

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): June 27, 2022

**RAND CAPITAL CORPORATION**

(Exact Name of Registrant as Specified in Its Charter)

**New York**  
(State or Other Jurisdiction  
of Incorporation)

**814-00235**  
(Commission  
File Number)

**16-0961359**  
(I.R.S. Employer  
Identification Number)

**1405 Rand Building, Buffalo, NY 14203**  
(Address of Principal Executive Offices) (Zip Code)

**(716) 853-0802**  
(Registrant's Telephone Number, Including Area Code)

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock, \$0.10 par value	RAND	Nasdaq Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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

**Item 1.01. Entry into a Material Definitive Agreement.**

On June 27, 2022, Rand Capital Corporation (the “Company”) entered into a Credit Agreement (the “Credit Agreement”) with M&T Bank, as lender (the “Lender”), which provides the Company with a senior secured revolving credit facility in a principal amount not to exceed \$25.0 million (the “Credit Facility”). The amount available to be borrowed, at any given time, by the Company under the Credit Facility is tied to a borrowing base, which is measured as (i) 75% of the aggregate sum of the fair market values of the publicly traded equity securities held by the Company (other than shares of ACV Auctions Inc.) plus (ii) the least of (a) 75% of the fair market value of the shares of ACV Auctions Inc. held by the Company, (b) \$6.25 million and (c) 25% of the aggregate borrowing base availability for the Credit Facility at any date of determination plus (iii) 50% of the aggregate sum of the fair market values of eligible private loans held by the Company meeting specified criteria plus (iv) the lesser of (a) 50% of the aggregate sum of the fair market values of unsecured private loans held by the Company meeting specified criteria and (b) \$1.25 million minus (v) such reserves as the Lender may establish from time to time in its sole discretion. The Credit Facility has a maturity date of June 27, 2027.

The Company’s borrowings under the Credit Facility bear interest at a variable rate determined as a rate per annum equal to 3.50 percentage points above the greater of (i) the applicable daily simple secured overnight financing rate (SOFR) and (ii) 0.25%. In addition, under the terms of the Credit Facility, the Company has also agreed to pay the Lender an unused commitment fee on a quarterly basis, computed as 0.30% multiplied by the average daily Unused Commitment Fee Base (which is defined as the difference between (i) \$25.0 million and (ii) the sum of the aggregate principal amount of the Company’s outstanding borrowings under the Credit Facility) for the preceding quarter.

The Credit Agreement contains representations and warranties and affirmative, negative and financial covenants usual and customary for agreements of this type, including among others covenants that prohibit, subject to certain specified exceptions, the Company’s ability to merge or consolidate with other companies, sell any material part of its assets, incur other indebtedness, incur liens on its assets, make investments or loans to third parties other than permitted investments and permitted loans, and declare any distribution or dividend other than certain permitted distributions. The Credit Agreement includes the following financial covenants: (i) a tangible net worth covenant that requires the Company to maintain a Tangible Net Worth (defined in the Credit Agreement as the aggregate assets of the Company, excluding intangible assets, less all liabilities of the Company) of not less than \$50.0 million, which is measured quarterly at the end of each fiscal quarter, (ii) an asset coverage ratio covenant that requires the Company to maintain an Asset Coverage Ratio (defined in the Credit Agreement as the ratio of the fair market value of all assets of the Company to the sum of all of the Company’s obligations for borrowed money plus all capital lease obligations) of not less than 3:00:1:00, which is measured quarterly at the end of each fiscal quarter and (iii) an interest coverage ratio covenant that requires the Company to maintain an Interest Coverage Ratio (defined in the Credit Agreement as the ratio of Cash Flow (as defined in the Credit Agreement) to Interest Expense (as defined in the Credit Agreement)) of not less than 2:50:1:00, which is measured quarterly on a trailing twelve-months basis.

Events of default under the Credit Agreement which permit the Lender to exercise its remedies, including acceleration of the principal and interest on the Credit Facility, include, among others: (i) default in the payment of principal or interest on the Credit Facility, (ii) default by the Company on any other obligation, condition, covenant or other provision under the Credit Agreement and related documents, (iii) failure by the Company to pay any material indebtedness or obligation owing to any third party or affiliate, or the failure by the Company to perform any agreement with any third party or affiliate that would have a material adverse effect on the Company and its subsidiaries taken as a whole, (iv) the sale of all or substantially all of the Company’s assets to a third party, (v) various bankruptcy and insolvency events, and (vi) any material adverse change in the Company and its subsidiaries, taken as a whole, or their business, assets, operations, management, ownership, affairs, condition (financial or otherwise) or the Lender’s collateral that the Lender reasonably determines will have a material adverse effect on the Lender’s collateral, the Company and its subsidiaries, taken as a whole, or their business, assets, operation or condition (financial or otherwise) or on the Company’s ability to repay its debts.

In connection with entry into the Credit Facility, the Company and each of its subsidiaries that guaranty the Credit Facility entered into a general security agreement, dated June 27, 2022, with the Lender (the “Security Agreement”). The Security Agreement secures all obligations of the Company to the Lender, including, without limitation, principal and interest on the Credit Facility and any fees and charges. The security interest granted under the Security Agreement covers all personal property of the Company including, among other things, all accounts, chattel paper, investment property, deposit accounts, general intangibles, inventory, and all fixtures of the Company. The Security Agreement contains various representations, warranties, covenants and agreements customary in security agreements and various events of default with remedies under the New York Uniform Commercial Code and the Security Agreement. Events of default under the Security Agreement, which permit the Lender to exercise its various remedies, are similar to those contained in the Credit Agreement.

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The foregoing description of the Credit Agreement, Security Agreement and Credit Facility does not purport to be complete and is qualified in its entirety by reference to the Credit Agreement, the Revolving Line Note, dated June 27, 2022, by the Company as borrower, the Addendum to Line of Credit Note, dated June 27, 2022, by the Company as borrower, the Variable Rate Rider (Daily Simple SOFR), dated June 27, 2022, by the Company as borrower and the Security Agreement, copies of which have been filed as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5 hereto, respectively, and are each expressly incorporated by reference herein.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth under Item 1.01 above regarding the Credit Facility is incorporated herein by reference.

**Item 8.01. Other Events.**

The Company issued a press release announcing the Company's entry into the Credit Facility. A copy of the press release is attached as Exhibit 99.1 hereto and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
10.1	<a href="#"><u>Credit Agreement, dated June 27, 2022, by and between Rand Capital Corporation, as borrower, and M&amp;T Bank, as lender.</u></a>
10.2	<a href="#"><u>Revolving Line Note, dated June 27, 2022, by Rand Capital Corporation, as borrower.</u></a>
10.3	<a href="#"><u>Addendum to Line of Credit Note, dated June 27, 2022, by Rand Capital Corporation, as borrower.</u></a>
10.4	<a href="#"><u>Variable Rate Rider (Daily Simple SOFR), dated June 27, 2022, by Rand Capital Corporation, as borrower.</u></a>
10.5	<a href="#"><u>General Security Agreement, dated June 27, 2022, by Rand Capital Corporation and each of the subsidiaries listed therein, as debtors, in favor of Manufacturers and Traders Trust Company, as the secured party.</u></a>
99.1	<a href="#"><u>Press Release, dated June 27, 2022.</u></a>

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**RAND CAPITAL CORPORATION**

Date: June 27, 2022

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

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**CREDIT AGREEMENT  
New York**

June 27, 2022

**Borrower:** **RAND CAPITAL CORPORATION**, a corporation organized under the laws of the State of New York having its chief executive office at 14 Lafayette Square, Suite 1405, Buffalo, NY 14203.

**Bank:** **M&T BANK**, a New York banking corporation with its chief executive office at One M&T Plaza, Buffalo, NY 14203. Attention: Office of General Counsel.

BACKGROUND OF AGREEMENT

The Borrower is an externally managed, closed-end, diversified management investment company regulated as a business development company under the Investment Company Act of 1940, as amended (the “**Investment Company Act**”). The Borrower’s investment strategy is focused on higher yield debt investments. The Borrower has requested that the Bank provide a senior secured revolving credit facility in an amount not to exceed \$25,000,000.

The Bank and the Borrower agree as follows:

**1. DEFINITIONS.**

- a. “**Affiliate**” has the meaning ascribed to the term “Affiliated Person” in the Investment Company Act.
- b. “**Agreement**” means this Credit Agreement.
- c. “**Asset Coverage Ratio**” means the ratio of fair market value of all assets of Borrower to the sum of all obligations for borrowed money (including Subordinated Debt) plus all capital lease obligations, in each case calculated in accordance with G.A.A.P.
- d. “**Capital Gains Fee**” has the meaning given to such term in the Investment Management Agreement.
- e. “**Cash Flow**” means the sum of (i) net investment income before taxes, plus (ii) depreciation expense and amortization, plus (iii) Interest Expense, plus (iv) non-cash expenses, plus (v) the Capital Gains Fee paid to Investment Advisor in cash, all determined in accordance with G.A.A.P.
- f. “**Credit**” means any and all credit facilities and any other financial accommodations made by the Bank in favor of the Borrower whether now or hereafter in existence.
- g. “**Distributions**” means any dividend or other form of distribution (whether in cash, securities or other property) with respect to any stock, membership or other form of equity interest in Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such interests or any option, warrant or other right to acquire any such interests, in each case in accordance with the applicable governing documents of Borrower or Subsidiary, as the case may be, or otherwise.
- h. “**G.A.A.P.**” means, with respect to any date of determination, generally accepted accounting principles as used by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants consistently applied and maintained throughout the periods indicated.
- i. “**Interest Coverage Ratio**” means the ratio of Cash Flow to Interest Expense, all determined in accordance with G.A.A.P.

- j. **“Interest Expense”** means all finance charges reflected on the income statement as interest expense for all obligations of Borrower to any person, including, but not limited to, Bank, as shown on any properly prepared balance sheet in accordance with G.A.A.P.
- k. **“Obligations”** means any and all indebtedness or other obligations of the Borrower to the Bank in any capacity, now existing or hereafter incurred, however created or evidenced, regardless of kind, class or form, whether direct, indirect, absolute or contingent (including obligations pursuant to any guaranty, endorsement, other assurance of payment or otherwise), whether joint or several, whether from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred, together with all extensions, renewals and replacements thereof, and all interest, fees, charges, costs or expenses which accrue on or in connection with the foregoing, including any indebtedness or obligations (i) not yet outstanding but contracted for, or with regard to which any other commitment by the Bank exists; (ii) arising prior to, during or after any pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding; (iii) owed by the Borrower to others and which the Bank obtained, or may obtain, by assignment or otherwise; and (iv) payable under this Agreement.
- l. **“Permitted Distributions”** has the meaning set forth in the Schedule.
- m. **“Permitted Guaranties”** has the meaning set forth in the Schedule.
- n. **“Permitted Indebtedness”** has the meaning set forth in the Schedule.
- o. **“Permitted Investments”** means investments made in accordance with the Borrower’s investment objectives and strategies, as the same may be revised from time to time pursuant to this Agreement.
- p. **“Permitted Liens”** has the meaning set forth in the Schedule.
- q. **“Permitted Loans”** means loans made by the Borrower to an unaffiliated third party in accordance with the Borrower’s investment objectives and strategies, as the same may be revised from time to time pursuant to this Agreement.
- r. **“Person”** means an individual, sole proprietorship, joint venture, association, trust, estate, business trust, corporation, company, limited liability company, exempted company, limited liability partnership, limited partnership, exempted limited partnership, nonprofit corporation, partnership, group, sector, sovereign government or agency, instrumentality, or political subdivision thereof, territory, or any similar entity or organization.
- s. **“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.
- t. **“RIC”** means a Person that qualifies as a “regulated investment company” within the meaning of Section 851(a) and Section 851(b) of the Internal Revenue Code and that is taxable under Section 852(b) of the Internal Revenue Code by reason of having satisfied the conditions contained in Section 852(a) of the Internal Revenue Code.
- u. **“Sanction”** or **“Sanctions”** means individually and collectively, respectively, any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and anti-terrorism laws, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order; (b) the United Nations Security Council; (c) the European Union; (d) the United Kingdom; or (e) any other Governmental Authorities with jurisdiction over the Borrower or its Subsidiaries or their respective Related Parties.
- v. **“Sanctioned Entity”** means any individual, entity, group, sector, territory or country that is the target of any Sanctions, including without limitation, any legal entity that is deemed to be a target of Sanctions based on the direct or indirect ownership or control of such entity by any other Sanctioned Entity.
- w. **“Schedule”** means Schedule A, attached hereto and made a part hereof.
- x. **“Subordinated Debt”** means all indebtedness of the Borrower which has been formally subordinated to payment and collection of the Obligations on written terms approved by Bank in writing.

