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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 30, 2022

OR

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

For the transition period from ___ to ___

Commission File Number: 001-36040



Fox Factory Holding Corp.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

26-1647258

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

2055 Sugarloaf Circle, Suite 300, Duluth GA 30097

(Address of Principal Executive Offices) (Zip Code)

(831) 274-6500

(Registrant's Telephone Number, Including Area Code)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, par value \$0.001 per share	FOXF	The NASDAQ Stock Market LLC (NASDAQ Global Select Market)

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

None

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

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

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

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

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

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

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

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

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Based upon the closing price of the registrant's common stock on the NASDAQ Global Select Market on July 1, 2022 (the last business day of the registrant's most recently completed second fiscal quarter), the approximate aggregate market value of the common stock held by non-affiliates of the registrant was approximately \$2,691,667,941. As of February 16, 2023, there were 42,269,840 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Definitive Proxy Statement for the 2023 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference in Part III, Items 10-14 of this Annual Report on Form 10-K.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K includes forward-looking statements, which are subject to the “safe harbor” created by Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We may make forward-looking statements in our United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, press releases, news articles, earnings presentations and when we are speaking on behalf of the Company. Forward-looking statements generally relate to future events or our future financial or operating performance that involve substantial risks and uncertainties. In some cases, you can identify forward-looking statements because they contain words such as “may,” “might,” “will,” “would,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “likely,” “potential” or “continue” or the negative of these words or other similar terms or expressions that concern our expectations, strategy, plans or intentions. Forward-looking statements contained in this Annual Report on Form 10-K are subject to numerous risks and uncertainties, including but not limited to risks related to:

- the spread of highly infectious or contagious disease, such as COVID-19, could cause severe disruptions in the U.S. and global economy, which could in turn disrupt the business activities and operations of our customers, as well as our businesses and operations;*
 - changes in general economic conditions, including market and macro-economic disruptions resulting from escalating tensions between China and Taiwan, the Russian invasion of Ukraine or due to growing inflation or higher interest rates;*
 - our dependency on a limited number of suppliers for materials, product parts, and vehicle chassis could lead to an increase in material costs, disruptions in our supply chain, or reputational costs;*
 - our ability to develop new and innovative products in our current end-markets;*
 - our ability to leverage our technologies and brand to expand into new categories and end-markets;*
 - our ability to increase our aftermarket penetration;*
 - our ability to accelerate international growth;*
 - our exposure to exchange rate fluctuations;*
 - the loss of key customers;*
 - our ability to improve operating and supply chain efficiencies;*
 - our ability to enforce our intellectual property rights;*
 - our future financial performance, including our sales, cost of sales, gross profit or gross margins, operating expenses, ability to generate positive cash flow and ability to maintain our profitability;*
 - our ability to maintain our premium brand image and high-performance products;*
 - our ability to maintain relationships with the professional athletes and race teams we sponsor;*
 - our ability to selectively add additional dealers and distributors in certain geographic markets;*
 - the growth of the markets in which we compete, our expectations regarding consumer preferences and our ability to respond to changes in consumer preferences;*
 - changes in demand for performance-defining products;*
 - the loss of key personnel, management and skilled engineers;*
 - our ability to successfully identify, evaluate and manage potential or completed acquisitions and to benefit from such acquisitions;*
 - the outcome of pending litigation;*
 - future disruptions in the operations of our manufacturing facilities;*
 - our ability to adapt our business model to mitigate the impact of certain changes in tax laws;*
 - changes in the relative proportion of profit earned in the numerous jurisdictions in which we do business and in tax legislation, case law and other authoritative guidance in those jurisdictions;*
 - product recalls and product liability claims; and*
 - future economic or market conditions.*
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You should not rely upon forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this Annual Report on Form 10-K primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, results of operations, and prospects and the outcomes of any of the events described in any forward-looking statements are subject to risks, uncertainties, and other factors. In addition to the risks, uncertainties and other factors discussed above and elsewhere in this Annual Report on Form 10-K, the risks, uncertainties and other factors expressed or implied discussed in [Item 1A. Risk Factors](#) of this Annual Report on Form 10-K could cause or contribute to actual results differing materially from those set forth in any forward-looking statement. Moreover, we operate in a very competitive and challenging environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Annual Report on Form 10-K. We cannot assure you that the results, events, and circumstances reflected in the forward-looking statements will be achieved or occur. Actual results, events, or circumstances could differ materially from those contemplated by, set forth in, or underlying any forward-looking statements.

For all of these forward-looking statements, we claim the protection of the safe harbor for forward-looking statements in Section 27A of the Securities Act and Section 21E of the Exchange Act.

The forward-looking statements made in this Annual Report on Form 10-K relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Annual Report on Form 10-K to reflect events or circumstances after the date of this Annual Report on Form 10-K or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

Fox Factory Holding Corp.
FORM 10-K
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PART I

ITEM 1. BUSINESS

Our company, Fox Factory Holding Corp., designs, engineers, manufactures and markets performance-defining products and systems for customers worldwide. Fox Factory Holding Corp. is the holding company of Fox Factory, Inc. As used herein, "Fox Factory," "FOX," the "Company," "we," "our," and similar terms refer to Fox Factory Holding Corp. and its subsidiaries, unless the context indicates otherwise. Our premium brand, performance-defining products and systems are used primarily on bicycles ("bikes"), side-by-side vehicles ("side-by-sides"), on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, all-terrain vehicles ("ATVs"), snowmobiles, and specialty vehicles and applications. Some of our products are specifically designed and marketed to some of the leading cycling and powered vehicle original equipment manufacturers ("OEMs"), while others are distributed to consumers through a global network of dealers and distributors.

Fox Factory, Inc., our operating subsidiary, was incorporated in California in 1978. Fox Factory Holding Corp. was incorporated in Delaware on December 28, 2007. In October 2018, we announced the relocation of our business headquarters from Scotts Valley, California to Braselton, Georgia, which was effective on December 31, 2018. In June 2021, we established a principal executive office in Duluth, Georgia.

In August 2013, we completed an initial public offering ("IPO") of our common stock. Our common stock is traded on the NASDAQ Global Select Market (the "NASDAQ") under the symbol "FOXF."

Description of our business

We are a designer, manufacturer and marketer of performance-defining products and systems used primarily on bikes, side-by-sides, on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, and specialty vehicles and applications. We believe our products offer innovative design, performance, durability and reliability. Our brand is associated with high-performance and technologically advanced products, by which we generally mean products that provide users with improved control and comfort while riding over rough terrain in varied environments, or providing improved control and responsiveness for on-road only vehicles. We believe that the performance of our products has been demonstrated by, and our brand benefits from, the success of professional athletes who use our products in elite competitive events, such as the Olympic Games, the Union Cycliste Internationale Mountain Bike World Cup, the X Games and the Baja 1000. We believe the exposure our products receive when used by successful professional athletes positively influences the purchasing habits of enthusiasts and other consumers seeking high-performance products. We believe that our strategic focus on the performance and racing segments in our markets influences many aspiring and enthusiast consumers who we believe seek to emulate the performance of professional and other elite athletes. We believe our products are generally sold at premium prices, which to us means manufacturer suggested retail sale prices that are generally in the upper quartile of their respective product categories.

We design our products for, and market our products to, some of the world's leading cycling and automotive OEMs and to consumers through the aftermarket channel. Many of our OEM customers, including Specialized, Trek Bicycles, Giant, Orbea, Canyon Bicycles, Santa Cruz Bicycles, and Yeti Cycles in Specialty Sports and BRP, Ford, Polaris, Toyota, 4 Wheel Parts, Kawasaki, Yamaha, and Honda in Powered Vehicles, are among the market leaders in their respective product categories, and help shape, as well as respond to, consumer trends in their respective categories. We believe that OEMs often prominently display and incorporate our products to improve the marketability and consumer demand for their performance models, which reinforces our brand image. In addition, consumers select our products in the aftermarket channel where we market through a global network of dealers and distributors.

Industry

We participate in large global markets for bikes and powered vehicles used by recreational and professional users. Today, our products for bicycles are primarily for mountain bikes, e-bikes and road bikes. Our products for powered vehicles are used primarily on on-road vehicles with and without off-road capabilities, side-by-sides, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, including military, motorcycles, and commercial trucks.

We focus on premium-priced products within each of these categories, which we consider to be the high-end segment because of their higher retail sale prices, where we believe consumers prefer well-designed, performance-oriented equipment. We believe that performance-defining products, which include suspension systems, as well as wheels, cranks, and other components, are critical to the performance of the bikes and powered vehicles in the product categories in which we focus and that technical features, component performance, product design, durability, reliability, and brand recognition strongly influence consumer-purchasing decisions.

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We believe the high-end segments in which we participate are well positioned for growth due to several factors, including:

- increasing consumer appetite for performance-defining products;
- increasing average retail sales prices, which we believe are driven by differentiated and feature-rich products with advanced technologies;
- continuing product cycle innovation, which we have observed often motivates consumers to upgrade and purchase new products for enhanced performance; and
- increasing sales opportunities for high-end bikes and powered vehicles in international markets.

As vehicles in our end-markets evolve and grow more capable, performance-defining products and systems have become, and we believe will continue to be, increasingly more important for improved performance and control. Additionally, we believe there are opportunities to continue to leverage our technical know-how of suspension products to provide solutions beyond our current applications and end-markets.

Our competitive strengths

Broad offering of performance-defining products across multiple consumer markets

Our performance-defining products enhance vehicle performance across multiple consumer markets. Through the use of adjustable suspension, position sensitive damping, multiple air spring technologies, lightweight and rigid materials, and other technologies and methods, our products improve the performance and control of the vehicles used by our consumers. We believe our reputation for performance-defining products is reinforced by the successful finishes in world class competitive events by athletes incorporating our products in their vehicles.

Premium brand with strong consumer loyalty

We believe that we have developed a reputation for performance-defining products and that we own and license established trademarks, such as FOX[®], FOX RACING SHOX[®], BLACK WIDOW[®], ROCKY RIDGE[®], RACE FACE[®] which are perceived as premium brands. As such, our performance-defining products are generally sold at premium prices. We take great effort to maintain our brands in the eyes of consumers. For instance, our FOX[®] logo is prominently displayed on our FOX[®] branded products used on bikes and powered vehicles sold by our OEM customers, which helps further reinforce our brand image. We believe that our brands have achieved strong loyalty from our consumers. To support our brands, we introduce new products that we believe feature innovative technologies designed to improve vehicle performance and enhance our brand loyalty with consumers.

Track record of innovation and new product introductions

Innovation, including new product development, is a key component of our growth strategy. Due to our experience in suspension engineering and design in multiple markets and with a variety of vehicles, solutions we develop for use in one market can ultimately be deployed across multiple markets. For example, we believe that our success in the high-end ATV category led to the widespread adoption of our suspension technology in the side-by-sides market. Our innovative product development and speed to market are supported by:

- our racing culture, including on-site technical race support of professional athletes, which provides us with unique real-time insights as to the evolving performance-defining product needs of those participating in challenging world-class events and is an integral part of our research and development efforts;
- ongoing research and development through a team of full-time engineers and numerous other technicians and employees who spend at least part of their time testing and using our products and helping develop engineering-based solutions to enhance our product offerings;
- feedback from professional athletes, race teams, enthusiasts and other consumers who use our products;
- strategic and collaborative relationships with OEM customers, which furthers our ability to extend technologies and applications across end-markets; and
- our integrated manufacturing facilities and performance testing centers, which allow us to quickly move from concept to product.

Over the past several years, we have developed multiple new products, such as:

- The first independently controlled compression and rebound, semi-active Live Valve X2 shock. This technology is currently being used in UTVs;

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- Live Valve, our proprietary semi-active, electronic suspension that processes data from multiple vehicle sensors to adjust the suspension virtually instantaneously to the demands of changing terrain. This technology is currently in use UTVs, trucks, and mountain bikes;
- The next generation of Live Valve combined with a 3.1-inch diameter anodized aluminum shock body, specifically designed to withstand the higher internal pressures created by the new valve's wider dynamic range. This technology has been adopted at the top tier of trucks and SUVs in the U.S.;
- Electronically adjustable rear suspension pre-load allowing a user to easily compensate for the additional weight and bring a vehicle back to optimal ride height. This technology is currently in use on select motorcycles to adapt to added passenger and luggage weight without using tools;
- Ridetech RidePro E5 Air Suspension Control System, improving comfort and performance to your vehicle. This technology is currently being used in many classic muscle car and truck applications;
- Ridetech 62-67 Nova Suspension System (Coil-Over & Air), complete suspension upgrades with either coil or air sprung adjustable shocks that bring modern performance to vintage and classic muscle cars;
- Market leading 3-4" Bronco suspension lift products that are custom designed to each model configuration and that range from load spacers and coil-overs, to remote adjustable shocks for increased off-road performance, comfort and control;
- 32, 34 and 36 Factory Series FLOAT FIT4, which reduces overall fork weight, provides external adjustability with our fourth-generation FOX Isolated Technology ("FIT") closed-cartridge damper, and includes the self-adjusting negative chamber air spring for quieter operation and ease of adjustment. This technology is used widely across all brands of mountain bikes or as aftermarket upgrades to replace lower performing suspension;
- The GRIP2 fork damper, which is our next-evolution sealed cartridge FIT system, our highest performing gravity-focused damper. GRIP2 shares its roots with the original GRIP architecture, but has been enhanced with all-new technology: four-way adjustability, VVC high-speed rebound circuit, high-performance mid-valve, and overall friction-reducing treatments. This technology is used widely across all brands of mountain bikes or as aftermarket upgrades to replace lower performing suspension;
- Rhythm series fork products developed to address a lower price point offering without compromising proven FOX performance;
- FOX AWL suspension fork for the growing electronic sports utility vehicle ("eSUV") commuter and e-mobility segment combining the confidence and stability of off-road capable suspension with the convenience of direct mount compatibility with full wrap fenders, lights, and anti-lock braking systems. This technology is found on a wide range of electric bikes;
- Race Face Vault Hub, a 120-point high-engagement mountain bike hubset featuring tool-free end caps that simplify conversion among all major axle standards and is approved for e-bike applications. This technology is found in select Race Face mountain bike wheels; and
- Easton EC90 SL Crankset, a versatile road bike crankset that allows quick conversion between 1x and 2x road and gravel chainring configurations.

Strategic brand for OEMs, dealers and distributors

Through our strategic relationships, we are often sought out by our OEM customers and work closely with them to develop and design new products and product enhancements. We believe our collaborative approach and product development processes strengthen our relationships with our OEM customers. We believe consumers value our branded products when selecting performance bikes and powered vehicles, and as a result, OEMs purchase and incorporate our products in their bikes and powered vehicles in order to increase the sales of their premium-priced products. In addition, we believe the inclusion of our products on high-end bikes and powered vehicles reinforces our premium brand image which helps to drive our sales in the aftermarket channel where dealers and distributors sell our products to consumers.

Experienced management team

We have an experienced senior management team led by Michael C. Dennison, our Chief Executive Officer. Many members of our management team and many of our employees are avid users of our products, which further extends their knowledge of, and expertise in, our products and end-markets. We are able to attract and retain highly trained and specialized employees who enhance our Company culture and serve as strong brand advocates.

Our strategy

Our goal is to expand our leadership position as a designer, manufacturer and marketer of performance-defining products designed to enhance ride dynamics and performance. We intend to focus on the following key strategies in pursuit of this goal:

Continue to develop new and innovative products in current end-markets

We intend to continue to develop and introduce new and innovative products in our current end-markets to improve ride dynamics and performance for our consumers. For example, our patented position-sensitive damping systems provide terrain optimized ride characteristics across many of our product lines. We believe that performance and control are important to our consumer base, and that our frequent introduction of products with innovative and improved technologies increases both OEM and aftermarket demand as consumers seek out products for their vehicles that can deliver these characteristics. We also believe evolving market trends, such as changing bike wheel and tire sizes and increasing adoption rates of off-road capable, on-road trucks should increase demand for vehicles in our end-markets, which, in turn, should increase demand for our suspension products.

Leverage technology and brand to expand into new categories and end-markets

We believe innovation is the foundation of our company. As we continue to leverage the latest technology to develop a diverse portfolio of performance-defining products, our Powered Vehicle Group facility extends our ability to not only scale to newer levels but also do it efficiently. We have great relations with our OEM and aftermarket partners and given our key distinct strengths, we believe we have and will continue to win more applications. Leveraging our technology and scale, we have successfully expanded into recreational vehicles and street car applications, and we believe there are opportunities to further penetrate these markets and grow with more pioneering product applications. Additionally, to grow our end user base, we are now looking at ways to explore international opportunities with some of our applications.

Opportunistically expand our business platform through acquisitions

Over the past several years, we have completed acquisitions that we believe enhance our business and strategically expand our product offerings. In March 2020, we acquired substantially all the issued and outstanding capital stock of SCA Performance Holdings, Inc. ("SCA"), a leading OEM authorized specialty vehicle manufacturer for light duty trucks and sport utility vehicles. In May 2021, through our wholly owned subsidiary, SCA, we acquired all of the issued and outstanding stock of Manifest Joy LLC ("Outside Van), a custom van conversion company that designs and custom engineers recreational vehicles. In December 2021, through our wholly owned subsidiary, Shock Therapy Suspension, Inc., we acquired substantially all the assets of Shock Therapy LLC ("Shock Therapy"), a premier suspension tuning company in the off-road industry. The Company expects these acquisitions to expand its North American geographic manufacturing footprint and broaden its product offerings in the automotive industry. We believe there is opportunity to expand our total available market by broadening our acquisition focus to include a more diverse range of performance products that add to or increase our customers' enjoyment of their activities of choice. We also believe that our passionate customer base has a desire for other types of performance products beyond those that attach to a vehicle or bike.

Our business development group is responsible for identifying and assessing inorganic and organic potential growth opportunities of our ride dynamics platform and other specialty sports technology platforms. Specifically, our business development group: (i) identifies and assesses potential acquisition opportunities; (ii) aids the business in analyzing growth alternatives; and (iii) manages critical projects and programs as determined by senior management.

Increase our aftermarket penetration

We currently have a broad aftermarket distribution network of thousands of retail dealers and distributors worldwide. We intend to further penetrate the aftermarket channel by selectively adding dealers and distributors in certain geographic markets, increasing our internal sales force and strategically expanding aftermarket-specific products and services to existing vehicle platforms.

