

(c) if VRI issues any Subordinated Debt which is subsequently converted to preferred stock, VRI may, if no Default or Potential Default exists (or would result therefrom), pay dividends on such stock at an annual rate which is less than or equal to the annual rate of interest payable on such Subordinated Debt prior to its conversion, so long as the terms on such preferred stock are no more favorable to the holders of the preferred stock than the terms afforded to the holders of the Subordinated Debt set forth in the indenture and other documents evidencing or executed in connection with such Subordinated Debt;

(d) VRI may make additional Distributions as follows:

(i) if (A) no Default or Potential Default exists or arises, (B) Borrower has delivered to Administrative Agent a certificate reflecting Availability and Unrestricted Cash in an aggregate amount of at least \$150,000,000 immediately after giving effect to such Distribution, and (C) the Total Leverage Ratio equals or exceeds 3.75 to 1.00, then VRI may make Distributions in an amount, when aggregated with all other Distributions by VRI from and after the Closing Date (including, without limitation, all Distributions pursuant to this **clause (d)(i)**, but excluding all Distributions pursuant to **clauses (d)(ii), (d)(iii)** and **(e)** through **(h)** below), not to exceed the sum of (v) \$200,000,000, *plus* (w) 50% of Consolidated Net Income from and after February 1, 2014 (determined as of the last day of the most-recently-ended fiscal quarter of the Restricted Companies), *minus* (x) if Consolidated Net Income from and after February 1, 2014 (determined as of the last day of the most-recently-ended fiscal quarter of the Restricted Companies) is a deficit, 100% of such deficit, *plus* (y) 100% of the Restricted Companies' net cash proceeds from the issuance of Equity Interests by any Restricted Company from and after the Closing Date, *minus* (z) the sum of repayments of Subordinated Debt or High-Yield Debt pursuant to **Section 10.2(a)** (other than any such repayment in connection with a refinancing of Subordinated Debt or High-Yield Debt permitted under this Agreement);

(ii) if (A) no Default or Potential Default exists or arises, (B) Borrower has delivered to Administrative Agent a certificate reflecting Availability and Unrestricted Cash in an aggregate amount of *at least* \$75,000,000 immediately after giving effect to such Distribution, and (C) the Total Leverage Ratio is less than 3.75 to 1.00, then VRI may make Distributions in an unlimited amount; and

(iii) if no Default or Potential Default exists or arises, then VRI may pay dividends in an amount not to exceed, for any fiscal quarter, the greater of (a) \$105,000,000, or (b) an amount equal to twenty percent (20%) of Adjusted EBITDA for the trailing twelve month period ended on the last day of the most-recently ended fiscal quarter (as calculated in the Compliance Certificate most-recently delivered pursuant to **Section 9.1(a)** or **(b)**);

(e) if no Default or Potential Default exists or arises, VRI may make Distributions on Equity Interests (other than Disqualified Equity Interests) payable solely in the form of common stock or other common equity interests of VRI; *provided, that* VRI may make Distributions on Disqualified Equity Interests in the form of additional Disqualified Equity Interests of the same type;

(f) if no Default or Potential Default exists or arises, the Companies may make Distributions to their respective employees, officers, or directors in an aggregate amount not exceeding \$2,000,000 in any twelve (12) month period;

(g) so long as no Default or Potential Default exists or arises, the redemption, repurchase, or other acquisition of Equity Interests of VRI in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of VRI) of, Equity Interests of VRI (except for any such redemption, repurchase, or acquisition effected through the concurrent issuance of Disqualified Equity Interests of the same type); and

(h) so long as no Default or Potential Default exists or arises, any Restricted Company may make Distributions of net cash proceeds from Designated Condominium Sales.



10.10 Sale of Assets.

No Restricted Company may sell, assign, lease, transfer, or otherwise dispose of Critical Assets in an aggregate amount (taking into account all dispositions after the Closing Date) in excess of 10% of Total Assets (measured prior to giving effect to such sale, assignment, lease transfer or disposal), if the ratio described in **Section 11.1** would, on a *pro forma* basis (taking the disposition into account), increase as a result of such disposition.

10.11 Acquisitions, Mergers, and Dissolutions.

(a) A Restricted Company may not acquire all or any substantial portion of the capital stock (or other equity or voting interests) of any other Person, acquire all or any substantial portion of the assets of any other Person, merge or consolidate with any other Person, or liquidate, wind up or dissolve (or suffer any liquidation or dissolution), except as follows:

(i) any Restricted Subsidiary may acquire all or any substantial portion of the capital stock (or other equity or voting interests) issued by any other Restricted Subsidiary, acquire all or any substantial portion of the assets of any other Restricted Subsidiary, and merge or consolidate with any other Restricted Subsidiary (and, in the case of such merger or consolidation or, in the case of the conveyance or distribution of such assets, the non-surviving or selling entity, as the case may be, may be liquidated, wound up or dissolved), *so long as*:

(A) with respect to a merger or consolidation, (1) if Borrower is a party to such merger or consolidation, then Borrower is the surviving entity, (2) if Borrower is not a party to such merger or consolidation, then (I) a Restricted Subsidiary is the surviving entity, and (II) if the surviving entity will own Critical Assets, then a Restricted Subsidiary of Borrower is the surviving entity, and (3) the surviving entity delivers Guaranties and Security Documents to the extent required under **Section 9.10**; and

(B) to the extent Critical Assets are acquired by a Restricted Subsidiary in connection with the foregoing transactions, such Restricted Subsidiary must be in compliance with **Section 9.7(b)** after giving effect thereto; and

(ii) any Restricted Subsidiary may acquire all or any substantial portion of the capital stock (or other equity or voting interests) issued by any Person (other than a Restricted Company), acquire all or any substantial portion of the assets of any Person (other than a Restricted Company), or merge or consolidate with any other Person (other than a Restricted Company) (and, in the case of such merger or consolidation, the non-surviving entity may be liquidated, wound up or dissolved), *so long as*:

(A) with respect to a merger or consolidation, (1) if Borrower is a party to such merger or consolidation, then Borrower is the surviving entity, (2) if Borrower is not a party to such merger or consolidation, then (I) a Restricted Subsidiary is the surviving entity, and (II) if the surviving entity will own Critical Assets, then a Restricted Subsidiary of Borrower is the surviving entity, and (3) the surviving entity delivers Guaranties and Security Documents to the extent required under **Section 9.10**;

(B) to the extent Critical Assets are acquired by a Restricted Company in connection with the foregoing transactions, such Restricted Company must be in compliance with **Section 9.7(b)** after giving effect thereto;

(C) Borrower certifies in writing to Administrative Agent as follows (with such calculations and other supporting evidence attached thereto as Administrative Agent shall request):

(1) ~~(I) if such transaction occurs during the period of time from the Fourth Amendment Closing Date through the end of the Temporary Waiver Period, the Restricted Companies have Availability and Unrestricted Cash in an aggregate amount of at least \$300,000,000, after giving pro forma effect to the transaction, and (II) if the transaction occurs at any other time;~~ (x) the ratio of Net Funded Debt on the closing date of the transaction to Adjusted EBITDA for the most-recently-ended four fiscal quarters, after giving pro forma effect to the transaction, is less than or equal to 6.25 to 1.00, and (y) the ratio of outstanding secured Net Funded Debt on the closing date of the transaction to Adjusted EBITDA for the most-recently-ended four fiscal quarters, after giving pro forma effect to the transaction, is less than or equal to 4.00 to 1.00,

(2) such other Person is engaged in a business in which a Restricted Company would be permitted to engage under **Section 10.14**,

(3) as of the closing of any such transaction, the transaction has been approved and recommended by the board of directors of the Person to be acquired or from which such business is to be acquired,

(4) as of the closing of any transaction, after giving effect to such acquisition or merger, the acquiring party is Solvent and the Companies, on a consolidated basis, are Solvent, and

(5) as of the closing of any transaction, no Default or Potential Default exists or shall occur as a result of, and after giving effect to, such transaction, and

(D) in respect of any such transaction for which the sum of the Purchase Price exceeds \$50,000,000, Borrower delivers to Administrative Agent (1) at least 15 days prior to the closing date of the transaction, a written description of the transaction, including the funding sources, the Purchase Price, calculations demonstrating pro forma compliance with the terms and conditions of the Loan Papers after giving effect to the transaction (including compliance with the Companies' applicable financial covenants), and estimates of any actual and identifiable cost synergies, and a draft of the applicable purchase agreement or merger agreement (*provided, however*, that if a draft of the applicable purchase agreement or merger agreement is not available at least 15 days prior to the closing date of the transaction, then such draft may be delivered as soon as available, but in any event no later than 5 days prior to the closing date of the transaction), and (2) on or prior to the closing date of the transaction, a copy of the executed purchase agreement or executed merger agreement relating to the transaction (and, to the extent available, all schedules and exhibits thereto).

(iii) VRI, VHI and the Whistler Acquisition Subsidiaries may consummate the Whistler Acquisition.

(iv) the Company, VRAD Holdings, Inc. and the Peak Resorts Acquisition Subsidiaries may consummate the Peak Resorts Acquisition

(b) Any Company (other than VRI or Borrower) that does not own any assets may be dissolved provided that Borrower gives Administrative Agent prior written notice of such dissolution.

(c) No limited liability company organized or formed under the laws of the State of Delaware (a "Delaware LLC") shall divide into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act without giving Administrative Agent prior written notice of such division.

10.12 Assignment.

No Company shall assign or transfer any of its Rights or cause to be delegated its duties or obligations under any of the Loan Papers.

10.13 Fiscal Year and Accounting Methods.

No Company shall change its method of accounting (*other than* immaterial changes in methods or as required by GAAP), nor, without first obtaining Administrative Agent's written consent, change its fiscal year. In the event that any Company changes its fiscal year, to the extent requested by Administrative Agent or Required Lenders, Borrower, Administrative Agent, Required Lenders, and Guarantors agree to negotiate such amendments to this Agreement and other Loan Papers as necessary to effect the change of its fiscal year.

10.14 New Businesses.

No Restricted Company shall engage in any business, *except* the businesses in which they are engaged on the Closing Date and any other Similar Business; *provided, however, that* the foregoing shall not be construed to prohibit the cessation by any Company of its business activities or the sale or transfer of the business or assets of such Company to the extent not otherwise prohibited by this Agreement.

10.15 Government Regulations.

No Company shall conduct its business in a way that it becomes regulated under the *Investment Company Act of 1940*, as amended.

10.16 Burdensome Agreements.

No Company shall enter into, incur, or permit to exist any agreement or other arrangement (other than this Agreement or any other Loan Paper) that prohibits, restricts, or imposes any condition upon (a) the ability of any Restricted Company to create, incur, or permit to exist any Lien upon any of its property or assets securing Debt, or (b) the ability of any Restricted Company to pay dividends or other Distributions with respect to any shares of its capital stock to Borrower or any Guarantor, to otherwise transfer property or assets to Borrower or any Guarantor, to make or repay loans or advances to Borrower

or any other Guarantor, or to guarantee the Debt of Borrower; *provided, that* (x) **clauses (a) and (b)** above shall not apply to (A) restrictions and conditions (1) imposed by Law, the Loan Papers, or any documentation for Debt constituting “*Permitted Debt*” under **clauses (d), (l), (n)** (solely with respect to Debt existing at the time of such acquisition, except to the extent entered into in connection therewith or in contemplation thereof), or **(q)** of the definition thereof, so long as such restrictions do not prevent, impede, or impair (I) the creation of Liens and Guaranties in favor of Lenders under the Loan Papers or (II) the satisfaction of the obligations of Borrower and Guarantors under the Loan Papers, (2) contained in agreements relating to the sale of a Subsidiary or other asset, so long as the sale of such Subsidiary or other asset is permitted pursuant to this Agreement, and (3) contained in agreements set forth on **Schedule 10.16**, (B) the Northstar Leases, and (C) the Canyons-Park City Lease as in effect on the Closing Date, and (y) **clause (a)** above shall not apply to customary provisions in leases and other agreements restricting the assignment thereof or the granting of Liens on leased or licensed property.

#### 10.17 Use of Proceeds.

Borrower shall not, and Borrower shall not permit any other Restricted Company to, use any part of the proceeds of any Loan, directly or indirectly, for a purpose which violates any Law, including, without limitation, the provisions of *Regulations U or X* (as enacted by the Board of Governors of the Federal Reserve System, as amended).

#### 10.18 Capital Improvements.

The Restricted Companies may not make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding (a) normal replacements and maintenance which are properly charged to current operations, (b) such expenditures relating to real estate held for resale, and (c) for the avoidance of doubt, such expenditures which are included as part of an acquisition of all or any substantial portion of the capital stock (or other equity or voting interests) of any other Person or all or any substantial portion of the assets of any other Person, in each case as permitted by, and made in accordance with, **Section 10.11(b)** (including the transactions contemplated by the Canyons-Park City Lease)), except for capital expenditures in the ordinary course of business not exceeding, in the aggregate for the Restricted Companies during any fiscal year, an amount equal to 15% of Total Assets (the “**Capital Expenditures Basket**”); *provided, that*, on any date of determination in any fiscal year, any unused portion of the Capital Expenditures Basket for the prior fiscal year can be used for capital expenditures during the current fiscal year after the Capital Expenditures Basket for the current fiscal year has been used in its entirety.

#### 10.19 Subsidiaries.

(a) VRI shall have no direct Subsidiaries other than Borrower and Gillett, (b) Gillett shall have no Subsidiaries, and VRI shall not permit Gillett to have any Subsidiaries, and (c) Gillett shall not own any Critical Assets, and VRI shall not permit Gillett to own any Critical Assets.

#### 10.20 Sanctions; [Anti-Corruption Laws](#).

Borrower shall not, and Borrower shall not permit any other Restricted Company to, directly or indirectly, use the proceeds of any Loan or otherwise make available such proceeds (a) to fund any activities of or business with any individual or entity that, at the time of such funding, is ~~a Sanctioned Person or is~~ [the subject of Sanctions or located, organized or resident](#) in ~~any~~ Designated Jurisdiction, (b) in any other manner that will result in a violation by Borrower, any Restricted Company or any individual

or entity participating in the transaction, whether as Lender, Joint Lead Arranger, Administrative Agent, L/C Issuer, ~~Swing Line Lender~~, or otherwise, of Sanctions, or (c) for any purpose which would breach any Anti-Corruption Law.