- y. **“Subsidiary”** means any corporation or other business entity of which at least fifty percent (50%) of the voting stock or other ownership interest is owned by the Borrower directly or indirectly through one or more Subsidiaries.
- z. **“Tangible Net Worth”** means the aggregate assets of Borrower excluding all intangible assets, including, but not limited to, goodwill, licenses, trademarks, patents, copyrights, organization costs, appraisal surplus, officer, stockholder, related entity and employee advances or receivables, mineral rights and the like, less liabilities, plus Subordinated Debt, all determined in accordance with G.A.A.P. (except to the extent that under G.A.A.P. “tangible net worth” excludes leasehold improvements which are included in “Tangible Net Worth” as defined herein).
- aa. **“Transaction Documents”** means this Agreement and all documents, instruments or other agreements by the Borrower in favor of the Bank in connection (directly or indirectly) with the Obligations, whether now or hereafter in existence, including, without limitation, promissory notes, security agreements, guaranties and letter of credit reimbursement agreements.
2. **REPRESENTATIONS AND WARRANTIES.** The Borrower makes the following representations and warranties and any “Additional Representations and Warranties” on the Schedule, all of which shall be deemed to be continuing representations and warranties as long as this Agreement is in effect:
- 1) **Good Standing; Authority.** The Borrower and each Subsidiary (if either is not an individual) is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed. The Borrower and each Subsidiary is duly authorized to do business in each jurisdiction in which failure to be so qualified might have a material adverse effect on the business or assets of the Borrower and its Subsidiaries taken as a whole, the Borrower and each Subsidiary has the power and authority to own each of its assets and to use them in the ordinary course of business as contemplated now and in the future.
- 2) **Compliance.** The Borrower and each Subsidiary conducts its business and operations and the ownership of its assets in compliance in all material respects with each applicable statute, regulation and other law, including environmental laws and the Investment Company Act. All approvals, including authorizations, permits, consents, franchises, licenses, registrations, filings, declarations, reports and notices (the “Approvals”) necessary for the conduct of the Borrower’s and each Subsidiary’s business and for the Credit have been duly obtained and are in full force and effect. The Borrower and each Subsidiary is in compliance in all material respects with the Approvals. The Borrower and each Subsidiary (if either is not an individual) is in compliance with its certificate of incorporation, by-laws, partnership agreement, articles of organization, operating agreement or other applicable organizational or governing document as may be applicable to the Borrower or a Subsidiary depending on its organizational structure (“Governing Documents”). The Borrower and each Subsidiary is in compliance with each agreement to which it is a party or by which it or any of its assets is bound except where the failure to comply could not have a material adverse effect on business or assets of the Borrower and its Subsidiaries taken as a whole.
- 3) **Legality.** The execution, delivery and performance by the Borrower of this Agreement and all related documents, including the Transaction Documents, (i) are in furtherance of the Borrower’s purposes and within its power and authority; (ii) do not (A) violate in any material respect any statute, regulation or other law or any judgment, order or award of any court, agency or other governmental authority or of any arbitrator with respect to the Borrower or any Subsidiary or (B) violate the Borrower’s or any Subsidiary’s Governing Documents (if either is not an individual), constitute a default under any agreement binding on the Borrower or any Subsidiary or result in a lien or encumbrance on any assets of the Borrower or any Subsidiary except where such default would not have a material adverse effect on the business or assets of the Borrower and its Subsidiaries taken as a whole; and (iii) have been duly authorized by all necessary organizational actions. No limitation on the powers of the Borrower to borrow, including, without limitation, under the Investment Company Act, will be exceeded as a result of borrowings under this Credit Agreement.
- 4) **Fiscal Year.** The fiscal year of the Borrower is the calendar year.
- 5) **Title to Assets.** The Borrower and each Subsidiary has good and marketable title to each of its assets free of security interests, mortgages or other liens or encumbrances, except as set forth on the Schedule titled “Permitted Liens” or pursuant to the Bank’s prior written consent.
- 6) **Judgments and Litigation.** There is no pending or, to the Borrower’s knowledge, threatened claim, audit, investigation, action or other legal proceeding or judgment, order or award of any court, agency or other governmental authority or arbitrator (any, an “Action”) which involves the Borrower, its Subsidiaries or their respective assets and might have a material adverse effect upon the Borrower and its Subsidiaries taken as a whole or threaten the validity of the Credit, any Transaction Document or any related document or action. Borrower will promptly notify the Bank in writing upon acquiring knowledge of any such Action.

- a. **Full Disclosure.** Neither this Agreement nor any certificate, financial statement or other writing provided to the Bank by or on behalf of the Borrower or any Subsidiary contains any statement of fact that is incorrect or misleading in any material respect or omits to state any fact necessary to make any such statement not incorrect or misleading. The Borrower is not aware of and has not failed to disclose to the Bank any fact that might have a material adverse effect on the Borrower and its Subsidiaries taken as a whole.
- h. **Investment Company Act.** The Borrower is registered as a business development company under the Investment Company Act. To the Borrower's knowledge, the Bank is not an "affiliated person", or an affiliated person of an affiliated person, of the Borrower (within the meaning of Section 2(a)(3) of the Investment Company Act). Rand Capital Management LLC (the "**Investment Advisor**") is an investment adviser that is registered under the U.S. Investment Advisers Act of 1940, as amended. The Investment Advisor is in compliance in all material respects with the terms of the Investment Advisory and Management Agreement dated December 31, 2020 (the "**Investment Management Agreement**"), between the Investment Advisor and the Borrower. The Borrower is not subject to any requirement of law (other than the Investment Company Act and Regulation X), which limits its ability to incur indebtedness hereunder. The Borrower has not entered into any agreement with any governmental authority limiting its ability to incur indebtedness hereunder.
- i. **Taxes.** The Borrower qualifies as a RIC. The Borrower has timely filed or caused to be filed all U.S. federal income and other material tax returns, information statements and reports required to have been filed and has timely paid or caused to be paid all U.S. federal and other material taxes required to be paid, except (i) for any such taxes that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been established in accordance with G.A.A.P. and (ii) where the failure to so file or pay could not reasonably be expected to have a material adverse effect on the business or assets of the Borrower and its Subsidiaries taken as a whole.
- j. **Sanctions.** Neither the Borrower nor any Subsidiary, and no Affiliate nor any other Related Party of the Borrower or any Subsidiary, (a) is a Sanctioned Entity, (b) is controlled by or is acting on behalf of a Sanctioned Entity, (c) to the Borrower's knowledge is under investigation for an alleged breach of Sanction(s) by a governmental authority that enforces Sanctions, or (d) will fund any repayment of the Obligations with derived from any transaction that would be prohibited by Sanctions or would otherwise cause any Lender or any other party to this Credit Agreement, or any Related Party, to be in breach of any Sanctions.
3. **AFFIRMATIVE COVENANTS.** So long as this Agreement is in effect, the Borrower will comply, and cause each of its Subsidiaries to comply, with the following covenants and any other "Additional Affirmative Covenant" contained in the Schedule:
- a. **Financial Statements and Other Information.** Promptly deliver to the Bank (i) within sixty (60) days after the end of each of its first three fiscal quarters, an unaudited consolidated financial statement of the Borrower and each Subsidiary as of the end of such quarter, which financial statement shall consist of income and cash flows for the quarter, for the corresponding quarter in the previous fiscal year and for the period from the end of the previous fiscal year, with a consolidated balance sheet as of the quarter end all in such detail as the Bank may request (which delivery requirement shall be satisfied in full by the Borrower's filing of its quarterly financial statements as part of its Quarterly Report on Form 10-Q with the Securities and Exchange Commission on the EDGAR filing system); (ii) within ninety (90) days after the end of each fiscal year, consolidated statements of the Borrower's and each Subsidiary's income and cash flows and its consolidated balance sheet as of the end of such fiscal year, setting forth comparative figures for the preceding fiscal year and to be (check applicable box, if no box is checked the financial statements shall be audited):

audited

reviewed

compiled

by an independent certified public accountant acceptable to the Bank (for the avoidance of doubt, the Bank acknowledges and agrees that Freed Maxick CPAs, P.C. shall be an acceptable independent certified public accountant) (which delivery requirement shall be satisfied in full by the Borrower's filing of its annual audited financial statements as part of its Annual Report on Form 10-K with the Securities and Exchange Commission on the EDGAR filing system); and (iii) within sixty (60) days after the end of each of its first three fiscal quarters and within ninety (90) days after the end of each fiscal year, (A) a certificate executed by the Borrower's chief executive and chief financial officers or other such person responsible for the financial management of the Borrower in the form attached hereto as Exhibit A (a) setting forth the computations required to establish the Borrower's compliance with each financial covenant, if any, during the statement period, (b) stating that the signers of the certificate have reviewed this Agreement and the operations and condition (financial or other) of the Borrower and each of its Subsidiaries during the relevant period and (c) stating that no Event of Default occurred during the period, or if an Event of Default did occur, describing its nature, the date(s) of its occurrence or period of existence and what action the Borrower has taken with respect thereto; and (B) a completed Borrowing Base Certificate in the form attached hereto as Exhibit B executed by the Borrower's chief executive and chief financial officers or other such person responsible for the financial management of the Borrower. The Borrower shall provide, in form satisfactory to the Bank, such additional information, reports or other information as the Bank may from time to time reasonably request regarding the financial and business affairs of the Borrower or any Subsidiary.



- b. **Accounting; Tax Returns and Payment of Claims.** Maintain a system of accounting and reserves in accordance with generally accepted accounting principles, has filed and will file each tax return required of it and, except as disclosed in the Schedule or (i) for any such taxes that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been established in accordance with G.A.A.P. and (ii) where the failure to so file or pay could not reasonably be expected to have a material adverse effect on the business or assets of the Borrower and its Subsidiaries taken as a whole, has paid and will pay when due each tax, assessment, fee, charge, fine and penalty imposed by any taxing authority upon it or any of its assets, income or franchises, as well as all amounts owed to mechanics, materialmen, landlords, suppliers and the like in the normal course of business.
  - c. **Inspections.** Upon the Bank's request, not less than forty-eight (48) hours in advance (unless a Default or Event of Default has occurred and is continuing), permit the Bank's officers, attorneys or other agents to inspect its and its Subsidiary's premises, examine and copy its records and discuss its and its Subsidiary's business, operations and financial or other condition with its and its Subsidiary's responsible officers and independent accountants, all at the Bank's sole cost and expense unless a Default or Event of Default has occurred and is continuing.
  - d. **Operating Accounts.** Maintain all bank accounts with the Bank.
  - e. **Borrower Notices.** Promptly upon acquiring reason to know of (i) any Event of Default, (ii) any event or condition that might have a material adverse effect upon the Borrower and its Subsidiaries taken as a whole or (iii) any change of its address or of the location of any collateral securing the Obligations, or (iv) any Action, the Borrower will provide to the Bank a certificate executed by the Borrower's senior individual authorized to transact business on behalf of the Borrower, specifying the date(s) and nature of the event or the Action and what action the Borrower or its Subsidiary has taken or proposes to take with respect to it.
  - f. **Insurance.** Maintain its property in good repair and will on request provide the Bank with evidence of insurance coverage satisfactory to the Bank, including fire and hazard, liability, workers' compensation and business interruption insurance and flood hazard insurance as required.
  - g. **Form U-1.** The Borrower shall promptly provide to the Bank a duly completed Form U-1 (Statement of Purpose for an Extension of Credit Secured by Margin Stock) in respect of the Credit Agreement, upon request by the Bank.
  - h. **Sanctions.** The Borrower and each Subsidiary thereof shall comply with all applicable Sanctions and shall maintain policies and procedures reasonably designed to ensure compliance with Sanctions.
4. **NEGATIVE COVENANTS.** As long as this Agreement is in effect, the Borrower shall not violate, and shall not suffer or permit any of its Subsidiaries to violate, any of the following covenants. The Borrower shall not:
- a. **Indebtedness.** Other than Permitted Indebtedness set forth on the Schedule, if any, permit any indebtedness (including direct and contingent liabilities) except for trade indebtedness or current liabilities for salary, wages incurred in the ordinary course of business and not substantially overdue or amounts due to the Investment Adviser in accordance with the Investment Management Agreement.
  - b. **Guaranties.** Become a guarantor, a surety, or otherwise liable for the debts or other obligations of another, whether by guaranty or suretyship agreement, agreement to purchase indebtedness, agreement for furnishing funds through the purchase of goods, supplies or services (or by way of stock purchase, capital contribution, advance or loan) for the purpose of paying or discharging indebtedness, or otherwise, except such Permitted Guaranties as an endorser of instruments for the payment of money deposited to its bank account for collection in the ordinary course of business and except as may be specified on the Schedule.
  - c. **Liens.** Permit any of its assets to be subject to any security interest, mortgage or other lien or encumbrance, except such Permitted Liens as may be specified on the Schedule and except for liens for property taxes not yet due; pledges and deposits to secure obligations or performance for workers' compensation, bids, tenders, contracts other than notes, appeal bonds or public or statutory obligations; and materialmen's, mechanics', carriers' and similar liens arising in the normal course of business.
  - d. **Investments.** Make any investment other than Permitted Investments.

- e. **Loans.** Make any loan, advance or other extension of credit except those Permitted Loans, except for endorsements of negotiable instruments deposited to the Borrower's deposit account for collection, trade credit in the normal course of business and intercompany loans approved in writing by the Bank.
- f. **Distributions.** Declare or pay any Distribution, except for (i) any Distributions required by law or regulation (including in order for the Borrower to continue to qualify as a RIC), and (ii) provided that no Default or Event of Default has occurred and is continuing, any Distributions in cash or payable solely in stock of the Borrower.
- g. **Changes in Form or Control.** (i) Transfer or dispose of substantially all of its assets, (ii) acquire substantially all of the assets of any other entity other than a Subsidiary that becomes a guarantor under the Transaction Documents, (iii) do business under or otherwise use any name other than its true name, (iv) make any material change in its business, structure, ownership, purposes or operations that might have a material adverse effect on the Borrower and its Subsidiaries taken as a whole, or (v) participate in any merger, consolidation or other absorption other than a merger, consolidation, or other absorption of a Subsidiary into another Subsidiary or the Borrower.
- h. **Sale of Assets.** Sell, transfer lease or otherwise dispose of any assets (including, without limitation, pursuant to any sale/leaseback transaction, securitization transaction, or with respect to any equity interest owned by it) other than sales, transfers and dispositions of (x) investments in the ordinary course of business and in accordance with the Borrower's investment objectives and strategies, as may be revised from time to time pursuant to this Agreement, (y) inventory in the ordinary course of business and (z) used, obsolete, worn out or surplus equipment or property in the ordinary course of business.
- i. **Reg U.** The Borrower shall not use any proceeds of the Credit to purchase Margin Stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System) and no Loan will be used to purchase Margin Stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System) except for repurchases by Borrower of the Borrower's common stock pursuant to Borrower's publicly announced share repurchase program provided, after making such purchase the Credit will not violate Regulation U of the Board of Governors of the Federal Reserve System.
- j. **Non-Affiliation.** The Borrower will not at any time take any action to become an Affiliate of the Bank or any Affiliate of the Bank known to the Borrower, and the Borrower will use its commercially reasonable efforts to ensure that none of its Affiliates is or becomes an Affiliate of the Bank or any Affiliate of the Bank known to the Borrower.
- k. **Securities Accounts.** The Borrower shall not open or maintain any securities accounts other than: (i) securities accounts that are established with the Bank; and (ii) securities accounts in which the Bank has a first priority perfected security interest.
- l. **Compliance with Sanctions.** Neither the Borrower or any Subsidiary and no Person directly or indirectly controlled by the Borrower or a Subsidiary, and to the Borrower's knowledge no other Related Party of any of the foregoing, in each case directly or indirectly, will use the proceeds of any Loan hereunder, or lend, contribute, or otherwise make available such proceeds to any subsidiary, joint venture partner, or other Person (i) to fund any activities or business of or with a Sanctioned Entity in violation of applicable law, or (ii) in any manner that would be prohibited by Sanctions or would otherwise cause the Bank to be in breach of any Sanctions. The Borrower and each Subsidiary thereof shall comply with all applicable Sanctions and shall maintain policies and procedures reasonably designed to ensure compliance with Sanctions.
- m. **Investment Management Agreement and Investment Manager.** Rand Capital Management LLC shall cease acting as investment adviser for the Borrower. Rand Capital Management LLC shall no longer be owned or controlled, directly or indirectly, by Callodine Credit, LLC. The Investment Management Agreement shall not be amended or modified in any material respect without the Bank's prior written consent, provided, however, the Bank acknowledges and agrees that the extension of the term of the Investment Management Agreement, in compliance with Sections 10(a) and 10(b) thereof, shall not require the Bank's prior written consent.
- n. **Investment Objectives and Strategy.** The Borrower will not materially amend, modify, alter or otherwise change its investment objectives and strategies as set forth on Schedule B without the Bank's prior written consent.