Accelerate international growth

We believe international expansion represents a significant opportunity for us and we have, and intend to continue to, selectively increase infrastructure investments and focus on identified geographic regions. We believe that rising consumer discretionary income in a number of developing markets and increasing consumer preferences for premium, performance bikes and powered vehicles should contribute to increasing demand for our products. In addition, we believe increasing international viewership of racing and extreme sports and other outdoor events, such as the Union Cycliste Internationale Mountain Bike World Cup and X Games, is contributing to the growth of international participation in activities in which our products are used. We intend to leverage the recognition of our brands to capitalize on these trends by globally increasing our sales to both OEMs and dealers and distributors, particularly in markets where we perceive significant opportunities.

Improve operating and supply chain efficiencies

In the fourth quarter of 2021, we completed the construction of an approximately 336,000 square foot state-of-the-art facility in Hall County, Georgia (the "Gainesville Facility") to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group. The Gainesville Facility is being used for manufacturing, warehousing, distribution and office space. Additionally, we completed the transition of our Watsonville, California facility (the "Watsonville Facility") and the relocation of our powered vehicles suspension manufacturing to the Gainesville Facility in the first quarter of 2022.

Seasonality

Certain portions of our business are seasonal; we believe this seasonality is due to the delivery of new products. As we have diversified our product offerings and our product launch cycles, seasonal fluctuations are becoming less material.

Competition

The markets for performance-defining products are highly competitive. We compete with other companies that produce products for sale to OEMs, dealers and distributors, as well as with OEMs that produce their own line of products for their own use. Some of our competitors may have greater financial, research and development or marketing resources than we do. Competition in the high-end segment of the performance-defining market revolves around technical features, performance, product design, innovation, reliability and durability, brand, time to market, customer service and reliable order execution. While the pricing of competing products is always a factor, we believe the performance of our products helps justify our premium pricing. Within our markets, we compete with several large companies and numerous small companies that provide branded and unbranded products across many of our product lines. These competitors can be divided into the following categories:

Powered Vehicles

Within the market for off-road and specialty vehicle suspension components, we compete with ThyssenKrupp Bilstein Suspension GmbH (commonly known as Bilstein), King Shock Technology, Inc. (commonly known as King Shocks), Icon Vehicle Dynamics, Sway-A-Way, Pro Comp USA Suspension, and Rancho ("Tenneco"). In the market for suspension systems, or lift kits, we compete with TransAmerican Wholesale/Pro Comp USA, Rough Country Suspension Systems, TeraFlex, Falcon, ReadyLIFT Suspension, Tuff Country EZ-Ride Suspension, and Rusty's Off-Road. In the market for upfitted vehicles, we compete with Roush Performance and DSI Custom Vehicles.

Within the market for powered vehicle suspension components, we compete with several companies in different submarkets. In the ATV and side-by-sides markets, outside of vertically-integrated OEMs, we compete with ZF Sachs (ZF Friedrichshafen AG), and Walker Evans Racing for OEM business and Elka Suspension Inc., Öhlins Racing AB, Works Performance Products, and Penske Racing Shocks / Custom Axis, Inc. for aftermarket business. In the snowmobile market, we compete with KYB (Kayaba Industry Co., Ltd.), Öhlins Racing AB (a wholly-owned subsidiary of Tenneco), Walker Evans Racing, Works Performance Products, Inc., and Penske Racing Shocks / Custom Axis, Inc.

Specialty Sports

Within the market for bike suspension components, we compete with several companies that manufacture front and rear suspension products, including RockShox (a subsidiary of SRAM Corp.), X-Fusion Shox (a wholly owned subsidiary of A-Pro), Manitou (a subsidiary of HB Performance Systems), SR Suntour, DT Swiss (a subsidiary of Vereinigte Drahtwerke AG), Cane Creek Cycling, DVO Suspension, Bos-Mountain Bike Suspensions, and Öhlins Racing AB. In the market for other bike components, we compete with SRAM, Truvativ and Zipp (all subsidiaries of SRAM Corp.), DT Swiss (a subsidiary of Vereinigte Drahtwerke AG), Mavic (a subsidiary of Bourrelier), and Shimano.

Our products

We design and manufacture performance-defining products, of which a significant portion is suspension products. These suspension products dissipate the energy and force generated by bikes and powered vehicles while they are in motion. Suspension products allow wheels or skis (in the case of snowmobiles) to move up and down to absorb bumps and shocks while maintaining contact with the ground for better control. Our products use adjustable suspension, position-sensitive damping, electronically controllable damping, multiple air spring technologies, low weight and structural rigidity, all of which improve user control for greater performance.

We use high-grade materials in our products and have developed a number of sophisticated assembly processes to maintain quality across all product lines. Our suspension products are assembled according to precise specifications throughout the assembly process to create consistently high-performance levels and customer satisfaction.

Powered Vehicles

In our powered vehicle product categories, we offer premium products under the FOX, BDS Suspension, Zone Offroad, JKS Manufacturing, RT Pro UTV, 4x4 Posi-Lok, Ridetech, Tuscany, Outside Van, and SCA brands for side-by-sides, on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, motorcycles, and commercial trucks. In each of the years ended December 30, 2022, December 31, 2021 and January 1, 2021, approximately 58%, 55% and 59%, respectively, of our sales were attributable to sales of powered vehicles related products.

Products for these vehicles are designed for use on roads, trail riding, racing, and to help maximize performance and comfort. Our products have also been used on limited quantities of off-road military vehicles and other small-scale select military applications. Our aftermarket truck suspension component products in the powered vehicles category range from two-inch bolt-on shocks to our patented position sensitive internal bypass shocks. We also offer lift kits and components with our shock products and aftermarket accessory packages for use in trucks. In addition, we manufacture suspension systems that enhance the handling and ride quality of muscle cars, trucks, sports cars and hot rods. With the recent acquisition of Shock Therapy in December 2021, we added suspension tuning services to the portfolio.

Our upfitting category leverages our strong partnerships with Ford, General Motors, Jeep, Nissan and RAM, enabling us to obtain truck, van and sports utility vehicle ("SUV") chassis directly from the manufacturers' facilities. We seek to improve each vehicle's capability with high quality, proprietary components and products, such as lift kits, shock products, superchargers, interior accessories, wheels, tires, lighting, and body enhancements, while still maintaining the factory warranty and safety standards that our customers expect. Our upfitting category includes brands such as Black Widow, Rocky Ridge, Badlander, Black Ops, Harley-Davidson and Shelby American.

Specialty Sports

Our bike product offerings are used on a wide range of performance mountain bikes, e-bikes and road bikes under the FOX, Race Face, Easton Cycling and Marzocchi brands. Given this wide range of bike products and brands, as well as the potential to expand our offerings to include other types of performance-defining products, we changed the name of the group from Bike Division to Specialty Sports Group. In each of the years ended December 30, 2022, December 31, 2021 and January 1, 2021, approximately 42%, 45% and 41%, respectively, of our sales were attributable to sales of bike-related products. Primarily for the mountain bike market, we offer mid-end and high-end front fork and rear suspension products designed for cross-country, trail, all-mountain, free-ride and downhill riding. Our mountain bike suspension products are sold in five series and under the Marzocchi brand: (i) our Marzocchi BOMBER series, designed for a rider who values ease of use over adjustability; (ii) our FOX Rhythm series, designed to provide FOX performance at the entry price point of the high-end mountain bikes segment; (iii) our FOX Performance series, designed for demanding enthusiasts; (iv) our FOX Performance Elite series, designed for experienced and expert riders; and (v) our FOX Factory series, designed for maximum performance at a professional level.

We also offer mountain and road bike wheels and other performance-defining cycling components under the Race Face and Easton Cycling brands including cranks, chainrings, pedals, bars, stems, and seat posts.

Research and development

Research and development is at the core of our product innovation and market leadership strategy. We have a growing team of engineers and technicians focused on designing innovative products and developing engineering-based solutions to enhance our product offerings. In addition, a large number of our other employees, many of whom use our products in their recreational activities, contribute to our research and development and product innovation initiatives. Their involvement in the development of new products ranges from participating in initial brainstorming sessions to test riding products in development. Product development also includes collaborating with OEM customers across end-markets, field testing by professional athletes and sponsored race teams and working with enthusiasts and other users of our products. This feedback helps us to develop innovative products that meet our demanding standards as well as the evolving needs of professional and recreational end users and to quickly commercialize these products.

Our research and development activities are supported by state-of-the-art engineering software design tools, integrated manufacturing facilities and a performance-testing center equipped to enhance product safety, durability and performance. Our testing center collects data and tests products prior to and after commercial introduction. Suspension products undergo a variety of rigorous performance and accelerated life tests before they are introduced into the market. Research and development expenses totaled approximately \$56.2 million, \$46.6 million and \$34.3 million in fiscal years 2022, 2021 and 2020, respectively.

Intellectual property

Intellectual property is an important aspect of our business. We rely upon a combination of patents, trademarks, trade names, licensing arrangements, trade secrets, know-how and proprietary technology and we secure and protect our intellectual property rights.

Our intellectual property counsel diligently protects our new technologies with patents and trademarks and defends against patent infringement allegations. We patent our proprietary technologies related to vehicle suspension and other products in the U.S. and various foreign patent offices. Our principal intellectual property also includes our registered trademarks in the U.S. and a number of international jurisdictions, including the marks FOX[®], FOX RACING SHOX[®] and REDEFINE YOUR LIMITS[®]. Although our intellectual property is important to our business operations and constitutes a valuable asset in the aggregate, we do not believe that any single patent, trademark or trade secret is critical to the success of our business as a whole. We cannot be certain that our patent applications will be issued or that any issued patents will provide us with any competitive advantages or will not be challenged by third parties.

In addition to the foregoing protections, we generally control access to and use of our proprietary and other confidential information using internal and external controls, including contractual protections with employees, OEMs, distributors and others.

Customers

Our OEM customers include market leaders in their respective categories, and they help define, as well as respond to, consumer trends in their respective industries. These OEM customers include our products on a number of their performance models. We believe OEMs often use our products to improve the marketability and demand of their own products, which, in turn, strengthens our brand image. In addition, consumers select our performance-defining products in the aftermarket channel, where we market through a global network of dealers and distributors. We currently sell to approximately 100 OEMs and distribute our products to more than 5,000 retail dealers and distributors worldwide. In 2022, 57% of our sales resulted from sales to OEM customers and 43% resulted from sales to dealers and distributors for resale in the aftermarket channel. No material portion of our business is subject to renegotiation of profits or termination of contracts or subcontracts at the election of the U.S. government.

Sales attributable to our 10 largest OEM customers, which can vary from year-to-year, collectively accounted for approximately 35%, 35% and 36% of our sales in fiscal years 2022, 2021 and 2020, respectively. In 2022, 2021 and 2020, no single customer represented 10% or more of our sales.

Although we refer to the branded bike OEMs that use our products throughout this document as "our customers," "our OEM customers" or "our bike OEM customers," branded bike OEMs often use contract manufacturers to manufacture and assemble their bikes. As a result, even though we typically negotiate price and volume requirements directly with our bike OEM customers, the contract manufacturer may place the purchase order and therefore assumes the payment responsibilities.

Our North American sales totaled \$1,009.2 million, \$811.3 million, and \$593.3 million, or 63%, 62% and 67%, of our total sales in 2022, 2021 and 2020, respectively. Our international sales totaled \$593.3 million, \$487.8 million and \$297.3 million or 37%, 38% and 33% of our total sales in fiscal years 2022, 2021 and 2020, respectively. Sales attributable to countries outside the U.S. are based on shipment location. Our international sales, however, do not necessarily reflect the location of the end users of our products, as many of our products are incorporated into bikes and powered vehicles that are assembled at international locations and then shipped back to the U.S. Additional information about our product revenues and certain geographical information is available in [Note 2. Revenues](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K.

Powered Vehicles

We sell our powered vehicle suspension products to OEMs, including BRP, Ford, Polaris, Toyota, Kawasaki, Yamaha, and Honda. We also are continually nurturing and developing relationships with our existing and new OEMs, as the powered vehicles market continues to grow. After incorporating our products on their powered vehicles, OEMs typically sell their powered vehicles to independent dealers, which then sell directly to consumers.

In the aftermarket, we typically sell suspension products to dealers and distributors, both domestically and internationally. Our dealers sell directly to consumers. When we sell to our distributors, they sell to independent dealers, which then sell directly to consumers. In our upfitting product category, we sell to a broad network of automotive dealerships.

Specialty Sports

We sell our bike suspension and components products to a broad network of domestic and international bike OEMs, including Specialized, Trek Bicycles, Giant, Orbea, Canyon Bicycles, Santa Cruz Bicycles, and Yeti Cycles. We have long-standing relationships with many of the top bike OEMs. After incorporating our products on their bikes, OEMs typically sell their bikes to independent dealers, which then sell directly to consumers.

In the aftermarket, we typically sell to U.S. dealers and through distributors internationally. Our dealers sell directly to aftermarket consumers. Our overseas distributors sell to independent dealers, which then sell directly to consumers.

Sales and marketing

We employ specialized and dedicated sales professionals. Each sales professional is fully responsible for servicing either OEM or aftermarket customers within our product categories, which ensures that our customers are in contact with capable and knowledgeable sales professionals to address their specific needs. We strongly believe that providing a high level of service to our end customers is essential to maintaining our reputational excellence in the marketplace. Our sales professionals receive training on the brands' latest products and technologies and attend trade shows and events to increase their market knowledge.

Our marketing strategy focuses on strengthening and promoting our brands in the marketplace. We strategically focus our marketing efforts on enthusiasts seeking high-end, performance-defining products and systems through promotions at destination riding locations and individual and team sponsorships. We believe the performance of our products has been demonstrated by, and our brands benefit from, the success of professional athletes who use our products in elite competitive events such as the Olympic Games, the Union Cycliste Internationale Mountain Bike World Cup, the X Games and the Baja 1000. We also believe these successes positively influence the purchasing habits of enthusiasts and other consumers seeking performance-defining products.

We believe that our strategic focus on the performance and racing segments in our markets, including our sponsorships of a number of professional athletes and race teams, influences many aspiring and enthusiast consumers and enables our products to be sold at premium price points. In order to continue to enhance our brand image, we will need to maintain our position in the suspension products industry and to continue to provide high-quality products and services.

We have also been able to develop long-term strategic relationships with leading OEMs. Our reputation for performance-defining products plays a critical role in our aftermarket sales to consumers.

In addition to our websites and traditional marketing channels, such as print advertising and tradeshow, we maintain an active social media presence, including an Instagram feed, Facebook page, YouTube channel, Vimeo channel and Twitter feed to increase brand awareness, foster loyalty and build a community of users. As strategies and marketing plans are developed for our products, our internal marketing and communications group works to ensure brand cohesion and consistency.

Manufacturing and backlog

We manufacture and complete final assembly on most of our products. By controlling the manufacturing process of our products, we can maintain our strict quality standards, customize our machines and processes for the specific requirements of our products, and quickly respond to feedback we receive on our products in development and otherwise. Furthermore, manufacturing our own products enables us to adjust our labor and production inputs to meet seasonal demands and the customized requirements of some of our customers.

In the fourth quarter of 2021, we completed the construction of our Gainesville Facility to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group. The Gainesville Facility is being used for manufacturing, warehousing, distribution and office space. Additionally, we completed the transition of our Watsonville Facility and relocation of our powered vehicles suspension manufacturing to the Gainesville Facility in the first quarter of 2022.

We had approximately \$116.7 million and \$223.5 million in firm backlog orders at December 30, 2022 and December 31, 2021, respectively. The decrease in 2022 backlog, as compared to 2021, is due to many factors including the normalization of supply chain shortages that were experienced in 2021, the realignment of production forecasts with some of our large OEM customers, and increased production at our Gainesville Facility.

Suppliers and raw materials

The primary raw materials used in the production of our products are aluminum, magnesium, carbon and steel. We generally use multiple suppliers for our raw materials and believe that our raw materials are in adequate supply and available from many suppliers at competitive prices. We do, however, depend on a limited number of suppliers for certain of our components. If our current suppliers for such components are unable to timely fill orders, or if we are required to transition to other suppliers, we could experience significant production delays or disruption to our business. Please read [Item 1A. Risk Factors – Risks Related to Our Business and Operations](#) - *"We depend on a limited number of suppliers for our materials and component parts for some of our products, and the loss of any of these suppliers or an increase in cost of raw materials could harm our business."* In addition, prices for our raw materials fluctuate. While we have been able to mitigate the impacts of price fluctuations on our business historically, we are actively monitoring the current market conditions and price trends.

We also have OEM partners that supply vehicle chassis used in our upfitting operations. Our operations could be negatively impacted if we are not able to receive vehicle chassis according to our production needs, or if an OEM decides to discontinue supplying chassis for other reasons.

We work closely with our supply base, and depend upon certain suppliers to provide raw inputs, such as forgings, castings and molded polymers that have been optimized for weight, structural integrity, wear and cost. In certain circumstances, we depend upon a limited number of suppliers for such raw inputs. We typically have no firm contractual sourcing agreements with our suppliers other than purchase orders.

Miyaki is the exclusive producer of the Kashima coating for our suspension component tubes. As part of our agreement with Miyaki, or the Kashima Agreement, we have been granted the exclusive right to use the trademark "KASHIMACOAT" on products comprising the aluminum finished parts for suspension components (e.g., tubes) and on related sales and marketing material worldwide, subject to a minimum model year order and certain other exclusions. The Kashima Agreement does not contain minimum purchase obligations.

Human Capital Resources

Employee Overview

As of December 30, 2022, we had approximately 4,400 employees in the U.S., Canada, Europe, Taiwan and Australia. Our employees are primarily located in the U.S. We also use temporary employees at our manufacturing facilities to help us meet seasonal demands. None of our employees are subject to collective bargaining agreements.

Health and Safety

Employee health and safety in the workplace is one of our top priorities. In response to the COVID-19 pandemic, we have been working to keep our employees safe and healthy from this outbreak. Using guidance from the Centers for Disease Control ("CDC"), the World Health Organization ("WHO"), and the various states and counties in which we operate, we have taken a number of measures to keep employees safe. Employees are offered paid sick leave or paid time off to cover sickness and absences. We will continue to make our employees a priority.