~~10.21 Temporary Waiver Period.~~

~~Notwithstanding anything to the contrary contained herein, so long as the Temporary Waiver Period is continuing, the following provisions will apply:~~

~~(a) Borrower agrees to comply, and cause each Company to comply, with the following:~~

~~(i) [Reserved];~~

~~(ii) The Restricted Companies shall maintain Availability and Unrestricted Cash, on the last day of each month, in an aggregate amount of not less than \$150,000,000;~~

~~(iii) No Restricted Company will incur Secured Debt which when added to the aggregate existing Secured Debt and Availability is in excess of \$1,750,000,000, and any Secured Debt, other than Loans and L/Cs Borrowings, shall be subject to an intercreditor agreement in form and substance reasonably satisfactory to Administrative Agent;~~

~~(iv) VRI will not make any Distributions unless (A) no Default or Potential Default exists or arises after giving effect to such Distribution, (B) the Restricted Companies have Availability and Unrestricted Cash in an aggregate amount of at least \$300,000,000 immediately after giving effect to such Distribution (as evidenced by a certificate delivered by the Borrower to Administrative Agent in the form of *Exhibit H* attached hereto) and (C) such Distributions do not exceed \$38,200,000 in the aggregate per fiscal quarter;~~

~~(v) No Company will make or suffer to exist any loan, advance, extension of credit or capital contribution to, make any investment in, purchase or commit to purchase any stock or other securities or evidences of Debt of, or interests in, any other Person, or Permitted Recourse Obligations constituting Debt pursuant to *Section 10.8(l), (m), (t) or (v)* of this Agreement, unless the Restricted Companies have Availability and Unrestricted Cash in an aggregate amount of at least \$300,000,000 immediately after giving effect to such transaction (as evidenced by a certificate delivered by the Borrower to Administrative Agent in the form of *Exhibit H* attached hereto);~~

~~(vi) [Reserved];~~

~~(vii) Borrower shall apply the net cash proceeds received from the sale, assignment, lease, transfer or other disposition of a Restricted Company's assets with a fair market value in excess of \$15,000,000 towards repayment of the Revolver Principal Debt or the Term Revolver Principal Debt, as directed by Borrower; and~~

~~(b) On the Third Amendment Closing Date, in order to accommodate the establishment of differing rate floors for the portion of any Term Loans for which Borrower has entered into Financial Hedges for purposes of hedging its exposure to fluctuations in the Eurocurrency Rate and the portion of any Term Loans for which Borrower has not entered into Financial Hedges for purposes of hedging its exposure to fluctuations in the Eurocurrency Rate, the Term Loans will be split into the Term Hedged Tranche and the Term Unhedged Tranche. Each Term Loan Lender will hold each of the Term Hedged~~

~~Tranche and the Term Unhedged Tranche ratably in accordance with such Term Loan Lender's Commitment Percentage of the Term Loan Facility, as set forth on **Schedule 1-A** on the Third Amendment Closing Date (as the same may be updated from time to time by Administrative Agent after receipt of a Hedge Change Notice). Other than with respect to the differing rate floors during the Temporary Waiver Period, the Interest Periods and all other payment and interest terms applicable to the Term Loans will be applicable to the Term Hedged Tranche and the Term Unhedged Tranche. Borrower will provide Administrative Agent notice within five Business Days after any change in the amount of Term Loans for which Borrower has entered into Financial Hedges (a "**Hedge Change Notice**"). Administrative Agent will then adjust the Register and **Schedule 1-A** in the amount of the Term Hedged Tranche and the Term Unhedged Tranche in accordance with such notice as soon as administratively feasible, but in any event within ten Business Days of receipt of a Hedge Change Notice. If, as a result of Borrower's failure to deliver a Hedge Change Notice to Administrative Agent for any reason, Administrative Agent or the Required Lenders determine that a delivery of a Hedge Change Notice would have resulted in higher pricing for such period as a result of a higher interest rate floor, Borrower shall, retroactively to the date that the Hedge Change Notice should have been delivered, be obligated to pay to Administrative Agent for the account of the Term Loan Lenders promptly on demand by Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, automatically and without further action by Administrative Agent or any Term Loan Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. As soon as administratively feasible, but in any event within ten Business Days, after the termination of the Temporary Waiver Period, the Administrative Agent will combine the Term Hedged Tranche and the Term Unhedged Tranche such that the multiple tranches of Term Loans no longer exist.~~

## **SECTION 11 FINANCIAL COVENANTS.**

~~Other than during the Temporary Waiver Period, so~~So long as Lenders are committed to fund Loans and the L/C Issuers are committed to issue L/Cs under this Agreement, and thereafter until the Obligation is paid and performed in full (*except* for provisions under the Loan Papers expressly intended to survive payment of the Obligation and termination of the Loan Papers), Borrower covenants and agrees to comply with each of the following ratios. Borrower shall calculate each such ratio after giving effect to the provisions of **Section 1.3** hereof.

### 11.1 Maximum Leverage Ratio.

As calculated as of the last day of each fiscal quarter of the Restricted Companies set forth below, the Restricted Companies shall not permit the ratio of (a) the unpaid principal amount of Net Funded Debt existing as of such last day to (b) Adjusted EBITDA for the four fiscal quarters ending on such last day to exceed 6.25 to 1.00 ~~for the first full fiscal quarter ending after the expiration of the Temporary Waiver Period and~~ for each fiscal quarter ~~thereafter~~.

### 11.2 Interest Coverage Ratio.

As calculated as of the last day of each fiscal quarter of the Restricted Companies, the Restricted Companies shall not permit the ratio of (a) Adjusted EBITDA for the four fiscal quarters ending on such last day to (b) interest on Funded Debt (excluding amortization of deferred financing costs and original issue discounts and *provided that*, with respect to any Capital Lease permitted under this Agreement, interest attributable thereto shall be limited to that portion of the lease payments that is characterized as an

interest expense under GAAP and paid in cash during the applicable period) in such four fiscal quarters to be less than 2.00 to 1.00.

### 11.3 Senior Secured Leverage Ratio.

As calculated as of the last day of each fiscal quarter of the Restricted Companies, the Restricted Companies shall not permit the ratio of (a) the unpaid principal amount of outstanding secured Net Funded Debt existing as of such last day to (b) Adjusted EBITDA for the four fiscal quarters ending on such last day to exceed 4.00 to 1.00 ~~for the first full fiscal quarter ending after the expiration of the Temporary Waiver Period and~~ for each fiscal quarter thereafter.

~~For the avoidance of doubt, during the Temporary Waiver Period, Borrower shall have no obligation to satisfy any of the financial covenants set forth in this Section 11.~~

## **SECTION 12 DEFAULT.**

The term “**Default**” means the occurrence of any one or more of the following events:

### 12.1 Payment of Obligation.

The failure or refusal of any Company to pay (a) any principal payment contemplated by **Sections 3.2(b)** and **3.2(c)** of this Agreement after such payment becomes due and payable hereunder, (b) any principal payment (*other than* those contemplated by **Sections 3.2(b)** and **3.2(c)**) or interest payment contemplated to be made hereunder within 3 Business Days after demand therefor by Administrative Agent, (c) any amount contemplated to be paid hereunder in respect of fees, costs, expenses, or indemnities within 10 Business Days after demand therefor by Administrative Agent and (d) any amount in respect of its reimbursement obligations in connection with any drawing under an L/C (including, without limitation, any L/C Borrowing) within 3 Business Days after demand therefor by Administrative Agent.

### 12.2 Covenants.

The failure or refusal of any Company to punctually and properly perform, observe, and comply with:

(a) Any covenant, agreement, or condition applicable to it contained in **Sections 9.2, 10** (*other than Sections 10.1, 10.3, 10.6, and 10.7*), or **11**; or

(b) Any other covenant, agreement, or condition applicable to it contained in any Loan Paper (*other than* the covenants to pay the Obligation and the covenants in **clause (a)** preceding), and such failure or refusal continues for 30 days.

### 12.3 Debtor Relief.

Any Restricted Company (a) fails, or admits in writing its inability, to pay its Debts generally as they become due, (b) voluntarily seeks, consents to, or acquiesces in the benefit of any Debtor Relief Law, (c) becomes a party to or is made the subject of any proceeding provided for by any Debtor Relief Law that could suspend or otherwise adversely affect the Rights of Administrative Agent or any Lender granted in the Loan Papers (unless, if the proceeding is involuntary, the applicable petition is dismissed

within 60 days after its filing), (d) becomes subject to an order for relief granted under the Bankruptcy Reform Act of 1978, as amended from time to time (*other than* as a creditor or claimant), or (e) takes any action to authorize any of the foregoing actions set forth in **clauses (a)** through **(d)** herein.

#### 12.4 Judgments and Attachments.

Any Restricted Company fails, within 60 days after entry, to pay, bond, or otherwise discharge any judgment or order for the payment of money in excess of \$15,000,000 (individually or collectively) or any warrant of attachment, sequestration, or similar proceeding against any assets of any Restricted Company having a value (individually or collectively) of \$15,000,000, which is neither (a) stayed on appeal nor (b) diligently contested in good faith by appropriate proceedings and adequate reserves have been set aside on its books in accordance with GAAP.

#### 12.5 Government Action.

Any Governmental Authority condemns, seizes, or otherwise appropriates, or takes custody or control of all or any substantial portion of the Critical Assets.

#### 12.6 Misrepresentation.

Any material representation or warranty made or deemed made by any Company in connection with any Loan Paper at any time proves to have been materially incorrect when made.

#### 12.7 Ownership.

There shall occur a Change of Control Transaction.

#### 12.8 Default Under Other Agreements.

Subject to **Section 12.9** below, (a) any Restricted Company fails to pay when due (after lapse of any applicable grace period) any recourse Debt in excess (individually or collectively) of \$15,000,000; or (b) any default exists under any agreement to which any Restricted Company is a party, the effect of which is to cause, or to permit any Person (*other than* a Restricted Company) to cause, any recourse obligation in excess (individually or collectively) of \$15,000,000 to become due and payable by any Restricted Company before its stated maturity, *except* to the extent such obligation is declared to be due and payable as a result of the sale of any asset to which it relates.

#### 12.9 Subordinated Debt.

(a) (i) The occurrence of any “*default*,” “*event of default*,” or other breach under or with respect to any Subordinated Debt, which “*default*,” “*event of default*,” or other breach remains uncured (after lapse of any applicable cure periods) on any date of determination; (ii) the trustee with respect to, or any holder of, any Subordinated Debt shall effectively declare all or any portion of such Debt or obligation thereunder due and payable prior to the stated maturity thereof; or (iii) any obligations under the Subordinated Debt become due before its stated maturity by acceleration of the maturity thereof.

(b) The payment directly or indirectly (including, without limitation, any payment in respect of any sinking fund, defeasance, redemption, or payment of any dividend or distribution) by any Company of any amount of any Subordinated Debt in a manner or at a time during which such payment is not permitted under the terms of the Loan Papers or under any instrument or document evidencing or creating the Subordinated Debt, including, without limitation, any subordination provisions set forth therein, or if



an event shall occur, including, without limitation, a “*Change of Control*” as defined in any agreement evidencing or creating the Subordinated Debt, and (i) such event results in the ability of the trustee or the holders of any such Debt or obligation to request or require (or any Company shall automatically be so required) to redeem or repurchase such Debt or obligation, or (ii) any Company shall initiate notice of redemption to holders of the Subordinated Debt or obligation, in connection with a redemption of any Debt or obligation arising under such agreements or instruments.

#### 12.10 Validity and Enforceability of Loan Papers.

Except in accordance with its terms or as otherwise expressly permitted by this Agreement, any Loan Paper at any time after its execution and delivery ceases to be in full force and effect in any material respect or is declared to be null and void or its validity or enforceability is contested by any Company party thereto or any Company denies that it has any further liability or obligations under any Loan Paper to which it is a party.

#### 12.11 Employee Plans.

Except where the occurrence or existence, individually or in the aggregate, is not a Material Adverse Event or, in any event, likely to result in a Lien on the assets of any Company or the Companies securing liability for any Company or the Companies (individually or when aggregated with any liability of the Companies contemplated by **Section 8.8** and **Section 8.9** herein that is reasonably likely to be secured by Liens) in excess of the Threshold Amount, (a) an Employee Plan or Multiemployer Plan, as applicable, has any “*unpaid minimum required contribution*” (as described in *section 4971(c)(4)* of the Code), whether or not waived, or any “*accumulated funding deficiency*” (as defined in *section 302* of ERISA or *section 412* of the Code), (b) a Company or an ERISA Affiliate incurs liability under ERISA to the PBGC in connection with any Employee Plan (other than required insurance premiums paid when due), (c) a Company or an ERISA Affiliate withdraws in whole or in part from participation in a Multiemployer Plan, (d) a Company, an ERISA Affiliate, or a Multiemployer Plan to which a Company or any ERISA Affiliate contributes to or has contributed to, receives notice concerning the determination that the Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of *Title IV* of ERISA, (e) a Company or an ERISA Affiliate engages in any “*prohibited transaction*” (as defined in *section 406* of ERISA or *section 4975* of the Code), or (f) a “*reportable event*” (as defined in *section 4043* of ERISA) occurs with respect to an Employee Plan, excluding events for which the notice requirement is waived under applicable PBGC regulations.

### **SECTION 13 RIGHTS AND REMEDIES.**

#### 13.1 Remedies Upon Default.

(a) If a Default exists under **Section 12.3**, the commitment to extend credit under this Agreement automatically terminates, the entire unpaid balance of the Obligation automatically becomes due and payable without any action of any kind whatsoever, and Borrower must provide cash collateral in an amount equal to the then-existing L/C Exposure.

(b) If any Default exists, subject to the terms of **Section 14.5**, Administrative Agent may (with the consent of, and must, upon the request of, Required Lenders), do any one or more of the following: (i) if the maturity of the Obligation has not already been accelerated under **Section 13.1(a)**, declare the entire unpaid balance of all or any part of the Obligation immediately due and payable, whereupon it is due and payable; (ii) terminate the Commitments of Lenders; (iii) reduce any claim to judgment; (iv)

demand Borrower to provide cash collateral in an amount equal to the L/C Exposure then existing; and (v) exercise any and all other legal or equitable Rights afforded by the Loan Papers, the Laws of the State of New York, or any other applicable jurisdiction.