**5. FINANCIAL COVENANTS.** During the term of this Agreement, the Borrower shall not violate, and shall not suffer or permit any of its Subsidiaries to violate, any of the following covenants. **For purposes of this Section, if the Borrower has any Subsidiaries all references to the Borrower shall include the Borrower and all of its Subsidiaries on a consolidated basis.**

A. Borrower shall maintain Tangible Net Worth of not less than \$50,000,000.00, measured quarterly as of each fiscal quarter end, commencing with the period ending June 30, 2022.

B. Borrower shall maintain an Asset Coverage Ratio of not less than 3.00:1.00, measured quarterly as of each fiscal quarter end, commencing with the period ending June 30, 2022.

C. Borrower shall maintain an Interest Coverage Ratio of not less than 2.50:1.00 measured quarterly on a trailing twelve-month basis, commencing with the period ending June 30, 2022.

**6. DEFAULT.**

- a. **Events of Default.** Any of the following events or conditions shall constitute an "Event of Default": (i) failure by the Borrower to pay (a) within three (3) business days of when due any interest, fees or costs due hereunder or (b) any principal as and when due hereunder (whether at the stated maturity, by acceleration or otherwise), or there occurs any event or condition which after notice, lapse of time or both will permit acceleration of any Obligation that is not cured within the applicable notice or cure period; (ii) Borrower defaults in the performance of any obligation, condition, covenant or other provision of this Agreement, the other Transaction Documents or any other agreement with the Bank or any of its Affiliates or subsidiaries, which, (a) if such default can be cured solely by the payment of money, is not cured within three (3) business days after written notice from the Bank, (b) if it is a non-monetary default (excluding any default under Sections 3a, 4 or 5), it is not cured within thirty (30) days after written notice from the Bank, or (c) any default under 3a, 4 or 5; (iii) failure by the Borrower to pay (whether at the stated maturity, by acceleration, upon demand or otherwise) any material indebtedness or obligation owing to any third party or Affiliate or the failure to perform any agreement with any third party or Affiliate which would have a material adverse effect on the Borrower and its Subsidiaries taken as a whole, or their assets taken as a whole; (iv) the sale, assignment transfer or delivery, by operation of law or otherwise, of all or substantially all of the assets of the Borrower to a third party; (v) the Borrower, without the Bank's prior written consent, engages in, agrees to or approves a plan for (a) reorganization, (b) merger or consolidation, (c) division into (or of) one or more entities or series of entities or allocation or transfer of any of Borrower's assets or liabilities as a result of such a division, (d) conversion to another form of business entity, or (e) dissolution of the Borrower or cessation by the Borrower as a going business concern; (vi) if Borrower becomes insolvent or is generally not paying its debts as such debts become due; (vii) the making of any general assignment by Borrower for the benefit of creditors; the appointment of a receiver or similar trustee for Borrower or its assets; or the making of any, or sending notice of any intended, bulk sale; (viii) Borrower commences (or has commenced against it and not dismissed or stayed within sixty (60) days) any proceeding or request for relief under any bankruptcy, insolvency or similar laws now or hereafter in effect in the United States of America or any state or territory thereof or any foreign jurisdiction or any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of Borrower; (ix) any representation or warranty made in this Agreement, any other Transaction Documents, any related document, any other agreement between Borrower and the Bank or any Affiliate or in any financial statement of Borrower or elsewhere was misleading in any material respect when made; Borrower omits to state a material fact necessary to make the statements made in this Agreement, any other Transaction Document, any related document, any other agreement between Borrower and the Bank or any Affiliate or any financial statement of Borrower or elsewhere not misleading in light of the circumstances in which they were made; or, if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed in any financial statement, representation, warranty or elsewhere that was not disclosed in writing to the Bank at or prior to the time of execution hereof; (x) any pension plan of Borrower fails to comply with applicable law or has vested unfunded liabilities that, in the opinion of the Bank, might have a material adverse effect on Borrower's ability to repay its debts; (xi) a material adverse change in the Borrower and its Subsidiaries, taken as a whole, or their business, assets, operations, management, ownership, affairs or condition (financial or otherwise) or the Bank's collateral from the status shown on any financial statement or other document submitted to the Bank or any Affiliate, and which change the Bank reasonably determines will have a material adverse effect on (a) the Bank's collateral, the Borrower and its Subsidiaries taken as a whole, their business, assets, operations or condition (financial or otherwise), or (b) the ability of the Borrower to pay or perform any obligation to the Bank; (xii) any indication or evidence received by the Bank that the Borrower may have directly or indirectly engaged in any type of activity which, in the Bank's discretion, might result in the forfeiture of any property of the Borrower to any governmental authority; or (xiii) the occurrence of any event described in sub-paragraph (i) through and including (xii) hereof with respect to any Subsidiary, endorser, guarantor or any other party liable for, or whose assets or any interest therein secures, payment of any of the Obligations.

- b. **Rights and Remedies Upon Default.** Upon the occurrence and during the continuance of any Event of Default, the Bank without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon the Borrower, any Subsidiary or any other person (all and each of which demands, presentments, protests, advertisements and notices are hereby waived), may exercise all rights and remedies under the Borrower's or its Subsidiaries' agreements with the Bank or its Affiliates, applicable law, in equity or otherwise and may declare all or any part of any Obligations not payable on demand to be immediately due and payable without demand or notice of any kind and terminate any obligation it may have to grant any additional loan, credit or other financial accommodation to the Borrower or any Subsidiary. All or any part of any Obligations whether or not payable on demand, shall be immediately due and payable automatically upon the occurrence of an Event of Default in sub-paragraphs (vii) or (viii) above. The provisions hereof are not intended in any way to affect any rights of the Bank with respect to any Obligations which may now or hereafter be payable on demand.
7. **EXPENSES.** The Borrower shall pay to the Bank on demand all costs and expenses (including all reasonable fees and disbursements of outside counsel retained for advice, suit, appeal or other proceedings or purpose and of any experts or agents it may retain), which the Bank may incur in connection with (i) the administration of the Obligations, including any administrative fees the Bank may impose for the preparation of discharges, releases or assignments to third-parties; (ii) the enforcement and collection of any Obligations or any guaranty thereof; (iii) the exercise, performance, enforcement or protection of any of the rights of the Bank hereunder; or (iv) the failure of the Borrower or any Subsidiary to perform or observe any provisions hereof. After such demand for payment of any cost, expense or fee under this Section or elsewhere under this Agreement, the Borrower shall pay interest at the highest default rate specified in any instrument evidencing any of the Obligations from the date payment is demanded by the Bank to the date reimbursed by the Borrower. All such costs, expenses or fees under this Agreement shall be added to the Obligations.
8. **TERMINATION.** This Agreement shall remain in full force and effect until (i) all Obligations outstanding, or contracted or committed for (whether or not outstanding), shall be finally and irrevocably paid in full and (ii) all Transaction Documents have been terminated by the Bank.
9. **RIGHT OF SETOFF.** If an Event of Default occurs and is continuing, the Bank shall have the right to set off against the amounts owing under this Agreement and the other Transaction Documents any property held in a deposit or other account or otherwise with the Bank or its Affiliates or otherwise owing by the Bank or its Affiliates in any capacity to the Borrower, its Subsidiary or any guarantor of, or endorser of any of the Transaction Documents evidencing, the Obligations. Such setoff shall be deemed to have been exercised immediately at the time the Bank or such Affiliate elect to do so.
10. **USA PATRIOT ACT NOTICE.** Bank hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act ("Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Bank to identify the Borrower in accordance with the Patriot Act. The Borrower agrees to, promptly following a request by Bank, provide all such other documentation and information that Bank requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.
11. **MISCELLANEOUS.**
- a. **Notices.** Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to Borrower (at its address on the Bank's records) or to the Bank (at the address on page one and separately to the Bank officer responsible for Borrower's relationship with the Bank). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal delivery and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Borrower and the Bank.
- b. **Generally Accepted Accounting Principles.** Any financial calculation to be made, all financial statements and other financial information to be provided, and all books and records, system of accounting and reserves to be kept in connection with the provisions of this Agreement, shall be in accordance with generally accepted accounting principles consistently applied during each interval and from interval to interval; provided, however, that in the event changes in generally accepted accounting principles shall be mandated by the Financial Accounting Standards Board or any similar accounting body of comparable standing, or should be recommended by Borrower's certified public accountants, to the extent such changes would affect any financial calculations to be made in connection herewith, such changes shall be implemented in making such calculations only from and after such date as Borrower and the Bank shall have amended this Agreement to the extent necessary to reflect such changes in the financial and other covenants to which such calculations relate.

- c. **Indemnification.** If after receipt of any payment of all, or any part of, the Obligations, the Bank is, for any reason, compelled to surrender such payment to any person or entity because such payment is determined to be void or voidable as a preference, an impermissible setoff, or a diversion of trust funds, or for any other reason, the Transaction Documents shall continue in full force and the Borrower shall be liable, and shall indemnify and hold the Bank harmless for, the amount of such payment surrendered. The provisions of this Section shall be and remain effective notwithstanding any contrary action which may have been taken by the Bank in reliance upon such payment, and any such contrary action so taken shall be without prejudice to the Bank's rights under the Transaction Documents and shall be deemed to have been conditioned upon such payment having become final and irrevocable. The provisions of this Section shall survive the termination of this Agreement and the Transaction Documents.
- d. **Further Assurances.** The Borrower shall take, and cause its Subsidiaries and affiliates to take, such action and execute and deliver to the Bank such additional documents, instruments, certificates, and agreements as the Bank may reasonably request from time to time to effectuate the purposes of the Transaction Documents and the transactions contemplated thereby, including, without limitation, causing any Subsidiary, affiliate, entity or series of entities it may create hereafter through merger, division or otherwise, to execute agreements, in form and substance acceptable to the Bank, (i) assuming or guarantying the Borrower's obligations under this Agreement and all related agreements and (ii) pledging assets to the Bank to the same extent as the Borrower.
- e. **Cumulative Nature and Non-Exclusive Exercise of Rights and Remedies.** All rights and remedies of the Bank pursuant to this Agreement and the Transaction Documents shall be cumulative, and no such right or remedy shall be exclusive of any other such right or remedy. In the event of any unreconcilable inconsistencies, this Agreement shall control. No single or partial exercise by the Bank of any right or remedy pursuant to this Agreement or otherwise shall preclude any other or further exercise thereof, or any exercise of any other such right or remedy, by the Bank.
- f. **Governing Law; Jurisdiction.** This Agreement has been delivered to and accepted by the Bank and will be deemed to be made in the State of New York. Except as otherwise provided under federal law, this Agreement will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **BORROWER HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK IN A COUNTY OR JUDICIAL DISTRICT WHERE THE BANK MAINTAINS A BRANCH AND CONSENTS THAT THE BANK MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT BORROWER'S ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS AGREEMENT WILL PREVENT THE BANK FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR JUDGMENT OR EXERCISING ANY RIGHTS AGAINST BORROWER INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF BORROWER WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION.** Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and Borrower. Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.
- g. **Successors and Assigns.** This Agreement shall be binding upon the Borrower and upon its successors and assignees, and shall inure to the benefit of, and be enforceable by, the Bank, its successors and assignees and each direct or indirect assignee or other transferee of any of the Obligations; provided, however, that this Agreement may not be assigned by the Borrower without the prior written consent of the Bank.
- h. **Waivers; Changes in Writing.** No failure or delay of the Bank in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The Borrower expressly disclaims any reliance on any course of dealing or usage of trade or oral representation of the Bank (including representations to make loans to the Borrower) and agrees that none of the foregoing shall operate as a waiver of any right or remedy of the Bank. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless made specifically in writing by the Bank and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No modification to any provision of this Agreement shall be effective unless made in writing in an agreement signed by the Borrower and the Bank.

- i. **Interpretation.** Unless the context otherwise clearly requires, references to plural includes the singular and references to the singular include the plural; references to “individual” shall mean a natural person and shall include a natural person doing business under an assumed name (e.g., a “DBA”); the word “or” has the inclusive meaning represented by the phrase “and/or”; the word “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; and captions or section headings are solely for convenience and not part of the substance of this Agreement. Any representation, warranty, covenant or agreement herein shall survive execution and delivery of this Agreement and shall be deemed continuous. Each provision of this Agreement shall be interpreted as consistent with existing law and shall be deemed amended to the extent necessary to comply with any conflicting law. If any provision nevertheless is held invalid, the other provisions shall remain in effect. The Borrower agrees that in any legal proceeding, a photocopy of this Agreement kept in the Bank’s course of business may be admitted into evidence as an original.
- j. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- k. **Waiver of Jury Trial. THE BORROWER AND THE BANK HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY THE BORROWER AND THE BANK MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTIONS RELATED HERETO. THE BORROWER REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF THE BANK HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. THE BORROWER ACKNOWLEDGES THAT THE BANK HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.**

**Acknowledgment.** Borrower acknowledges that it has read and understands all the provisions of this Agreement, including the **Governing Law, Jurisdiction and Waiver of Jury Trial**, and has been advised by counsel as necessary or appropriate.