Inclusion, Diversity and Engagement

At FOX, we believe that people are our greatest asset. Therefore, we are committed to building and maintaining an inclusive workplace in which all employees feel they belong, are empowered to be their best, and inspired to deliver maximum performance. Our employees have diverse skills, experiences and unique perspectives that collectively contribute to greater opportunities for engagement, innovation and business growth. Our commitment to Inclusion, Diversity, and Engagement aligns with our values of Leadership, Trust, Service, Agility, Ingenuity, and Collaboration and is a critical component of being a purpose-led organization. The Inclusion, Diversity, and Engagement strategy is sponsored by the entire Executive Leadership Team and is centered on the following objectives:

- build a globally diverse, high-performing workforce that mirrors the populations around us;
- foster an inclusive workplace culture where all feel like they are heard, welcomed, valued, and empowered; and
- engage our people in making an impact in the marketplace where we live, work, and play.

Employee Benefits

Our employee benefits are designed to attract and retain our employees and include medical, health and dental insurance, short-term and long-term disability insurance, accidental death and disability insurance, voluntary supplemental coverages, discount programs, and our 401(k) Plan. As part of the 401(k) Plan, FOX matches 50 percent of the first 6 percent of compensation contributed by the employee into the 401(k) Plan.

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Practices related to working capital items

The Company does not believe that it, or the industry in general, has any special practices or special conditions affecting working capital items that are material to understanding our business. Information about the Company's working capital is incorporated herein by reference to [Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations](#), and to the [Consolidated Statements of Cash Flows](#) within Item 8 of this Annual Report on Form 10-K.

Government regulation

Environmental

Our manufacturing operations, facilities and properties in the U.S., Europe, Canada, and Taiwan are subject to evolving foreign, international, federal, state and local environmental and occupational health and safety laws and regulations, including those governing air emissions, wastewater discharge and the storage and handling of chemicals and hazardous substances. If we fail to comply with such laws and regulations, we could be subject to significant fines, penalties, costs, liabilities or restrictions on operations, which could negatively affect our financial condition.

We believe that our operations are in compliance, in all material respects, with applicable environmental and occupational health and safety laws and regulations, and our compliance with such laws and regulations has not had, nor is it expected to have, a material impact on our earnings or competitive position. However, new requirements, more stringent application of existing requirements or the discovery of previously unknown environmental conditions could result in material environmental related expenditures in the future. For example, in March 2022, the SEC proposed new rules for extensive and prescriptive climate-related disclosures in annual reports and registration statements, which would also require inclusion of certain climate-related financial metrics in a note to companies' audited financial statements. Please read "Risks Related to Laws and Regulations - Increasing focus on environmental, social and governance responsibility may impose additional costs on us and expose us to new risks" within [Item 1A. Risk Factors](#).

Employment

We are subject to numerous foreign, federal, state and local government laws and regulations governing our relationships with our employees, including those relating to minimum wage, overtime, working conditions, hiring and firing, non-discrimination, work permits and employee benefits. We believe that our operations are conducted in compliance, in all material respects, with such laws and regulations. We have never experienced a material work stoppage or disruption to our business relating to employee matters. We believe that our relationship with our employees is good.

Consumer safety

We are subject to the jurisdiction of the U.S. Consumer Product Safety Commission ("CPSC"), and other federal, state and foreign regulatory bodies including the National Highway Traffic Safety Administration ("NHTSA"), which enforces the Federal Motor Vehicle Safety standards. Under CPSC regulations, a manufacturer of consumer goods is obligated to notify the CPSC, if, among other things, the manufacturer becomes aware that one of its products has a defect that could create a substantial risk of injury. If the manufacturer has not already undertaken to do so, the CPSC may require a manufacturer to recall a product, which may involve product repair, replacement or refund. During the past three years, we initiated two voluntary product recalls. For additional information, see [Item 1A. Risk Factors](#) in this Annual Report on Form 10-K.

Government contracts

No material portion of our business is subject to renegotiation of profits or termination of contracts or subcontracts at the election of the U.S. government.

Financial information about segments and geographic areas

We operate in one reportable segment: manufacturing, sale and service of performance-defining products. Additional information about our product segment and certain geographic information is available in [Note 2. Revenues](#) and [Note 5. Property, Plant and Equipment, net](#) of the [Notes to Consolidated Financial Statements](#) in this Annual Report on Form 10-K.

Corporate and available information

Our principal executive offices are located at 2055 Sugarloaf Circle, Suite 300, Duluth, GA 30097, and our telephone number is (831) 274-6500. Our website address is www.ridefox.com.

We file reports with the SEC, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any other filings required by the SEC. We make available through the Investor Relations section of our website, free of charge, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and all amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The information on our website is not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC.

The public may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

ITEM 1A. RISK FACTORS

Our business, financial condition, operating results and prospects could be materially and adversely affected by various risks and uncertainties that are described herein. In addition to the risks and uncertainties discussed elsewhere in this Annual Report on Form 10-K, you should carefully consider the risks and uncertainties described below. If any of these risks actually occur, our business, financial condition, operating results and prospects could be materially and adversely affected. In that event, the trading price of our common stock could decline.

Summary of Risk Factors

The risks described below include, but are not limited to, the following:

Risks Related to Our Business and Operations

- our business, financial condition and results of operations have been and may continue to be adversely affected by global public health epidemics or pandemics, including the ongoing COVID-19 pandemic;
- the impact of the risks associated with international geopolitical conflicts, including continuing tensions between Taiwan and China, and the Russian invasion of Ukraine on the global economy, energy supplies and raw materials are uncertain, but may prove to negatively impact our business and operations;
- our dependency on a limited number of suppliers for materials, product parts, and vehicle chassis could lead to an increase in material costs, disruptions in our supply chain, or reputational costs;
- failure to effectively compete against competitors, enhance existing products or develop, manufacture and market new products that respond to consumer needs and preferences and achieve market acceptance could result in a decrease in demand for our products and negatively impact our business and financial results;
- our performance-defining products, and the bike and powered vehicles into which they are incorporated, are discretionary purchases and may be adversely impacted by changes in the economy, a shrinking market for these powered vehicles, or a material decline in demand for the high-end bikes that make up a significant portion of our sales;
- changes in our customer, channel and product mix could place demands that are more rigorous on our infrastructure and cause our profitability percentages to fluctuate;
- a disruption in the operations of our facilities, such as work stoppages, or delays in our planned expansion of certain facilities, could have a negative effect on our business, financial condition or results of operations;
- our business depends substantially on our ability to attract and retain experienced and qualified talent, including our senior management team;
- we may not be able to sustain our past growth or successfully implement our growth strategy, which may have a negative effect on our business, financial condition or results of operations;
- the loss of the support of professional athletes for our products, or the inability to attract new professional athletes or disruption in relationships with dealers and distributors may harm our business;
- our business is dependent in large part on the orders we receive from our OEM customers and from their success. The loss of all or a substantial portion of our sales to any of these customers could have a material adverse impact on us and our results of operations;
- our international operations are exposed to risks associated with conducting business globally, including currency exchange rate fluctuations and policies related to global trade and tariffs;
- if we are unable to enforce our intellectual property rights, our reputation and sales could be adversely affected, while intellectual property disputes could lead to significant costs or the inability to sell products;
- if we inaccurately forecast demand for our products, we may manufacture insufficient or excess quantities or our manufacturing costs could increase, which could adversely affect our business;
- product recalls and significant product repair and/or replacement due to product warranty costs and claims have had, and in the future could have, a material adverse impact on our business;
- an adverse determination in any material product liability claim against us could adversely affect our operating results or financial condition;
- we are subject to certain risks in our manufacturing and in the testing of our products;
- fuel shortages, or high prices for fuel, could have a negative effect on the use of powered vehicles that use our products;

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- we rely on increasingly complex information systems for management of our manufacturing, distribution, sales and other functions. If our information systems fail to perform these functions adequately, if we or our vendors or commercial partners experience an interruption in our operations, or if we are impacted by cybersecurity attacks, our business could suffer;
- we have grown and may continue to grow in the future through acquisitions, and we may not be able to effectively integrate businesses we acquire or we may not be able to identify or complete any future acquisitions on favorable terms, or at all;
- our operating results are subject to quarterly variations in our sales, which could make our operating results difficult to predict and could adversely affect the price of our common stock;
- growth in our sales and the mix of domestic versus export shipments from Taiwan could cause additional foreign tax credits to not be realizable, potentially reducing our income and adversely affecting our cash flows;
- the current inflation affecting the economy and the Federal Reserve's repeated interest rate increases in response, could negatively impact our cash flows due to higher debt costs or negatively impact our customers' ability to finance powered vehicles or bikes that include our products;

Risks Related to Our Indebtedness and Liquidity

- our 2022 Credit Facility places operating restrictions on us and creates default risks, and the variable rate makes us more vulnerable to increases in interest rates;
- we will continue to have the ability to incur debt and our levels of debt may affect our operations and our ability to pay the principal of and interest on our debt;
- we may incur losses on interest rate swap and hedging arrangements;

Risks Related to Laws and Regulations

- changes in tax laws and regulations or other factors could cause our income tax obligations to increase, potentially reducing our net income and adversely affecting our cash flows;
- we are subject to extensive U.S. federal and state, foreign and international safety, environmental, employment practices and other government regulations that may require us to incur expenses or modify product offerings in order to maintain compliance with such regulation, which could have a negative effect on our business and results of operations;
- unpredictability in increasingly stringent emission standards and increasing focus on environmental, social and governance responsibility, including climate change, may impose additional costs and new risks on us;
- we are subject to employment practice laws and regulations, and, as such, are exposed to litigation risks, and we may incur higher employee costs in the future;
- we retain certain personal information about individuals and are subject to various privacy and consumer protection laws;
- our vendors and any potential commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements;

Risks Related to Ownership of Our Common Stock

- potential volatility in our trading price, publications by securities or industry analysts, and future issuances, sales, and the perception of such could cause our stock price and trading volume to decline;
- anti-takeover provisions in our charter documents and Delaware law could discourage, delay or prevent a change in control of our Company;
- our Amended and Restated Certificate of Incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or other employees; and

General Risk Factors

- failure of our internal control over financial reporting could adversely affect our business and financial results.

RISKS RELATED TO OUR BUSINESS AND OPERATIONS

Our business, financial condition and results of operations have been and may continue to be adversely affected by global public health epidemics or pandemics, including the ongoing COVID-19 pandemic.

We face various risks related to public health issues, including epidemics, pandemics, and other outbreaks, including the ongoing coronavirus (“COVID-19”) pandemic. The global outbreak of COVID-19 was declared a pandemic by the World Health Organization and a national emergency by the U.S. Government in March 2020 and has resulted in over six and a half million deaths worldwide, as of the date of filing this Annual Report, and it continues to spread in major markets in which we operate. The impact of the COVID-19 pandemic, including changes in consumer behavior, COVID-19 pandemic fears and market downturns, and restrictions on business and individual activities, has created significant volatility in the global economy and led to reduced economic activity. There have been extraordinary actions taken by international, federal, state, and local public health and governmental authorities to contain and combat the outbreak and spread of COVID-19 in regions throughout the world, including travel bans, quarantines, “stay-at-home” orders, and similar mandates for many individuals to substantially restrict daily activities and for many businesses to curtail or cease normal operations.

These government-mandated closures, “shelter-in-place” directives, and an outbreak among, or quarantine of, the employees in any of our facilities, have caused and could continue to cause significant interruptions to, or temporary closures of our operations. These impacts include, but are not limited to:

- significant reductions in demand or significant future volatility in demand for one or more of our products, which may be caused by, among other things: the temporary inability of consumers to purchase our products due to illness, quarantine or other travel restrictions, store closures, financial hardship, shifts in demand away from one or more of our more discretionary or higher-priced products, supply chain and shipping constraints, reduced options for marketing and promotion of products or other restrictions in connection with the COVID-19 pandemic; if prolonged, such impacts can further increase the difficulty of operating our business, including accurately planning and forecasting, planning for operations and may adversely impact our results;
- inability to meet our current or future demand due to disruptions in our manufacturing and supply arrangements caused by the loss or disruption of essential manufacturing and supply elements such as raw materials, vehicle chassis, or other components, transportation, workforce, or other manufacturing and distribution capability;
- failure of third parties on which we rely, including our suppliers, contract manufacturers, distributors, contractors, commercial banks, and external business partners, to meet their obligations to the Company or to timely meet those obligations, or significant disruptions in their ability to do so, which may be caused by their own financial or operational difficulties and may adversely impact our operations;
- significant changes in the political conditions in markets in which we manufacture, sell or distribute our products, including additional or expanded quarantines, governmental or regulatory actions, closures or other restrictions that further limit or close our operating and manufacturing facilities, restrict our employees’ ability to travel or perform necessary business functions, restrict or prevent consumers from having access to our products, or otherwise prevent our third-party partners, dealers, suppliers, or customers from sufficiently staffing operations, including operations necessary for the production, distribution, sale, and support of our products, which could adversely impact our results; and
- increased difficulty in determining the fair value of the Company’s goodwill and other assets for accounting purposes given the level of judgment and estimation that is inherently higher in the current environment considering the uncertainty created by the COVID-19 pandemic, which could result in estimates and assumptions made in valuing goodwill and other Company assets proving to be inaccurate in the future.

These impacts have had and could continue to have a negative effect on our business, financial condition, results of operations and cash flows, as well as the trading price of our securities. Furthermore, the COVID-19 pandemic has impacted and may further impact the broader economies of affected countries, including negatively impacting economic growth, the proper functioning of financial and capital markets, foreign currency exchange rates, interest rates, and liquidity.

We have modified, and might further modify, our business practices in response to the COVID-19 pandemic, related third-party responses, including from government authorities and our suppliers, customers and distributors, and the economic and social ramifications of the disease and societal responses across the markets in which the Company operates. Despite our efforts to manage and remedy these impacts to the Company, the ultimate impact and the extent to which the COVID-19 pandemic will continue to affect our business, results of operation and financial condition is difficult to predict and depends on numerous evolving factors outside our control including: the duration and scope of the COVID-19 pandemic; government, social, business and other actions that have been and will be taken in response to the COVID-19 pandemic; increases in COVID-19 case counts; any additional waves or resurgences of the virus; availability and ultimate efficacy of the vaccine on new variants of the virus; and the effect of the COVID-19 pandemic on short- and long-term general economic conditions.

The impact of the risks associated with international geopolitical conflicts, including continuing tensions between Taiwan and China, and the Russian invasion of Ukraine on the global economy, energy supplies and raw materials are uncertain, but may prove to negatively impact our business and operations.

In recent years, diplomatic and trade relationships between the U.S. government and China have become increasingly frayed and the threat of a takeover of Taiwan by China has increased. Since our bike suspension manufacturing occurs in Taiwan, our business, our operations and our supply chain could be materially and adversely impacted by political, economic or other actions from China, or changes in China-Taiwan relations that impact Taiwan and its economy. In addition, we continue to monitor any adverse impact that the outbreak of war in Ukraine and the subsequent institution of sanctions against Russia by the United States and several European and Asian countries may have on the global economy in general, on our business and operations and on the businesses and operations of our suppliers and customers. For example, a prolonged conflict may result in ongoing increased inflation, escalating energy prices and constrained availability, and thus increasing costs, of raw materials. To the extent that continuing political tensions between China and Taiwan or the war in Ukraine may adversely affect our business, it may also have the effect of heightening many of the other risks described in our risk factors, such as those relating to data security, supply chain, volatility in prices of inputs, and market conditions, any of which could negatively affect our business and financial condition.

We depend on a limited number of suppliers for our materials and component parts for some of our products, and the loss of any of these suppliers or an increase in cost of raw materials could harm our business.

We depend on a limited number of suppliers for certain components. If our current suppliers, in particular the minority of those that are "single-source" suppliers, are unable to timely fulfill orders, or if we are required to transition to other suppliers, we could experience significant production delays or disruption to our business. We define a single-source supplier as a supplier from which we purchase all of a particular raw material or input used in our manufacturing operations, although other suppliers are available from which to purchase the same raw material or input of an equivalent substitute. We do not maintain long-term supply contracts with any of our suppliers and instead purchase these components on a purchase order basis. As a result, we cannot force any supplier to sell us the necessary components we use in creating our products and we could face significant supply disruptions should they refuse to do so. As the majority of our bike component manufacturing occurs in Taiwan, we could experience difficulties locating qualified suppliers geographically located closer to these facilities. Furthermore, such suppliers could experience difficulties in providing us with some or all of the materials we require, which could result in disruptions in our manufacturing operations. Our business, financial condition or results of operations could be materially and adversely impacted if we experience difficulties with our suppliers or manufacturing delays caused by our suppliers, whether in connection with our manufacturing operations in the U.S. or in Taiwan.

We also purchase various raw materials in order to manufacture our products. The main commodity items purchased for production include aluminum, magnesium, steel and carbon. Historically, we have effectively mitigated the impacts of price fluctuations for these components and raw materials on our business. In the future, however, if we experience material increases in the price of components or raw materials and are unable to pass on those increases to our customers, or there are shortages in the availability of such component parts or raw materials, or there are rising prices due to overall inflationary pressures, it could negatively affect our business, financial condition or results of operations.

In addition to our various single-source suppliers, we also rely on one "sole-source" supplier, Miyaki Corporation, or Miyaki. We define a sole-source supplier as a supplier of a raw material or input for which there is no other supplier of the same product or an equivalent substitute. Miyaki is the exclusive producer of the Kashima coating for our suspension component tubes. As part of our agreement with Miyaki, we have been granted the exclusive right to use the trademark "KASHIMACOAT" on products comprising the aluminum finished parts for suspension components (e.g., tubes) and on related sales and marketing material worldwide, subject to certain exclusions. Although we believe we could obtain other coatings of comparable utility from other sources if necessary, we could no longer obtain this specific Kashima coating or use the trademark "KASHIMACOAT" if Miyaki were to stop supplying us with this coating. The need to replace the Kashima coating could temporarily disrupt our business and harm our business, financial condition or results of operations.

We also have OEM partners that supply vehicle chassis used in our upfitting operations. An OEM may encounter difficulties and may be unable to deliver chassis according to our production needs, or an OEM may choose to discontinue supplying chassis for other reasons. Any interruption or discontinuation in the availability of chassis may result in increased production costs, delays in the delivery of our products, and lost sales, which could have an adverse effect on our business and financial condition.

If we are unable to continue to enhance existing products and develop, manufacture and market new products that respond to consumer needs and preferences and achieve market acceptance, we may experience a decrease in demand for our products, and our business and financial results could suffer.