### 13.2 Company Waivers.

**To the extent permitted by Law, each Company waives presentment and demand for payment, protest, notice of intention to accelerate, notice of acceleration and notice of protest and nonpayment, and agrees that its liability with respect to all or any part of the Obligation is not affected by any renewal or extension in the time of payment of all or any part of the Obligation, by any indulgence, or by any release or change in any security for the payment of all or any part of the Obligation.**

### 13.3 Performance by Administrative Agent.

If any covenant, duty, or agreement of any Company is not performed in accordance with the terms of the Loan Papers, Administrative Agent may, while a Default exists, at its option (but subject to the approval of Required Lenders), perform, or attempt to perform that covenant, duty, or agreement on behalf of that Company (and any amount expended by Administrative Agent in its performance or attempted performance is payable by the Companies, jointly and severally, to Administrative Agent on demand, becomes part of the Obligation, and bears interest at the Default Rate from the date of Administrative Agent's expenditure until paid). However, Administrative Agent does not assume and shall never have, *except* by its express written consent, any liability or responsibility for the performance of any covenant, duty, or agreement of any Company.

### 13.4 Not in Control.

None of the covenants or other provisions contained in any Loan Paper shall, or shall be deemed to, give Administrative Agent, the L/C Issuers, or Lenders the Right to exercise control over the assets (including, without limitation, real property), affairs, or management of any Company; the power of Administrative Agent, the L/C Issuers, and Lenders is limited to the Right to exercise the remedies provided in this **Section 13**.

### 13.5 Course of Dealing.

The acceptance by Administrative Agent or Lenders of any partial payment on the Obligation shall not be deemed to be a waiver of any Default then existing. No waiver by Administrative Agent, the L/C Issuers, Required Lenders, Required Revolver Lenders, Required Term Loan Lenders or Lenders of any Default shall be deemed to be a waiver of any other then-existing or subsequent Default. No delay or omission by Administrative Agent, the L/C Issuers, Required Lenders, Required Revolver Lenders, Required Term Loan Lenders or Lenders in exercising any Right under the Loan Papers will impair that Right or be construed as a waiver thereof or any acquiescence therein, nor will any single or partial exercise of any Right preclude other or further exercise thereof or the exercise of any other Right under the Loan Papers or otherwise.

### 13.6 Cumulative Rights.

Notwithstanding anything to the contrary provided herein, all Rights available to Administrative Agent, the L/C Issuers, Required Lenders, Required Revolver Lenders, Required Term Loan Lenders and

Lenders under the Loan Papers are cumulative of and in addition to all other Rights granted to Administrative Agent, the L/C Issuers, Required Lenders, Required Revolver Lenders, Required Term Loan Lenders and Lenders at Law or in equity, whether or not the Obligation is due and payable and whether or not Administrative Agent, the L/C Issuers, Required Lenders, Required Revolver Lenders, Required Term Loan Lenders or Lenders have instituted any suit for collection, foreclosure, or other action in connection with the Loan Papers.

### 13.7 Enforcement.

Notwithstanding anything to the contrary contained herein or in any other Loan Paper, the authority to enforce rights and remedies hereunder and under the other Loan Papers against the Companies or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Administrative Agent in accordance with **Section 13.1** for the benefit of all the Lenders and the L/C Issuers; *provided, however*, that the foregoing shall not prohibit (a) Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Papers, (b) the L/C Issuers ~~or the Swing Line Lenders~~ from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer ~~or Swing Line Lender, as the case may be~~) hereunder and under the other Loan Paper, (c) any Lender from exercising setoff rights in accordance with **Section 15.13** (subject to the terms of **Section 3.12**), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Company under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Paper, then (i) Required Lenders shall have the rights otherwise ascribed to Administrative Agent pursuant to **Section 13.1** and (ii) in addition to the matters set forth in **clauses (b), (c), and (d)** of the preceding proviso and subject to **Section 3.12**, any Lender may, with the consent of Required Lenders, enforce any rights and remedies available to it and as authorized by Required Lenders.

### 13.8 Application of Proceeds.

Any and all proceeds ever received by Administrative Agent or Lenders from the exercise of any Rights pertaining to the Obligation shall be applied to the Obligation according to **Section 3.10**.

### 13.9 Diminution in Value of Collateral.

Neither Administrative Agent nor any Lender has any liability or responsibility whatsoever for any diminution in or loss of value of any Collateral or other collateral ever securing payment or performance of all or any part of the Obligation (*other than* diminution in or loss of value caused by its gross negligence or willful misconduct).

### 13.10 Certain Proceedings.

The Companies will promptly execute and deliver, or cause the execution and delivery of, all applications, certificates, instruments, registration statements and all other documents and papers Administrative Agent, the L/C Issuers, Required Lenders, Required Revolver Lenders, Required Term Loan Lenders or Lenders reasonably request in connection with the obtaining of any consent, approval, registration, qualification, permit, license, or authorization of any Governmental Authority or other Person necessary or appropriate for the effective exercise of any Rights under the Loan Papers. Because Borrower agrees that Administrative Agent's, the L/C Issuers', Required Lenders', Required Revolver

Lenders', Required Term Loan Lenders' and Lenders' remedies at Law for failure of the Companies to comply with the provisions of this paragraph would be inadequate and that failure would not be adequately compensable in damages, Borrower agrees that the covenants of this paragraph may be specifically enforced.

#### **SECTION 14 ADMINISTRATIVE AGENT.**

##### **14.1 Appointment and Authority.**

Each Lender and each L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as Administrative Agent hereunder and under the other Loan Papers and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of Administrative Agent, Lenders, and the L/C Issuers, and neither Borrower nor any other Company have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "*agent*" herein or in any other Loan Papers (or any other similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

##### **14.2 Delegation of Duties.**

Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Paper by or through any one or more sub-agents appointed in good faith by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

##### **14.3 Rights as a Lender.**

The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent and the term "*Lender*" or "*Lenders*" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to Lenders. Lenders acknowledge that, pursuant to such activities, Bank of America or its Affiliates may receive information regarding any Restricted Company or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Restricted Company or such Affiliate) and acknowledge that Administrative Agent shall be under no obligation to provide such information to them.

#### 14.4 Reliance by Administrative Agent.

Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, or other writing (including any electronic message, Internet, or intranet website posting, or other distribution) believed by it to be genuine and to have been signed, sent, or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of an L/C, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or the applicable L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or the applicable L/C Issuer prior to the making of such Loan or the issuance of such L/C. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants, and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants, or experts.

#### 14.5 Exculpatory Provisions.

Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Papers, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Potential Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Papers that Administrative Agent is required to exercise as directed in writing by Required Lenders, Required Revolver Lenders or Required Term Loan Lenders, as applicable (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Papers), *provided, that* Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Paper or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Papers, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity.

Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of Required Lenders, Required Revolver Lenders or Required Term Loan Lenders, as applicable (or such other number or percentage of Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 15.9** and **13.1**), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Administrative

Agent shall be deemed not to have knowledge of any Default or Potential Default unless and until notice describing such Default or Potential Default is given to Administrative Agent by Borrower, a Lender, or an L/C Issuer.

Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, or representation made in or in connection with this Agreement or any other Loan Paper, (ii) the contents of any certificate, report, or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms or conditions set forth herein or therein or the occurrence of any Default or Potential Default, (iv) the validity, enforceability, effectiveness, or genuineness of this Agreement, any other Loan Paper, or any other agreement, instrument, or document, or (v) the satisfaction of any condition set forth in **Section 7** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

#### 14.6 Resignation or Removal as Administrative Agent.

(a) Administrative Agent may at any time give notice of its resignation to Lenders, the L/C Issuers, and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States, and shall be consented to by Borrower at all times other than during the existence of a Default or Potential Default (which consent of Borrower shall not be unreasonably withheld). If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may, after consultation with Borrower, on behalf of Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided, that* if Administrative Agent shall notify Borrower and Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to **clause (d)** of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and, in consultation with Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Papers (except that in the case of any collateral security held by Administrative Agent on behalf of Lenders or the L/C Issuers under any of the Loan Papers, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent or collateral agent is appointed), and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications, and determinations provided to be made by, to, or through Administrative Agent shall instead be made by or to each Lender and the applicable L/C Issuer directly, until such time as Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become

vested with all of the rights, powers, privileges, and duties of the retiring (or removed) Administrative Agent (other than as provided in **Section 4.1(g)** and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Papers (if not already discharged therefrom as provided above in this Section). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Papers, the provisions of this **Section 14** and **Section 15.4** shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents, and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer ~~and Swing Line Lender~~. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all L/Cs outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans, [Daily SOFR Rate Loans](#) or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.3(c)**. ~~If Bank of America resigns as a Swing Line Lender, it shall retain all the rights of a Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to **Section 2.4(c)**.~~ Upon the appointment by Borrower of a successor L/C Issuer ~~or Swing Line Lender~~ hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges, and duties of the retiring L/C Issuer ~~and Swing Line Lender~~, (b) the retiring L/C Issuer ~~and Swing Line Lender~~ shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Papers, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the L/Cs, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such L/Cs.

#### 14.7 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Paper, or any related agreement or any document furnished hereunder or thereunder.

#### 14.8 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Restricted Company, Administrative Agent (irrespective of whether the principal of any Loan or L/C Exposure shall then be due and payable as herein expressed or by

declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Exposure, and all other Obligation that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements, and advances of Lenders and Administrative Agent, and their respective agents and counsel and all other amounts due Lenders, Administrative Agent and the L/C Issuers, as applicable, under **Sections 5.3, 5.4, and 15.4**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements, and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under **Sections 5.4 and 15.4**.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligation or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

#### 14.9 Collateral and Guaranty Matters.

(a) Upon the occurrence and continuance of a Default, Lenders agree to promptly confer in order that Required Lenders or Lenders, as the case may be, may agree upon a course of action for the enforcement of the Rights of Lenders; and Administrative Agent shall be entitled to refrain from taking any action (without incurring any liability to any Person for so refraining) unless and until Administrative Agent shall have received instructions from Required Lenders. All Rights of action under the Loan Papers and all Rights to the Collateral, if any, hereunder may be enforced by Administrative Agent and any suit or proceeding instituted by Administrative Agent in furtherance of such enforcement shall be brought in its name as Administrative Agent without the necessity of joining as plaintiffs or defendants any other Lender, and the recovery of any judgment shall be for the benefit of Lenders subject to the expenses of Administrative Agent. In actions with respect to any property of any Restricted Company, Administrative Agent is acting for the ratable benefit of each Lender. Any and all agreements to subordinate (whether made heretofore or hereafter) other indebtedness or obligations of any Restricted Company to the Obligation shall be construed as being for the ratable benefit of each Lender.

(b) Each Lender authorizes and directs Administrative Agent to enter into the Security Documents for the benefit of Lenders. *Except* to the extent unanimity is required hereunder, (i) each Lender agrees that any action taken by Required Lenders in accordance with the provisions of the Loan Papers, and the exercise by Required Lenders of the powers set forth herein or therein, *together with* such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Lenders, (ii) each Revolver Lender agrees that any action taken by Required Revolver Lenders in accordance with the provisions of the Loan Papers, and the exercise by Required Revolver Lenders of the powers set forth



herein or therein, *together with* such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Revolver Lenders, and (iii) each Term Loan Lender agrees that any action taken by Required Term Loan Lenders in accordance with the provisions of the Loan Papers, and the exercise by Required Term Loan Lenders of the powers set forth herein or therein, *together with* such other powers as are reasonably incidental thereto, shall be authorized and binding upon all Term Loan Lenders.

(c) Administrative Agent is hereby authorized on behalf of all Lenders, without the necessity of any notice to or further consent from any Lender, from time to time to take any action with respect to any Collateral or Security Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to the Security Documents.

(d) Administrative Agent shall have no obligation whatsoever to any Lender or to any other Person to assure that the Collateral exists or is owned by any Restricted Company or is cared for, protected, or insured or has been encumbered or that the Liens granted to Administrative Agent herein or pursuant hereto 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 granted or available to Administrative Agent in this **Section 14.9** or in any of the Security Documents; *it being understood* and agreed that in respect of the Collateral, or any act, omission, or event related thereto, Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given Administrative Agent's own interest in the Collateral as one of Lenders and that Administrative Agent shall have no duty or liability whatsoever to any Lender, *other than* to act without gross negligence or willful misconduct.

(e) Lenders irrevocably authorize Administrative Agent (or in the case of Bond Rights, the L/C Issuers), at its option and in its discretion, (i) to release any Lien on any property granted to or held by Administrative Agent under any Loan Paper (A) upon termination of the Total Commitment and payment in full of all Obligation (other than contingent indemnification obligations) and the expiration or termination of all L/Cs, (B) as permitted under **Section 9.11**, (C) constituting property being sold or disposed of as permitted under **Section 10.10**, if Administrative Agent determines that the property being sold or disposed is being sold or disposed in accordance with the requirements and limitations of **Section 10.10** and Administrative Agent concurrently receives all mandatory prepayments with respect thereto, if any, or (D) if approved, authorized, or ratified in writing by Required Lenders, subject to **Section 15.9**, unless such Liens are held under any Bond Document; (ii) to release (or authorize the release by the applicable L/C Issuer of) any Collateral held by Administrative Agent (or the applicable L/C Issuer) under or pursuant to any Bond Document upon the reimbursement of any Bond Purchase Drawing in accordance with **Section 2.3(i)** herein; and (iii) to release any Restricted Company from its Guaranty (A) upon full payment of the Obligation, (B) as permitted under **Section 9.11**, (C) in connection with the sale or disposition of the stock (or other equity interest) issued by such Restricted Company permitted under **Section 10.10**, if Administrative Agent determines that the disposition or sale is in accordance with the requirements and limitations of **Section 10.10** and Administrative Agent concurrently receives all mandatory prepayments with respect thereto, if any, or (D) if approved, authorized, or ratified in writing by Required Lenders, subject to **Section 15.9**. Upon request by Administrative Agent at any time, Required Lenders will confirm in writing Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this **Section 14.9**.

(f) In furtherance of the authorizations set forth in this **Section 14.9**, each Lender and each L/C Issuer hereby irrevocably appoints Administrative Agent its attorney-in-fact, with full power of substitution, for and on behalf of and in the name of each such Lender and each such L/C Issuer, (i) to enter into Security Documents (including, without limitation, any appointments of substitute trustees

under any Security Document), (ii) to take action with respect to the Collateral and Security Documents to perfect, maintain, and preserve Lenders' and the L/C Issuers' Liens, as applicable, and (iii) to execute instruments of release or to take other action necessary to release Liens upon any Collateral to the extent authorized in **clause (e)** hereof. This power of attorney shall be liberally, not restrictively, construed so as to give the greatest latitude to Administrative Agent's power, as attorney, relative to the Collateral matters described in this **Section 14.9**. The powers and authorities herein conferred on Administrative Agent may be exercised by Administrative Agent through any Person who, at the time of the execution of a particular instrument, is an officer of Administrative Agent. The power of attorney conferred by this **Section 14.9(f)** is granted for valuable consideration and is coupled with an interest and is irrevocable so long as the Obligation, or any part thereof, shall remain unpaid, Lenders are obligated to make any Loans, or the L/C Issuers are obligated to issue L/Cs, under the Loan Papers.