M&T BANK

By           /s/ Patrick Covert            
Name: Patrick Covert  
Title: Senior Vice President

RAND CAPITAL CORPORATION

By           /s/ Daniel P. Penberthy            
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

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**REVOLVING LINE NOTE**  
New York

June 27, 2022

\$25,000,000.00

**BORROWER:** RAND CAPITAL CORPORATION, a corporation organized under the laws of the State of New York having its chief executive office at 14 Lafayette Square, Suite 1405, Buffalo, NY 14203.

**BANK:** M&T BANK, a New York banking corporation with its banking offices at One M&T Plaza, Buffalo, New York 14203, Attention: Office of the General Counsel

**Promise to Pay.** For value received, and intending to be legally bound, Borrower promises to pay to the order of the Bank the principal sum of Twenty-Five Million Dollars (\$25,000,000.00) (the “Maximum Principal Amount”) or the outstanding principal amount of this Note (the “Outstanding Principal Amount”), if less; plus interest as agreed below and all actual fees and costs (including without limitation reasonable attorneys’ fees and disbursements of outside counsel) the Bank incurs in order to administer, service or modify the credit facility evidenced by this Note, to collect any amount due under this Note, to negotiate or document a workout or restructuring, or to preserve its rights or realize upon any guaranty or other security for the payment of this Note (“Expenses”). Terms capitalized but not defined herein shall have the meanings given to such terms in the Credit Agreement between Borrower and Bank of even date herewith (the “Credit Agreement”).

**Authorized Representatives.** This Note is issued by Borrower to the Bank in connection with a certain line of credit made available by the Bank to Borrower (the “Credit”). The Bank may make any loan or advance pursuant to the Credit (collectively, “Loan(s)”) in reliance upon any oral, telephonic, written, teletransmitted or other request (the “Request(s)”) that the Bank in good faith believes to be valid and to have been made by Borrower or on behalf of Borrower by any executive officer of Borrower who is authorized or designated as a signer of loan documents under the provisions of Borrower’s most recent resolutions or similar documents on file with the Bank (each an “Authorized Person”). Notwithstanding that individual names may have been provided to the Bank, the Bank shall be permitted at any time to rely solely on an individual’s title to ascertain whether that individual is an Authorized Person. The Bank may act on the Request of any Authorized Person until the Bank shall have received from Borrower, and had a reasonable time to act on, written notice revoking the authority of such Authorized Person. Borrower acknowledges that the transmission between Borrower and Bank of any Request or other instructions with respect to the Credit involves the possibility of errors, omissions, misinterpretations, fraud and mistakes, and agrees to adopt such internal measures and operational procedures as may be necessary to prevent such occurrences. By reason thereof, Borrower hereby assumes all risk of loss and responsibility for, and releases and discharges the Bank from any and all responsibility or liability for, and agrees to indemnify, reimburse on demand and hold Bank harmless from, any and all claims, actions, damages, losses, liability and expenses by reason of, arising out of, or in any way connected with or related to: (i) Bank’s accepting, relying on and acting upon any Request or other instructions with respect to the Credit; or (ii) any such error, omission, misinterpretation, fraud or mistake, provided such error, omission, misinterpretation, fraud or mistake is not directly caused by the Bank’s gross negligence or willful misconduct. The Bank shall incur no liability to Borrower or to any other person as a direct or indirect result of making any Loan pursuant to this paragraph.

**Revolving Credit.** This Note evidences a revolving Credit. Subject to all applicable provisions in this Note and in any and all other agreements between the Borrower and the Bank related hereto from the date hereof until the Termination Date (as defined below), the Borrower may borrow, pay, prepay and reborrow hereunder at any time. Notwithstanding that, from time to time, there may be no amounts outstanding respecting this Note, this Note shall continue in full force and effect until all obligations and liabilities evidenced by this Note are paid in full and the Credit evidenced by this Note has been terminated by the Bank. See attached Addendum to Line of Credit Note, the terms of which are incorporated herein by reference, for definitions and additional provisions.

**Interest.** The Outstanding Principal Amount of this Note, as may fluctuate from time to time based on the disbursement of Loans and any repayments, shall earn interest calculated on the basis of a 360-day year for the actual number of days of each year (365 or 366), from and including the dates the proceeds of any Loans are disbursed to, but not including, the date all amounts hereunder are paid in full, at a rate per year which shall be:

- ☒ variable at 3.50 percentage points above the greater of (a) the applicable Variable Loan Rate (as defined in the attached Variable Rate Rider), or (b) 0.25% (the “Index Floor”). See attached Variable Rate Rider, the terms of which are incorporated herein by reference, for definitions and additional provisions.

If no rate is specified above, interest shall accrue at the Maximum Legal Rate (defined below).



**Maximum Legal Rate.** It is the intent of the Bank and of Borrower that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law (the "Maximum Legal Rate"). Solely to the extent necessary to prevent interest under this Note from exceeding the Maximum Legal Rate, Borrower agrees that any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Bank, shall be refunded to Borrower, without interest.

**Maturity Date.** The Outstanding Principal Amount of this Note and all accrued and unpaid interest is due and payable on June 27, 2027 or such earlier date as such amounts may become due or be demanded in accordance with this Note or the Credit Agreement (such date, the "Termination Date").

**Payments.** Payments shall be made in immediately available United States funds at any banking office of the Bank.

**Preauthorized Transfers from Deposit Account.** If a deposit account number is provided in the following blank, Borrower hereby authorizes the Bank to debit Borrower's deposit account \_\_\_\_\_ with the Bank automatically for any amount which becomes due under this Note.

**Interest Accrual; Application of Payments.** Interest will continue to accrue on the Outstanding Principal Amount until the Outstanding Principal Amount is paid in full. In connection with any daily adjusting interest rate, payment invoices may reflect estimated interest accruals for a portion of each billing period (to facilitate timely distribution of invoices in advance of each payment date), followed by appropriate interest accrual adjustments reflected in the invoice for the succeeding billing period. All installment payments (excluding voluntary prepayments of principal) will be applied as of the date each payment is received and processed. Payments may be applied in any order in the sole discretion of the Bank, but, prior to demand for payment in full, may be applied chronologically (i.e., oldest invoice first) to unpaid amounts due and owing, in the following order: first to accrued interest, then to principal, then to late charges and other fees, and then to all other Expenses.

**Late Charge.** If Borrower fails to pay, within three (3) business days of its due date, any amount due and owing pursuant to this Note or any other agreement executed and delivered to the Bank in connection with this Note, Borrower shall immediately pay to the Bank a late charge equal to the greatest of (a) \$50.00, (b) five percent (5%) of the delinquent amount, or (c) the Bank's then current late charge as announced by the Bank from time to time.

**Default Rate.** Upon the occurrence and during the continuance of an Event of Default, the interest rate on the Outstanding Principal Amount shall immediately and automatically increase to five (5) percentage points above the otherwise applicable rate per year ("Default Rate"), and any judgment entered hereon or otherwise in connection with any suit to collect amounts due hereunder shall bear interest at such Default Rate.

**Increased Costs.** If the Bank shall determine that, due to either (a) the introduction of any change in (or in the interpretation of) any requirement of law or (b) compliance with any guideline or request from any central bank or other governmental or regulatory authority (whether or not having the force of law), there shall be any increase in the cost to the Bank of agreeing to make or making, funding or maintaining any loans hereunder, then Borrower shall be liable for, and shall from time to time, upon demand therefor by the Bank, pay to the Bank such additional amounts as are sufficient to compensate the Bank for such increased costs.

**Right of Setoff.** Upon the occurrence and continuance of an Event of Default, the Bank shall have the right to set off against the amounts owing under this Note any property held in a deposit or other account with the Bank or any of its affiliates or otherwise owing by the Bank or any of its affiliates in any capacity to Borrower or any guarantor or endorser of this Note. Such set-off shall be deemed to have been exercised immediately at the time the Bank or such affiliate elects to do so.

**Bank Records Conclusive.** The Bank shall set forth on a schedule attached to this Note or maintained on the Bank's loan booking systems, the date and original principal amount of each Loan and the date and amount of each payment to be applied to the Outstanding Principal Amount of this Note. The Outstanding Principal Amount set forth on any such schedule shall be presumptive evidence of the Outstanding Principal Amount of this Note and of all Loans. No failure by the Bank to make, and no error by the Bank in making, any annotation on any such schedule shall affect the Borrower's obligation to pay the principal and interest of each Loan or any other obligation of Borrower to the Bank pursuant to this Note.

**Purpose.** Borrower certifies (a) that no Loan will be used to purchase Margin Stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System) except for repurchases by Borrower of the Borrower's common stock pursuant to Borrower's publicly announced share repurchase program provided, after making such purchase, the Credit will not violate Regulation U of the Board of Governors of the Federal Reserve System; and (b) that all Loans shall be used for a business purpose, and not for any personal, family or household purpose.

**Authorization.** Borrower, if a corporation, partnership, limited liability company, trust or other entity, represents that it is duly organized and in good standing or duly constituted in the state of its organization and is duly authorized to do business in all jurisdictions material to the conduct of its business; that the execution, delivery and performance of this Note have been duly authorized by all necessary regulatory and corporate or partnership action or by its governing instrument; that this Note has been duly executed by an authorized officer, member, partner or trustee and constitutes a binding obligation enforceable against Borrower and not in violation of any law, court order or agreement by which Borrower is bound; and that Borrower's performance is not threatened by any pending or threatened litigation.

**USA PATRIOT Act Notice.** Bank hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act ("Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Bank to identify the Borrower in accordance with the Patriot Act. The Borrower agrees to, promptly following a request by Bank, provide all such other documentation and information that Bank requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

**Miscellaneous.** This Note, together with the Credit Agreement and any related loan documents, contains the entire agreement between the Bank and Borrower with respect to each Loan, and supersedes every course of dealing, other conduct, oral agreement and representation previously made by the Bank. All rights and remedies of the Bank under applicable law and this Note are cumulative and not exclusive. No single, partial or delayed exercise by the Bank of any right or remedy shall preclude the subsequent exercise by the Bank at any time of any right or remedy of the Bank without notice. No waiver or amendment of any provision of this Note shall be effective unless made specifically in writing by the Bank. No course of dealing or other conduct, no oral agreement or representation made by the Bank, and no usage of trade, shall operate as a waiver of any right or remedy of the Bank. No waiver of any right or remedy of the Bank shall be effective unless made specifically in writing by the Bank. Borrower agrees that in any legal proceeding, a copy of this Note kept in the Bank's course of business may be admitted into evidence as an original. This Note is a binding obligation enforceable against Borrower and its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns. If a court deems any provision of this Note invalid, the remainder of the Note shall remain in effect. Section headings are for convenience only. Singular number includes plural and neuter gender includes masculine and feminine as appropriate.

**Notices.** Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to Borrower (at its address on the Bank's records) or to the Bank (at the address on page one and separately to the Bank officer responsible for Borrower's relationship with the Bank). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal delivery and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Borrower and the Bank.

**Governing Law; Jurisdiction.** This Note has been delivered to and accepted by the Bank and will be deemed to be made in the State of New York. Except as otherwise provided under federal law, this Note will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **BORROWER HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK IN A COUNTY OR JUDICIAL DISTRICT WHERE THE BANK MAINTAINS A BRANCH AND CONSENTS THAT THE BANK MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT BORROWER'S ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS NOTE WILL PREVENT THE BANK FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR JUDGMENT OR EXERCISING ANY RIGHTS AGAINST BORROWER INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF BORROWER WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION.** Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and Borrower. Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Note.

**Waiver of Jury Trial. BORROWER AND THE BANK HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY BORROWER AND THE BANK MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS NOTE OR THE TRANSACTIONS RELATED HERETO. BORROWER REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF THE BANK HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. BORROWER ACKNOWLEDGES THAT THE BANK HAS BEEN INDUCED TO ENTER INTO THIS NOTE BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.**

**Acknowledgment.** Borrower acknowledges that it has read and understands all the provisions of this Note, including the **Governing Law, Jurisdiction and Waiver of Jury Trial**, and has been advised by counsel as necessary or appropriate.

RAND CAPITAL CORPORATION

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

(Signature Page to Revolving Line Note)

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**ADDENDUM TO LINE OF CREDIT NOTE  
Formula-Based Credit**

Borrower: RAND CAPITAL CORPORATION

Initial Face Amount\* of Note: \$25,000,000.00

\*(This information is for cross-reference purposes only. Any calculation of availability under the Note shall be determined based on the Maximum Principal Amount, subject to other terms and conditions as described in the Note and this Addendum, as any of the same may be amended from time to time.)

Date of Note: June 27, 2022.

This Addendum, as may be amended from time to time, is a part of and shall be incorporated into the certain promissory note referenced above, executed and delivered by Borrower to M&T Bank (the "Bank") on or about the date indicated above, and any replacements, amendments, modifications and extensions thereof (collectively, the "Note"). Each capitalized term used herein shall have the meaning specified in the Note or the Credit Agreement, except as otherwise defined herein.

This Addendum shall set forth certain additional terms and conditions with respect to the Credit and the making of Loans under the Note. To the extent that the terms of this Addendum shall differ from the terms of the Note, the terms of this Addendum shall control.

**1. Loans.**

From time to time, Borrower may make a Request for a Loan so long as the sum of the Outstanding Principal Amount and the requested Loan amount does not exceed the Borrowing Capacity (defined below), as computed by the Bank at the time of the Request.