Our growth strategy involves the continuous development of innovative performance-defining products. We may not be able to compete as effectively with our competitors, and ultimately satisfy the needs and preferences of our customers and the end users of our products, unless we can continue to enhance existing products and develop new, innovative products in the global markets in which we compete. In addition, we must continuously compete for not only end users who purchase our products through the dealers and distributors who are our customers, but also for the OEMs, which incorporate our products into their bikes and powered vehicles. These OEMs regularly evaluate our products against those of our competitors to determine if they are allowing the OEMs to achieve higher sales and market share on a cost-effective basis. Should one or more of our OEM customers determine that they could achieve overall better financial results by incorporating a competitor's new or existing product, they would likely do so, which could harm our business, financial condition or results of operations.

Product development requires significant financial, technological and other resources. While we expended approximately \$56.2 million, \$46.6 million and \$34.3 million for our research and development efforts in 2022, 2021 and 2020, respectively, there can be no assurance that this level of investment in research and development will be sufficient in the future to maintain our competitive advantage in product innovation, which could cause our business, financial condition or results of operations to suffer.

Product improvements and new product introductions require significant planning, design, development and testing at the technological, product and manufacturing process levels, and we may experience unanticipated delays in our introduction of product improvements or new products. Our competitors' new products may beat our products to market, be more effective and/or less expensive than our products, obtain better market acceptance or render our products obsolete. Any new products that we develop may not receive market acceptance or otherwise generate any meaningful sales or profits for us relative to our expectations. In addition, one of our competitors could develop an unforeseen and entirely new product or technology that renders our products less desirable or obsolete, which could negatively affect our business, financial condition or results of operations.

We face intense competition in all product lines, including from some competitors that may have greater financial and marketing resources. Failure to compete effectively against competitors would negatively impact our business and operating results.

The industries in which we operate are highly competitive. We compete with a number of other manufacturers that produce and sell performance-defining products to OEMs and aftermarket dealers and distributors, including OEMs that produce their own lines of products for their own use. Our continued success depends on our ability to continue to compete effectively against our competitors, some of which have significantly greater financial, marketing and other resources than we have. In addition, several of our competitors offer broader product lines to OEMs, which they may sell in connection with suspension products as part of a package offering. In the future, our competitors may be able to maintain and grow brand strength and market share more effectively or quickly than we do by anticipating the course of market developments more accurately than we do, developing products that are superior to our products, creating manufacturing or distribution capabilities that are superior to ours, producing similar products at a lower cost than we can or adapting more quickly than we do to new technologies or evolving regulatory, industry or customer requirements, among other possibilities. In addition, we may encounter increased competition if our current competitors broaden their product offerings by beginning to produce additional types of performance-defining products or through competitor consolidations. We could also face competition from well-capitalized entrants into these product markets, as well as aggressive pricing tactics by other manufacturers trying to gain market share. As a result, our products may not be able to compete successfully with our competitors' products, which could negatively affect our business, financial condition or results of operations.

Our business is sensitive to economic conditions that impact consumer spending. Our performance-defining products, and the bike and powered vehicles into which they are incorporated, are discretionary purchases and may be adversely impacted by changes in the economy.

Our business depends substantially on global economic and market conditions. In particular, we believe that currently a significant majority of the end users of our products live in the U.S. and countries in Europe. These areas have historically experienced recessions, disruptions in banking and/or financial systems, economic weakness and uncertainty, and there appears to be an increasing risk of recessions or inflationary economic impacts related to the global COVID-19 pandemic, the Russian invasion of Ukraine, escalating energy costs, global supply chain disruptions, rising interest rates and other economic changes. In addition, many of our products are recreational in nature and are generally discretionary purchases by consumers. Consumers are usually more willing to make discretionary purchases during periods of favorable general economic conditions and high consumer confidence. Discretionary spending may also be affected by many other factors, including interest rates, gas prices, the availability of consumer credit, taxes and consumer confidence in future economic conditions. During periods of unfavorable economic conditions, or periods when other negative market factors exist, consumer discretionary spending is typically reduced, which in turn could reduce our product sales and have a negative effect on our business, financial condition or results of operations.

There could also be a number of secondary effects resulting from an economic downturn, such as insolvency of our suppliers resulting in product delays, an inability of our OEM and distributor and dealer customers to obtain credit to finance purchases of our products, customers delaying payment to us for the purchase of our products due to financial hardship or an increase in bad debt expense. Any of these effects could negatively affect our business, financial condition or results of operations.

If we are unable to maintain our premium brand image, our business may suffer.

OEM dealers and distributors select our products in part because of the premium brand reputation we hold with them and our end users. Therefore, our success depends on our ability to maintain and build the image of our brands. We have focused on building our brands through producing products or acquiring businesses that produce products that we believe are innovative, high in performance and highly reliable. In addition, our brands benefit from our strong relationships with our OEM customers and dealers and distributors and through marketing programs aimed at bike and powered vehicle enthusiasts in various media and other channels. For example, we sponsor a number of professional athletes and professional race teams. In order to continue to enhance the image of our brands, we will need to maintain our position in the performance-defining products industry, continue to provide high-quality products and services, and preserve our reputation. The rising popularity of social media and other consumer-oriented technologies creates new risks and challenges that could cause damage to our brands and reputation. Social media platforms make it easy for anyone to provide public feedback that can influence perceptions of our brands, and social media platforms can also accelerate and potentially amplify the scope of negative publicity.

There can be no assurance that we will be able to maintain or enhance the strength of our brands in the future. Our brands could be adversely impacted by, among other things:

- failure to develop new products that are innovative, performance-oriented, and reliable;
- internal product quality control issues;
- product quality issues on the bikes and powered vehicles on which our products are installed;
- product recalls;
- high-profile component failures (such as a component failure during a race on a mountain bike ridden by one of our sponsored athletes);
- negative publicity regarding our brands or our sponsored athletes, which could be amplified on social media;
- high-profile injury or death to one of our sponsored athletes;
- inconsistent uses of our brands and our other intellectual property assets, as well as failure to protect our intellectual property;
- changes in consumer trends and perceptions; and
- lack of investment in sponsorships, marketing and public relations.

Any adverse impact on our brands could in turn negatively affect our business, financial condition or results of operations.

Our growth in the powered vehicle category is dependent upon our continued ability to expand our product sales into powered vehicles that require performance-defining products and the continued expansion of the market for these powered vehicles.

Our growth in the powered vehicle category is in part attributable to the expansion of the market for powered vehicles that require performance-defining products. Such market growth includes the creation of new classes of vehicles that can benefit from our products, such as trucks that are upfitted with products to enhance their off-road capability, and our ability to create products for these vehicles. Additionally, with our acquisitions of SCA, Tuscany, Outside Van and Shock Therapy, a growing portion of our sales are expected to be generated from providing upfitting solutions. In the event these markets stop expanding or contract due to economic factors, changes in consumer preferences or other reasons, or we are unsuccessful in creating new products for these markets or other competitors successfully enter into these markets, we may fail to achieve future growth or our sales could decrease, and our business, financial condition or results of operations could be negatively affected.

A significant portion of our sales are highly dependent on the demand for high-end bikes and a material decline in the demand for these bikes or their suspension components could have a material adverse effect on our business or results of operations.

During 2022, approximately 42% of our sales were generated from the sale of bike products. Part of our success has been attributable to the growth in the high-end bike industry, including increases in average retail sales prices, as better-performing product designs and technologies have been incorporated into these products. If the popularity of high-end or premium-priced bikes does not increase or declines, the number of bike enthusiasts seeking such bikes or premium-priced suspension products, wheels, cranks and other specialty components for their bikes does not increase or declines, or the average price point of these bikes declines, we may fail to achieve future growth or our sales could decrease, and our business, financial condition or results of operations could be negatively affected. In addition, if current bike enthusiasts stop purchasing our products due to changes in preferences, we may fail to achieve future growth or our sales could be decreased, and our business, financial condition or results of operations could be negatively affected.

Changes in our customer, channel and product mix could place demands that are more rigorous on our infrastructure and cause our profitability percentages to fluctuate.

We may experience changes in our customer, channel and product mix from time to time as a result of changes in demands from existing customers due to shifts in their products and markets. Additionally, the Company may pursue new customers and markets. Such changes in customers, channel and product mix could place demands that are more rigorous on our infrastructure and supply chain and could result in changes to our profitability and profitability percentages. If customers begin to require more lower-margin products from us and fewer higher-margin products, or place demands on our performance that increase our costs, our business, results of operations and financial condition may suffer.

A disruption in the operations of our facilities, or delays in our planned expansion of certain facilities, could have a negative effect on our business, financial condition or results of operations.

In the fourth quarter of 2021, we completed the construction of the Gainesville Facility in Hall County Georgia to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group. The Gainesville Facility is being used for manufacturing, warehousing, distribution and office space. In the first quarter of 2022 we completed the transition of our Watsonville Facility and the relocation of our powered vehicles suspension manufacturing to the Gainesville Facility. As a result, we have incurred, and may continue to incur, costs associated with some duplication of facilities, equipment and personnel, the amount of which could vary materially from our projections. Unforeseen difficulties in future expansion projects, whatever the cause, could have a material adverse effect on our business, customer relationships, financial condition, operating results, cash flow, and liquidity.

Equipment failures, delays in deliveries or catastrophic loss at any of our facilities could lead to production or service disruptions, curtailments or shutdowns. In the event of a stoppage in production or a slowdown in production due to high employee turnover or a labor dispute at any of our facilities, even if only temporary, or if we experience delays as a result of events that are beyond our control, delivery times to our customers could be severely affected. If there was a manufacturing disruption in any of our manufacturing facilities, we might be unable to meet product delivery requirements and our business, financial condition or results of operations could be negatively affected, even if the disruption was covered in whole or in part by our business interruption insurance. Any significant delay in deliveries to our customers could lead to increased returns or cancellations, expose us to damage claims from our customers or damage our brands and, in turn, negatively affect our business, financial condition or results of operations.

Work stoppages or other disruptions at seaports could adversely affect our operating results.

A portion of our goods move through ports on the Western Coast of the U.S. We have a global supply chain and we import products from our third-party vendors as well as our Fox Taiwan facility into the U.S. largely through ports on the West Coast. Dockworkers, none of whom are our employees, must offload freight from ships arriving at West Coast ports. We do not control the activities of these employees or seaports and we could suffer supply chain disruptions due to any disputes, capacity shortages, slowdowns or shutdowns that may occur, as was experienced in February 2015, in relation to certain West Coast ports. The 2015 strike lasted longer than we forecasted, and any similar labor dispute in the future could potentially have a negative effect on both our financial condition and results of operations. Furthermore, the ongoing COVID-19 pandemic has only increased uncertainty for global supply chains, as port congestion and shipping container shortages have become exacerbated, which could adversely affect our operating results.

Our business depends substantially on our ability to attract and retain experienced and qualified talent, including our senior management team.

We are dependent upon the contributions, talent and leadership of our senior management team, particularly our Chief Executive Officer, Michael C. Dennison. We do not have a "key person" life insurance policy on Mr. Dennison or any other key employees. We believe that the top eight members of our senior management team are key to establishing our focus and executing our corporate strategies as they have extensive knowledge of our systems and processes. Given our senior management team's knowledge of our industry and the limited number of direct competitors in the industry, we believe that it could be difficult to find replacements should any of the members of our senior management team leave.

We could also be adversely affected if we fail to attract and retain talent throughout our organization. For instance, we rely on skilled and well-trained engineers for the design and production of our products, as well as in our research and development functions. Competition for such individuals is intense, particularly in California and Georgia where several of our facilities are located. Our inability to attract or retain qualified employees in our design, production or research and development functions or elsewhere in our Company could result in diminished quality of our products and delinquent production schedules or impede our ability to develop new products.

Our failure to adequately address any of these issues could have a material adverse effect on our business, operating results and financial condition.

We may not be able to sustain our past growth or successfully implement our growth strategy, which may have a negative effect on our business, financial condition or results of operations.

We grew our sales from approximately \$1,299.1 million in 2021 to approximately \$1,602.5 million in 2022. This growth rate may be unsustainable. Our future growth will depend upon various factors, including the strength of the image of our brands, our ability to continue to produce innovative performance-defining products, consumer acceptance of our products, competitive conditions in the marketplace, our ability to make strategic acquisitions, the growth in emerging markets for products requiring high-end suspension products and, in general, the continued growth of the high-end bike and powered vehicle markets into which we sell our products. Our beliefs regarding the future growth of markets for high-end suspension products are based largely on qualitative judgments and limited sources and may not be reliable. If we are unable to sustain our past growth or successfully implement our growth strategy, our business, financial condition or results of operations could be negatively affected.

The professional athletes and race teams who use our products are an important aspect of the image of our brands. The loss of the support of professional athletes for our products or the inability to attract new professional athletes may harm our business.

If current or future professional athletes and race teams do not use our products, our brands could lose value and our sales could decline. While our sponsorship agreements typically restrict our sponsored athletes and race teams from promoting, endorsing or using competitors' products that compete directly within our product categories during the term of the sponsorship agreements, we do not typically have long-term contracts with any of the athletes or race teams whom we sponsor.

If we are unable to maintain our current relationships with these professional athletes and race teams, these professional athletes and race teams are no longer popular, our sponsored athletes and race teams fail to have success or we are unable to continue to attract the endorsement of new professional athletes and race teams in the future, the value of our brands and our sales could decline.

We depend on our relationships with dealers and distributors and their ability to sell and service our products. Any disruption in these relationships could harm our sales.

We sell our aftermarket products to dealers and distributors, and we depend on their willingness and ability to market and sell our products to consumers and provide customer and product service as needed. We also rely on our dealers and distributors to be knowledgeable about our products and their features. If we are not able to educate our dealers and distributors so that they may effectively sell our products as part of a positive buying experience, or if they fail to implement effective retail sales initiatives, focus selling efforts on our competitors' products, reduce the quantity of our products that they sell or reduce their operations due to financial difficulties or otherwise, our brands and business could suffer.

We do not control our dealers or distributors, and many of our contracts allow these entities to offer our competitors' products. Our competitors may incentivize our dealers and distributors to favor their products. In addition, we do not have long-term contracts with a majority of our dealers and distributors, and our dealers and distributors are not obligated to purchase specified amounts of our products. In fact, the majority of our dealers and distributors buy from us on a purchase order basis. Consequently, with little or no notice, many of these dealers and distributors may terminate their relationships with us or materially reduce their purchases of our products. If we were to lose one or more of our dealers or distributors, we would need to obtain a new dealer or distributor to cover the particular location or product line, which may not be possible on favorable terms or at all.

Alternatively, we could use our own sales force to replace such a dealer or distributor, but expanding our sales force into new locations takes a significant amount of time and resources and may not be successful. Further, many of our international distribution contracts contain exclusivity arrangements, which may prevent us from replacing or supplementing our current distributors under certain circumstances.

We are a supplier in the high-end bike and powered vehicles markets, and our business is dependent in large part on the orders we receive from our OEM customers and from their success.

As a supplier to OEM customers, we are dependent in large part on the success of the business of our OEM customers. Model year changes by our OEM customers or production disruptions or hiatuses may adversely impact our sales or cause our sales to vary from quarter to quarter. In addition, losses in market share individually or a decline in the overall market of our OEM customers or the discontinuance by our OEM customers of their products which incorporate our products could negatively impact our business, financial condition or results of operations.

A relatively small number of customers account for a substantial portion of our sales. The loss of all or a substantial portion of our sales to any of these customers, whether through the temporary or permanent discontinuation of their products which incorporate our products or otherwise, or the loss of market share by these customers could have a material adverse impact on us and our results of operations.

Sales attributable to our five largest OEM customers, which can vary from year to year, collectively accounted for approximately 23%, 24%, and 23% of our sales in fiscal years 2022, 2021 and 2020. The loss of all or a substantial portion of our sales to any of these OEM customers, whether through the temporary or permanent discontinuation of their products which incorporate our products or otherwise, the loss of market share by these customers, manufacturing or other problems, including disruptions related to the COVID-19 pandemic, could have a material impact on our business, financial condition or results of operations.

Currency exchange rate fluctuations could impact gross margins and expenses.

Foreign currency fluctuations could in the future have an adverse effect on our business, financial condition or results of operations. U.S. government policy, including continued interest rate increases by the Federal Reserve, may impact the exchange rate between the U.S. dollar and foreign currencies. We sell our products inside and outside of the U.S. primarily in U.S. Dollars and New Taiwan Dollars. However, some of the OEMs purchasing products from us sell their products in Europe and other foreign markets using the Euro and other foreign currencies. As a result, as the U.S. Dollar appreciates against these foreign currencies, our products will become relatively more expensive for these OEMs. Accordingly, competitive products that our OEM customers can purchase in other currencies may become more attractive, and we could lose sales as these OEMs seek to replace our products with cheaper alternatives. In addition, should the U.S. Dollar depreciate significantly, this could have the effect of decreasing our gross margins and adversely impact our business, financial condition or results of operations.

With a majority of our manufacturing operations for our bike products occurring in Taiwan, a percentage of our sales and expenses are denominated in the New Taiwan Dollar. Should the New Taiwan Dollar appreciate against the U.S. Dollar, this could have the effect of decreasing our sales, increasing our expenses, and decreasing our profitability.

Additionally, certain of our operations take place in Canada and a percentage of our sales and expenses are denominated in Canadian Dollars. Our operating profitability could be negatively impacted as a result of changes in the exchange rate between the U.S. Dollar and the Canadian Dollar.

Our international operations are exposed to risks associated with conducting business globally.

As a result of our international presence, we are exposed to increased risks inherent in conducting business outside of the U.S. In addition to foreign currency risks, these risks include:

- difficulty in transporting materials internationally, including labor disputes at West Coast ports, which handle a large amount of our products;
- political, economic, or other actions from China or changes in China-Taiwan relations could impact Taiwan and its economy, and may adversely affect our operations in Taiwan, our customers, and our supply chain;
- geopolitical regional conflicts, including the impact of the Russian invasion of Ukraine on the global economy, energy supplies and raw materials, terrorist activity, political unrest, civil strife, acts of war and other political uncertainty;
- increased difficulty in protecting our intellectual property rights and trade secrets;
- changes in tax laws and the interpretation of those laws;
- exposure to local economic conditions;
- unexpected government action or changes in legal or regulatory requirements;
- changes in tariffs, quotas, trade barriers and other similar restrictions on sales;
- the effects of any anti-American sentiments on our brands or sales of our products;
- increased difficulty in ensuring compliance by employees, agents and contractors with our policies as well as with the laws of multiple jurisdictions, including but not limited to the U.S. Foreign Corrupt Practices Act, local and international environmental, health and safety laws, and increasingly complex regulations relating to the conduct of international commerce;
- increased difficulty in controlling and monitoring foreign operations from the U.S., including increased difficulty in identifying and recruiting qualified personnel for our foreign operations; and
- increased difficulty in staffing and managing foreign operations or international sales.