#### 14.10 Financial Hedges

To the extent any Lender or any Affiliate of a Lender issues a Financial Hedge in accordance with the requirements of the Loan Papers and accepts the benefits of the Liens in the Collateral arising pursuant to the Security Documents, such Lender (for itself and on behalf of any such Affiliates) agrees (a) to appoint Administrative Agent, as its nominee and agent, to act for and on behalf of such Lender or Affiliate thereof in connection with the Security Documents and (b) to be bound by the terms of this **Section 14**; whereupon all references to "Lender" in this **Section 14** and in the Security Documents shall include, on any date of determination, any Lender or Affiliate of a Lender that is party to a then-effective Financial Hedge which complies with the requirements of the Loan Papers. Additionally, if the Obligation owed to any Lender or Affiliate of a Lender consists *solely* of Debt arising under a Financial Hedge (such Lender or Affiliate being referred to in this **Section 14.10** as an "**Issuing Lender**"), then such Issuing Lender (by accepting the benefits of any Security Documents) acknowledges and agrees that pursuant to the Loan Papers and without notice to or consent of such Issuing Lender: (w) Liens in the Collateral may be released in whole or in part; (x) all Guaranties may be released; (y) any Security Document may be amended, modified, supplemented, or restated; and (z) all or any part of the Collateral may be permitted to secure other Debt.

#### 14.11 Bond L/Cs and Bond Documents.

In addition to the authorizations set forth in **Section 14.9**, each Lender and each L/C Issuer hereby authorize Administrative Agent or the L/C Issuers, as the case may be, to execute and deliver all certificates, documents, agreements, and instruments required to be delivered after the Closing Date pursuant to or in connection with any Bond L/C and Bond Documents executed in connection therewith, and to take such actions as Administrative Agent or the L/C Issuers, as the case may be, deems necessary in connection therewith. This authorization shall be liberally, not restrictively, construed so as to give the greatest latitude to Administrative Agent's or the applicable L/C Issuer's authority, as the case may be, relative to the Bonds, Bond L/Cs, and Bond Documents. The powers and authorities herein conferred on Administrative Agent and the L/C Issuers may be exercised by Administrative Agent or the applicable L/C Issuer, as the case may be, through any Person who, at the time of the execution of a particular instrument, is an officer of Administrative Agent or such L/C Issuer, as applicable.

#### 14.12 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the co-syndication agents, co-documentation agents, joint lead arrangers, or joint bookrunners listed on the cover page hereof shall have

any powers, duties, or responsibilities under this Agreement or any of the other Loan Papers, except in its capacity, as applicable, as Administrative Agent, a Lender, or an L/C Issuer hereunder.

#### 14.13 Recovery of Erroneous Payments.

Without limitation of any other provision in this Agreement, if at any time Administrative Agent makes a payment hereunder in error to any Lender or any L/C Issuer (the “Credit Party”), whether or not in respect of an Obligation due and owing by Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to Administrative Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. Administrative Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

### **SECTION 15 MISCELLANEOUS.**

#### 15.1 Headings.

The headings, captions, and arrangements used in any of the Loan Papers are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of the Loan Papers, nor affect the meaning thereof.

#### 15.2 Nonbusiness Days; Time.

Any payment or action that is due under any Loan Paper on a non-Business Day may be delayed until the next-succeeding Business Day (but interest shall continue to accrue on any applicable payment until payment is in fact made) unless the payment concerns a ~~Eurocurrency~~Term Reference Rate Loan, in which case if the next-succeeding Business Day is in the next calendar month, then such payment shall be made on the next-preceding Business Day.

#### 15.3 Notices and Other Communications; Facsimile Copies.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **subsection (b)** below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower, Administrative Agent, or either L/C Issuer, ~~or either Swing Line Lender~~, to the address, telecopier number, electronic mail address, or telephone number specified for such Person on **Schedule 1**; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address, or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (*except that*, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in **subsection (b)** below, shall be effective as provided in such **subsection (b)**.

(b) **Electronic Communications.** Notices and other communications to Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, *provided, that* the foregoing shall not apply to notices to any Lender or either L/C Issuer pursuant to **Section 2** if such Lender or such L/C Issuer, as applicable, has notified Administrative Agent that it is incapable of receiving notices under such **Section 2** by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided, that* approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "*return receipt requested*" function, as available, return e-mail, or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing **clause (i)** of notification that such notice or communication is available and identifying the website address therefor; *provided, that*, for both **clauses (i)** and **(ii)**, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) **The Platform.** THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH BORROWER MATERIALS OR THE PLATFORM. In no event shall Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to Borrower, any Lender, either L/C Issuer, or any other Person for losses, claims, damages, liabilities, or expenses of any kind (whether in tort, contract, or otherwise) arising out of Borrower's or Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities, or expenses are

determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to Borrower, any Lender, either L/C Issuer, or any other Person for indirect, special, incidental, consequential, or punitive damages (as opposed to direct or actual damages).

(d) **Change of Address, Etc.** Each of Borrower, Administrative Agent, and the L/C Issuers, ~~and the Swing Line Lenders~~ may change its address, telecopier, or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier, or telephone number for notices and other communications hereunder by notice to Borrower, Administrative Agent, and the L/C Issuers, ~~and the Swing Line Lender~~. In addition, each Lender agrees to notify Administrative Agent from time to time to ensure that Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number, and electronic mail address to which notices and other communications may be sent, and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “*Private Side Information*” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “*Public Side Information*” portion of the Platform and that may contain material non-public information with respect to Borrower or its securities for purposes of United States Federal or state securities laws.

(e) **Reliance by Administrative Agent, L/C Issuers, and Lenders.** Administrative Agent, the L/C Issuers, and Lenders shall be entitled to rely and act upon any notices (including telephonic notices, ~~Loan Notices~~ and ~~Swing Line~~ Loan Notices) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete, or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify Administrative Agent, the L/C Issuers, each Lender, and the Related Parties of each of them from all losses, costs, expenses, and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

#### 15.4 Expenses; Indemnity; Damage Waiver.

(a) **Costs and Expenses.** Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by Administrative Agent and its Affiliates (including the reasonable fees, charges, and disbursements of counsel for Administrative Agent) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery, and administration of this Agreement and the other Loan Papers, or any amendments, modifications, or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuers in connection with the issuance, amendment, renewal, or extension of any L/C or any demand for payment thereunder, and (iii) all out-of-pocket expenses incurred by Administrative Agent, any Lender, or the L/C Issuers (including the fees, charges, and disbursements of any counsel for Administrative Agent, any Lender, or the L/C Issuers), and shall pay all fees and time charges for attorneys who may be employees of Administrative Agent, any Lender, or the L/C Issuers, in connection with the enforcement or protection of its rights (A)

in connection with this Agreement and the other Loan Papers, including its rights under this Section, or (B) in connection with the Loans made or L/Cs issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring, or negotiations in respect of such Loans or L/Cs.

(b) **Indemnification by Borrower.** Borrower shall indemnify Administrative Agent (and any sub-agent thereof), each Lender, and the L/C Issuers, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”), against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, and related expenses (including the fees, charges, and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Company arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Paper, or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, or the consummation of the transactions contemplated hereby or thereby, or, in the case of Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Papers, (ii) any Loan or L/C or the use or proposed use of the proceeds therefrom (including any refusal by either L/C Issuer to honor a demand for payment under an L/C if the documents presented in connection with such demand do not strictly comply with the terms of such L/C), (iii) any actual or alleged presence or release of Hazardous Substances on or from any property owned or operated by Borrower or any other Company, or any liability under Environmental Laws related in any way to the or any other Company, or (iv) any actual or prospective claim, litigation, investigation, or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, whether brought by a third party or by Borrower or any other Company, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF THE INDEMNITEE**; *provided, that* such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, or (y) result from a claim brought by Borrower or any other Company against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Paper, if Borrower or another Restricted Company has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of **Section 4.1(c)**, this **Section 15.4** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by Lenders.** To the extent that Borrower for any reason fails to indefeasibly pay any amount required under **subsection (a)** or **(b)** of this Section to be paid by it to Administrative Agent (or any sub-agent thereof), the L/C Issuers, or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent), the L/C Issuers, or such Related Party, as the case may be, such Lender’s Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided, that* the unreimbursed expense or indemnified loss, claim, damage, liability, or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any such sub-agent) or any L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent) any L/C Issuer in connection with such capacity. The obligations of Lenders under this **subsection (c)** are subject to the provisions of **Section 2.2(d)**.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable Law, each of Borrower and any Related Party of Borrower that is a party to a Loan Paper from time to time shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Paper, or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or L/C, or the use of the proceeds thereof. No Indemnitee referred to in **subsection (b)** above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic, or other information transmission systems in connection with this Agreement or the other Loan Papers or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments.** All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) **Survival.** The agreements in this Section shall survive the resignation of Administrative Agent; ~~and~~ either L/C Issuer ~~and either Swing Line Lender~~, the replacement of any Lender, the termination of the Total Commitment, and the repayment, satisfaction, or discharge of all the other Obligation.

#### 15.5 Exceptions to Covenants; Conflict with Agreement.

The Companies may not take or fail to take any action that is permitted as an exception to any of the covenants contained in any Loan Paper if that action or omission would result in the breach of any other covenant contained in any Loan Paper. Any conflict or ambiguity between the terms and provisions of this Agreement and the terms and provisions in any other Loan Paper is controlled by the terms and provisions of this Agreement.

#### 15.6 Governing Law.

(a) **GOVERNING LAW.** THIS AGREEMENT AND THE OTHER LOAN PAPERS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN PAPER (EXCEPT, AS TO ANY OTHER LOAN PAPER, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) **SUBMISSION TO JURISDICTION.** BORROWER AND EACH OTHER COMPANY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN PAPER OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO

IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN PAPER SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT, ANY LENDER OR EITHER L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN PAPER AGAINST BORROWER OR ANY OTHER COMPANY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** BORROWER AND EACH OTHER COMPANY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN PAPER IN ANY COURT REFERRED TO IN **PARAGRAPH (B)** OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 15.3**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

#### 15.7 Severability.

If any provision of this Agreement or the other Loan Papers is held to be illegal, invalid, or unenforceable, (a) the legality, validity, and enforceability of the remaining provisions of this Agreement and the other Loan Papers shall not be affected or impaired thereby, and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid, or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid, or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### 15.8 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN PAPER OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND



THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN PAPERS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

15.9 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Paper, and no consent to any departure by any Restricted Company therefrom, shall be effective unless in writing signed by Required Lenders, Borrower, and other applicable Restricted Companies, as the case may be, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver, or consent shall:

- (a) waive any condition set forth in **Section 7.1** without the written consent of each Lender;
- (b) waive any condition set forth in **Section 7.2** as to any Loan under the Revolver Facility or the Term Loan Facility without the written consent of the Required Revolver Lenders or the Required Term Loan Lenders, as the case may be;
- (c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section **13.1**) without the written consent of such Lender;
- (d) postpone any date fixed by this Agreement or any other Loan Paper for any payment of principal, interest, fees, or other amounts due to Lenders (or any of them) hereunder or under any other Loan Paper without the written consent of each Lender directly affected thereby;
- (e) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or any fees (other than fees covered by the Fee Letter) or other amounts payable hereunder or under any other Loan Paper without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of Required Lenders shall be necessary to amend the definition of “*Default Rate*” or to waive any obligation of Borrower to pay interest or L/C Fees (as described in **Section 5.3(a)**) at the Default Rate;
- (f) amend, waive, modify, supplement, or otherwise change **Sections 3.10, 3.11, or 3.12** in a manner that would alter the sharing of payments required thereby without the written consent of each Lender adversely affected thereby;
- (g) change any provision of this Section, the definition of “*Required Lenders*,” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive, or otherwise modify any Rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;
- (h) change the definition of “*Required Revolver Lenders*” without the written consent of each Revolver Lender;
- (i) change the definition of “*Required Term Loan Lenders*” without the written consent of each Term Loan Lender;

(j) waive compliance with, amend, or release (in whole or in part) the Guaranty of VRI or the Guaranties of all or substantially all of the Restricted Subsidiaries without the consent of each Lender;

(k) release all or substantially all of the Collateral without the consent of each Lender, *except* that Administrative Agent or the applicable L/C Issuer, as applicable, may release Collateral in accordance with **Section 14.9(e)** herein; or

(l) amend the definition of “*Alternative Currency*” without the written consent of each L/C Issuer directly affected thereby;

and, provided *further*, that (i) no amendment, waiver, or consent shall affect the Rights or duties of an L/C Issuer under this Agreement or any L/C Agreement relating to any L/C issued or to be issued by it unless signed by the L/C Issuer issuing such L/C in addition to Lender required above; (ii) no amendment, waiver, or consent shall, ~~unless in writing and signed by the applicable Swing Line Lender in addition to Lenders required above, affect the rights or duties of such Swing Line Lender under this Agreement;~~ (iii) ~~no amendment, waiver, or consent shall,~~ unless in writing and signed by Administrative Agent in addition to Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Paper; and ~~(iv)~~ (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver, or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender, and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of Administrative Agent, Borrower, Guarantors and lenders providing the Incremental Term Loan Facility (i) to add one or more Incremental Term Loan Facilities to this Agreement (subject to the limitations in **Section 2.5**), and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Papers with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by Administrative Agent, lenders providing the Incremental Term Loan Facility to participate in any required vote or action required to be approved by Required Lenders or by any other number, percentage, or class of Lenders hereunder; *provided, that* any amendment pursuant to **clause (ii)** shall be consistent with the terms of this Agreement in effect on the Closing Date or otherwise approved by Required Lenders.