The Bank may, in its sole and absolute discretion, make a Loan to Borrower even though the Borrowing Capacity would be exceeded by the making of such Loan, and any such Loan shall still be included in the computation of the Outstanding Principal Amount. Without limiting Borrower's obligation to pay the Outstanding Principal Amount, plus interest, costs, reasonable attorney's fees and Expenses, as set forth in the Note, whenever the Outstanding Principal Amount exceeds the Borrowing Capacity (such excess, an "Overadvance"), Borrower shall, within 30 days of delivery of the Borrowing Base Certificate showing such Overadvance, pay to the Bank an amount equal to such excess, provided however that, notwithstanding the foregoing, Borrower shall immediately be required to pay such Overadvance if any other Event of Default has occurred and is continuing.

**2. Borrowing Capacity.**

"Borrowing Capacity" shall be, at any point in time of computation, the **lesser** of (i) the Maximum Principal Amount, or (ii) the aggregate sum of the amounts calculated according to the respective formulas described in categories (A), (B), (C) and (D) below minus (E) ((the sum of (A), (B), (C) and (D)) minus (E) shall be referred to herein as "Borrowing Base Availability"):

- (A) 75% of the Publicly Traded Securities Borrowing Base (defined below) (excluding shares of ACV Auctions Inc.); plus
  - (B) the least of (i) 75% of the Fair Market Value of the shares of ACV Auctions, Inc., (ii) \$6,250,000 and (iii) 25% of Borrowing Base Availability at any date of determination; plus
  - (C) 50% of the Private Debt Borrowing Base (defined below); plus
  - (D) the lesser of (i) 50% of the Unsecured Private Debt Borrowing Base and (ii) \$1,250,000; minus
  - (E) such reserves as the Bank may establish from time to time in its sole discretion.
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“Publicly Traded Securities Borrowing Base” means, at the time of determination, the aggregate sum of the Fair Market Value of the Eligible Publicly Traded Securities (as defined below) (excluding the shares of ACV Auctions Inc.).

“Private Debt Borrowing Base” means, at the time of determination, the aggregate sum of the Fair Market Value of Eligible Private Debt (as defined below).

“Unsecured Private Debt Borrowing Base” means, at the time of determination, the aggregate sum of the Fair Market Value of Eligible Unsecured Private Debt (as defined below).

The percentages applicable to the Publicly Traded Securities Borrowing Base, the Private Debt Borrowing Base and the Unsecured Private Debt Borrowing Base and the calculation of the Publicly Traded Securities Borrowing Base, the Private Debt Borrowing Base and the Unsecured Private Debt Borrowing Base, as they relate to the calculation of the Borrowing Capacity, are subject to the Bank’s continuing review and right of modification and/or restriction at any time, for any reason, in the Bank’s sole discretion, without prior notice to Borrower and without effect on Borrower’s obligations under the Note.

### 3. Reports.

The Borrower shall deliver to the Bank, at the frequency required in accordance with the Credit Agreement, the financial reports required thereunder.

### 4. Fair Market Value.

For the purposes hereof, “Fair Market Value” shall be the fair market value of Eligible Publicly Traded Securities, Eligible Private Debt and Eligible Unsecured Private Debt as set forth in the most recent 10-K or 10-Q filed by the Borrower with the Securities and Exchange Commission.

### 5. Eligible Publicly Traded Securities.

“Eligible Publicly Traded Securities” means any equity security registered or having unlisted trading privileges on a national securities exchange or any over the counter security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (each such equity security, a “Publicly Traded Security”); provided that if the Fair Market Value of the shares of an Eligible Publicly Traded Security exceed \$5,000,000, such shares shall be deemed to have a fair market value of \$5,000,000 for purposes of determining the Eligible Publicly Traded Securities.

### 6. Eligible Private Debt/Eligible Unsecured Private Debt.

“Eligible Private Debt” means any loan by the Borrower to a Person (not an individual) (“Private Debt”) which, at the time of any evaluation thereof:

- (a) is secured by all or substantially all of the non-realty assets of the applicable borrower(s) and the Borrower or the Borrower’s agent has a perfected lien over such assets although such lien may be subordinated to the lien of other Persons;
- (b) is evidenced by a note and loan documents which is valid and binding on the applicable borrower(s) and duly authorized, executed and delivered by the applicable borrower(s);
- (c) is not contractually past due or otherwise in default;
- (d) the outstanding principal amount does not exceed \$5,000,000; provided that, to the extent the outstanding principal amount exceeds \$5,000,000, only such excess shall be ineligible for the purposes hereof;
- (e) has not been pledged, sold or assigned to any other Person; or
- (f) the Bank has not deemed to be ineligible, in accordance with the Bank’s criteria, applied in the Bank’s reasonable discretion.

“Eligible Unsecured Private Debt” means any Private Debt that satisfies all of the criteria of Eligible Private Debt except clause (a).

### 7. Notice of Ineligibility.

Borrower shall, promptly upon acquiring knowledge or reason to know of any event or condition that caused or will or might cause any Private Debt to cease to be “Eligible Private Debt”, or that adversely affects or will or might adversely affect the value of such Publicly Traded Security or Private Debt as security for the repayment of the Loans, or any of the Bank’s rights and remedies relating to such Publicly Traded Security or Private Debt, deliver notice of such event or condition to the Bank.

*(Signature Page Follows)*

IN WITNESS WHEREOF, Borrower has executed and delivered this Addendum as an instrument under seal (in jurisdictions where applicable).

RAND CAPITAL CORPORATION

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

(Signature Page to Addendum to Line of Credit Note)

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**VARIABLE RATE RIDER  
(Daily Simple SOFR)**

Borrower: RAND CAPITAL CORPORATION

Promissory Note Original/Maximum Principal Amount: \$25,000,000.00

Promissory Note Date: June 27, 2022

**DEFINITIONS.** The above-referenced Promissory Note is referred to herein as the “Note” and all references to the “Note” shall be deemed to include the Note and this Rider. As used in the Note and this Rider, each capitalized term shall have the meaning specified in the Note, and the following terms shall have the indicated meanings:

- a. **“Base Rate”** shall mean the rate per annum equal to the greater of (i) two (2) percentage points above the rate of interest announced by the Bank each day as its prime rate of interest (“Prime Rate”), or (ii) 3.25% (the “Base Rate Floor”).
- b. **“Business Day”** shall mean any day other than Saturday, Sunday or other day on which commercial banking institutions in New York, New York are authorized or required by law or other governmental action to remain closed for business.
- c. **“Daily Simple SOFR”** shall mean for any day (a “SOFR Rate Day”), a rate per annum equal to SOFR for the day (such day “*t*”) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day, or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. If by 5:00 pm (ET) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any day “*t*”, the SOFR in respect of such day “*t*” has not been published on the SOFR Administrator’s Website (and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred), then the SOFR for such day “*t*” will be the SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.
- d. **“SOFR”** shall mean, with respect to any U.S. Government Securities Business Day, a rate per annum equal to the secured overnight financing rate for such U.S. Government Securities Business Day.
- e. **“SOFR Administrator”** shall mean the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).
- f. **“SOFR Administrator’s Website”** shall mean the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.
- g. **“SOFR Loan Rate”** shall mean Daily Simple SOFR.
- h. **“SOFR Rate Day”** shall have the meaning specified in the definition of Daily Simple SOFR.
- i. **“U.S. Government Securities Business Day”** shall mean any day other than Saturday, Sunday or other day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.
- j. **“Variable Loan Rate”** shall mean the SOFR Loan Rate.

**ADDITIONAL PROVISIONS.**

**Timing of Requests for Advances.** In addition to and without compromising any additional requirements referenced in the Note, the Bank reserves the right to require that any Borrower request for an advance must be delivered to the Bank a certain number of days prior to the requested date of funding that shall be equal to the number of days in any lookback period used to determine SOFR for purposes of calculating the Daily Simple SOFR for any SOFR Rate Day.

**Modification to Payment Due Date.** Notwithstanding any provision to the contrary in the Note, if in any particular month the applicable payment due date is not a Business Day, the payment due date shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such payment due date shall be the immediately preceding Business Day.

**Conversion to Base Rate Upon Default.** Unless the Bank shall otherwise and in its sole discretion consent in writing, if (i) an event of default (with respect to any payment obligation or otherwise, as may be defined or described in the Note or related documents) has occurred and is continuing, or (ii) there exists a condition or event that, with the passage of time, the giving of notice, or both, shall constitute such an event of default, the Bank, in its sole discretion, may convert the applicable interest rate to the Base Rate, and each reference in the Note and herein to the applicable interest rate shall be deemed to be a reference to the Base Rate. Nothing herein shall be construed to be a waiver by the Bank of its right to have the outstanding principal balance accrue interest at the Default Rate, accelerate the indebtedness and/or exercise any other remedies available to the Bank under the terms hereof or applicable law.

**Repayment Upon Conversion to Base Rate.** Except as otherwise provided herein, during the time of any conversion of the applicable interest rate to the Base Rate, whether temporary or permanent, and whether pursuant to an event of default or otherwise, and without compromising any other rights and remedies of the Bank, and in the absence of the Bank exercising any such other rights or remedies as may be applicable, Borrower shall continue to repay all indebtedness in accordance with the terms of the Note. The determination by the Bank of the foregoing amounts shall, in the absence of manifest error, be conclusive and binding upon Borrower.

**Illegality.** If the Bank shall determine that the introduction of any law (statutory or common), treaty, rule, regulation, guideline or determination of an arbitrator or of a governmental authority or in the interpretation or administration thereof, has made it unlawful, or that any central bank or other governmental or regulatory authority has asserted that it is unlawful or otherwise impermissible for the Bank to make or maintain loans using the then-current applicable interest rate index, then, on notice thereof by the Bank to Borrower, the Bank may (i) suspend the maintaining of the loan hereunder using the then-current applicable interest rate index until the Bank shall have notified Borrower that the circumstances giving rise to such determination shall no longer exist, and/or (ii) convert the applicable interest rate for the loan hereunder to the Base Rate, subject to the terms of the section below entitled “Inability to Determine SOFR; Effect of Benchmark Transition Event”.

**Inability to Determine SOFR; Effect of Benchmark Transition Event.**

- (a) If the Bank shall determine (which determination shall be conclusive and binding on Borrower) that for any reason SOFR cannot be determined, other than as a result of a Benchmark Transition Event, the Bank will give notice of such determination to Borrower. Thereafter, the Bank may not make or maintain the loan hereunder using the SOFR Loan Rate until the Bank revokes such notice in writing, and until such revocation, the Bank may convert the applicable interest rate to the Base Rate, subject to the provisions below.
- (b) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in the Note or any related agreement, upon the occurrence of a Benchmark Transition Event, the Bank may unilaterally amend the terms of the Note to replace the SOFR Loan Rate (or the then-current Benchmark) with a Benchmark Replacement. Any such amendment will become effective as soon as practicable for the Bank and upon notice to the Borrower, without any further action or consent of the Borrower. No replacement of SOFR (or the then-current Benchmark) with a Benchmark Replacement pursuant to this Section titled “Inability to Determine SOFR; Effect of Benchmark Transition Event” (“this Section”) will occur prior to the applicable Benchmark Transition Start Date. Borrower shall pay all out-of-pocket costs (including reasonable attorney fees) incurred by the Bank in connection with any amendment and related actions contemplated in this Section.
- (c) **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement, the Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary in the Note or in any related document or agreement, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of the Borrower or any other party hereto. The Bank shall not be liable to the Borrower for any Benchmark Replacement Conforming Changes made by the Bank in good faith.
- (d) **Notices; Standards for Decisions and Determinations.** The Bank will provide notification to the Borrower (which may at the Bank’s discretion be electronic, part of a billing statement, a general notice to customers or other communication) of the implementation of any Benchmark Replacement and the effectiveness of any Benchmark Replacement Conforming Changes, within a reasonable time prior to such implementation and effectiveness, as applicable. Any determination, decision or election that may be made by the Bank pursuant to this Section, including, without limitation, any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding upon the Borrower and any other parties hereto absent manifest error and may be made in the Bank’s sole discretion and without consent from the Borrower, except, in each case, as expressly required pursuant to this Section, and shall not be the basis of any claim of liability of any kind or nature against the Bank by any party hereto, all such claims being hereby waived individually by each party hereto.
- (e) **Benchmark Unavailability Period.** Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke (as applicable) any request for an advance/borrowing of, conversion to, or continuation of a loan based on the SOFR Loan Rate (or the then-current Benchmark) to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request (as applicable) into a request for an advance/borrowing of or conversion to a loan that shall accrue interest at the Base Rate.



(f) The Bank does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referenced in the definition thereof or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Bank may select information sources or services in its reasonable discretion to ascertain the Benchmark, in each case pursuant to the terms hereof, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

(g) Certain Defined Terms. As used in this Section:

1. "Benchmark" means the SOFR Loan Rate or any subsequent Benchmark Replacement that has become effective hereunder.
2. "Benchmark Replacement" means the sum of: (a) the alternate benchmark rate that has been selected by the Bank giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than the current benchmark rate floor with respect to the SOFR Loan Rate (if any, the "Floor"), the Benchmark Replacement will be deemed to be such Floor for the purposes hereof.
3. "Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Bank giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such then-current Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated or bilateral credit facilities at such time.
4. "Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including, without limitation, changes to the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that the Bank decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank decides that adoption of any portion of such market practice is not administratively feasible or if the Bank determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Bank decides is reasonably necessary in connection with the administration of the loan evidenced hereby).
5. "Benchmark Replacement Date" means the earlier to occur of the following events with respect to the then-current Benchmark:
  - 1) in the case of clause (a) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
  - 2) in the case of clause (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein, and (ii) the announced or stated date as of which all applicable tenors of such Benchmark will no longer be representative.

6. “Benchmark Transition Event” means, with respect to any then-current Benchmark, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased, or will cease on a specified date, to provide such Benchmark (or all tenors of such Benchmark applicable to the loan evidenced hereby), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any applicable tenors of such Benchmark or (b) all applicable tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and indicating that representativeness will not be restored.
7. “Benchmark Transition Start Date” means in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 180th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 180 days after such statement or publication, the date of such statement or publication).
8. “Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder in accordance with this Section and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder in accordance with this Section.
9. “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 or any successor thereto.
10. “Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

**Acknowledgment.** Borrower acknowledges that it has read and understands all the provisions of this Rider and has been advised by counsel as necessary or appropriate.