An adverse change in any of these conditions could have a negative effect upon our business, financial condition or results of operations.

Our sales could be adversely impacted by the disruption or cessation of sales by other bike component manufacturers or if other bike component manufacturers enter into the specialty bike component market.

Most of the bikes incorporating our suspension products also use products and components manufactured by other bike component manufacturers. If such component manufacturers were to cease selling their products and components on a standalone basis, their sales are disrupted, or their competitive market position or reputation is diminished, customers could migrate to competitors that sell complementary bike products that we do not sell. Moreover, such bike component manufacturers could begin manufacturing bike suspension products, wheels, or cranks, or bundle their bike components with suspension products, wheels or cranks manufactured by competitors. If any of the foregoing were to occur, our sales could decrease and our business, financial condition or results of operations could suffer.

We have been and may become subject to intellectual property disputes that could cause us to incur significant costs or pay significant damages or prohibit us from selling our products.

As we develop new products or attempt to use our brands in connection with new products, we seek to avoid infringing the valid patents and other intellectual property rights of our competitors. However, from time to time, third parties have alleged, or may allege in the future, that our products and/or trademarks infringe upon their proprietary rights. We will evaluate any such claims and, where appropriate, may obtain or seek to obtain licenses or other business arrangements. To date, there have been no significant interruptions in our business as a result of any claims of infringement, and we do not hold patent infringement insurance. Any claim, regardless of its merit, could be expensive, time consuming to defend and distract management from our business. Moreover, if our products or brands are found to infringe third-party intellectual property rights, we may be unable to obtain a license to use such technology or associated intellectual property rights on acceptable terms. A court determination that our brands, products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require us to make material changes to our products and/or manufacturing processes or preclude our ability to use certain brands. In most circumstances, we are not indemnified for our use of a licensor's intellectual property, if such intellectual property is found to be infringing. Any of the foregoing results could cause us to redesign our products or defend legal actions, which could cause us to incur substantial costs that could negatively affect our business, financial condition or results of operations.

If we are unable to enforce our intellectual property rights, our reputation and sales could be adversely affected.

Intellectual property is an important component of our business. We patent our proprietary technologies related to vehicle suspension and other products in the U.S. and various foreign patent offices. Additionally, we have registered or have applied for trademarks and service marks with the U.S. Patent and Trademark Office and a number of foreign countries, including the marks FOX[®] and RACE FACE[®], to be used with certain goods and services. When appropriate, we may from time to time assert our rights against those who infringe on our patents, trademarks, trade dress, or other intellectual property. However, we may not be successful in enforcing our patents or asserting trademark, trade name or trade dress protection with respect to our brand names and our product designs, and third parties may seek to oppose or challenge our patents or trademark registrations. Further, these legal efforts may not be successful in reducing sales of suspension products by those infringing. In addition, our pending patent applications may not result in the issuance of patents, and even issued patents may be contested, circumvented or invalidated and may not provide us with proprietary protection or competitive advantages. If our efforts to develop and enforce our intellectual property are unsuccessful, or if a third party misappropriates our rights, this may adversely affect our business, financial condition or results of operations. Additionally, intellectual property protection may be unavailable or limited in some foreign countries where laws or law enforcement practices may not protect our proprietary rights as fully as in the U.S., and it may be more difficult for us to successfully challenge the use of our proprietary rights by other parties in these countries. Furthermore, other competitors may be able to successfully produce products that imitate certain of our products without infringing upon any of our patents, trademarks or trade dress. The failure to prevent or limit infringements and imitations could have a permanent negative impact on the pricing of our products or reduce our product sales and product margins, even if we are ultimately successful in limiting the distribution of a product that infringes our rights, which in turn may affect our business, financial condition or results of operations.

Although we enter into non-disclosure agreements with employees, OEMs, distributors and others to protect our confidential information and trade secrets, we may be unable to prevent such parties from breaching these agreements with us and using our intellectual property in an unauthorized manner. If our efforts to protect our intellectual property are unsuccessful, or if a third party misappropriates our rights, our business may be adversely affected. Defending our intellectual property rights can be very expensive and time consuming, and there is no assurance that we will be successful.

If we inaccurately forecast demand for our products, we may manufacture insufficient or excess quantities or our manufacturing costs could increase, which could adversely affect our business.

We plan our manufacturing capacity based upon the forecasted demand for our products. In the OEM channel, our forecasts are based in large part on the number of our product specifications for new bikes and powered vehicles and on projections from our OEM customers. In the aftermarket channel, our forecasts are based partially on discussions with our dealers and distributors as well as our own assessment of markets. If we incorrectly forecast demand, we may incur capacity issues in our manufacturing plant and supply chain, increased material costs, increased freight costs, additional overtime, and costs associated with excess inventory, all of which in turn adversely impact our cost of sales and our gross margin. Economic weakness and uncertainty in the U.S., Europe and other countries may make accurate forecasting particularly challenging.

In the future, if actual demand for our products exceeds forecasted demand, the margins on our incremental sales in excess of anticipated sales may be lower due to temporary higher costs, which could result in a decrease in our overall margins. While we generally manufacture our products upon receipt of customer orders, if actual demand is less than the forecasted demand for our products and we have already manufactured the products or committed to purchase materials in support of forecasted demand, we could be forced to hold excess inventories. In short, either excess or insufficient production due to inaccurate forecasting could have a negative effect on our business, financial condition or results of operations.

Product recalls, and significant product repair and/or replacement due to product warranty costs and claims have had, and in the future, could have, a material adverse impact on our business.

Unless otherwise required by law, we generally provide a limited warranty for our products for a one or two-year period beginning on: (i) in the case of OEM sales, the date the bike or powered vehicle is purchased from an authorized OEM where our product is incorporated as original equipment on the purchased bike or powered vehicle; or (ii) in the case of aftermarket sales, the date the product is originally purchased from an authorized dealer. From time to time, our customers may negotiate for longer or different warranty coverage. In the ordinary course of business, we incur warranty costs and reserve against such costs in our financial statements. However, there is a risk that a product could underperform and require us to adjust our warranty reserves or incur costs in excess of these reserves, which could adversely affect our results of operations.

If any of our products are or are alleged to be defective, we may be required to participate in a recall involving such products. Our products and items where our products are incorporated as original equipment on the purchased item are frequently subject to regulation by various agencies, including, for example, the NHTSA, the CPSC and/or similar state and international regulatory authorities. We have had in the past, and may have in the future, recalls (both voluntary and involuntary) of our products or of items that incorporate our products. In the case of OEM sales, each manufacturer has its own practices regarding product recalls and other product liability actions that could involve its suppliers. Additionally, as suppliers become more integrally involved in the design process and assume a greater role in the overall system design, OEMs could potentially look to us to share in the cost if faced with recalls and product liability claims.

Although we carry product liability and product recall insurance, no assurance can be made that such insurance will provide adequate coverage against any potential claims, such insurance is available in the appropriate markets or that we will be able to obtain such insurance on acceptable terms in the future. In addition to the direct costs related to these or other recalls, our aftermarket and OEM sales could be adversely affected if we do not have a ready replacement product for such recalled products. Such recall events could also adversely affect the image of our brands and have a negative effect on our relationships with our OEMs, sponsored athletes and race teams, or otherwise have a negative effect on our business, financial condition or results of operations.

An adverse determination in any material product liability claim against us could adversely affect our operating results or financial condition.

The use of our products by consumers, often under extreme conditions, exposes us to risks associated with product liability claims. If our products are defective or used incorrectly by our customers, bodily injury, property damage or other injury, including death, may result in, and could give rise to product liability claims against us, which could adversely affect our brands' image or reputation. We have encountered product liability claims in the past and carry product liability insurance to help protect us against the costs of such claims, although our insurance may not be sufficient to cover all losses. Any losses that we may suffer from product liability claims, and the effect that any product liability litigation may have upon the reputation and marketability of our products, may have a negative impact on our business, financial condition or results of operations.

We are subject to certain risks in our manufacturing and in the testing of our products.

As of December 30, 2022, we employed approximately 4,400 employees worldwide, a large percentage of which work at our manufacturing facilities. Our business involves complex manufacturing processes that can be inherently dangerous. Although we employ safety procedures in the design and operation of our facilities, there is a risk that an accident or death could occur in one of our facilities. In addition, prior to the introduction of new products, our employees test the products under rigorous conditions, which involve the risk of injury or death. Any accident could result in manufacturing or product delays, which could negatively affect our business, financial condition or results of operations. The outcome of litigation is difficult to assess or quantify, and the cost to defend litigation can be significant. As a result, the costs to defend any action or the potential liability resulting from any such accident or death or arising out of any other litigation, and any negative publicity associated therewith, could have a negative effect on our business, financial condition or results of operations.

Fuel shortages, or high prices for fuel, could have a negative effect on the use of powered vehicles that use our products.

Gasoline or diesel fuel is required for the operation of the powered vehicles that use our products. There can be no assurance that the supply of these fuels will continue uninterrupted, that rationing will not be imposed or that the price of or tax on these petroleum products will not significantly increase in the future. For example, there have been significant increases in the price of gasoline and diesel fuel due to geopolitical developments, including the impacts resulting from the Russian invasion of Ukraine, and there are heightened uncertainties regarding the future price and availability of gasoline and diesel fuel. Future shortages of gasoline and diesel fuel and substantial increases in the price of fuel could have a material adverse effect on our powered vehicle product category, which could have a negative effect on our business, financial condition or results of operations.

We do not control our suppliers, OEMs, other customers or partners, or require them to comply with a formal code of conduct, and actions that they might take could harm our reputation and sales.

We do not control our suppliers, OEMs, other customers or partners, or their labor, environmental or other practices. A violation of labor, environmental, intellectual property or other laws by our suppliers, OEMs, other customers or partners, or a failure of these parties to follow generally accepted ethical business practices, could create negative publicity and harm our reputation. In addition, we may be required to seek alternative suppliers or partners if these violations or failures were to occur. We do not inspect or audit compliance of our suppliers, OEMs, customers or partners with these laws or practices, and we do not require our suppliers, OEMs, customers or partners to comply with a formal code of conduct. Any conduct or actions that our suppliers take could reduce demand for our products, harm our ability to meet demand or harm our reputation, brand image, business, financial condition or results of operations.

We may incur higher employee costs in the future.

We are subject to government-mandated wage and benefit laws and regulations in many varying countries and jurisdictions. As we expand internationally, we are also subject to applicable laws in each such jurisdiction. Increases in the mandated wage in any or all of the jurisdictions in which we operate could subject us to increased costs, thereby impacting our business, financial condition, or results of operations. Further, the evolving labor market and increased ability for employees in our industry and other industries to work from home or have remote work arrangements may impact the turnover of our employees, potentially making it more difficult for us to compete.

We maintain a self-insured healthcare plan for our employees based in the U.S. We have insurance coverage in place for individual claims above a specified amount in any year. Inflation in healthcare costs, as well as additional costs we may incur as a result of current or future federal or state healthcare legislation and regulations, could significantly increase our employee healthcare costs in the future. Continued increases in our employee costs could adversely affect our earnings, financial condition and liquidity.

We rely on increasingly complex information systems for management of our manufacturing, distribution, sales and other functions. If our information systems fail to perform these functions adequately or if we experience an interruption in our operations, our business could suffer.

All of our major operations, including manufacturing, distribution, sales and accounting, are dependent upon our complex information systems. Our information systems are vulnerable to damage or interruption from, among other things:

- earthquake, fire, flood, hurricane and other natural disasters;
- power loss, computer systems failure, internet and telecommunications or data network failure; and
- hackers, computer viruses, software bugs, implementing new functions or releases of software.

Any damage or significant disruption in the operation of such systems or the failure of our information systems to perform as expected could disrupt our operations, reduce our efficiency, delay our fulfillment of customer orders or require significant unanticipated expenditures to correct, and thereby have a negative effect on our business, financial condition or results of operations.

ERP implementations are complex and time-consuming projects that involve substantial expenditures on system software and implementation activities. ERP implementations also require transformation of business and financial processes in order to reap the benefits of the ERP system. Any such future transformation, due to acquisition integration or business growth and consolidation, involves risks inherent in the conversion to a new computer system, including loss of information and potential disruption to our normal operations. Our business and results of operations may be adversely affected if we experience operating problems or cost overruns during the ERP implementation process, or if the ERP system and the associated process changes do not give rise to the benefits that we expect.

Additionally, if we do not effectively implement the ERP system as planned or the system does not operate as intended, the effectiveness of our internal control over financial reporting could be adversely affected.

We could be negatively impacted by cybersecurity attacks and are subject to evolving privacy laws in the U.S. and other jurisdictions that could adversely impact our business and require that we incur substantial costs.

We use a variety of information technology systems in the ordinary course of business, which are potentially vulnerable to unauthorized access, computer viruses, ransomware software viruses and other similar types of malicious activities and cyber-attacks, including cyber-attacks to our information technology infrastructure and attempts by others to gain access to our propriety or sensitive information, and ranging from individual attempts to advanced persistent threats. Further, ransomware attacks are becoming increasingly prevalent and severe. To alleviate the financial, operational, and reputational impact of a ransomware attack, it may be preferable to make extortion payments, but we may be unwilling or unable to do so, including, for example, if applicable laws or regulations prohibit such payments. The procedures and controls we use to monitor these threats and mitigate our exposure may not be sufficient to prevent cybersecurity incidents. The results of these incidents could include misstated financial data, theft of trade secrets or other intellectual property, liability for disclosure of confidential customer, supplier or employee information, increased costs arising from the implementation of additional security protective measures, litigation and reputational damage, which could materially adversely affect our financial condition, business or results of operations. Any remedial costs or other liabilities related to cybersecurity incidents may not be fully insured or indemnified by other means. Moreover, we or our third-party vendors or business partners may be more vulnerable to such attacks in remote work environments, which have increased in response to the COVID-19 pandemic.

Additionally, security breaches could result in a violation of applicable U.S. and international privacy and other laws and subject us to governmental investigations and proceedings, which could result in our exposure to material civil or criminal liability. For example, the European Union adopted a regulation that became effective in May 2018, called the General Data Protection Regulation (“GDPR”). GDPR requires companies to meet new requirements regarding the handling of personal data, including its use, protection and the ability of persons whose data is stored to correct or delete such data about themselves. Similarly, the California Consumer Privacy Act (“CCPA”), which took effect on January 1, 2020, imposes additional obligations on businesses to make new disclosures about data collection, use, and sharing practices and affords consumers new rights with respect to their data. It also provides a new private right of action for data breaches. The CCPA has been amended several times, including by the California Privacy Rights Act (“CPRA”), a California ballot initiative that passed in November 2020, and took effect in most material aspects on January 1, 2023, which, among other things, significantly modifies the CCPA, including by expanding consumers’ rights with respect to certain personal information and creating a new state agency to oversee implementation and enforcement efforts. Failure to meet GDPR, CCPA and CPRA requirements could result in financial penalties. Furthermore, the CCPA and CPRA could mark the beginning of a trend toward more stringent privacy legislation in the U.S., as other states across the country are considering and proposing similar laws, and states like Virginia and Colorado have recently enacted CCPA-like laws to provide their respective residents with similar rights. Privacy laws, both domestically and internationally, are changing rapidly, including a discussion in Congress of a new federal data protection and privacy law, all of which may add additional complexity, variation in requirements, restrictions and potential legal risk, require additional investment in resources for compliance programs, and result in increased compliance costs and/or changes in business marketing practices and policies.

Our vendors’ and commercial partners’ information technology systems may fail or suffer security breaches, which could result in a material disruption of our operations.

Despite the implementation of security measures, the information technology systems of our vendors or commercial partners are vulnerable to damage from computer viruses, ransomware software viruses and other similar types of malicious activities, unauthorized access, natural disasters, and electrical failures. Such events could cause disruptions in our operations. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data, or inappropriate disclosure of confidential or propriety information, we could be subject to litigation and reputational harm, which could materially adversely affect our financial condition, business or results of operations.

We have grown and may continue to grow in the future through acquisitions. Growth by acquisitions involves risks, and we may not be able to effectively integrate businesses we acquire or we may not be able to identify or consummate any future acquisitions on favorable terms, or at all.

We have completed several acquisitions over the past several years, including our acquisition of SCA in March 2020, Outside Van and Sola Sport Pty Ltd. (“Sola Sport”) in May 2021, and Shock Therapy in December 2021. Additionally, we intend to selectively evaluate additional acquisitions in the future. Any acquisitions that we have made and might make are subject to various risks and uncertainties and could have a negative impact on our business, financial condition or results of operations. These risks include the inability to integrate effectively the operations, products, technologies and personnel of the acquired companies (some of which may be spread out in different geographic regions), the inability to achieve anticipated cost savings or operating synergies, the earn-outs we may contractually obligate ourselves to pay, and the risk we may not be able to effectively manage our operations at an increased scale of operations resulting from such acquisitions. In the event we do complete acquisitions in the future, such acquisitions could affect our cash flows and net income as we expend funds, increase indebtedness and incur additional expenses in connection with pursuing acquisitions. We may also issue shares of our common stock or other securities from time to time as consideration for future acquisitions and investments. We may not be able to identify or consummate any future acquisitions on favorable terms, or at all.

Our operating results are subject to quarterly variations in our sales, which could make our operating results difficult to predict and could adversely affect the price of our common stock.

We have experienced, and expect to continue to experience, substantial quarterly variations in our sales and net income. Our quarterly results of operations fluctuate, in some cases significantly, as a result of a variety of other factors, including, among other things:

- the timing of new product releases or other significant announcements by us or our competitors;
- new advertising initiatives;
- fluctuations in raw materials and component costs; and
- changes in our practices with respect to building inventory.

As a result of these quarterly fluctuations, comparisons of our operating results between different quarters within a single year are not necessarily meaningful and may not be accurate indicators of our future performance. Any future quarterly fluctuations that we report may differ from the expectations of market analysts and investors, which could cause the price of our common stock to fluctuate significantly. We also believe that the seasonal nature of our business may have been overshadowed throughout the past few years due to the rapid growth in sales we have experienced during those periods.