#### 15.10 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Papers constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in **Section 7.1**, this Agreement shall become effective when it shall have been executed by Administrative Agent and

when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

15.11 Successors and Assigns; Participation.

(a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of **subsection (b)** of this Section, (ii) by way of participation in accordance with the provisions of **subsection (d)** of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **subsection (h)** of this Section, (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **subsection (d)** of this Section and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this **subsection (b)**, participations in L/C Exposure ~~and in Swing Line Loans~~) at the time owing to it); *provided, that* any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in **subsection (b)(i)(A)** of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless Administrative Agent and, so long as no Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, ~~except that this clause (ii) shall not apply to rights in respect of the Swing Line Lender's rights and obligations in respect of Swing Line Loans;~~

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by **subsection (b)(i) (B)** of this Section and, in addition:

(A) the consent of Borrower (such consent not to be unreasonably withheld) shall be required unless (1) a Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided, that* Borrower shall be deemed to have consented to any assignment under the Term Loan Facility or the Incremental Term Loan Facility unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after having received written notice thereof;

(B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of each L/C Issuer ~~and each Swing Line Lender~~ (such consent not to be unreasonably withheld or delayed) shall be required only for assignments of Commitments in respect of Revolver Loans and L/C Exposure.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; *provided, however,* that Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to Borrower or any of Borrower's Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this **clause (B)**, or (C) to a natural Person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and

participations in L/C ~~and Swing Line Loans~~ in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

~~(vii) Assignments During Temporary Waiver Period. During the Temporary Waiver Period and until the Term Hedged Tranche and the Term Unhedged Tranche have been combined by Administrative Agent, any assignment by a Term Loan Lender to one or more Eligible Assignees in accordance with this Section 15.11 of all or a portion of its rights and obligations under the Term Loans shall be made pro rata across the Term Hedged Tranche and the Term Unhedged Tranche.~~

Subject to acceptance and recording thereof by Administrative Agent pursuant to **subsection (c)** of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Sections 4.1, 4.4, 4.5, and 15.4** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided, that* except to the extent otherwise expressly agreed by the affected parties no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **subsection (d)** of this Section.

(c) **Register.** Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower (and such agency being solely for tax purposes), shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amounts of the Loans and L/C Exposure owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender, Borrower, or any of Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Exposure ~~and Swing Line Loans~~) owing to it); *provided, that* (i) such Lender's obligations under this Agreement shall remain

unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, Administrative Agent, Lenders, and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Sections 15.4** without regard to the existence of any participation. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to **Section 15.9** that affects such Participant. Subject to **subsection (e)** of this Section, Borrower agrees that each Participant shall be entitled to the benefits of **Sections 4.1, 4.4, or 4.5** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **subsection (b)** of this Section (it being understood that the documentation required under **Section 4.1(e)** shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; *provided* that such Participant (A) agrees to be subject to the provisions of **Sections 4.6 and 15.14** as if it were an assignee under **paragraph (b)** of this Section and (B) shall not be entitled to receive any greater payment under **Sections 4.1 or 4.4**, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive. Each Lender that sells a participation agrees, at Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of **Section 4.6** with respect to any Participant. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 15.13** as though it were a Lender, *provided* such Participant agrees to be subject to **Section 3.12** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower, 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 Papers (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 Paper) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under **Section 5f.103-1(c)** of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided, that* no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **Resignation as L/C Issuer ~~or Swing Line Lender~~ after Assignment.** Notwithstanding anything to the contrary contained herein, if at any time any L/C Issuer ~~or any Swing Line Lender~~ assigns all of its Commitment and Loans pursuant to **subsection (b)** above, such L/C Issuer ~~or such Swing Line Lender~~ may, upon 30 days' notice to Borrower and Lenders, resign as an L/C Issuer ~~or a Swing Line Lender, or both~~. In the event of any such resignation as an L/C Issuer ~~or a Swing Line Lender~~, Borrower shall be entitled to appoint from among Lenders a successor L/C Issuer ~~or Swing Line Lender~~ hereunder;

provided, however, that no failure by Borrower to appoint any such successor shall affect the resignation of such L/C Issuer ~~or such Swing Line Lender~~. If an L/C Issuer resigns, it shall retain all the rights, powers, privileges, and duties of an L/C Issuer hereunder with respect to all L/C outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Exposure with respect thereto (including the right to require Lenders to make Base Rate Loans, [Daily SOFR Rate Loans](#) or fund risk participations in unreimbursed amounts pursuant to **Section 2.3(c)**). ~~If a Swing Line Lender resigns, it shall retain all the rights of a Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to **Section 2.4(c)**.~~ Upon the appointment of a successor L/C Issuer ~~and/or Swing Line Lender~~, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges, and duties of the retiring L/C Issuer ~~or Swing Line Lender, as the case may be~~, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the L/Cs, if any, outstanding at the time of such succession or make other arrangements satisfactory to the resigning L/C Issuer to effectively assume the obligations of such resigning L/C Issuer with respect to such L/Cs.

#### 15.12 Payments Set Aside.

To the extent that any payment by or on behalf of Borrower or any other obligor on the Obligation under any Loan Paper is made to Administrative Agent, either L/C Issuer, or any Lender, or Administrative Agent, either L/C Issuer, or any Lender exercises its Right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required (including pursuant to any settlement entered into by Administrative Agent, such L/C Issuer, or such Lender in its discretion) to be repaid to a trustee, receiver, or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of Lenders and the L/C Issuers under **clause (b)** of the preceding sentence shall survive the payment in full of the Obligation and the termination of this Agreement.

#### 15.13 Right of Setoff.

If a Default shall have occurred and be continuing, each Lender, the L/C Issuers, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the applicable L/C Issuer, or any such Affiliate to or for the credit or the account of Borrower or any other Company against any and all of the obligations of Borrower or such other Company now or hereafter existing under this Agreement or any other Loan Paper to such Lender or the applicable L/C Issuer, irrespective of whether or not such Lender or the applicable L/C Issuer shall have made any demand under this Agreement or any other Loan Paper and although such obligations of Borrower or such other Company may be contingent or unmatured or are owed to a branch or office of such Lender or the applicable L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, each L/C Issuer, and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff)

that such Lender, the applicable L/C Issuer, or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify Borrower and Administrative Agent promptly after any such setoff and application, *provided, that* the failure to give such notice shall not affect the validity of such setoff and application.

#### 15.14 Replacement of Lenders.

Under any circumstances set forth in this Agreement providing that Borrower shall have the right to replace a Lender as a party to this Agreement, including, without limitation, if any Lender requests compensation under **Section 4.4**, or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 4.1**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 15.11**), all of its interests, rights (other than its existing rights to payments pursuant to **Sections 4.1** and **4.4**), and obligations under this Agreement and the related Loan Papers to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided, that*:

(a) Borrower shall have paid to Administrative Agent the assignment fee specified in **Section 15.11(b)**;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in L/C Borrowings, accrued interest thereon, accrued fees, and all other amounts payable to it hereunder and under the other Loan Papers (including any amounts under **Section 4.5**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under **Section 4.4** or payments required to be made pursuant to **Section 4.1**, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws;

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

#### 15.15 Confidentiality.

Each of Administrative Agent, Lenders, and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees, and agents, including accountants, legal counsel, and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the



extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Paper or any action or proceeding relating to this Agreement or any other Loan Paper or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative or other transaction under which payments are to be made by reference to Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of Borrower, (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this section or (y) becomes available to Administrative Agent, any Lender, either L/C Issuer, or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower, or (j) to any direct or indirect contractual counterparty in Financial Hedges or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this **Section 15.15**). For purposes of this section, "**Information**" means all information received from any Restricted Company relating to any Restricted Company or any of their respective businesses, other than any such information that is available to Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Restricted Company, *provided that*, in the case of information received from a Restricted Company after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Each of Administrative Agent, Lenders, and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning any Company, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information, and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

#### 15.16 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 Paper), Borrower acknowledges and agrees that: (i)(A) arranging and other services regarding this Agreement provided by Administrative Agent, the Joint Lead Arrangers and the Lenders, are arm's-length commercial transactions between Borrower and its Affiliates, on the one hand, and Administrative Agent, the Joint Lead Arrangers and the Lenders, on the other hand, (B) Borrower has consulted its own legal, accounting, regulatory, and tax advisors to the extent it has deemed appropriate, and (C) Borrower is capable of evaluating, and understands and accepts, the terms, risks, and conditions of the transactions contemplated hereby and by the other Loan Papers; (ii)(A) each of Administrative Agent, the Joint Lead Arrangers and the Lenders 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 Borrower or any of its Affiliates, or any other Person and (B) neither Administrative Agent nor any Joint Lead Arranger or Lender has any obligation to Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Papers; and

(iii) Administrative Agent, Joint Lead Arrangers, the Lender and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and its Affiliates, and neither Administrative Agent, nor Joint Lead Arrangers, nor any Lender has any obligation to disclose any of such interests to Borrower or its Affiliates. To the fullest extent permitted by law, Borrower hereby waives and releases any claims that it may have against Administrative Agent, Joint Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

#### 15.17 USA PATRIOT Act Notice.

Each Lender that is subject to the Act (as hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Act**”), it is required to obtain, verify, and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the Act. Borrower shall, promptly following a request by Administrative Agent or any Lender, provide all documentation and other information that Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “*know your customer*” and anti-money laundering rules and regulations, including the Act.

#### 15.18 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Paper or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lender, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default or Potential Default at the time of any Loan or L/C Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any L/C shall remain outstanding.

#### 15.19 Execution of Assignments and Certain Other Documents.

This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “**Communication**”), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Borrower agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on Borrower to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of Borrower enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by ~~the~~ Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. ~~The~~ Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“**Electronic Copy**”), which shall be

deemed created in the ordinary course of ~~the~~ such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, ~~the~~ Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by ~~the~~ Administrative Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent ~~the~~ Administrative Agent has agreed to accept such Electronic Signature, ~~the~~ Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of Borrower without further verification and (b) upon the request of ~~the~~ Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "**Electronic Record**" and "**Electronic Signature**" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

#### 15.20 **ENTIRE AGREEMENT.**

**THIS AGREEMENT AND THE OTHER LOAN PAPERS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.** This Agreement supersedes all prior written agreements and understandings relating to the subject matter hereof and may be supplemented only by documents delivered in accordance with the terms hereof.

#### 15.21 Restatement of Existing Agreement.

The parties hereto agree that, on the Closing Date, after all conditions precedent set forth in **Section 7.1** have been satisfied or waived: (a) the Obligation (as defined in this Agreement) represents, among other things, the restatement, renewal, amendment, extension, and modification of the "*Obligation*" (as defined in the Existing Agreement); (b) this Agreement is intended to, and does hereby, restate, renew, extend, amend, modify, supersede, and replace the Existing Agreement in its entirety; (c) the Notes, if any, executed pursuant to this Agreement amend, renew, extend, modify, replace, restate, substitute for, and supersede in their entirety (but do not extinguish the Debt arising under) the promissory notes issued pursuant to the Existing Agreement, which existing promissory notes shall be returned to Administrative Agent promptly after the Closing Date, marked " *canceled and replaced*"; (d) each Confirmation of Pledge Agreement executed pursuant to this Agreement ratifies and confirms (but does not extinguish or impair the collateral security created or evidenced by) the "*Pledge Agreement*" executed and delivered by the "*Debtor*" named therein pursuant to the Original Agreement and all subsequent amendments and restatements thereof (including, without limitation, the Existing Agreement); (e) the Confirmation of Guaranty executed pursuant to this Agreement ratifies and confirms (but does not extinguish or impair the "*Guaranteed Debt*" guaranteed by) the "*Guaranty*" executed and delivered pursuant to the Original Agreement and all subsequent amendments and restatements thereof (including, without limitation, the Existing Agreement); and (f) the entering into and performance of their respective obligations under the Loan Papers and the transactions evidenced hereby do not constitute a novation nor shall they be deemed to have terminated, extinguished, or discharged the "*Debt*" under the Existing Agreement, the Security Documents, the Guaranty, or the other Loan Papers (or the collateral security therefore), all of which Debt and Collateral shall continue under and be governed by this Agreement and the other Loan Papers, except as expressly provided otherwise herein.

#### 15.22 Judgment Currency.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Paper in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of Borrower in respect of any such sum due from it to Administrative Agent or any L/C Issuer hereunder or under the other Loan Papers shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by Administrative Agent or such L/C Issuer, as the case may be, of any sum adjudged to be so due in the Judgment Currency, Administrative Agent or such L/C Issuer, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Administrative Agent or any L/C Issuer from Borrower in the Agreement Currency, Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Administrative Agent or such L/C Issuer, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Administrative Agent or any L/C Issuer in such currency, Administrative Agent or such L/C Issuer, as the case may be, agrees to return the amount of any excess to Borrower (or to any other Person who may be entitled thereto under applicable law).

#### 15.23 ERISA.

Each Lender as of the Closing Date represents and warrants as of the Closing Date to ~~the~~ Administrative Agent and their respective Affiliates, and not, for the avoidance of doubt, for the benefit of ~~the~~ Borrower or any Guarantor, that such Lender is not and will not be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to Section 4975 of the Code, (c) an entity deemed to hold “plan assets” of any such plans or accounts for purposes of ERISA or the Code or (d) a “governmental plan” within the meaning of ERISA.

#### 15.24 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Paper or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Paper, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or

other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Paper; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

#### 15.25 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Papers provide support, through a guarantee or otherwise, for any Financial Hedge or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and *Title II* of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Papers and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Papers that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Papers were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

As used in this **Section 15.25**, the following terms have the following meanings:

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

“**Covered Entity**” means any of the following: (i) a “*covered entity*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b); (ii) a “*covered bank*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or (iii) a “*covered FSI*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§252.81, 47.2 or 382.1, as applicable.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).”