IN WITNESS WHEREOF, Borrower has executed and delivered this Rider as an instrument under seal (in jurisdictions where applicable).

RAND CAPITAL CORPORATION

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

(Signature Page to Variable Rate Rider)

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**GENERAL SECURITY AGREEMENT  
New York**

**Debtor** (Name): Rand Capital Corporation  
 (Organizational Structure): corporation  
 (State Law organized under): New York  
 (Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number): 273023  
 (Address of residence/chief executive office): 14 Lafayette Square, Suite 1405, Buffalo, NY 14203

**Debtor** (Name): Rand BMP Swanson Holdings Corp.  
 (Organizational Structure): corporation  
 (State Law organized under): New York  
 (Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number): 5666889  
 (Address of residence/chief executive office): 14 Lafayette Square, Suite 1405, Buffalo, NY 14203

**Debtor** (Name): Rand Capital Sub LLC  
 (Organizational Structure): limited liability company  
 (State Law organized under): Delaware  
 (Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number): 6464811  
 (Address of residence/chief executive office): 14 Lafayette Square, Suite 1405, Buffalo, NY 14203

**Debtor** (Name): Rand Carolina Skiff Holdings Corp.  
 (Organizational Structure): corporation  
 (State Law organized under): New York  
 (Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number): 5666876  
 (Address of residence/chief executive office): 14 Lafayette Square, Suite 1405, Buffalo, NY 14203

**Debtor** (Name): Rand DSD Holdings Corp.  
 (Organizational Structure): corporation  
 (State Law organized under): New York  
 (Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number): 6206436  
 (Address of residence/chief executive office): 14 Lafayette Square, Suite 1405, Buffalo, NY 14203

**Debtor** (Name): Rand Filterworks Holdings Corp.  
 (Organizational Structure): corporation  
 (State Law organized under): New York  
 (Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number): 5666872  
 (Address of residence/chief executive office): 14 Lafayette Square, Suite 1405, Buffalo, NY 14203

**Debtor** (Name): Rand ITA Holdings Corp.  
 (Organizational Structure): corporation  
 (State Law organized under): New York  
 (Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number): 6033623  
 (Address of residence/chief executive office): 14 Lafayette Square, Suite 1405, Buffalo, NY 14203

**Debtor** (Name): Rand Somerset Holdings Corp. (Organizational Structure): corporation  
 (State Law organized under): New York  
 (Organizational Identification Number, if any; note that this is NOT a request for the Taxpayer Identification Number): 5666897  
 (Address of residence/chief executive office): 14 Lafayette Square, Suite 1405, Buffalo, NY 14203

Each of the foregoing shall be referred to herein both individually and collectively as the "Debtor".

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**Bank/Secured Party: MANUFACTURERS AND TRADERS TRUST COMPANY**, a New York banking corporation with its banking offices at One M&T Plaza, Buffalo, New York 14203 Attention: Office of General Counsel.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, each Debtor agrees with Secured Party as follows:

**1. Security Interests.**

1.1 Grant. As security for the prompt and complete payment and performance when due of all of the Obligations, Debtor does hereby grant to Secured Party a continuing security interest (“Security Interest”) in all personal property and fixtures of Debtor, wherever located, whether now existing or owned or hereafter arising or acquired, whether or not subject to the Uniform Commercial Code, as the same may be in effect in the State of New York, as amended from time to time (“UCC”), and whether or not affixed to any realty, including, without limitation, (i) all accounts, chattel paper, investment property, deposit accounts, documents, goods, equipment, farm products, general intangibles (including trademarks, service marks, trade names, patents, copyrights, licenses and franchises), instruments, inventory, money, letter of credit rights, causes of action (including tort claims) and other personal property (including agreements and instruments not constituting chattel paper or a document, general intangible or instrument); (ii) all additions to, accessions to, substitutions for, replacements of and supporting obligations of the foregoing; (iii) all proceeds, products, rents, issues, profits and accounts arising from the foregoing and substitutions therefore, including, without limitation, insurance proceeds; and (iv) all business records and information relating to any of the foregoing and any software or other programs for accessing and manipulating such information (collectively, the “Collateral”). Debtor acknowledges and agrees that the foregoing collateral description is intended to cover all assets of Debtor.

Notwithstanding anything to the contrary herein, if, now or in the future, any of the obligations secured pursuant to any Security Interest created by this Agreement include any Special Flood Zone Loan, then the following shall apply: any such Special Flood Zone Loan shall not be secured pursuant to any Security Interest created by this instrument in personal property that would constitute “contents” located within Flood Zone Improvements securing such Special Flood Zone Loan unless covered by the requisite flood insurance, where, for purposes of the foregoing, “Flood Zone Improvements” mean any “improved” real property that is located within a Special Flood Hazard Area, a “Special Flood Zone Loan” means a loan, line of credit or other credit facility which is secured by Flood Zone Improvements, and the terms “improved” real property, “Special Flood Hazard Area,” and “contents” shall have the meaning ascribed to them by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq., and implementing regulations 44 C.F.R. Parts 59 et seq., and/or the Federal Emergency Management Agency, as all may be amended from time to time.

1.2 Obligations. The term “Obligations” means any and all indebtedness or other obligations of Debtor to Secured Party in any capacity, now existing or hereafter incurred, however created or evidenced, regardless of kind, class or form, whether direct, indirect, absolute or contingent (including obligations pursuant to any guaranty, endorsement, other assurance of payment or otherwise), whether joint or several, whether from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred, together with all extensions, renewals and replacements thereof, and all interest, fees, charges, costs or expenses which accrue on or in connection with the foregoing, including, without limitation, any indebtedness or obligations (i) not yet outstanding but contracted for, or with regard to which any other commitment by Secured Party exists; (ii) arising prior to, during or after any pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding; (iii) owed by Debtor to others and which Secured Party obtained, or may obtain, by assignment or otherwise; or (iv) payable under this Agreement.

**2. Covenants.** Debtor covenants and agrees as follows:

2.1 Perfection of Security Interest. Debtor shall execute and deliver to Secured Party such financing statements, control agreements or other documents, in form and content satisfactory to Secured Party, as Secured Party may from time to time request to perfect and continue the Security Interest. Upon the request of Secured Party, Debtor shall deliver to Secured Party any and all instruments, chattel paper, negotiable documents or other documents evidencing or constituting any part of the Collateral properly endorsed or assigned, in a manner satisfactory to Secured Party. Until such delivery, Debtor shall hold such portion of the Collateral in trust for Secured Party. Debtor shall pay all out-of-pocket expenses for the preparation, filing, searches and related costs in connection with the grant and perfection of the Security Interest. Debtor authorizes (both prospectively and retroactively) Secured Party to file financing statements, and any continuations and amendments thereof, with respect to the Collateral without Debtor’s signature. A photocopy or other reproduction of any financing statement or this Agreement shall be sufficient as a financing statement for filing in any jurisdiction. Notwithstanding anything herein to the contrary, provided that no Event of Default has occurred and is continuing and provided that the Debtor has not established any deposit accounts or securities accounts with any other financial institution other than the Bank, the Debtor shall only be obligated to deliver financing statements as the Secured Party may from time to time request.

2.2 Negative Pledge; Disposition of Collateral. Debtor shall not grant or allow the imposition of any lien, security interest or encumbrance on, or assignment of, the Collateral unless consented to in writing by Secured Party or otherwise permitted under the Credit Agreement of even date herewith between Rand Capital Corp and the Secured Party (the "Credit Agreement"). Debtor shall not make or permit to be made any sale, transfer or other disposition of the Collateral except as permitted in accordance with the Credit Agreement.

2.3 Condition of Collateral; Impermissible Use. Debtor shall keep the Collateral consisting of goods in good condition and shall not commit or permit damage or destruction (other than ordinary wear and tear) to such Collateral. Debtor shall not permit any Collateral consisting of goods (i) to be used in such a manner that would violate any insurance policy or warranty covering the Collateral or that would violate any applicable law of any governmental authority (including any environmental law) now or hereafter in effect; (ii) to become fixtures on any real property on which Secured Party does not have a first priority mortgage lien (unless Secured Party has been provided with an acceptable landlord/mortgagee waiver) or become an accession to any goods not included in the Collateral; or (iii) to be placed in any warehouse that may issue a negotiable document with regard to such Collateral.

2.4 Modification to Collateral. Debtor shall not, without Secured Party's prior written consent, grant any extension on, compound, settle for less than the full amount of, release (in whole or in part), modify, cancel, or allow for any substitution, credit or adjustment on Collateral consisting of accounts, chattel paper, general intangibles, instruments, documents or investment property, except that provided that no Event of Default has occurred and is continuing, Debtor may grant to account debtors, or other persons obligated with respect to the Collateral, extensions, credits, discounts, compromises or settlements in the ordinary course of business consistent with its past practices and consistent with prudent and standard practices used in the industries that are the same or similar to those in which Debtor is engaged.

2.5 Titled Goods. Debtor shall cause all goods included in the Collateral to be properly titled and registered to the extent required by applicable law. Upon the request of Secured Party, Debtor shall cause the interest of Secured Party to be properly indicated on any certificate of title relating to such goods and deliver to Secured Party each such certificate, and any additional evidence of ownership, certificates of origin or other documents evidencing any interest in such goods.

2.6 Insurance. Debtor shall, at its own expense and at all times, maintain effective insurance policies covering damage to persons and against fire, flood, theft and all other risks to which the Collateral may be subject, all in such amounts, with such deductibles and issued by such insurance company as shall be reasonably satisfactory to Secured Party. Such insurance policies shall have all endorsements that Secured Party may reasonably require and shall further (i) name Secured Party, exclusively, as the additional insured on the casualty insurance and the lender's loss payee and/or mortgagee on the hazard insurance; (ii) provide that Secured Party shall receive a minimum of thirty (30) days prior written notice of any amendment or cancellation; and (iii) insure Secured Party notwithstanding any act or neglect of Debtor or other owner of the property described in such insurance. If Debtor fails to obtain the required insurance as provided herein, Secured Party may, but is not obligated, to obtain such insurance as Secured Party may deem appropriate, including, without limitation, if Secured Party so chooses, "single interest insurance" which will cover only Secured Party's interest in the Collateral. Debtor shall pay or reimburse to Secured Party the cost of such insurance. Secured Party shall have the option, in its sole discretion, to hold insurance proceeds as part of the Collateral, apply any insurance proceeds toward the Obligations or allow the Debtor to apply the insurance proceeds towards repair or replacement of the item of Collateral in respect of which such proceeds were received. Upon the request of Secured Party, Debtor shall from time to time deliver to Secured Party such insurance policies, or other evidence of such policies satisfactory to Secured Party, and such other related information Secured Party may request.

2.7 Collateral Information. Debtor shall provide all information, in form and substance reasonably satisfactory to Secured Party, that Secured Party shall from time to time reasonably request to (i) identify the nature, extent, value, age and location of any of the Collateral, or (ii) identify any account debtor or other party obligated with respect to any chattel paper, general intangible, instrument, investment property, document or deposit account included in the Collateral.

2.8 Reserved.

2.9 Reserved.

2.10 Records; Legend. Debtor shall maintain accurate and complete books and records relating to the Collateral in conformity with generally accepted accounting principles consistently applied. At Secured Party's request while an Event of Default has occurred and is continuing, Debtor will legend, in form and manner satisfactory to Secured Party, its books and records to indicate the Security Interest.

2.11 Reserved.

2.12 Debtor Notices. Promptly upon acquiring knowledge or reason to know of any of the following, Debtor shall notify Secured Party of the occurrence or existence of (i) any Event of Default; (ii) any event or condition that, after notice, lapse of time or after both notice and lapse of time, would constitute an Event of Default; (iii) any account or general intangible that arises out of a contract with any governmental authority (including the United States); (iv) any event or condition that has or (so far as can be foreseen) will or might have any material adverse effect on the Collateral (including a material loss, destruction or theft of, or of any damage to, the Collateral, material decline in value of the Collateral or a material default by an account debtor or other party's performance of obligations with respect to the Collateral), on the Debtors taken as a whole, or their business, operations, affairs or condition (financial or otherwise).

2.13 Reserved.

2.14 Protection of Collateral; Further Assurances. Debtor shall, at its own cost, faithfully preserve, defend and protect the Security Interest as a prior perfected security interest in the Collateral under the UCC and other applicable law, superior and prior to the rights of all third parties (other than those permitted pursuant to Section 3.1) and shall defend the Collateral against all setoffs, claims, counterclaims, demands and defenses other than Permitted Liens (as defined in the Credit Agreement). Debtor shall, and shall cause its affiliates to take such action and execute and deliver to the Secured Party such additional documents, instruments, certificates, and agreements as the Secured Party may reasonably request from time to time to effectuate the purposes and intent of the transaction(s) contemplated hereby, including, without limitation, (i) to attach, continue, preserve, perfect or protect the Security Interest and Secured Party's interests in the Collateral and rights hereunder, including using commercially reasonable efforts to obtain waivers (in form and content acceptable to Secured Party) from landlords, warehousemen and mortgagees and (ii) causing any subsidiary it may create hereafter, to execute agreements, in form and substance acceptable to Secured Party, (a) assuming or guarantying the Debtor's obligations under this Agreement and all related agreements and (b) pledging assets to the Secured Party to the same extent as the Debtor. Debtor hereby irrevocably appoints Secured Party, its officers, employees and agents, or any of them, as attorneys-in-fact for Debtor with full power and authority in the place and stead of Debtor and in the name of Debtor or its own name from time to time in Secured Party's discretion, to perform all acts which Secured Party deems appropriate to attach, continue, preserve or perfect and continue the Security Interest, including signing for Debtor (to the extent such signature may be required by applicable law) UCC-1 financing statements, UCC-3 amendment or other instruments and documents to accomplish the purposes of this Agreement. This power of attorney, being coupled with an interest, is irrevocable and shall not be affected by the subsequent disability or incompetence of Debtor.