Our beliefs regarding the future growth of the performance-defining product market are supported by qualitative data and limited sources and may not be reliable. A reduction or lack of continued growth in the popularity of high-end bikes, bikes or powered vehicles or in the number of consumers who are willing to pay premium prices for well-designed, performance-oriented equipment in the markets in which we sell our products could adversely affect our product sales and profits, financial condition or results of operations.

We generate virtually all of our revenues from sales of performance-defining products. Our beliefs regarding the outlook of the performance-defining product market come from qualitative data and limited sources, which may not be reliable. If our beliefs regarding the opportunities in the market for our products are incorrect or the number of consumers who we believe are willing to pay premium prices for well-designed, performance-oriented equipment in the markets in which we sell our products does not increase, or declines, we may fail to achieve future growth and our business, financial condition or results of operations could be negatively affected.

Our operations may be impaired if our information technology systems fail to perform adequately or if they are the subject of a data breach or cyber-attack.

Information technology systems are critically important to operating our business. We rely on information technology systems to manage business data, communications, supply chain, order entry and fulfillment, and other business processes. The failure of any of the information technology systems to perform as anticipated could disrupt our business and could result in transaction errors, processing inefficiencies and the loss of sales and customers, which could materially adversely affect our business, financial condition, or results of operations.

We carry cyber insurance policies to protect and offset a portion of potential costs incurred from a security breach. Additionally, we currently have cyber insurance policies to provide supplemental coverage above the coverage carried by our other third-party insurance managers. Despite various precautionary steps to protect our business from losses resulting from cyber-attacks, any cyber-attack occurrence could still result in losses, which could affect our results of operations. We are not aware of any cyber incidents that we believe to be material or that could have a material adverse effect on our business, financial condition and results of operations

Because of the current inflation affecting the economy and the Federal Reserve's interest rate increases in response, we may be harmed in the future.

We believe inflation, and actions taken by the Federal Reserve in response, currently pose a risk to us in a number of ways. General inflation in the United States has risen to levels not experienced in recent decades, including rising energy prices, prices for consumer goods, interest rates, wages, and currency volatility and downgrades by rating agencies to the U.S. government's credit rating or concerns about its credit and deficit levels in general, could cause interest rates and borrowing costs to rise. These increases and any fiscal or other policy interventions by the U.S. government in reaction to such events could negatively impact our business by increasing our operating costs and our borrowing costs as well as decreasing capital. Specifically, the Federal Reserve increased benchmark interest rates multiple times in 2022, has already increased benchmark interest rates in 2023, and has indicated its intention to continue to raise benchmark interest rates in 2023 in an effort to curb the upward inflationary pressure on the cost of goods and services across the U.S. The raw materials and other supplies we use to produce our products have experienced increasing prices during recent periods as a result of inflation. In response, we have increased the prices we charge customers for our products. While these price adjustments have not caused a reduction in sales thus far, continued increases in inflation rates may result in a reduction of customers or sales volumes. Additionally, as the Federal Reserve begins to increase interest rates, the result could be a recession which would slow demand for our products and hinder our sales growth, or cause sales to decline in future periods. As of the date of this Annual Report, we cannot predict how extensive the inflation or the effects of the Federal Reserve's responses thereto will be, its duration or the ultimate impact on us. Additionally, the U.S. government's credit and deficit concerns, the European sovereign debt crisis, and the potential trade war with China, could further cause interest rates to be volatile, which may negatively impact our ability to access the debt markets on favorable terms.

RISKS RELATED TO OUR INDEBTEDNESS AND LIQUIDITY

The 2022 Credit Facility places operating restrictions on us and creates default risks.

The 2022 Credit Facility with Wells Fargo Bank, National Association and other named lenders contains covenants that place restrictions on our operating activities. These covenants, among other things, limit our ability to:

- pay dividends or make distributions to our stockholders or redeem our stock;
- incur additional indebtedness or permit additional encumbrances on our assets; and
- make acquisitions or complete mergers or sales of assets, or engage in new businesses.

These restrictions may interfere with our ability to obtain financing or to engage in other business activities, which may have a material adverse effect on our business, financial condition or results of operations.

If we are unable to comply with the covenants contained in the 2022 Credit Facility, it could constitute an event of default and our lenders could declare all borrowings outstanding, together with accrued and unpaid interest, to be immediately due and payable. If we are unable to repay or otherwise refinance these borrowings when due, our lenders could sell the collateral securing the 2022 Credit Facility, which constitutes substantially all of our assets.

We will continue to have the ability to incur debt and our levels of debt may affect our operations and our ability to pay the principal of and interest on our debt.

In the future, we and our subsidiaries may be able to incur substantial additional debt from amendments to the 2022 Credit Facility, additional lending sources subject to the restrictions contained in the 2022 Credit Facility, or because of certain debt instruments we may issue.

As of December 30, 2022, we had \$200.0 million of indebtedness, and \$450.0 million in revolving credit available to borrow under the 2022 Credit Facility. Our ability to borrow under the 2022 Credit Facility fluctuates from time to time due to, among other factors, our borrowings under the 2022 Credit Facility.

Our indebtedness could be costly or have adverse consequences, such as:

- requiring us to dedicate a substantial portion of our cash flows from operations to payments on our debt;
- limiting our ability to obtain future financing for working capital, capital expenditures, acquisitions, debt obligations and other general corporate requirements;
- making us more vulnerable to adverse conditions in the general economy or our industry and to fluctuations in our operating results, including affecting our ability to comply with and maintain any financial tests and ratios required under our indebtedness;
- limiting our flexibility to engage in certain transactions or to plan for, or react to, changes in our business and industry;
- putting us at a disadvantage compared to competitors that have less relative and/or less restrictive debt; and

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- subjecting us to additional restrictive financial and other covenants.

If we incur substantial additional indebtedness in the future, these higher levels of indebtedness may affect our ability to pay the principal of and interest on existing indebtedness and our creditworthiness generally.

Our outstanding indebtedness under the 2022 Credit Facility bears interest at a variable rate, which makes us more vulnerable to increases in interest rates and could cause our interest expense to increase and decrease cash available for operations and other purposes.

Borrowings under the 2022 Credit Facility bear interest on a variable rate, which increases and decreases based upon changes in the underlying interest rate and/or our leverage ratio. Any such increases in the interest rate or increases of our borrowings under the 2022 Credit Facility will increase our interest expense.

The Federal Reserve increased benchmark interest rates multiple times in 2022, has already increased benchmark interest rates in 2023, and has indicated its intention to continue to raise benchmark interest rates in 2023 in an effort to curb the upward inflationary pressure on the cost of goods and services across the U.S.. Increases in these rates increase our interest expense and reduce our funds available for operations and other purposes. Although from time to time we may enter into agreements to hedge a portion of our interest rate exposure, such as the 2022 Swap Agreement, these agreements may be costly and may not protect against all interest rate fluctuations. Accordingly, we may experience material increases in our interest expense as a result of increases in interest rate levels generally. Refer to [Note 11. Derivatives and Hedging](#) for additional information regarding the interest rate swap arrangement.

As of December 30, 2022, we had \$200.0 million of indebtedness outstanding under the 2022 Credit Facility. Based on the \$100.0 million of variable interest rate indebtedness that was outstanding under the 2022 Credit Facility as of December 30, 2022, after giving effect to our interest rate swap, a hypothetical 100 basis point increase or decrease in the interest rate would have resulted in an approximately \$1.0 million increase or decrease in interest expense for the year ended December 30, 2022, respectively.

We may incur losses on interest rate swap and hedging arrangements.

We may periodically enter into agreements to reduce the risks associated with increases in interest rates, such as our 2022 Swap Agreement. Although these agreements may partially protect against rising interest rates, they also may reduce the benefits to us if interest rates decline.

RISKS RELATED TO LAWS AND REGULATIONS

Changes in tax laws and regulations or other factors could cause our income tax obligations to increase, potentially reducing our net income and adversely affecting our cash flows.

We are subject to income tax requirements in various jurisdictions in the U.S. and internationally. In preparing our financial statements, we provide for income taxes based on current tax laws and regulations and the estimated taxable income within each of these jurisdictions. Our income tax obligations may be higher due to numerous factors. Changes to tax laws or interpretations proposed by the current administration in the U.S.; modifications to the U.S. tax reform enacted in December 2017; revisions to estimates regarding our ability to utilize foreign tax credits, particularly increases in revenues generated in Taiwan or changes in the export potential from Taiwan; increases in applicable tax rates; and actions by tax authorities in jurisdictions in which we operate could have a material impact on our net income and cash flows.

We are subject to extensive U.S. federal and state, foreign and international safety, environmental, employment practices and other government regulations that may require us to incur expenses or modify product offerings in order to maintain compliance with such regulation, which could have a negative effect on our business and results of operations.

We are subject to extensive laws and regulations relating to safety, environmental, and other laws and regulations promulgated by the U.S. federal and state governments, as well as foreign and international regulatory authorities. Although we believe that our products, policies and processes comply with applicable safety, environmental, and other standards and related regulations, future regulations may require additional safety standards that would require additional expenses and/or modification of product offerings in order to maintain such compliance. Failure to comply with applicable regulations could result in fines, increased expenses to modify our products and harm to our reputation, all of which could have an adverse effect on our business, financial condition or results of operations.

Moreover, certain of our product offerings require us to comply with the rules and regulations of various standards of standard-setting organizations, such as the CPSC, the NHTSA, and the European Committee for Standardization. Failure to comply with the requirements of such organizations could result in the loss of certain customer contracts, fines and penalties, or both, which could have an adverse effect on our business, financial condition or results of operations.

Unpredictability in the adoption, implementation and enforcement of increasingly stringent emission standards by multiple jurisdictions could adversely affect our business.

Certain of our products are subject to extensive statutory and regulatory requirements governing emission and noise, including standards imposed by the Environmental Protection Agency, the European Union, state regulatory agencies (such as the California Air Resources Board) and other regulatory agencies around the world. We have made, and continue to make, capital and research expenditures to ensure certain of our products comply with these emission standards. Developing products to meet numerous changing government regulatory requirements, with different implementation timelines and emission requirements, makes developing products efficiently for multiple markets complicated and could result in additional costs that may be difficult to recover in certain markets. In some cases, we may be required to develop new products to comply with new regulations, particularly those relating to air emissions. The successful development and introduction of new and enhanced products in order to comply with new regulatory requirements are subject to other risks, such as delays in product development, cost over-runs and unanticipated technical and manufacturing difficulties.

In addition to these risks, the nature and timing of government implementation and enforcement of increasingly stringent emission standards is unpredictable. Any delays in implementation or enforcement could result in the products we developed or modified to comply with these standards becoming unnecessary or becoming necessary later than expected, which in turn could delay, diminish or eliminate the expected return and may adversely affect our business.

Increasing focus on environmental, social and governance responsibility may impose additional costs on us and expose us to new risks.

Regulators, stockholders and other interested constituencies have focused increasingly on the environmental, social and governance practices of companies. For example, in March 2022, the SEC proposed new rules for extensive and prescriptive climate-related disclosure in annual reports and registration statements, which would also require inclusion of certain climate-related financial metrics in a note to companies' audited financial statements. Further, our customers may require us to implement environmental, social or governance responsibility procedures or standards before they will continue to do business with us. Additionally, we may face reputational challenges in the event our environmental, social or governance responsibility procedures or standards do not meet the standards set by certain constituencies. The occurrence of any of the foregoing could have a material adverse effect on the price of our shares and our business, financial condition and results of operations.

Climate change and related regulatory responses may adversely impact our business.

There is increasing concern that a gradual increase in global average temperatures due to increased concentration of carbon dioxide and other greenhouse gases in the atmosphere will cause significant changes in weather patterns around the globe and an increase in the frequency and severity of natural disasters. Changes in weather patterns and an increased frequency, intensity and duration of extreme weather conditions could, among other things, disrupt the operation of our supply chain, since our bike suspension manufacturing is entirely located in Taiwan, which is prone to typhoons, increase our product costs and impact the types and amounts of products that consumers purchase, since the majority of our products are used in outdoor recreation. In addition, a number of our facilities are located in California, a state that frequently experiences earthquakes and wildfires. As a result, the effects of climate change could have a long-term adverse impact on our business and results of operations.

In many of the countries in which we operate, governmental bodies are increasingly enacting legislation and regulations in response to the potential impacts of climate change. For example, many nations have agreed to limit emissions of greenhouse gas pursuant to the United Nations Framework Convention on Climate Change, also known as the "Kyoto Protocol" and other initiatives. In December 2015, the U.S. and 194 other countries adopted the Paris Agreement, committing to work towards addressing climate change and agreeing to a monitoring and review process for greenhouse gas emissions. Although the U.S. withdrew from the Paris Agreement in November 2020, the U.S. officially rejoined the Paris Agreement in February 2021 following the change in Presidential administrations, and may in the future choose to join other international agreements targeting greenhouse gas emissions. In addition, in January 2021, President Biden issued an executive order directing all federal agencies to review and take action to address any federal regulations, orders, guidance documents, policies, and any similar agency actions promulgated during the prior administration that may be inconsistent with the current administration's policies and to confront the climate crisis. President Biden also issued an executive order solely targeting climate change. The adoption of legislation or regulatory programs at the federal level or other government action to reduce emissions of greenhouse gases, could have the potential to impact our operations directly or indirectly as a result of required compliance by our suppliers and us. In addition, we may choose to take voluntary steps to mitigate our impact on climate change. As a result, we may experience increases in energy, production, transportation and raw material costs, capital expenditures or insurance premiums and deductibles. Inconsistency of legislation and regulations among jurisdictions may also affect the costs of compliance with such laws and regulations. Any assessment of the potential impact of future climate change legislation, regulations or industry standards, as well as any international treaties and accords, is uncertain given the scope of potential regulatory change in the countries in which we operate.

We are subject to employment practice laws and regulations, and, as such, are exposed to litigation risks, and we may incur higher employee costs in the future.

We are subject to extensive laws and regulations relating to employment practices, including wage and hour, wrongful termination and discrimination. Complying with such laws and regulations, and defending against allegations of our failure to comply (including meritless allegations), can be expensive and time consuming. We believe that our policies and processes comply with applicable employment standards and related regulations; however, we are subject to risks of litigation by employees and others that might involve allegations of illegal, unfair or inconsistent employment practices, including wage and hour violations and employment discrimination, misclassification of independent contractors as employees, wrongful termination and other concerns, which could require additional expenditures.

We are subject to environmental laws and regulation and potential exposure for environmental costs and liabilities.

Our operations, facilities and properties are subject to a variety of foreign, federal, state and local laws and regulations relating to health, safety and the protection of the environment. These environmental laws and regulations include those relating to the use, generation, storage, handling, transportation, treatment and disposal of solid and hazardous materials and wastes, emissions to air, discharges to waters and the investigation and remediation of contamination. Many of these laws impose strict, retroactive, joint and several liability upon owners and operators of properties, including with respect to environmental matters that occurred prior to the time the party became an owner or operator. In addition, we may have liability with respect to third-party sites to which we send waste for disposal. Failure to comply with such laws and regulations can result in significant fines, penalties, costs, liabilities or restrictions on operations that could negatively affect our business, financial condition or results of operations. From time to time, we have been involved in administrative or legal proceedings relating to environmental, health or safety matters and have incurred expenditures relating to such matters in the past.

We believe that our operations are in substantial compliance with applicable environmental laws and regulations. However, additional environmental issues relating to presently known or unknown matters could give rise to currently unanticipated investigation, assessment or expenditures. Compliance with laws or regulations that are more stringent, as well as different interpretations of existing laws, more vigorous enforcement by regulators or unanticipated events, could require additional expenditures that may materially affect our business, financial condition or results of operations.

Federal, state, local, foreign and international laws and regulations relating to environmental matters, land-use, and noise and air pollution may have a negative impact on our future sales and results of operations.

The products in our powered vehicles category are used in vehicles that are subject to numerous federal, state, local, foreign and international laws and regulations relating to noise and air pollution. Powered vehicles, and even bikes, have become subject to laws and regulations prohibiting their use on certain lands and trails. For example, in San Mateo County, California, mountain bikes are not allowed on county trails, and ATV and side-by-sides riding is not allowed in Zion National Park, among many other national and state parks. In addition, recreational snowmobiling has been restricted in some national parks and federal lands in Canada, the U.S. and other countries. If more of these laws and regulations are passed and the users of our products lose convenient locations to ride their mountain bikes and powered vehicles, our sales could decrease and our business, financial condition or results of operations could suffer.

Regulations related to conflict minerals may force us to continue to incur additional expenses and otherwise adversely impact our business.

The SEC rules regarding disclosure of the use of tin, tantalum, tungsten and gold, known as conflict minerals, in products manufactured by public companies require ongoing due diligence to determine whether such minerals originated from the Democratic Republic of Congo ("DRC"), or an adjoining country and whether such minerals helped finance the armed conflict in the DRC. As a public company, we are required to comply with the reporting obligations annually. There are costs associated with complying with these disclosure requirements, including costs to determine the origin of conflict minerals in our products. The effect of such rules on customer, supplier and/or consumer behavior could adversely affect the sourcing, supply and pricing of materials used in our products. As a result, we may also incur costs with respect to potential changes to products, processes or sources of supply. We may face disqualification as a supplier for customers and reputational challenges if our due diligence procedures do not enable us to verify the origins for all conflict minerals used in our products or to determine if such conflict minerals are conflict-free. Accordingly, these rules could have a material adverse effect on our business, results of operations or financial condition.

We retain certain personal information about individuals and are subject to various privacy and consumer protection laws.

We collect personal information for various purposes and through various methods, including from third parties and directly from consumers through our website, at events and sales, and via telephone and email. Certain individuals may object to the processing of this data, request the deletion of this data, or opt out of the sharing of this data, any of which may negatively impact our ability to provide effective customer service or otherwise impact our operations. Collection and use of personal information in conducting our business may be subject to federal and/or state laws and regulations in the U.S. and foreign jurisdictions including, in particular, various jurisdictions in Europe, and such laws and regulations may restrict our processing of such personal information and may hinder our ability to attract new customers or market to existing customers. We may incur significant expenses to comply with privacy, consumer protection, and security standards and protocols imposed by law, regulation, industry standards or contractual obligations.

Our vendors and any potential commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements.