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**SUBSIDIARIES <sup>1</sup>**  
**OF**  
**VAIL RESORTS, INC.**

NAME	STATE OF INCORPORATION/FORMATION	DOING BUSINESS AS
1016563 B.C. Ltd.	British Columbia	
1089881 B.C. Ltd.	British Columbia	
17402 HIDDEN VALLEY, LLC	Missouri	
2006 CIMARRON, LLC	Colorado	
AFFINITY SNOWSPORTS INC.	British Columbia	
ALL MEDIA ASSOCIATES, INC.	California	
ALL MEDIA HOLDINGS, INC.	Colorado	
AQUIA PTY LTD	Australia	
ARRABELLE AT VAIL SQUARE, LLC	Colorado	
AUSTRALIAN ALPINE ENTERPRISES HOLDINGS PTY LTD	Australia	
AUSTRALIAN ALPINE ENTERPRISES PTY LTD	Australia	
AUSTRALIAN ALPINE RESERVATION CENTRES PTY LTD	Australia	
AVON PARTNERS II LIMITED LIABILITY COMPANY	Colorado	
BBJFLQ, INC.	Pennsylvania	
BCRP, INC.	Delaware	
BEAVER CREEK ASSOCIATES, INC.	Colorado	BEANO AT BEAVER CREEK HAY MEADOW AT BEAVER CREEK LATIGO AT BEAVER CREEK MCCOY PARK AT BEAVER CREEK RED TAIL AT BEAVER CREEK SPRUCE SADDLE RESTAURANT STRAWBERRY PARK AT BEAVER CREEK BEAR TRAP AT BEAVER CREEK, INC. BUCKBOARD AT BEAVER CREEK, INC. DALLY AT BEAVER CREEK, INC. FLATTOPS AT BEAVER CREEK, INC. GOSHAWK AT BEAVER CREEK, INC. GRAND TRAVERSE AT BEAVER CREEK, INC. PINEY AT BEAVER CREEK, INC. RED BUFFALO AT BEAVER CREEK, INC. SALT LICK AT BEAVER CREEK, INC. SHEEPHORN AT BEAVER CREEK, INC. STEP ONE, INC. STONE CREEK SWITCHBACK AT BEAVER CREEK, INC. STUMP PARK AT BEAVER CREEK, INC.
BEAVER CREEK CONSULTANTS, INC.	Colorado	

BEAVER CREEK FOOD SERVICES, INC.	Colorado	BACHELOR GULCH CLUB BEANO'S CABIN BEAVER CREPES AND COOKIES CANDY CABIN GUNDER'S TALONS THE OSPREY AT BEAVER CREEK WHITE CARPET CLUB
BLACK DIAMOND INSURANCE, INC.	Arizona	
BLACKCOMB MOUNTAIN DEVELOPMENT LTD.	British Columbia	
BLACKCOMB SKIING ENTERPRISES LIMITED PARTNERSHIP	British Columbia	
BLACKCOMB SKIING ENTERPRISES LTD.	British Columbia	
BLC OPERATORS, INC.	Pennsylvania	
BOOTH CREEK SKI HOLDINGS, INC.	Delaware	
BOSTON MILLS SKI RESORT, INC.	Ohio	BOSTON MILLS SKI RESORT
BOULDER VIEW TAVERN, INC.	Pennsylvania	
BRANDYWINE SKI RESORT, INC.	Ohio	
BRECKENRIDGE HOTEL MANAGEMENT COMPANY, LLC	Colorado	
BRECKENRIDGE RESORT PROPERTIES, INC.	Colorado	BRECKENRIDGE RESORT PROPERTIES VAIL RESORTS PROPERTY MANAGEMENT KEYSTONE RESORT PROPERTY MANAGEMENT
BRECKENRIDGE TERRACE, LLC	Colorado	
CARINTHIA GROUP 1, LP	Vermont	
CARINTHIA GROUP 2, LP	Vermont	
CARINTHIA RESIDENTIAL PHASE 1, LP	Vermont	
CARINTHIA SKI LODGE LLC	Vermont	
CB COMMERCIAL PROPERTIES, LLC	Colorado	
COLORADO MOUNTAIN EXPRESS, INC.	Colorado	CME CMECOUPONS CMECOUPONS.COM CME DESTINATIONS WEST CME PARTNERS CME PREMIER COLORADO MOUNTAIN EXPRESS DESTINATIONS WEST EPIC MOUNTAIN EXPRESS PREMIER VIP TRANSPORTATION RESORT EXPRESS ROCKY MOUNTAIN ART GUIDE ROCKY MOUNTAIN DINING GUIDE SKIER'S CONNECTION TRANSPORTATION MANAGEMENT SYSTEMS WHEELS OF FORTUNE GO CME GO COLORADO MOUNTAIN EXPRESS WHEELS OF FORTUNE
COLTER BAY CONVENIENCE STORE, LLC	Wyoming	
COLTER BAY GENERAL STORE, LLC	Wyoming	



CRESTED BUTTE, LLC	Colorado	CBMR PROPERTIES CBMR SKI AND RIDE SCHOOL CRESTED BUTTE RESORT CRESTED BUTTE MOUNTAIN RESORT CRESTED BUTTE SKI AREA CRESTED BUTTE SKI RENTAL CRESTED BUTTE VACATIONS GENERAL STORE – CBMR HALL OF FAME BAR & GRILL ICE BAR KIDS WORLD – CBMR OUTPOST CBMR PARADISE RESORT COMMUNICATIONS RUSTICA CBMR TRACKERS – CBMR WOODSTONE GRILLE CAMP CB CB CONFERENCE SERVICES CBMR LIFT TICKETS GRAND LODGE HOTEL GRAND LODGE RETAIL JEFE’S RESTAURANT LODGE AT MOUNTAINEER SQUARE LOGO’D AT CB TEN PEAKS RESTAURANT THIN AIR SPORTS TREASURY CENTER RENTALS WHITE ROOM CB MOUNTAIN SCHOOL ULEY’S CABIN MOUNTAIN ADVENTURES CBMR WHOLESALE DEPARTMENT CRESTED BUTTE WHOLESALE CRESTED BUTTE TRAVEL COAL BREAKERS – CRESTED BUTTE MOUNTAIN RESORT ELEVATION RETAIL ATMOSPHERE BUTTE 66 BUTTE 66 BBQ ROADHOUSE CRESTED BUTTE DEVELOPMENT CORPORATION CRESTED BUTTE MOUNTAIN BIKE PARK
CROTCHED MOUNTAIN PROPERTIES, LLC	New Hampshire	
CRYSTAL PEAK LODGE OF BRECKENRIDGE, INC.	Colorado	CRYSTAL PEAK LODGE
DELTRECS, INC.	Ohio	
DTPC, LLC	Delaware	
EPICSKI, INC.	Montana	
EVER VAIL, LLC	Colorado	
FALLS CREEK SKI LIFTS PTY LTD	Australia	
FIRST CHAIR HOUSING TRUSTEE LLC	Colorado	
FLAGG RANCH COMPANY	Colorado	
FROSTY LAND, INC.	New York	

FOREST RIDGE HOLDINGS, INC.	Colorado	
GARIBALDI LIFTS LTD.	British Columbia	
GILLETT BROADCASTING, INC.	Delaware	
GORE CREEK PLACE, LLC	Colorado	
GRAND TETON LODGE COMPANY	Wyoming	
GREAT NORTH REGIONAL CENTER, LLC	Vermont	
GREATER PARK CITY COMPANY	Utah	GREATER PARK CITY CORPORATION PARK CITY MOUNTAIN RESORT
GREATER PROPERTIES, INC.	Delaware	
GROS VENTRE UTILITY COMPANY	Wyoming	
HEAVENLY VALLEY, LIMITED PARTNERSHIP	Nevada	BUB'S PUB EXPEDITION KIRKWOOD HEAVENLY MOUNTAIN RESORT KIRKWOOD KIRKWOOD CENTRAL RESERVATIONS KIRKWOOD GENERAL STORE KIRKWOOD INN KIRKWOOD MOUNTAIN OUTFITTERS KIRKWOOD MOUNTAIN RESORT KIRKWOOD RESORT KIRKWOOD SERVICE CENTER KIRKWOOD SKI AND SUMMER RESORT KIRKWOOD SKI RESORT MONTE WOLFS MOUNTAIN KITCHEN OFF THE WALL BAR AND GRILL TIMBER CREEK
HIDDEN VALLEY GOLF AND SKI, INC.	Missouri	HIDDEN VALLEY SKI AREA
HPK, LLC	Delaware	
HUNKIDORI LAND COMPANY, LLC	Colorado	
HUNTER MOUNTAIN ACQUISITION, INC.	Missouri	
HUNTER MOUNTAIN BASE LODGE, INC.	New York	
HUNTER MOUNTAIN FESTIVALS, LTD.	New York	
HUNTER MOUNTAIN RENTALS, LTD.	New York	
HUNTER MOUNTAIN SKI BOWL, INC.	New York	
HUNTER RESORT VACATIONS, INC.	New York	
HVLP KIRKWOOD SERVICES, LLC	California	
JACKSON HOLE GOLF AND TENNIS CLUB, INC.	Wyoming	
JACKSON LAKE LODGE CORPORATION	Wyoming	
JENNY LAKE LODGE, INC.	Wyoming	
JENNY LAKE STORE, LLC	Wyoming	
JFBB LQ, INC.	Pennsylvania	
JFBB SKI AREAS, INC.	Missouri	
JHL&S LLC	Wyoming	
KEYSTONE CONFERENCE SERVICES, INC.	Colorado	
KEYSTONE DEVELOPMENT SALES, INC.	Colorado	

KEYSTONE FOOD AND BEVERAGE COMPANY	Colorado	9280' ALPENTOP DELI DERCUM SQUARE ICE RINK KEYSTONE LODGE & SPA MINER'S CART ONE SKI HILL PLACE PIONEER CROSSING SNOW DRIFTER THE CROW'S NEST THE OVERLOOK KEYSTONE CONFERENCE CENTER CORPORATION SEVENS RESTAURANT
KEYSTONE RANCH WATER COMPANY	Colorado	
KEYSTONE RESORT PROPERTY MANAGEMENT COMPANY	Colorado	KEYSTONE CENTRAL RESERVATIONS KEYSTONE MOUNTAIN RESERVATIONS KEYSTONE PROPERTY MANAGEMENT
KEYSTONE/INTRAWEST, LLC	Delaware	KEYSTONE REAL ESTATE DEVELOPMENTS
KEYSTONE/INTRAWEST REAL ESTATE, LLC	Colorado	
LA POSADA BEVERAGE SERVICE, LLC	Delaware	
LAKE TAHOE LODGING COMPANY	Colorado	ACCOMMODATION STATION TAHOE LODGING ZALANTA
LBO HOLDING, INC.	Maine	
LODGE PROPERTIES, INC.	Colorado	THE LODGE AT VAIL
LODGE REALTY, INC.	Colorado	
MAD RIVER MOUNTAIN, INC.	Missouri	
MHSC DP PTY LTD	Australia	
MHSC HOTELS PTY LTD	Australia	
MHSC PROPERTIES PTY LTD	Australia	
MHSC TRANSPORTATION SERVICES PTY LTD	Australia	
MOUNT HOTHAM MANAGEMENT AND RESERVATION PTY LTD	Australia	
MOUNT HOTHAM SKIING COMPANY PTY LTD	Australia	
MOUNT SNOW DEVELOP AND BUILD	Vermont	
MOUNT SNOW GP SERVICES	Vermont	
MOUNT SNOW LTD.	Vermont	
MOUNTAIN THUNDER, INC.	Colorado	
MT CB REAL ESTATE, LLC	Colorado	
NATIONAL PARK HOSPITALITY COMPANY	Colorado	
NORTHSTAR GROUP COMMERCIAL PROPERTIES, LLC	Delaware	
NORTHSTAR GROUP RESTAURANT PROPERTIES, LLC	Delaware	

OKEMO LIMITED LIABILITY COMPANY	Vermont	CAMP GOKEMO JACKSON COUNTRY CLUB AT OKEMO MOUNTAIN RESORT JACKSON GORE JACKSON GORE AT OKEMO NEW ENGLAND'S SKI RESORT OKEMO HEALTH CENTER OKEMO MOUNTAIN LODGE OKEMO MOUNTAIN LODGING BUREAU OKEMO MOUNTAIN LODGING SERVICE OKEMO MOUNTAIN RENTAL SHOP OKEMO MOUNTAIN RESERVATION SERVICE OKEMO MOUNTAIN RESORT OKEMO MOUNTAIN RESORT PROPERTIES OKEMO MOUNTAIN SKI RENTAL AND REPAIR SHOP OKEMO RENTAL SERVICE OKEMO SKI AND RIDE SCHOOL OKEMO SPA OKEMO SPORTS CENTER OKEMO VALLEY GOLF ACADEMY OKEMO VALLEY GOLF CLUB OKEMO VALLEY GOLF COURSE OKEMO VALLEY NORDIC CENTER SNOW STARS SNOW TRACKS LEARNING CENTER SOLITUDE VILLAGE SPORTS CENTER THE GOLF ACADEMY AT OKEMO THE ICE HOUSE THE MEETING HOUSE THE OKEMO VALLEY GOLF SCHOOL THE SPA AT OKEMO THE SPORTS CENTER AT OKEMO THE SPRING HOUSE THE VILLAGE AT JACKSON GORE WOMEN'S SKI SPREE THE TOLL HOUSE TAVERN CUTTING EDGE SKI SCHOOL OKEMO CUTTING EDGE OKEMO CUTTING EDGE SKI SCHOOL OKEMO MOUNTAIN HEALTH CARE PLAN OKEMO MOUNTAIN FLEXIBLE BENEFITS PLAN THE OKEMO DIFFERENCE VILLAGE AT OKEMO JACKSON COUNTRY CLUB THE VILLAGE CLUB AT JACKSON GORE
OKEMO MOUNTAIN FOOD AND BEVERAGE, INC.	Vermont	43 NORTH EPIC JACKSON GORE INN OKEMO TAP HOUSE ROBIN'S ROOST SIENA AT JACKSON GORE SKY BAR SMOKEY JOE'S GRILL SUGAR HOUSE AT OKEMO THE COLEMAN BROOK TAVERN THE CORNER STORE AT JACKSON GORE THE INN AT JACKSON GORE THE SITTING BULL LOUNGE VERMONT PIZZA AT OKEMO WILLIE DUNN'S GRILLE
ONE RIVER RUN, LLC	Colorado	
ONE SKI HILL PLACE, LLC	Colorado	