**3. Representations and Warranties.** Debtor represents, warrants and agrees as follows:

3.1 Title. Debtor holds good and marketable title to the Collateral free and clear from any security interest or other lien or encumbrance of any party, other than Permitted Liens. Debtor has not made any prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral except for the Permitted Liens.

3.2 Authority. If Debtor is a business entity, it is duly organized, validly existing and in good standing under the laws of the above-named state of organization. Debtor has the full power and authority to grant the Security Interest and to execute, deliver and perform its obligations in accordance with this Agreement. The execution and delivery of this Agreement will not (i) violate any applicable law of any governmental authority or any judgment or order of any court, other governmental authority or arbitrator; (ii) violate any agreement governing Debtor or to which Debtor is a party; or (iii) result in a security interest or other lien or encumbrance on any of Debtor's assets, except in favor of Secured Party. Debtor's certificate of incorporation, by-laws or other organizational documents do not prohibit any term or condition of this Agreement. Each authorization, approval or consent from, each registration and filing with, each declaration and notice to, and each other act by or relating to, any party required as a condition of Debtor's execution, delivery or performance of this Agreement (including any shareholder or board of directors or similar approvals) has been duly obtained and is in full force and effect. Debtor has the power and authority to transact the business in which it is engaged and is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of its business or ownership of property requires such licensing or such qualifications.

3.3 Judgments and Litigation. There is no pending or, to Debtor's knowledge, threatened claim, audit, investigation, action or other legal proceeding or judgment or order of any court, agency or other governmental authority or arbitrator which involves Debtor or the Collateral and which might have a material adverse effect upon the Collateral, the Debtors taken as a whole, their business, operations, affairs or condition (financial or otherwise), or threaten the validity of this Agreement or any related document or action. Debtor will promptly notify Secured Party upon acquiring knowledge of the foregoing.

3.4 Enforceability of Collateral. Instruments, chattel paper, accounts or documents which constitute any part of the Collateral are genuine and enforceable in accordance with their terms, comply with the applicable law of any governmental authority concerning form, content, manner of preparation and execution, and all persons appearing to be obligated on such Collateral have authority and capacity to contract and are in fact obligated as they appear to be on such Collateral. There are no restrictions on any assignment or other transfer or grant of the Security Interest by Debtor (other than customary restrictions for private company equity investments included in the Collateral). Each sum represented by Debtor from time to time as owing on accounts, instruments, deposit accounts, chattel paper and general intangibles constituting any part of the Collateral by account debtors and other parties with respect to such Collateral is the sum actually and unconditionally owing by account debtors and other parties with respect thereto at such time, except for applicable normal cash discounts. None of the Collateral is subject to any defense, set-off, claim or counterclaim of a material nature against Debtor except as to which Debtor has notified Secured Party in writing.

3.5 Location of Chief Executive Office, Records, Collateral. The locations of the following are listed on page one of this Agreement or, if different or additional, on Exhibit A hereto: (i) Debtor's residence, principal place of business and chief executive office; (ii) the office in which Debtor maintains its books or records relating to the Collateral; (iii) the facility (including any storage facility) at which now owned or subsequently acquired inventory, equipment, goods, fixtures and other tangible personal property constituting any part of the Collateral shall be kept; and (iv) the real property on which any crop included in the Collateral is growing or is to be grown, or on which any timber constituting any part of the Collateral is or is to be standing. Debtor will not effect or permit any change in any of the foregoing locations (or remove or permit the removal of the records or Collateral therefrom, except for mobile equipment included in the Collateral which may be moved to another location for not more than thirty (30) days) without thirty (30) days prior written notice to Secured Party and all actions deemed necessary by Secured Party to maintain the Security Interest intended to be granted hereby at all times fully perfected and in full force and effect have been taken. All of the locations listed on page one or Exhibit A are owned by Debtor, or if not, by the party(ies) identified on Exhibit A.

3.6 Structure; Name. Debtor's organizational structure, state of registration and organizational identification number (if any) are stated accurately on page one of this Agreement, and its full legal name and any trade name used to identify it are stated accurately on page one of this Agreement, or if different or additional are listed on Exhibit A hereto. Debtor will not change its name, any trade names or its identity, its organizational structure, state of registration or organizational identification number without thirty (30) days prior written notice to Secured Party. All actions deemed necessary by Secured Party to maintain the Security Interest intended to be granted hereby at all times fully perfected and in full force and effect have been taken.

**4. Performance and Expenditures by Secured Party.** If Debtor fails to perform or comply with any of the terms hereof, Secured Party, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such terms including the payment or discharge of all taxes, fees, security interest or other liens, encumbrances or claims, at any time levied or placed on the Collateral. An election to make expenditures or to take action or perform an obligation of Debtor under this Agreement, after Debtor's failure to perform, shall not affect Secured Party's right to declare an Event of Default and to exercise its remedies. Nor shall the provisions of this Section relieve Debtor of any of its obligations hereunder with respect to the Collateral or impose any obligation on Secured Party to proceed in any particular manner with respect to the Collateral. Interest on any judgment entered against Debtor related to this Agreement shall accrue at the highest default rate specified in any instrument evidencing any of the Obligations.

**5. Duty of Secured Party.** Secured Party's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Secured Party deals with similar property for its own account. Neither Secured Party nor its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of the Collateral upon the request of Debtor or any other person or to take any other action whatsoever with regard to the Collateral. The powers conferred on Secured Party hereunder are solely to protect Secured Party's interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of its powers under this Agreement, and neither it nor its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

#### **6. Certain Rights and Remedies.**

6.1 Inspection; Verification. Secured Party, and such persons as it may designate, shall have the right from time to time to (i) audit and inspect (a) the Collateral, (b) all books and records related thereto (and make extracts and copies from such records), and (c) the premises upon which any of the Collateral or books and records may be located; (ii) discuss Debtor's business, operations, affairs or condition (financial or otherwise) with its officers, accountants; and (iii) verify the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to the Collateral in any manner and through any medium Secured Party may consider appropriate (including contacting account debtors or third party possessing the Collateral for purpose of making such verification). Debtor shall furnish all assistance and information and perform any acts Secured Party may require regarding thereto. Provided that no Default or Event of Default has occurred and is continuing, the Bank shall bear the cost and expense of any such inspection and verification.

6.2 Notification of Security Interest. Secured Party may notify any or all account debtors and other person obligated with respect to the Collateral of the Security Interest therein. Upon the request of Secured Party, Debtor agrees to enter into such warehousing, lockbox or other custodial arrangement with respect to any of the Collateral that Secured Party shall deem necessary or desirable.



6.3 Application of Proceeds. Secured Party may apply the proceeds from the sale, lease or other disposition or realization upon the Collateral to the Obligations in such order and manner and at such time as Secured Party shall, in its sole discretion, determine. Debtor shall remain liable for any deficiency if the proceeds of any sale, lease or other disposition or realization upon the Collateral are insufficient to pay the Obligations. Any proceeds received by Debtor from the Collateral during an Event of Default shall (i) be held by Debtor in trust for Secured Party in the same medium in which received; (ii) not be commingled with any assets of Debtor; and (iii) be delivered to Secured Party in the form received, properly indorsed to permit collection. During an Event of Default, Debtor shall promptly notify Secured Party of the return to or repossession by Debtor of goods constituting part of the Collateral, and Debtor shall hold the same in trust for Secured Party and shall dispose of the same as Secured Party directs.

6.4 Income and Proceeds of Instruments and Investment Property. Except during the continuance of an Event of Default, Debtor reserves the right to request to receive all cash income or cash distribution (whether in cash or evidenced by check) payable on account of any instrument or investment property constituting part of the Collateral (collectively, "Cash Distribution"). Until actually paid, all rights in the foregoing shall remain subject to the Security Interest. Any other income, dividend, distribution, increase in or profits (including any stock issued as a result of any stock split or dividend, any capital distributions and the like) on account of any instrument or investment property constituting part of the Collateral and, upon the occurrence and continuance of an Event of Default, all Cash Distributions, shall be delivered to Secured Party immediately upon receipt, in the exact form received and without commingling with other property which may be received by, paid or delivered to Debtor or for Debtor's account, whether as an addition to, in discharge of, in substitution of, or in exchange of the Collateral. Until delivery, such Collateral shall be held in trust for Secured Party.

6.5 Registered Holder of the Collateral. In the event an Event of Default has occurred and is continuing, the Secured Party shall have the right to transfer to or register (with or without reference to this Agreement) in the name of Secured Party or its nominee any investment property, general intangible, instrument or deposit account constituting part of the Collateral so that Secured Party or such nominee shall appear as the sole owner of record thereof; provided, however, that so long as no Event of Default exists, Secured Party shall deliver to Debtor all notices, statements or other communications received by it or its nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give to Debtor or its designee a proxy or proxies to vote and take all action with respect to such Collateral. During any Event of Default, Debtor waives all rights to be advised of or to receive any notices, statements or communications received by Secured Party or its nominee as such record owner, and agrees that no proxy or proxies given by Secured Party to Debtor or its designee as aforesaid shall thereafter be effective.

## 7. Default.

7.1 Events of Default. Any of the following events or conditions shall constitute an "Event of Default": (i) any Event of Default occurs under and as defined in the Credit Agreement; (ii) Debtor defaults in the performance of any obligation, condition, covenant or other provision of this Agreement, which, if such default can be cured solely by the payment of money, is not cured within three (3) business days after written notice from the Secured Party, or if it is a nonmonetary default, it is not cured within thirty (30) days after written notice from the Secured Party; (iii) Debtor fails to pay when due (whether at the stated maturity, by acceleration or otherwise) any material indebtedness for borrowed money owing to any third party or Affiliate or the failure to perform any agreement with any third party or Affiliate which would have a material adverse effect on the Debtors taken as a whole; (iv) the sale, assignment transfer or delivery, by operation of law or otherwise, of all or substantially all of the assets of the Debtor to a third party; (v) Debtor, without the Secured Party's prior written consent, engages in, agrees to or approves a plan for (a) reorganization, (b) merger or consolidation, (c) division into (or of) one or more entities or series of entities or allocation or transfer of any of Debtor's assets or liabilities as a result of such a division, (d) conversion to another form of business entity, or (e) dissolution of Debtor or cessation by Debtor as a going business concern; (vi) the death or judicial declaration of incompetency of Debtor, if an individual; (vii) failure to pay, withhold or collect any tax as required by law; the service or filing against Debtor or any of its assets of any lien (other than a lien permitted in writing by the Secured Party), judgment, garnishment, order or award; (viii) if Debtor becomes insolvent or is generally not paying its debts as such debts become due; (ix) the making of any general assignment by Debtor for the benefit of creditors; the appointment of a receiver or similar trustee for Debtor or its assets; or the making of any, or sending notice of any intended, bulk sale; (x) Debtor commences (or has commenced against it and not dismissed or stayed within sixty (60) days) any proceeding or request for relief under any bankruptcy, insolvency or similar laws now or hereafter in effect in the United States of America or any state or territory thereof or any foreign jurisdiction or any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of Debtor; (xi) any representation or warranty made in this Agreement, any related document, any agreement between Debtor and the Secured Party or any Affiliate or in any financial statement of Debtor or elsewhere was misleading in any material respect when made; Debtor omits to state a material fact necessary to make the statements made in this Agreement, any related document, any agreement between Debtor and the Secured Party or any Affiliate or any financial statement of Debtor or elsewhere not misleading in light of the circumstances in which they were made; or, if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed in any financial statement, representation, warranty or elsewhere that was not disclosed in writing to the Secured Party at or prior to the time of execution hereof; (xii) any pension plan of Debtor fails to comply with applicable law or has vested unfunded liabilities that, in the opinion of the Secured Party, might have a material adverse effect on Debtor's ability to repay its debts; (xiii) a material adverse change in the Collateral, or the Debtors, taken as a whole, their business, assets, operations, management, ownership, affairs or condition (financial or otherwise) from the status shown on any financial statement or other document submitted to the Secured Party or any Affiliate, and which change the Secured Party reasonably determines will have a material adverse effect on (a) the Collateral, or the Debtors, taken as a whole, their business, assets, operations or condition (financial or otherwise), or (b) the ability of the Debtor to pay or perform any obligation to the Secured Party; or (xiv) the occurrence of any event described in sub-paragraph (i) through and including (xiii) hereof with respect to any endorser, guarantor or any other party liable for, or whose assets or any interest therein secures, payment of any of the Obligations.

7.2 Rights and Remedies Upon Default. Upon the occurrence and during the continuance of any Event of Default, Secured Party without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon Debtor or any other person (all and each of which demands, presentments, protests, advertisements and notices are hereby waived), may exercise all rights and remedies of a secured party under the UCC, under other applicable law, in equity or otherwise or available under in this Agreement including:

7.2.1 Obligations Immediately Due; Termination of Lending. Secured Party may declare all or any part of any Obligations not payable on demand to be immediately due and payable without demand or notice of any kind. All or any part of any Obligations whether or not payable on demand, shall be immediately due and payable automatically upon the occurrence of an Event of Default in Section 7.1 (ix) or (x) above. The provisions hereof are not intended in any way to affect any rights of Secured Party with respect to any Obligations which may now or hereafter be payable on demand. Secured Party may terminate any obligation it may have to grant any additional loan, credit or other financial accommodation to Debtor.

7.2.2 Access to Collateral. Secured Party, or its agents, may peaceably retake possession of the Collateral with or without notice or process of law, and for that purpose may enter upon any premises where the Collateral is located and remove the same. At Secured Party's request, Debtor shall assemble the Collateral and deliver it to Secured Party or any place designated by Secured Party, at Debtor's expense.

7.2.3 Sell Collateral. Secured Party shall have the right to sell, lease or otherwise dispose of the Collateral in one or more parcels at public or private sale or sales upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of Debtor. Debtor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which Debtor now has or may at any time in the future have under any applicable law now existing or hereafter enacted. Secured Party shall have the right to use Debtor's premises and any materials or rights of Debtor (including any intellectual property rights) without charge for such sales or disposition of the Collateral or the completion of any work in progress for such times as Secured Party may see fit. Without in any way requiring notice to be given in the following time and manner, Debtor agrees that with respect to any notice by Secured Party of any sale, lease or other disposition or realization or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, such notice shall be deemed reasonable and proper if given at least five (5) days before such action in the manner described below in the Section entitled "Notices".