Our vendors and any potential commercial partners expose us to the risk of fraud or other misconduct. Misconduct by these parties could include intentional, reckless, and/or negligent conduct or disclosure of unauthorized activities to us that violate federal and/or state data privacy, security, and consumer protection laws and regulations in the U.S. and abroad. Such misconduct could result in regulatory sanctions and cause serious harm to our reputation.

U.S. policies related to global trade and tariffs could have a material adverse effect on our results of operations.

The current domestic and international political environment, including existing and potential changes to U.S. policies related to global trade and tariffs, have resulted in uncertainty surrounding the future state of the global economy. In 2018, the U.S. imposed tariffs of 25 percent on steel and 10 percent on aluminum, with only a handful of countries exempt from the increase. Throughout the Trump Administration, the U.S. and China imposed a variety of tariffs on most goods traded between the two countries. The U.S. and the European Union also imposed tariffs on each other's products stemming from a dispute at the World Trade Organization related to aircraft. The Biden Administration and U.S. Congress have created significant uncertainty about their review of tariffs and future relationships between the U.S. and other countries with respect to regulations.

While we have limited exposure to implemented tariffs at this time, any expansion in the types of tariffs implemented has the potential to negatively impact our supply chain costs as well as the operating performance of our customers, thus negatively affecting our sales, gross margin and operating performance. Additionally, there is a risk that continued U.S. tariffs on imports could be met with additional retaliatory tariffs on U.S. produced exports and that the broader trade uncertainty could intensify. This has the potential to significantly impact global trade and economic conditions in many of the regions where we do business and have a material adverse effect on our results of operations.

RISKS RELATED TO OWNERSHIP OF OUR COMMON STOCK

The trading price of our common stock may be volatile, and you might not be able to sell your shares at or above the price you pay for the shares.

The trading price of our common stock could be volatile, and you could lose all or part of your investment in our common stock. For example, from January 4, 2020 through December 30, 2022, our stock price has fluctuated between \$190.29 and \$34.58 per share and such volatility may continue in the future. Factors affecting the trading price of our common stock could include:

- variations in our operating results or those of our competitors;
- new product or other significant announcements by us or our competitors;
- changes in our product mix;
- changes in consumer preferences;
- fluctuations in currency exchange rates;
- the gain or loss of significant customers;
- recruitment or departure of key personnel;
- changes in the estimates of our operating results or changes in recommendations by any securities analysts that elect to follow our common stock;
- changes in general economic conditions as well as conditions affecting our industry in particular; and
- sales of our common stock by us, our significant stockholders or our directors or executive officers.

In addition, in recent years, the stock market has experienced significant price fluctuations. Fluctuations in the stock market generally or with respect to companies in our industry could cause the trading price of our common stock to fluctuate for reasons unrelated to our business, operating results or financial condition. Further, some companies that have had volatile market prices for their securities have had securities class actions filed against them. A lawsuit filed against us, regardless of its merits or outcome, could cause us to incur substantial costs and could divert management's attention.

Future issuances and sales of our shares, or the perception that such sales may occur, could cause our stock price to decline.

The issuance of additional shares of our common stock, such as the follow-on offering of approximately 2.8 million shares of common stock that we completed in June 2020, could dilute the ownership interest of our common stockholders and could depress the market price of shares of our common stock.

Our Amended and Restated Certificate of Incorporation authorizes us to issue 90,000,000 shares of common stock, 42,269,840 of which shares were outstanding as of December 30, 2022. In the future, we may issue additional shares of common stock or other equity or debt securities convertible into common stock in connection with financings, acquisitions, registration statements or otherwise.

After our IPO in 2013 and, more recently, in May 2022, we filed registration statements under the Securities Act to register shares of our common stock that we may issue under our equity plans. As a result, all such shares can be freely sold in the public market upon issuance, subject to any vesting or contractual lock-up agreements.

We also have a number of institutional stockholders that own significant blocks of our common stock. If one or more of these stockholders were to sell large portions of their holdings in a relatively short time, for liquidity or other reasons, the prevailing price of shares of our common stock could be negatively affected.

If securities or industry analysts do not publish research or publish unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about our business or us. If one or more of the analysts who covers us downgrades our stock or publishes unfavorable research about our business or our industry, our stock price would likely decline. If one or more of these analysts ceases coverage of our Company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

Anti-takeover provisions in our charter documents and Delaware law could discourage, delay or prevent a change in control of our Company.

Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws (together, our "Charter Documents"), as well as Delaware law, contain provisions that may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. Among other things, these provisions:

- authorize the issuance of "blank check" preferred stock that could be issued by our Board of Directors to discourage a takeover attempt;
- establish a classified Board of Directors, as a result of which the successors to the directors whose terms have expired will be elected to serve from the time of election and qualification until the third annual meeting following their election;
- require that directors be removed from office only for cause;
- provide that vacancies on our Board of Directors, including newly created directorships, may be filled only by a majority vote of directors then in office;
- provide that no action be taken by stockholders by written consent;
- provide that special meetings of our stockholders may be called only by our Board of Directors, our Chairperson of the Board of Directors, our Lead Director (if we do not have a Chairperson or the Chairperson is disabled), our Chief Executive Officer or our President (in the absence of a Chief Executive Officer);
- require supermajority stockholder voting for our stockholders to effect certain amendments to our Charter Documents; and
- establish advance notice requirements for nominations for elections to our Board of Directors or for proposing other matters that can be acted upon by stockholders at stockholder meetings.

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In addition, we are subject to Section 203 of the General Corporation Law of the State of Delaware ("DGCL"), which generally prohibits a Delaware corporation from engaging in a broad range of business combinations with a stockholder owning 15% or more of such corporation's outstanding voting stock for a period of three years following the date on which such stockholder became an "interested" stockholder. In order for us to consummate a business combination with an interested stockholder within three years of the date on which the stockholder became interested, either: (i) the business combination or the transaction that resulted in the stockholder becoming interested must be approved by our Board of Directors prior to the date the stockholder became interested; (ii) the interested stockholder must own at least 85% of our outstanding voting stock at the time the transaction commences (excluding voting stock owned by directors who are also officers and certain employee stock plans); or (iii) the business combination must be approved by our Board of Directors and authorized by at least two-thirds of our stockholders (excluding the interested stockholder) at a special or annual meeting (not by written consent). This provision could have the effect of delaying or preventing a change in control, whether or not it is desired by or beneficial to our stockholders. Any delay or prevention of a change in control transaction or changes in our Board of Directors and management could deter potential acquirers or prevent the completion of a transaction in which our stockholders could receive a substantial premium over the then-current market price for their shares of our common stock.

Our Amended and Restated Certificate of Incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or other employees.

Our Amended and Restated Certificate of Incorporation provides that, with certain limited exceptions, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for: (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of our Company owed to us or our stockholders; (iii) any action asserting a claim against us arising pursuant to any provision of the DGCL or our Charter Documents; (iv) any action to interpret, apply, enforce or determine the validity of our Charter Documents; or (v) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have received notice of and consented to the foregoing provisions. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and employees. Alternatively, if a court were to find this choice of forum provision inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition or results of operations.

GENERAL RISK FACTORS

Failure of our internal controls over financial reporting could adversely affect our business and financial results.

Our management is responsible for establishing and maintaining effective internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act of 2002, as amended. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with GAAP. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that we would prevent or detect a misstatement of our financial statements or fraud. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. The identification of a material weakness could indicate a lack of controls adequate to generate accurate financial statements that, in turn, could cause a loss of investor confidence and decline in the market price of our common stock. We cannot assure you that we will be able to timely remediate any material weaknesses that may be identified in future periods or maintain all of the controls necessary for continued compliance. Likewise, we cannot assure you that we will be able to retain sufficient skilled finance and accounting personnel, especially in light of the increased demand for such personnel among publicly traded companies.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

At December 30, 2022, we occupied the following square footage by location:

	U.S.	Other Countries	Total
Leased facilities	790,645	421,269	1,211,914
Owned facilities	914,327	42,900	957,227
Total	<u>1,704,972</u>	<u>464,169</u>	<u>2,169,141</u>

Certain administrative, research and development and manufacturing operations are located in California and Georgia. We also manufacture in the U.S. States of Michigan, Colorado, Indiana, Alabama and Oregon, and internationally in Taiwan and Canada, and maintain sales and service offices in the U.S. and Europe.

We believe that our properties are generally suitable to meet our needs for the foreseeable future. In addition, to the extent we require additional space in the future, we believe that it would be readily available on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS

From time to time, the Company is involved in legal proceedings that arise in the ordinary course of business. Although the Company cannot assure the outcome of any such legal proceedings, based on information currently available, management does not believe that the ultimate resolution of any pending matters, either individually or in the aggregate, will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

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

Market Information

Our common stock has been listed on the NASDAQ Global Select Market under the symbol "FOXF" since August 8, 2013. Our IPO was priced at \$15.00 per share on August 8, 2013. Prior to that date, there was no public trading market for our common stock. On February 16, 2023, the closing price per share of our common stock as reported on the NASDAQ Global Select Market was \$122.66 per share.

Stockholders

As of January 31, 2023, there were approximately 8 holders of record of our common stock. The actual number of stockholders is greater than this number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Dividend Policy

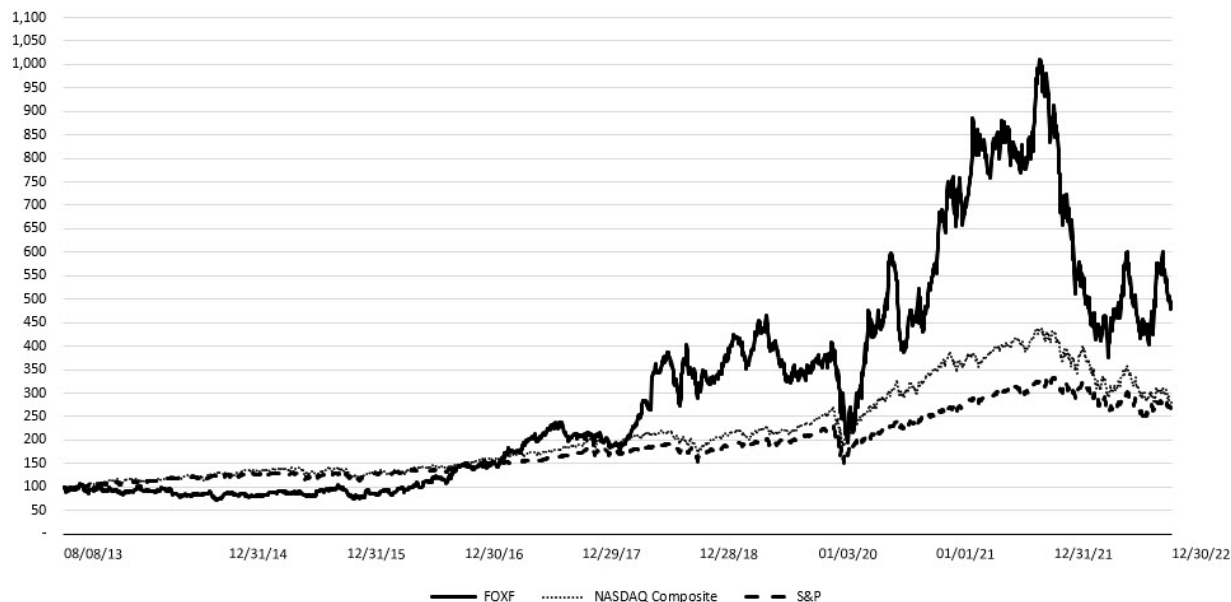
We did not declare or pay any dividends in the years ended December 30, 2022 and December 31, 2021. In addition, our 2022 Credit Facility contains covenants limiting our ability to pay dividends to our stockholders. See [Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Credit Facility](#) for additional information. While we currently intend to reinvest our earnings, any future determination to declare cash dividends will be made at the discretion of our Board of Directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions and any other factors that our Board of Directors may deem relevant. We do not intend to pay dividends in the foreseeable future.

Equity Compensation Plan Information

For equity compensation plan information, refer to [Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters](#) of this Annual Report on Form 10-K.

Performance Graph

The following graph shows a comparison from August 8, 2013 (the date our common stock commenced trading on the NASDAQ) through December 30, 2022 of the total cumulative return of our common stock with the total cumulative return of the NASDAQ Composite Index (the "NASDAQ Composite") and S&P 500 Index ("S&P 500"). The figures represented below assume an investment of \$100 in our common stock at the closing price of \$18.61 on August 8, 2013 and in the NASDAQ Composite and S&P 500. Data for the NASDAQ Composite and S&P 500 assume reinvestment of dividends. The comparisons in the graph are historical and are not intended to forecast or be indicative of possible future performance of our common stock.



This performance graph shall not be deemed to be "soliciting material" or "filed" or incorporated by reference in future filings with the SEC, or subject to the liabilities of Section 18 of the Exchange Act except as shall be expressly set forth by specific reference in such filing.

Issuer Purchases of Equity Securities

The table below sets forth information regarding repurchases of our common stock by us during the quarter ended December 30, 2022:

Period	Total Number of Shares Purchased (1)	Weighted Average Price Paid per Share
10/1-11/4	1,336	\$ 87.85
11/5-12/2	176	102.63
12/3-12/30	—	—
Total	1,512	\$ 89.57

(1) Includes shares acquired from holders of restricted stock unit awards and option exercises to satisfy tax withholding obligations. These shares were not purchased as part of a publicly announced program to purchase common stock.

ITEM 6. RESERVED

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes thereto included elsewhere in this Annual Report in Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed below. You should review the "Risk Factors" and "Special Note Regarding Forward-Looking Statements" sections of this Annual Report on Form 10-K for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

We design, engineer, manufacture and market performance-defining products and systems for customers worldwide. Our premium brand, performance-defining products and systems are used primarily on bikes, side-by-sides, on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, and specialty vehicles and applications. Virtually all of our revenues were from our product sales; miscellaneous sources of revenue such as royalty income and service related repair work and the associated sale of parts represented less than 1% of our sales in each of the years ended December 30, 2022, December 31, 2021 and January 1, 2021.

We have determined that we operate in one reportable segment, which is the manufacturing, sale and service of performance-defining products. Our products fall into the following two categories:

- powered vehicles, including side-by-sides, certain on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, including military, motorcycles, and commercial trucks;
- specialty sports products, which consist primarily of bike suspension and component products.

In each of the years ended December 30, 2022, December 31, 2021 and January 1, 2021, approximately 58%, 55% and 59%, respectively, of our sales were attributable to sales of products for powered vehicles and approximately 42%, 45% and 41%, respectively, of our sales were attributable to sales of specialty sports products.

Our North American sales totaled \$1,009.2 million, \$811.3 million and \$593.3 million, or 63%, 62% and 67% of our total sales in fiscal years 2022, 2021 and 2020, respectively. Our international sales totaled \$593.3 million, \$487.8 million and \$297.3 million, or 37%, 38% and 33% of our total sales in fiscal years 2022, 2021 and 2020, respectively. Sales attributable to countries outside the U.S. are based on shipment location. Our international sales, however, do not necessarily reflect the location of the end users of our products as many of our products are incorporated into bikes that are assembled at international locations and then shipped back to the U.S. We estimate, based on our internal projections and assumptions, that approximately one-third of the end users of our bike products are located outside the U.S.

Opportunities, challenges and risks

We intend to focus on generating sales of our performance-defining products through OEMs and in the aftermarket channel. To do this, we intend to continue to develop and introduce new and innovative products in our current end-markets and we intend to selectively develop products for applications and end-markets in which we do not currently participate. Currently, the majority of our sales are dependent on the demand for performance-defining products.

Our aftermarket distribution network currently consists of more than 5,000 retail dealers and distributors worldwide. To further penetrate the aftermarket channel, we intend to selectively add additional dealers and distributors in certain geographic markets, expand our internal sales force and strategically increase the number of aftermarket specific products and services that we offer for existing vehicle platforms. In addition, we believe international expansion represents a significant opportunity for us and we intend to selectively increase infrastructure investments and focus on identified geographic regions.

As a supplier to OEM customers, we are largely dependent on the success of the business of our OEM customers. Model year changes by our OEM customers may adversely impact our sales or cause our sales to vary from quarter to quarter. Losses in market share or a decline in the overall market of our OEM customers or the discontinuance by our OEM customers of their products that incorporate our products could negatively impact our business and our results of operations.

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In the fourth quarter of 2021, we completed the construction of an approximately 336,000 square foot state-of-the-art facility in Hall County, Georgia (the "Gainesville Facility"), to diversify our manufacturing platform and provide additional long-term capacity to support growth in our Powered Vehicles Group. The Gainesville Facility is being used for manufacturing, warehousing, distribution and office space. Additionally, we completed the transition of our Watsonville Facility and relocation of our powered vehicles suspension manufacturing to the Gainesville Facility in the first quarter of 2022.

From time to time, we have experienced, and may continue to experience, warranty costs and claims relating to our products. In the ordinary course of business, we reserve for such costs and claims in our financial statements. There is a risk, however, that in the future we will experience higher than expected warranty costs and claims, as well as other related costs. Please read "Risks Related to Our Business and Operations - Product recalls, and significant product repair and/or replacement due to product warranty costs and claims have had, and in the future, could have, a material adverse impact on our business" within [Item 1A. Risk Factors](#).

We intend to evaluate selective potential acquisition opportunities for performance-defining products and technologies that we believe will help us extend our performance-defining product platform. Any acquisitions that we might make are subject to various risks and uncertainties and could have a negative impact on our results of operations. In addition, we may contractually obligate ourselves to contingent consideration or acquisition related compensation payments in conjunction with such acquisitions, which could have a negative impact on our cash flow and results of operations. See [Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Material Cash Requirements](#) for additional information.

Basis of presentation

Composition of sales

Sales from:

- *Product sales:* consist of sales of performance-defining products and systems to customers worldwide. Sales are measured based on the consideration specified in a contract with a customer. We recognize sales when a performance obligation is satisfied by transferring control of a product to a customer, generally at the time of shipment. Contracts are generally in the form of purchase orders and are governed by standard terms and conditions. For larger OEMs, we may also enter into master agreements; and
- *Shipping and handling fees:* consists of shipping and handling fees billed to customers.

Net of:

- *Rebates:* consists of incentives we provide to customers based on sales of eligible products; and
- *Sales returns allowances:* consists of an estimate of our sales returns. This allowance is based upon estimates of the projected returns in future periods based on our experience with returns recorded in previous periods. Sales returns have not been significant to date; and

We attribute our past growth in sales predominantly to continued higher demand for on and off-road suspension products, acquisitions, and the success of our current product lines including new products within those lines.