PAOLI PEAKS, INC.	Missouri	
PARK PROPERTIES, INC.	Delaware	
PEAK TO CREEK HOLDINGS CORP.	British Columbia	
PEAK TO CREEK LODGING COMPANY LTD.	British Columbia	LODGING OVATIONS
PEAK RESORTS, INC.	Missouri	
PERISHER BLUE PTY LIMITED	Australia	
PROPERTY MANAGEMENT ACQUISITION CORP., INC.	Tennessee	ROCKY MOUNTAIN RESORT LODGING COMPANY
RCR VAIL, LLC	Colorado	
ROCKRESORTS ARRABELLE, LLC	Colorado	
ROCKRESORTS CORDILLERA LODGE COMPANY, LLC	Colorado	
ROCKRESORTS COSTA RICA S.R.L.	Costa Rica	
ROCKRESORTS DR, LLC	Delaware	
ROCKRESORTS EQUINOX, INC.	Vermont	
ROCKRESORTS HOTEL JEROME, LLC	Colorado	
ROCKRESORTS INTERNATIONAL, LLC	Delaware	
ROCKRESORTS INTERNATIONAL MANAGEMENT COMPANY	Colorado	
ROCKRESORTS JAMAICA LIMITED	Jamaica	
ROCKRESORTS SKI TIP, LLC	Delaware	
ROCKRESORTS (ST. LUCIA) INC.	St. Lucia	
ROCKRESORTS THIRD TURTLE, LTD.	Turks & Caicos Islands	
ROCKRESORTS WYOMING, LLC	Wyoming	
ROCKRESORTS, LLC	Delaware	
SKI LIBERTY OPERATING CORP.	Pennsylvania	
SKI ROUNDTOP OPERATING CORP.	Pennsylvania	
SKIINFO AS	Norway	
SLIFER SMITH & FRAMPTON/VAIL ASSOCIATES REAL ESTATE, LLC	Colorado	SLIFER, SMITH & FRAMPTON REAL ESTATE SLIFER, SMITH & FRAMPTON/VAIL ASSOCIATES SLIFER, SMITH & FRAMPTON/VAIL ASSOCIATES LLC VAIL LIONSHEAD REAL ESTATE BROKERS VAIL-LIONSHEAD REAL ESTATE BROKERS VAIL-LIONSHEAD REAL ESTATE CO.
SOHO DEVELOPMENT, LLC	Colorado	
SNH DEVELOPMENT, INC.	Missouri	
SNOW CREEK, INC.	Missouri	
SNOW TIME ACQUISITION, INC.	Missouri	
SNOW TIME, INC.	Delaware	
SNOW TRUST	Australia	

SSI VENTURE, INC.	Utah	ALL MOUNTAIN SPORTS ALTERNATIVE EDGE ANY MOUNTAIN ASPEN SPORTS AT SNOWMASS BEAVER CREEK FLY FISHER BEAVER CREEK SIGNATURE SHOP BICYCLE VILLAGE OF COLORADO BOARDER CROSS BOARDER CROSSING BOARDER X-ING BOARDINGHOUSE CECILS BOOTSIE LACY B LLC BOULDER SKI AND BIKE BOULDER SKI AND BIKE DEALS BOULDER SKI DEALS BRECKENRIDGE SPORTS BREEZE BREEZE SKI RENTALS BREEZE SKI & SPORT BUTTERBOX BUTTERBOX RENTAL SHOP BUYSKIS.COM CB MOUNTAIN OUTFITTERS COLORADO SKI AND BIKE COLORADO SKI & GOLF COLORADO SNOWBOARDS COPPER MOUNTAIN SPORTS COPPER VILLAGE SPORTS CRESTED BUTTE RENTAL & DEMO CENTER DEPOT DEPOT SKI RENTALS EFLIN SPORTS EPIC MOUNTAIN GEAR EPIC MOUNTAIN RENTALS FRISCO SPORTS GRAND WEST OUTFITTERS
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SSI VENTURE, INC. (Continued)	Utah	GONDOLA SPORTS GORE CREEK FLY FISHERMAN HAPPY THOUGHTS HEAVENLY BOULDER HEAVENLY LAKELAND VILLAGE HEAVENLY SPORTS HEAVENLY SPORTS - CECILS HEAVENLY STAGECOACH HEAVENLY TAMARACK LODGE HOIGAARD'S HS GONDOLA SPORTS KEYSTONE SPORTS KIRKWOOD MOUNTAIN SPORTS KIRKWOOD VILLAGE DEMOS KIRKWOOD VILLAGE RENTALS LAKE TAHOE RESORT HOTEL LIONSHEAD SPORTS LOGO'D AT GRAND LODGE MAIN LODGE RENTAL MAIN LODGE RETAIL MAIN STREET OUTLET MID MOUNTAIN RETAIL SHOP MAX SNOWBOARD MINE CHILDREN'S MOUNTAIN BASICS MOUNTAIN SPORTS OUTLET MOUNTAINSPORT TELLURIDE MOUNTAIN ADVENTURE CENTER NORTHSTAR ADVENTURE CENTER NORTHSTAR LOGO NORTHSTAR LOGO COMPANY NORTHSTAR ON MTN DEMOS NORTHSTAR SPORTS ONE TRACK MIND PARK CITY MOUNTAIN SPORTS PEAK SPORTS PERFORMANCE SKI & BOARD DEMO RENTBOARDS.COM RENTSKIS.COM
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SSI VENTURE, INC. (Continued)	Utah	ROCKY MOUNTAIN EYEWEAR ROCKY MOUNTAIN EYEWEAR LTD. SAN MIGUEL ANGLERS SKI & BOARD RENTAL SHOP SKI DEPOT SKI DEPOT RENTALS SKI DEPOT SPORTS SNOWMASS SPORT STALKER SPECIALTY SPORTS NETWORK STEAMBOAT SPORTS TAYLOR CREEK TAYLOR CREEK ANGLING SERVICES TAYLOR CREEK FLY SHOPS TAYLOR CREEK SPORTS TELLURIDE ADVENTURES TELLURIDE MOUNTAIN BIKE HEADQUARTERS LLC TELLURIDE MOUNTAINCRAFT LLC TELLURIDE SPORTS TEN MILE SPORTS THE BOARDING HOUSE THE DEPOT THE SKI DOCTOR TIMBER CREEK KW RETAIL/RENTAL TRUE NORTH VAIL FISHING GUIDES VAIL FLY-FISHING VAIL FLY-FISHING OUTFITTERS VAIL RESORTS RETAIL VAIL SPORTS VAIL SPORTS KIDS WINTER PARK SKI RENTALS WINTER PARK SKI SWAP ZEPHYR LODGE NORTHSTAR ASPEN SPORTS LLC BRECK SPORTS RENTSKIS GOLD RIVER RUN SPORTS ROCKY MOUNTAIN EYES AND TEES ROCKY MOUNTAIN EYEWEAR LTD. "A SHADEY BUSINESS" SPECIALTY SPORTS VENTURE LLC WINTER PARK SPORTS
SSV HOLDINGS, INC.	Colorado	NEVE SPORTS
SSV ONLINE LLC	Wisconsin	OUTDOOR OUTLET
SSV ONLINE HOLDINGS, INC.	Colorado	
STAGECOACH DEVELOPMENT, LLC	Nevada	
STAMPEDE CANTEEN, LLC	Wyoming	
SUMMIT SKI LIMITED	British Columbia	
SYCAMORE LAKE, INC.	Ohio	ALPINE VALLEY
TCRM COMPANY	Delaware	
TENDERFOOT SEASONAL HOUSING, LLC	Colorado	
TETON HOSPITALITY SERVICES, INC.	Wyoming	
THE CANYONS GOLF CLUB, LLC	Utah	
THE CHALETs AT THE LODGE AT VAIL, LLC	Colorado	THE LODGE AT VAIL CHALETs



THE SUNAPEE DIFFERENCE LLC	New Hampshire	MOUNT SUNAPEE CUTTING EDGE LEARNING CENTER MOUNT SUNAPEE CUTTING EDGE SKI SCHOOL MOUNT SUNAPEE LODGING BUREAU MOUNT SUNAPEE LODGING SERVICE MOUNT SUNAPEE NEW HAMPSHIRE'S RESORT MOUNT SUNAPEE RENTAL SHOP MOUNT SUNAPEE RESERVATION BUREAU MOUNT SUNAPEE RESERVATION SERVICE MOUNT SUNAPEE RESORT MOUNT SUNAPEE SKI AND SNOWBOARD SHOP MOUNT SUNAPEE SKI AREA MOUNT SUNAPEE SKI RENTALS MOUNT SUNAPEE SKI SHOP MOUNT SUNAPEE SNOWSPORTS SHOP NEW HAMPSHIRE'S BEST CORDUROY SNOW PROS VILLAGE AT MOUNT SUNAPEE WHISK AROUND THE MOUNTAIN
THE VAIL CORPORATION	Colorado	ARROWHEAD ALPINE CLUB ASPEN GROVE AVAIL ADVENTURE OUTFITTERS, LTD. BACHELOR GULCH CLUB BACHELOR GULCH BEAVER CREEK CLUB BEAVER CREEK RESORT PASSPORT CLUB PRATER LANE PLAY SCHOOL RED SKY GOLF CLUB RED SKY GOLF CLUB GUEST CLUBHOUSE PRO SHOP RED SKY GOLF CLUB MEMBER PRO SHOP THE ARRABELLE CLUB THE OSPREY AT BEAVER CREEK THE PASSPORT CLUBHOUSE AT GOLDEN PEAK THE YOUNGER GENERATION VAIL ASSOCIATES, INC. VAIL CONSULTANTS VAIL MOUNTAIN VAIL MOUNTAIN HIKING CENTER VAIL RESORTS MANAGEMENT COMPANY VAIL SNOWBOARD SUPPLY GORE CREEK MINI GOLF TV8
THE VILLAGE AT BRECKENRIDGE ACQUISITION CORP., INC.	Tennessee	
TRIMONT LAND COMPANY	California	NORTHSTAR AT TAHOE RESORT NORTHSTAR CALIFORNIA
TRIPLE PEAKS, LLC	Colorado	
VAIL ASSOCIATES HOLDINGS, LTD.	Colorado	
VAIL ASSOCIATES INVESTMENTS, INC.	Colorado	WARREN LAKES VENTURE, LTD.
VAIL ASSOCIATES REAL ESTATE, INC.	Colorado	

VAIL FOOD SERVICES, INC.	Colorado	BISTRO 14 EXTRA EXTRA FOX HOLLOW GOLF COURSE CLUBHOUSE GOLDEN PEAK GRILL GOLDEN PEAK RESTAURANT AND CANTINA IN THE DOG HAUS ONE ELK RESTAURANT RIPPEROO'S CORNER CAFÉ SALSA'S THE LIONS DEN BAR & GRILL TWO ELK RESTAURANT VAIL MOUNTAIN DINING COMPANY WAFFLE WAY WILDWOOD EXPRESS WILDWOOD SMOKEHOUSE WOK'N ROLL, INC. WOK 'N ROLL 'N RICE, INC. CAMP 1, INC. WILDWOOD SMOKEHOUSE BUFFALOES ROADHOUSE GRILL GAME CREEK CLUB VILLAGE CLUBHOUSE THE 10TH
VAIL HOLDINGS FINANCE B.V.	Netherlands	