7.2.4 Collect Revenues. Secured Party may either directly or through a receiver (i) demand, collect and sue on any Collateral consisting of accounts or any other Collateral including notifying account debtors or any other persons obligated on the Collateral to make payment on the Collateral directly to Secured Party; (ii) file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Secured Party with respect to the Collateral or to enforce any other right in respect of the Collateral; (iii) take control, in any manner, of any payment or proceeds from the Collateral; (iv) prosecute or defend any suit, action or proceeding brought against Debtor with respect to the Collateral; (v) settle, compromise or adjust any and all claims arising under the Collateral or, to give such discharges or releases as Secured Party may deem appropriate; (vi) receive and collect all mail addressed to Debtor, direct the place of delivery thereof to any location designated by Secured Party; to open such mail; to remove all contents therefrom; to retain all contents thereof constituting or relating to the Collateral; (vii) execute, sign or endorse any and all claims, endorsements, assignments, checks or other instruments with respect to the Collateral; or (viii) generally, use, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral; and Debtor hereby irrevocably appoints Secured Party, its officers, employees and agents, or any of them, as attorneys-in-fact for Debtor with full power and authority in the place and stead of Debtor and in the name of Debtor or in its own name from time to time in Secured Party's discretion, to take any and all appropriate action Secured Party deems necessary or desirable to accomplish any of the foregoing or otherwise to protect, preserve, collect or realize upon the Collateral or to accomplish the purposes of this Agreement. Debtor revokes each power of attorney (including any proxy) heretofore granted by Debtor with regard to the Collateral. This power of attorney, being coupled with an interest, is irrevocable and shall not be affected by the subsequent disability or incompetence of Debtor.

7.2.5 Setoff. Secured Party may place an administrative hold on and set off against the Obligations any property held in a deposit or other account with Secured Party or any of its Affiliates or otherwise owing by Secured Party or any of its Affiliates in any capacity to Debtor. Such set-off shall be deemed to have been exercised immediately at the time Secured Party or such Affiliate elects to do so.

7.2.6 Appointment of Receiver. Secured Party, upon occurrence of an Event of Default, shall be entitled, and Debtor hereby consents, without notice or demand and without regard to the adequacy of any security for the indebtedness and other Obligations or the solvency or insolvency of any person liable for the payment thereof, to the appointment of a receiver for the Collateral. The receiver shall have all rights and powers permitted under applicable law and such other powers as the court making such appointment shall confer. The expenses, including, without limitation, receiver's fees, attorneys' fees, court costs, and agent's compensation, incurred pursuant to or arising from the powers herein contained shall be secured by the Collateral. The right of a receiver, among other rights and powers, to enter and take possession of and to manage and operate the Collateral, and to collect the rents, issues, profits and proceeds thereof shall be cumulative to any other rights or remedies hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Notwithstanding the appointment of any receiver or other custodian, Secured Party shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments or other Collateral at the time held by, or payable or deliverable under the terms of this Agreement to Secured Party.

**8. Expenses.** Debtor shall pay to Secured Party on demand all costs and expenses (including all reasonable fees and disbursements of all outside counsel retained for advice, suit, appeal or other proceedings or purpose and of any experts or agents it may retain), which Secured Party may incur in connection with (i) the administration of this Agreement, including any administrative fees Secured Party may impose for the preparation of discharges, releases or assignments to third-parties; (ii) the custody or preservation of, or the sale, lease or other disposition or realization on the Collateral; (iii) the enforcement and collection of any Obligations or any guaranty thereof; (iv) the exercise, performance, enforcement or protection of any of the rights of Secured Party hereunder; or (v) the failure of Debtor to perform or observe any provisions hereof. After such demand for payment of any cost, expense or fee under this Section or elsewhere under this Agreement, Debtor shall pay interest at the highest default rate specified in any instrument evidencing any of the Obligations from the date payment is demanded by Secured Party to the date reimbursed by Debtor. All such costs, expenses or fees under this Agreement shall be added to the Obligations.

**9. Indemnification.** Debtor shall indemnify Secured Party and its Affiliates and each officer, employee, accountant, attorney and other agent thereof (each such person being an "Indemnified Party") on demand, without any limitation as to amount, against each liability, cost and expense (including all reasonable fees and disbursements of all counsel retained for advice, suit, appeal or other proceedings or purpose, and of any expert or agents an Indemnified Party may retain) heretofore or hereafter imposed on, incurred by or asserted against any Indemnified Party (including any claim involving any allegation of any violation of applicable law of any governmental authority (including any environmental law or criminal law)), however asserted and whether now existing or hereafter arising, arising out of any ownership, disposition or use of any of the Collateral; provided, however, the foregoing indemnity shall not apply to liability, cost or expense solely attributable to an Indemnified Party's gross negligence or willful misconduct. This indemnity agreement shall survive the termination of this Agreement. Any amounts payable under this or any other section of this Agreement shall be additional Obligations secured hereby.

**10. USA PATRIOT Act Notice.** Secured Party hereby notifies the Debtor that pursuant to the requirements of the USA PATRIOT Act ("Patriot Act"), it is required to obtain, verify and record information that identifies the Debtor, which information includes the name and address of the Debtor and other information that will allow Secured Party to identify the Debtor in accordance with the Patriot Act. The Debtor agrees to, promptly following a request by Secured Party, provide all such other documentation and information that Secured Party requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

## 11. Miscellaneous.

11.1 Notices. Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to Debtor (at its address on Secured Party's records) or to Secured Party (at the address on page one and separately to Secured Party's officer responsible for Debtor's relationship with Secured Party). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal delivery and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Debtor and Secured Party.

11.2 Governing Law; Jurisdiction. This Agreement has been delivered to and accepted by Secured Party and will be deemed to be made in the State of New York. Except as otherwise provided under federal law, this Agreement will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **DEBTOR HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK IN A COUNTY OR JUDICIAL DISTRICT WHERE SECURED PARTY MAINTAINS A BRANCH AND CONSENTS THAT SECURED PARTY MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT DEBTOR'S ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS AGREEMENT WILL PREVENT SECURED PARTY FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR JUDGMENT OR EXERCISING ANY RIGHTS AGAINST DEBTOR INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF DEBTOR WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION.** Debtor acknowledges and agrees that the venue provided above is the most convenient forum for both Secured Party and Debtor. Debtor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

11.3 Security Interest Absolute. All rights of Secured Party hereunder, the Security Interest and all obligations of Debtor hereunder shall be absolute and unconditional irrespective of (i) any filing by or against Debtor of any petition in bankruptcy or any action under federal or state law for the relief of debtors or the seeking or consenting to of the appointment of an administrator, receiver, custodian or similar officer for the wind up of its business; (ii) any lack of validity or enforceability of any agreement with respect to any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any agreement or instrument with respect to the Obligations, (iv) any exchange, release or non-perfection of any lien or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (v) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Debtor in respect of the Obligations or this Agreement. If, after receipt of any payment of all or any part of the Obligations, Secured Party is for any reason compelled to surrender such payment to any person or entity, because such payment is determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, such payment shall be reinstated as part of the Obligations and this Agreement shall continue in full force notwithstanding any contrary action which may have been taken by Secured Party in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Secured Party's rights under this Agreement and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

11.4 Remedies Cumulative; Preservation of Rights. The rights and remedies herein are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies which Secured Party may have under other agreements now or hereafter in effect between Debtor and Secured Party, at law (including under the UCC) or in equity. No failure or delay of Secured Party in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Debtor expressly disclaims any reliance on any course of dealing or usage of trade or oral representation of Secured Party including representations to make loans to Debtor. No notice to or demand on Debtor in any case shall entitle Debtor to any other or further notice or demand in similar or other circumstances.

11.5 Joint and Several; Successors and Assigns. If there is more than one Debtor, each of them shall be jointly and severally liable for all amounts, which become due, and the performance of all obligations under this Agreement and the term "Debtor" shall include each as well as all of them. This Agreement shall be binding upon Debtor and upon its heirs and legal representatives, its successors and assignees, and shall inure to the benefit of, and be enforceable by, Secured Party, its successors and assignees and each direct or indirect assignee or other transferee of any of the Obligations; provided, however, that this Agreement may not be assigned by Debtor without the prior written consent of Secured Party.

11.6 Waivers; Changes in Writing. No course of dealing or other conduct, no oral agreement or representation made by Secured Party or usage of trade shall operate as a waiver of any right or remedy of Secured Party. No waiver of any provision of this Agreement or consent to any departure by Debtor therefrom shall in any event be effective unless made specifically in writing by Secured Party and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No modification to any provision of this Agreement shall be effective unless made in writing in an agreement signed by Debtor and Secured Party.

11.7 Interpretation. Unless the context otherwise clearly requires, references to plural includes the singular and references to the singular include the plural; the word “or” has the inclusive meaning represented by the phrase “and/or”; the word “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; and captions or section headings are solely for convenience and not part of the substance of this Agreement. Any representation, warranty, covenant or agreement herein shall survive execution and delivery of this Agreement and shall be deemed continuous. Each provision of this Agreement shall be interpreted as consistent with existing law and shall be deemed amended to the extent necessary to comply with any conflicting law. If any provision nevertheless is held invalid, the other provisions shall remain in effect. Debtor agrees that in any legal proceeding, a photocopy of this Agreement kept in Secured Party’s course of business may be admitted into evidence as an original. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the UCC.

11.8 Waiver of Jury Trial. **DEBTOR AND SECURED PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY DEBTOR AND SECURED PARTY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTIONS RELATED HERETO. DEBTOR REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF SECURED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SECURED PARTY WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. DEBTOR ACKNOWLEDGES THAT SECURED PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.**

Dated June 27, 2022

**RAND CAPITAL CORPORATION**

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

**RAND BMP SWANSON HOLDINGS CORP.**

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

**RAND CAPITAL SUB LLC**

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

**RAND CAROLINA SKIFF HOLDINGS CORP.**

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

**RAND DSD HOLDINGS CORP.**

By: /s/ Daniel P. Penberthy  
Name: Daniel P. Penberthy  
Title: President and Chief Executive Officer

(Signature Page to General Security Agreement)

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Dated June 27, 2022

**RAND FILTERWORKS HOLDINGS CORP.**

By: /s/ Daniel P. Penberthy

Name: Daniel P. Penberthy

Title: President and Chief Executive Officer

**RAND ITA HOLDINGS CORP.**

By: /s/ Daniel P. Penberthy

Name: Daniel P. Penberthy

Title: President and Chief Executive Officer

**RAND SOMERSET HOLDINGS CORP.**

By: /s/ Daniel P. Penberthy

Name: Daniel P. Penberthy

Title: President and Chief Executive Officer

(Signature Page to General Security Agreement)

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# **NEWS RELEASE**

14 Lafayette Square, Suite 1405 • Buffalo, New York 14203

FOR IMMEDIATE RELEASE

## **Rand Capital Secures \$25 Million Senior Secured Credit Facility to Support Future Investments**

BUFFALO, NY, June 27, 2022 – Rand Capital Corporation (Nasdaq: RAND) (“Rand” or the “Company”), a business development company providing alternative financing for lower middle market companies, announced the closing of a \$25 million senior secured revolving credit facility. The funds are expected to be used for future portfolio investments. This new senior secured credit facility was provided by M&T Bank.

Daniel P. Penberthy, President and Chief Executive Officer of Rand, commented, “The new facility adds another source of capital to support our strategy, which is focused on continued portfolio expansion into income producing assets to drive investment income and future dividend growth. In addition to the increased liquidity, this facility provides greater flexibility and an increased funding commitment than our previous credit arrangement with the SBA, which was repaid in full during the fourth quarter of 2021.”

The new senior secured credit facility provides for a 5 year term through 2027, at an interest rate calculated using SOFR plus 3.5%.

### **ABOUT RAND CAPITAL**

Rand Capital (Nasdaq: RAND) is an externally-managed business development company (BDC). The Company’s investment objective is to maximize total return to its shareholders with current income and capital appreciation by focusing its debt and related equity investments in privately-held, lower middle market companies with committed and experienced managements in a broad variety of industries. Rand invests in early to later stage businesses that have sustainable, differentiated and market-proven products, revenue of more than \$2 million and a path to free cash flow or up to \$5 million in EBITDA. The Company’s investment activities are managed by its external investment adviser, Rand Capital Management, LLC. Additional information can be found at the Company’s website where it regularly posts information: <https://www.randcapital.com/>.

### **Safe Harbor Statement**

*This press release contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements, other than historical facts, including but not limited to statements regarding the strategy of the Company and its outlook; statements regarding the expected use of the borrowings under the senior secured credit facility; and any assumptions underlying any of the foregoing, are forward-looking statements. Forward-looking statements concern future circumstances and results and other statements that are not historical facts and are sometimes identified by the words “may,” “will,” “should,” “potential,” “intend,” “expect,” “endeavor,” “seek,” “anticipate,” “estimate,” “overestimate,” “underestimate,” “believe,” “could,” “project,” “predict,” “continue,” “target” or other similar words or expressions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove to be incorrect, actual results may vary materially from those indicated or anticipated by such forward-looking statements. The inclusion of such statements should not be regarded as a representation that such plans, estimates or expectations will be achieved. Important factors that could cause actual results to differ materially from such plans, estimates or expectations include, among others, (1) evolving legal, regulatory and tax regimes; (2) changes in general economic and/or industry specific conditions; and (3) other risk factors as detailed from time to time in Rand’s reports filed with the Securities and Exchange Commission (“SEC”), including Rand’s annual report on Form 10-K for the year ended December 31, 2021, quarterly reports on Form 10-Q, and other documents filed with the SEC. Consequently, such forward-looking statements should be regarded as Rand’s current plans, estimates and beliefs. Except as required by applicable law, Rand assumes no obligation to update the forward-looking information contained in this release.*



**Rand Capital Secures \$25 Million Senior Secured Credit Facility to Support Future Investments**

**June 27, 2022**

**Page 2 of 2**

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