<p>VAIL HOLDINGS, INC.</p>	<p>Colorado</p>	<p> APRÉS LOUNGE  AVON AT BEAVER CREEK.  AVON-VAIL COMPANY  BEAVER CREEK ADVERTISING AGENCY  BEAVER CREEK EQUESTRIAN CENTER  BEAVER CREEK GOLF AND TENNIS CLUB  BEAVER CREEK GOLF CLUB BAR &amp; GRILL  BEAVER CREEK GOLF CLUB  BEAVER CREEK GUIDES  BEAVER CREEK JEEP GUIDES  BEAVER CREEK SKI PATROL  BEAVER CREEK SKI RENTAL  BEAVER CREEK SKI REPAIR  BEAVER CREEK SKI RESORT  BEAVER CREEK SKI SCHOOL  BEAVER CREEK SKI SHOPS  BEAVER CREEK SPORTING GOODS  BEAVER CREEK SPORT SHOP  BEAVER CREEK SPORTS  BEAVER CREEK TENNIS CLUB  BEAVER CREEK VACATION RESORT  EAGLE RESIDENCES  GAME CREEK CLUB  LODGE AT BEAVER CREEK  PLAZA LODGE AT BEAVER CREEK  THE ENCLAVE RESTAURANT  THE INN AT BEAVER CREEK  TRAIL'S END BAR  VAIL ASSOCIATES DEVELOPMENT  CORPORATION  VAIL/BEAVER CREEK CENTRAL  RESERVATIONS  VAIL-BEAVER CREEK COMPANY  VAIL BEAVER CREEK REAL ESTATE  VAIL MOUNTAIN CLUB  VAIL MOUNTAIN RESORT  VAIL MOUNTAIN RESORT AND  CONFERENCE CENTER  VAIL PRODUCTIONS  WILDWOOD SHELTER </p>
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VAIL HOLDINGS, INC. (Continued)	Colorado	AD BROKERAGE, A DIVISION OF VAIL ASSOCIATES, INC. BEAVER CREEK ANTIQUES, INC. BEAVER CREEK APARTMENTS, INC. BEAVER CREEK ART, INC. BEAVER CREEK AT AVON, INC. BEAVER CREEK AT VAIL, INC. BEAVER CREEK BACKPACKING, INC. BEAVER CREEK BAKERY, INC. BEAVER CREEK BAR, INC. BEAVER CREEK BARBERS, INC. BEAVER CREEK BICYCLES, INC. BEAVER CREEK BOOK AND POSTER SHOP, INC. BEAVER CREEK BOOK STORE, INC. BEAVER CREEK BOOKING AGENCY, INC. BEAVER CREEK BOOKING AND TICKET AGENCY, INC. BEAVER CREEK BOOKSTORE AND OFFICE SUPPLY, INC. BEAVER CREEK BUILDERS, INC. BEAVER CREEK BUS SERVICE, INC. BEAVER CREEK CAB, INC BEAVER CREEK CABLE T V INC. BEAVER CREEK CAFE & LOUNGE, INC. BEAVER CREEK CAMERA, INC. BEAVER CREEK CHEESE SHOP, INC. BEAVER CREEK CINEMA, INC. BEAVER CREEK CLEANERS, INC. BEAVER CREEK CLOTHING, INC. BEAVER CREEK CONDOMINIUM MANAGEMENT RENTAL, INC. BEAVER CREEK CONDOMINIUM RENTAL, INC. BEAVER CREEK CONDOMINIUMS AND LODGE, INC. BEAVER CREEK CONDOMINIUMS, INC. BEAVER CREEK CONDOTEL, INC. BEAVER CREEK CONFERENCE CENTER, INC. BEAVER CREEK CONSTRUCTION AND DEVELOPMENT, INC. BEAVER CREEK CONSTRUCTION COMPANY, INC. BEAVER CREEK CONSTRUCTION MANAGEMENT CONSULTANTS, INC.
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VAIL HOLDINGS, INC. (Continued)	Colorado	BEAVER CREEK CYCLE SHOP, INC. BEAVER CREEK DAIRY, INC. BEAVER CREEK DECORATING, INC. BEAVER CREEK DEPARTMENT STORE, INC. BEAVER CREEK DEVELOPMENT COMPANY, INC. BEAVER CREEK DISTRIBUTING, INC. BEAVER CREEK DRUGS, INC. BEAVER CREEK DRUGSTORE, INC. BEAVER CREEK DRY CLEANERS, INC. BEAVER CREEK ELECTRIC, INC. BEAVER CREEK ENGINEERS, INC. BEAVER CREEK FILLING STATION, INC. BEAVER CREEK FIREWOOD, INC. BEAVER CREEK FLORISTS, INC. BEAVER CREEK FLYING SERVICE, INC. BEAVER CREEK FOOD STORE, INC. BEAVER CREEK GALLERIES, INC. BEAVER CREEK GAS STATION, INC. BEAVER CREEK GENERAL CONTRACTORS, INC. BEAVER CREEK GIFT SHOP, INC. BEAVER CREEK GROCERY, INC. BEAVER CREEK HARDWARE, INC. BEAVER CREEK HEALTH SPA, INC. BEAVER CREEK HEATING & PLUMBING, INC. BEAVER CREEK HOSTESSES, INC. BEAVER CREEK HOTEL COMPANY, INC. BEAVER CREEK INTERIOR DESIGN, INC. BEAVER CREEK JEWELERS, INC. BEAVER CREEK JOURNAL, INC. BEAVER CREEK LANDSCAPING AND SNOWPLOWING, INC. BEAVER CREEK LAUNDROMAT, INC. BEAVER CREEK LIMOUSINE SERVICE, INC. BEAVER CREEK LIQUOR AND WINE SHOP, INC. BEAVER CREEK LIQUOR STORE, INC. BEAVER CREEK LIQUORS, INC. BEAVER CREEK LODGE AND CONFERENCE CENTER, INC. BEAVER CREEK MAINTENANCE AND REPAIR, INC. BEAVER CREEK MARKET, INC.
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VAIL HOLDINGS, INC. (Continued)	Colorado	BEAVER CREEK MARKETING ASSOCIATION, INC. BEAVER CREEK MEADOWS, INC. BEAVER CREEK MERCHANTS ASSOCIATION BEAVER CREEK MOBILE COURT, INC. BEAVER CREEK MOBILE HOME PARK, INC. BEAVER CREEK MOTEL, INC. BEAVER CREEK MOTOR LODGE, INC. BEAVER CREEK MOUNTAIN CORPORATION BEAVER CREEK MOUNTAINEERING, INC. BEAVER CREEK NEWS AGENCY, INC. BEAVER CREEK NEWS, INC. BEAVER CREEK OUTDOOR CLUB, INC. BEAVER CREEK PAINTING, INC. BEAVER CREEK PHARMACY, INC. BEAVER CREEK PHOTOGRAPHY, INC. BEAVER CREEK PIZZA, INC. BEAVER CREEK PLANTERS, INC. BEAVER CREEK PRINTERY, INC. BEAVER CREEK PRINTING AND SECRETARIAL SERVICE, INC BEAVER CREEK PUB, INC. BEAVER CREEK RANCH, INC. BEAVER CREEK REAL ESTATE, INC. BEAVER CREEK REALTY AND MANAGEMENT, INC. BEAVER CREEK RECREATION AREA, INC. BEAVER CREEK RENTALS, INC. BEAVER CREEK RESERVATION SERVICE BEAVER CREEK RESORT AND CONFERENCE CENTER, INC. BEAVER CREEK RESORT AND TENNIS CLUB BEAVER CREEK RESORT ASSOCIATION BEAVER CREEK RESTAURANT, INC. BEAVER CREEK SALES, INC. BEAVER CREEK SALOON, INC. BEAVER CREEK SECURITY BEAVER CREEK SERVICE CORPORATION BEAVER CREEK SERVICE STATION, INC. BEAVER CREEK SKI AND MOUNTAINEERING, INC. BEAVER CREEK SKI AND SPORTS BEAVER CREEK SKI AREA BEAVER CREEK SKI CLUB, INC. BEAVER CREEK SKI CORPORATION
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VAIL HOLDINGS, INC. (Continued)	Colorado	BEAVER CREEK SKI SERVICE, INC. BEAVER CREEK SKI TOURING, INC. BEAVER CREEK SKIING CORPORATION BEAVER CREEK SNOWPLOWING, INC. BEAVER CREEK SPIRITS, INC. BEAVER CREEK STEAK HOUSE, INC. BEAVER CREEK SYSTEMS, INC. BEAVER CREEK T V, INC. BEAVER CREEK TAXI SERVICE, INC. BEAVER CREEK TOWING, INC. BEAVER CREEK TRADING POST, INC. BEAVER CREEK TRADING, INC. BEAVER CREEK TRAILER PARK, INC. BEAVER CREEK TRANSPORTATION CORPORATION BEAVER CREEK TRAVEL AGENCY, INC. BEAVER CREEK TRAVEL SERVICE, INC. BEAVER CREEK VALLEY ASSOCIATION, INC. BEAVER CREEK VILLAGER, INC. BEAVER CREEK VISITORS SERVICE, INC. BEAVER CREEKSIDE BEAVER CREEK-VAIL COMPANY BEAVER-VAIL DEVELOPMENT CORPORATION EXTREMELY VAIL, INC. FOOD STORE AT BEAVER CREEK, INC. MERIDIAN GROUP JOINT VENTURE, LTD. THE ADVENTURE COMPANY, INC. THE BEAVER TAIL, INC. VAIL ASSOCIATES VENTURES, INC. VAIL BOBSLED ADVENTURES, INC. VAIL/BROADMOOR, INC. VAIL/JAPAN ENTERPRISES, INC. VAIL-AVON COMPANY
VAIL HOTEL MANAGEMENT COMPANY, LLC	Colorado	
VAIL RESORTS DEVELOPMENT COMPANY	Colorado	VAIL ASSOCIATES REAL ESTATE GROUP
VAIL RESORTS LODGING COMPANY	Delaware	PARK CITY RENTAL MANAGEMENT COMPANY VAIL RESORTS HOSPITALITY
VAIL RR, INC.	Colorado	

VAIL SUMMIT RESORTS, INC.	Colorado	BEAVER CREEK VILLAGE TRAVEL BRECKENRIDGE HOSPITALITY BRECKENRIDGE LODGING & HOSPITALITY BRECKENRIDGE MOUNTAIN RESORT BRECKENRIDGE PROPERTY MANAGEMENT BRECKENRIDGE SKI RESORT BRECKENRIDGE SKI RESORT CORPORATION COLORADO VACATIONS KEYSTONE CONFERENCE CENTER KEYSTONE LODGE & SPA KEYSTONE LODGING AND HOSPITALITY KEYSTONE RESORT KEYSTONE STABLES KEYSTONE TRAVEL RESERVATIONS FOR THE SUMMIT ROCKY MOUNTAIN RESORT RESERVATIONS ROCKY MOUNTAIN RESORTVACATIONS ROCKY MOUNTAIN SKI CONSOLIDATORS VAIL/BEAVER CREEK CENTRAL RESERVATIONS VAIL/BEAVER CREEK RESERVATIONS VAIL/BEAVER CREEK TRAVEL
VAIL TRADEMARKS, INC.	Colorado	VAIL RESORTS TRADEMARKS, INC.
VAIL/ARROWHEAD, INC.	Colorado	
VAIL/BEAVER CREEK RESORT PROPERTIES, INC.	Colorado	ARROWHEAD PROPERTY MANAGEMENT COMPANY BACHELOR GULCH PROPERTY MANAGEMENT COMPANY BEAVER CREEK RESORT PROPERTIES BEAVER CREEK TENNIS CENTER TRAPPER'S CABIN VAIL PROPERTY MANAGEMENT PARK PLAZA RENTAL RESERVATIONS PARK PLAZA RESERVATIONS, INC. BEAVER CREEK RESORT PROPERTIES
VAMHC, INC.	Colorado	
VR ACQUISITION, INC.	California	
VR AUSTRALIA HOLDINGS PTY LTD	Australia	
VR CPC HOLDINGS, INC.	Delaware	CANYONS GOLF COURSE BEVERAGE CARTS CANYONS RESORT COBRA DOG SHACK KRISTI'S COFFEE CAFÉ LEGACY LODGE LEGACY SPORTS LEGENDS AT THE RESORT MID MOUNTAIN MINER'S CAMP RESTAURANT PARK CITY MOUNTAIN RESORT PARK CITY MOUNTAIN PARK CITY RESORT SNOW HUT SUMMIT HOUSE THE CANYONS PARK CITY RESORT
VR CPC SERVICES, LLC	Delaware	



VR HEAVENLY CONCESSIONS, INC.	California	
VR HEAVENLY I, INC.	Colorado	
VR HEAVENLY II, INC.	Colorado	
VR HOLDINGS, INC.	Colorado	
VR NE HOLDINGS, LLC	Delaware	JACKSON COUNTRY CLUB JACKSON GORE AT OKEMO MOUNTAIN RESORT JACKSON GORE LODGE JACKSON GORE RENTALS JACKSON GORE RESERVATIONS JACKSON GORE VACATION CLUB JACKSON GORE VACATIONS JACKSON GORE VILLAGE JACKSON GORE VILLAGE LODGING SERVICE JACKSON GORE VILLAGE RENTALS JACKSON GORE VILLAGE SPORT AND FITNESS CENTER
VR NW HOLDINGS, INC.	Delaware	
VR PA HOLDINGS, INC.	Pennsylvania	
VRSS HOLDINGS, LLC	Delaware	
VR US HOLDINGS, INC.	Delaware	AFTON ALPS AFTON ALPS RESORT BRUHN'S MT. BRIGHTON MT. BRIGHTON RESORT ONE CREEK MOUNTAIN GRILL SKI HILL GRILL THE TRUCK

VR US HOLDINGS II, LLC	Delaware	STOWE MOUNTAIN RESORT ADVENTURE CENTER CLIFF HOUSE RESTAURANT CUBS CHILD CARE GONDOLA CAFÉ LODGE AT MT. MANSFIELD LODGE AT STOWE MOUNTAIN RESORT MIDWAY CAFÉ MT. MANSFIELD SKI PATROL OCTAGON CAFETERIA SPRUCE BASE CAMP SPRUCE CAMP BASE LODGE SPRUCE CAMP STOWE ADVENTURE CENTER STOWE BASE CAMP STOWE CUBS DAYCARE THE CANTEEN RESTAURANT THE FIRESIDE TAVERN THE INN AT THE MOUNTAIN THE OCTAGON TOLL HOUSE CONFERENCE CENTER TREETOP ADVENTURE ZIPTOUR ADVENTURE MT. MANSFIELD BASE LODGE THE SMUGGLERS DEN SPRUCE LODGE AT MOUNT MANSFIELD ADVENTURE OUTFITTERS ALL MOUNTAIN PROGRAM (AMP) ALL MOUNTAIN PROGRAM (AMP) AMERICAN FLYER BARNES CAMP COUNTRY STORE BROKEN SKI TAVERN CHILDREN'S ADVENTURE CENTER EVOLUTION STOWE EVOLUTION STOWE CARD EXPLORERS FIRST CHAIR ALPINE FRONT FOUR DEMO CENTER FRONT FOUR RENTALS FRONT FOUR SPORTS GEAR ZONE GREAT ROOM GRILL H. H. BINGHAMS INSIDER'S GUIDE TO STOWE MAIN EVENT TERRAIN PARK MANSFIELD CROSS-COUNTRY SKI CENTER MANSFIELD SPORT SHOPS MIDWAY LODGE MIGHTYBUSTERS MINIBUSTERS MOUNT MANSFIELD LODGE AT LONG TRAIL MOUNTAIN CLINIC MOUNTAINEERS MT. MANSFIELD LODGE
VR WM HOLDINGS, LLC	Delaware	WILMOT MOUNTAIN RESORT
VRV AUSTRALIA PTY LTD	Australia	
WB LAND INC.	British Columbia	
WB LAND (CREEKSIDE SNOW SCHOOL) INC.	British Columbia	

WB/T DEVELOPMENT LTD.	British Columbia	
WC ACQUISITION CORP.	New Hampshire	
WEST LAKE WATER PROJECT, LLC	Vermont	
WHISTLER & BLACKCOMB MOUNTAIN RESORTS LIMITED	British Columbia	
WHISTLER ALPINE CLUB INC.	British Columbia	
WHISTLER BLACKCOMB EMPLOYMENT CORP.	British Columbia	
WHISTLER BLACKCOMB HOLDINGS INC. (f/k/a 1068877 BC Ltd.)	British Columbia	
WHISTLER/BLACKCOMB MOUNTAIN EMPLOYEE HOUSING LTD.	British Columbia	
WHISTLER BLACKCOMB GENERAL PARTNER LTD.	British Columbia	
WHISTLER HELI-SKIING LTD.	British Columbia	
WHISTLER MOUNTAIN RESORT LIMITED PARTNERSHIP	British Columbia	
WHISTLER SKI SCHOOL LTD.	British Columbia	
WHITETAIL MOUNTAIN OPERATING CORP.	Pennsylvania	

<sup>1</sup>Includes only those entities owned 50% or greater.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-233953) and on Form S-8 (Nos. 333-145934, 333-169552, and 333-208357) of Vail Resorts, Inc. of our report dated September 28, 2022 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/PricewaterhouseCoopers LLP

Denver, Colorado  
September 28, 2022

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

I, Kirsten A. Lynch, certify that:

1. I have reviewed this annual report on Form 10-K of Vail Resorts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 28, 2022

/s/ KIRSTEN A. LYNCH

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Kirsten A. Lynch  
Chief Executive Officer

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

I, Michael Z. Barkin, certify that:

1. I have reviewed this annual report on Form 10-K of Vail Resorts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 28, 2022

/s/ MICHAEL Z. BARKIN

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Michael Z. Barkin  
Executive Vice President and Chief Financial Officer

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
AND THE CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT  
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned hereby certifies in their capacity as an officer of Vail Resorts, Inc. (the “Company”) that the Company’s Annual Report on Form 10-K for the year ended July 31, 2022 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in such Report fairly presents, in all material respects, the financial condition and the results of operations of the Company at the end of and for the periods covered by such Report.

Date: September 28, 2022

\_\_\_\_\_  
/s/ KIRSTEN A. LYNCH

Kirsten A. Lynch  
Chief Executive Officer

Date: September 28, 2022

\_\_\_\_\_  
/s/ MICHAEL Z. BARKIN

Michael Z. Barkin  
Executive Vice President and Chief Financial Officer

This certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, is not a part of the Form 10-K to which it refers, and is, to the extent permitted by law, provided by each of the above signatories to the extent of his respective knowledge. This certification is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Vail Resorts, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by Section 906 has been provided to Vail Resorts, Inc. and will be furnished to the Securities and Exchange Commission or its staff upon request.