Cost of sales

The cost of sales includes the cost of purchased parts and manufactured products (raw materials consumed, the cost to procure materials, labor costs, including wages, and employee benefits, and factory overhead to produce finished good products), including:

- the costs to inspect and repair products;
- shipping costs associated with inbound freight (such costs are capitalized as part of inventory and included in cost of sales as the inventory is sold);
- royalty expenses, including payments to certain parties for our use of licensed technology incorporated into our products;
- freight expenses incurred for certain shipments to customers;
- warranty costs associated with the repair or replacement of products under warranty; and
- reductions in the cost of inventory to its net realizable value, if required, for estimated excess, obsolescence or impaired balances.

Gross profit/gross margin

Our gross profit equals our sales minus cost of sales. Our gross margin measures our gross profit as a percentage of sales.

Our gross margins fluctuate based on production volumes, product, customer and channel mix and overall supply chain and manufacturing efficiencies. Generally, we earn higher gross margins on our products sold to the aftermarket channel.

Operating expenses

Our operating expenses consist of the following:

- sales and marketing;
- research and development;
- general and administrative; and
- amortization of purchased intangibles.

Our sales and marketing expenses include costs related to our sales, customer service and marketing personnel, including their wages, employee benefits and related stock-based compensation, and occupancy related expenses. Other significant sales and marketing expenses include commissions paid to outside sales representatives, promotional materials and products, our sales office costs, race support and sponsorships of events and athletes, advertising and promotions related to trade shows, and travel and entertainment.

Our research and development expenses consist primarily of salaries and personnel costs, including wages, employee benefits and related stock-based compensation for our engineering, research and development teams, occupancy related expenses, fees for third party consultants, service fees, and expenses for prototype tooling and materials, travel, and supplies. We expense research and development costs as incurred and such costs are included as research and development expenses on our consolidated statements of income.

Our general and administrative expenses include costs related to our executive, finance, legal, information technology, business development, human resources and administrative personnel, including wages, employee benefits and related stock-based compensation expenses. We record professional and contract service expenses, occupancy related expenses associated with corporate locations and equipment, and legal expenses in general and administrative expenses.

Our amortization of purchased intangibles includes amortization over their respective useful lives of our purchased intangible assets, such as customer lists and our core technology. Our intangible assets are evaluated for impairment whenever events or changes in circumstances indicate that the carrying value of the assets may not be fully recoverable. No impairments of intangible assets were identified in the years ended December 30, 2022, December 31, 2021 and January 1, 2021.

Income from operations

We define income from operations as gross profit less our operating expenses. We use income from operations as an indicator of the profitability of our business and our ability to manage costs.

Interest and other expense, net

Interest expense consists of interest charged to us under our credit facility and changes related to our interest rate swap.

Other expense, net, consists of foreign currency transaction gains and losses, gains and losses on the disposal of fixed assets, and other miscellaneous items.

Income taxes

We are subject to income taxes in the U.S. (federal and state) and various other foreign jurisdictions. Our effective tax rate could be affected by numerous factors such as change in our business operations, acquisitions, investments, entry into new businesses and geographies, intercompany transactions, the relative amount of our foreign earnings, losses incurred in jurisdictions for which we are not able to realize related tax benefits, changes in our deferred tax assets and liabilities and their valuation, changes in the laws, regulations, administrative practices, principles, and interpretations related to tax, including changes to the global tax framework and other laws and accounting rules in various jurisdictions.

For the years ended December 30, 2022, December 31, 2021 and January 1, 2021, we had effective tax rates of 12.2%, 13.0% and 12.2%, respectively.

As of December 30, 2022, our deferred tax assets included foreign tax credits of approximately \$47.8 million, which begin to expire in 2026 unless utilized.

Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. As of December 30, 2022, we reduced the valuation allowance against Foreign Tax Credits by \$9.2 million. U.S. tax regulations proposed by the U.S. Treasury and Internal Revenue Service on November 22, 2022, which were early adopted by the Company, provided clarification to earlier guidance and resulted in the Company's ability to utilize certain foreign tax credits related to royalties. As a result, the Company determined a valuation allowance was not needed. In the future, our effective tax rate could vary as we update our assessment of valuation allowances for our deferred tax assets, including those associated with credit carryforwards. It is reasonably possible that we could record a material adjustment to the valuation allowance in the next 12 months.

We are subject to examination of our income tax returns by the U.S. Internal Revenue Service ("IRS") and other tax authorities. We regularly assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our income tax liabilities and expense. Should actual events or results differ from our current expectations, charges or credits to our income tax expense may become necessary. Any such adjustments could have a significant impact on our effective tax rate.

Results of operations

The table below summarizes our results of operations for the fiscal years ended December 30, 2022, December 31, 2021, and January 1, 2021:

(in thousands)	For the fiscal years ended		
	December 30	December 31	January 1
	2022	2021	2021
Sales	\$ 1,602,491	\$ 1,299,064	\$ 890,554
Cost of sales	1,071,148	866,732	601,007
Gross profit	531,343	432,332	289,547
Operating expenses:			
Sales and marketing	90,801	70,925	52,214
Research and development	56,205	46,567	34,292
General and administrative	116,103	97,241	71,309
Amortization of purchased intangibles	21,537	20,685	17,583
Total operating expenses	284,646	235,418	175,398
Income from operations	246,697	196,914	114,149
Interest and other expense, net:			
Interest expense	8,939	8,162	9,294
Other expense, net	3,994	371	325
Total interest and other expense, net	12,933	8,533	9,619
Income before income taxes	233,764	188,381	104,530
Provision for income taxes	28,486	24,563	12,784
Net income	205,278	163,818	91,746
Less: net income attributable to non-controlling interest	—	—	1,072
Net income attributable to FOX stockholders	\$ 205,278	\$ 163,818	\$ 90,674

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The following table sets forth statement of income data as a percentage of sales for the years indicated:

	For the fiscal years ended		
	December 30	December 31	January 1
	2022	2021	2021
Sales	100.0 %	100.0 %	100.0 %
Cost of sales	66.8	66.7	67.5
Gross profit	33.2	33.3	32.5
Operating expenses:			
Sales and marketing	5.7	5.5	5.9
Research and development	3.5	3.6	3.9
General and administrative	7.2	7.5	8.0
Amortization of purchased intangibles	1.3	1.6	2.0
Total operating expenses	17.8	18.1	19.7
Income from operations	15.4	15.2	12.8
Interest and other expense, net:			
Interest expense	0.6	0.6	1.0
Other expense, net	0.2	—	—
Interest and other expense, net	0.8	0.7	1.1
Income before income taxes	14.6	14.5	11.7
Provision for income taxes	1.8	1.9	1.4
Net income	12.8	12.6	10.3
Less: net income attributable to non-controlling interest	—	—	0.1
Net income attributable to FOX stockholders	12.8 %	12.6 %	10.2 %

**Percentages may not foot due to rounding.*

Fiscal year ended December 30, 2022 compared to fiscal year ended December 31, 2021
Sales

(in millions)	For the fiscal years			
	2022	2021	Change (\$)	Change (%)
Powered Vehicle products	\$ 921.5	\$ 720.0	\$ 201.5	28.0 %
Specialty Sports products	681.0	579.0	102.0	17.6
Total sales	\$ 1,602.5	\$ 1,299.0	\$ 303.5	23.4 %

Sales for the year ended December 30, 2022 increased approximately \$303.5 million, or 23.4%, compared to the year ended December 31, 2021. The sales increase reflects an increase of 28.0% and 17.6% in Powered Vehicle products and Specialty Sports products sales, respectively, for the year ended December 30, 2022 compared to the prior fiscal year. The increase in Powered Vehicle product sales was primarily due to strong performance from our upfitting product lines and increased demand in the OEM channel. The increase in Specialty Sports product sales reflects higher demand primarily in the OEM channel.

Cost of sales

(in millions)	For the fiscal years			
	2022	2021	Change (\$)	Change (%)
Cost of sales	\$ 1,071.1	\$ 866.7	\$ 204.4	23.6 %

Cost of sales for the year ended December 30, 2022 increased approximately \$204.4 million, or 23.6%, compared to the year ended December 31, 2021. The increase in cost of sales was driven primarily by an increase in product sales, as well as certain business factors affecting gross margin, which are discussed below.

For the year ended December 30, 2022, our gross margin was 33.2% compared to 33.3% for the year ended December 31, 2021. The decrease in gross margin for the fiscal year 2022 was primarily due to increases in factory overhead and materials costs, each of which were driven higher by inflation. Additionally, the completion of the planned shutdown of our Watsonville Facility and transition of those production lines resulted in inefficiencies in the first half of fiscal year 2022 as we ramped up our Gainesville Facility.

Operating expenses

(in millions)	For the fiscal years			
	2022	2021	Change (\$)	Change (%)
Operating expenses:				
Sales and marketing	\$ 90.8	\$ 70.9	\$ 19.9	28.1 %
Research and development	56.2	46.6	9.6	20.6
General and administrative	116.1	97.2	18.9	19.4
Amortization of purchased intangibles	21.5	20.7	0.8	3.9
Total operating expenses	\$ 284.6	\$ 235.4	\$ 49.2	20.9 %

Total operating expenses for the year ended December 30, 2022 increased approximately \$49.2 million, or 20.9%, over the comparable period in 2021. When expressed as a percentage of sales, operating expenses decreased to 17.8% of sales for the year ended December 30, 2022, compared to 18.1% of sales for the fiscal year ended December 31, 2021.

Within operating expenses, our sales and marketing expense increased by approximately \$19.9 million primarily due to higher commissions costs of \$9.7 million, higher headcount and employee-benefit related costs of \$5.8 million, higher marketing-related costs of \$4.0 million and various others. Research and development expenses increased approximately \$9.6 million primarily due to headcount investments to support future growth. General and administrative expenses increased approximately \$18.9 million due to higher headcount and employee benefit-related costs of \$11.7 million and higher insurance and facility-related costs of \$11.1 million. These increases were partially offset by lower acquisition-related compensation and decreases in other miscellaneous costs.

Amortization of purchased intangible assets for the year ended December 30, 2022 increased by approximately \$0.8 million as compared to the year ended December 31, 2021, primarily due to the amortization of Shock Therapy intangible assets.

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Income from operations

(in millions)	For the fiscal years			
	2022	2021	Change (\$)	Change (%)
Income from operations	\$ 246.7	\$ 196.9	\$ 49.8	25.3 %

As a result of the factors discussed above, income from operations for the year ended December 30, 2022 increased approximately \$49.8 million, or 25.3%, compared to the year ended December 31, 2021.

Interest and other expense, net

(in millions)	For the fiscal years			
	2022	2021	Change (\$)	Change (%)
Interest and other expense, net:				
Interest expense	\$ 8.9	\$ 8.2	\$ 0.7	8.5 %
Other expense, net	4.0	0.3	3.7	1,233.3
Interest and other expense, net	\$ 12.9	\$ 8.5	\$ 4.4	51.8 %

Interest and other expense, net for the year ended December 30, 2022 increased by approximately \$4.4 million to \$12.9 million, compared to \$8.5 million for the year ended December 31, 2021. The increase in interest and other expense, net is primarily due to higher foreign currency losses, as well as increasing interest rates.

Income taxes

(in millions)	For the fiscal years			
	2022	2021	Change (\$)	Change (%)
Provision for income taxes	\$ 28.5	\$ 24.6	\$ 3.9	15.9 %

Income tax expense for the year ended December 30, 2022 increased by approximately \$3.9 million to \$28.5 million compared to income tax expense of \$24.6 million for the year ended December 31, 2021. The increase in expense resulted from an increase in pre-tax profit and decreased benefits from stock-based compensation deductions, partially offset by the release of the valuation allocation for foreign tax credits and the benefit of a lower tax rate on U.S. foreign derived earnings.

The effective tax rates were 12.2% and 13.0% for the years ended December 30, 2022 and December 31, 2021, respectively.

For the year ended December 30, 2022, the difference between our effective tax rate and the 21% federal statutory rate resulted from a lower tax rate on U.S. foreign derived earnings and the release of the valuation allocation for foreign tax credits, partially offset by other non-deductible expenses and state taxes.

For the year ended December 31, 2021, the difference between our effective tax rate and the 21% federal statutory rate resulted from a lower tax rate on U.S. foreign derived earnings and the benefit of excess stock based compensation deductions.

Net income

(in millions)	For the fiscal years			
	2022	2021	Change (\$)	Change (%)
Net income	\$ 205.3	\$ 163.8	\$ 41.5	25.3 %

As a result of the factors described above, our net income increased \$41.5 million, or 25.3%, to \$205.3 million in the fiscal year ended December 30, 2022 from \$163.8 million for the fiscal year ended December 31, 2021.

Fiscal year ended December 31, 2021 compared to fiscal year ended January 1, 2021
Sales

(in millions)	For the fiscal years		Change (\$)	Change (%)
	2021	2020		
Sales	\$ 1,299.1	\$ 890.6	\$ 408.5	45.9 %

Sales for the year ended December 31, 2021 increased approximately \$408.5 million, or 45.9%, compared to the year ended January 1, 2021. The sales increase reflects a 57.8% increase in Specialty Sports products as well as a 37.5% growth in Powered Vehicle products for the year ended December 31, 2021 compared to the prior fiscal year. The increase in Specialty Sports product sales reflects higher demand primarily in the OEM channel. The increase in Powered Vehicle product sales was primarily due to strong performance from our upfitting product lines, the inclusion of a full year of SCA's results and increased demand in the aftermarket channel.

Cost of sales

(in millions)	For the fiscal years		Change (\$)	Change (%)
	2021	2020		
Cost of sales	\$ 866.7	\$ 601.0	\$ 265.7	44.2 %

Cost of sales for the year ended December 31, 2021 increased approximately \$265.7 million, or 44.2%, compared to the year ended January 1, 2021. The increase in cost of sales was driven primarily by an increase in product sales, as well as certain business factors affecting gross margin, which are discussed below.

For the year ended December 31, 2021, our gross margin was 33.3% compared to 32.5% for the year ended January 1, 2021. The increase in gross margin for the fiscal year 2021 was primarily due to higher volume sales in our Specialty Sports Group and the strong performance of our upfitting product lines, as well as favorable product and channel mix. Additionally, our gross margin for the prior fiscal year period was negatively impacted by incremental costs related to the COVID-19 pandemic.

Operating expenses

(in millions)	For the fiscal years		Change (\$)	Change (%)
	2021	2020		
Operating expenses:				
Sales and marketing	\$ 70.9	\$ 52.2	\$ 18.7	35.8 %
Research and development	46.6	34.3	12.3	35.9
General and administrative	97.2	71.3	25.9	36.3
Amortization of purchased intangibles	20.7	17.6	3.1	17.6
Total operating expenses	\$ 235.4	\$ 175.4	\$ 60.0	34.2 %

Total operating expenses for the year ended December 31, 2021 increased approximately \$60.0 million, or 34.2%, over the comparable period in 2020. When expressed as a percentage of sales, operating expenses decreased to 18.1% of sales for the year ended December 31, 2021 compared to 19.7% of sales in 2020.

Within operating expenses, our sales and marketing expense increased by approximately \$18.7 million primarily due to higher commissions of \$11.8 million, higher employee related expenses of \$1.5 million, and various other expenses. Research and development expenses increased approximately \$12.3 million primarily due to headcount investments to support future growth. General and administrative expenses increased approximately \$25.9 million due to higher employee related costs of \$18.0 million, as well as various other investments of \$5.1 million as we continue to scale our administrative support functions to meet the demands of our growing business. These increases were partially offset by lower acquisition-related costs of \$9.3 million, as well as lower patent litigation related expenses of \$1.1 million.

Amortization of purchased intangible assets for the year ended December 31, 2021 increased by approximately \$3.1 million as compared to the year ended January 1, 2021, due to the amortization of SCA and Outside Van's intangible assets.

[Table of Contents](#)*Income from operations*

(in millions)	For the fiscal years			
	2021	2020	Change (\$)	Change (%)
Income from operations	\$ 196.9	\$ 114.1	\$ 82.8	72.6%

As a result of the factors discussed above, income from operations for the year ended December 31, 2021 increased approximately \$82.8 million, or 72.6%, compared to income from operations in the year ended January 1, 2021.

Interest and other expense, net

(in millions)	For the fiscal years			
	2021	2020	Change (\$)	Change (%)
Interest and other expense, net:				
Interest expense	\$ 8.2	\$ 9.3	\$ (1.1)	(11.8)%
Other expense, net	0.3	0.3	—	—
Interest and other expense, net	\$ 8.5	\$ 9.6	\$ (1.1)	(11.5)%

Interest and other expense, net for the year ended December 31, 2021 decreased by approximately \$1.1 million to \$8.5 million, compared to \$9.6 million for the year ended January 1, 2021. The decrease in interest and other expense, net is primarily due to lower interest rates and the pay down of our term loan.

Income taxes

(in millions)	For the fiscal years			
	2021	2020	Change (\$)	Change (%)
Provision for income taxes	\$ 24.6	\$ 12.8	\$ 11.8	92.2%

Income tax expense for the year ended December 31, 2021 increased by approximately \$11.8 million to \$24.6 million, compared to income tax expense of \$12.8 million in the year ended January 1, 2021. The increase in expense resulted from the increase in pre-tax profit, partially offset by the benefit of a lower tax rate on U.S. foreign derived earnings.

The effective tax rates were 13.0% and 12.2% for the years ended December 31, 2021 and January 1, 2021, respectively.

For the year ended December 31, 2021, the difference between our effective tax rate and the 21% federal statutory rate resulted from a lower tax rate on U.S. foreign derived earnings and the benefit of excess stock based compensation deductions.

For the year ended January 1, 2021, the difference between our effective tax rate and the 21% federal statutory rate resulted from the benefit of excess deductions on stock-based compensation and the benefit of a lower tax rate on U.S. foreign derived earnings.

Net income

(in millions)	For the fiscal years			
	2021	2020	Change (\$)	Change (%)
Net income	\$ 163.8	\$ 91.7	\$ 72.1	78.6%

As a result of the factors described above, our net income increased \$72.1 million, or 78.6%, to \$163.8 million in the fiscal year ended December 31, 2021 from \$91.7 million for the fiscal year ended January 1, 2021.

Liquidity and Capital Resources

Our primary cash needs are to support working capital, capital expenditures, acquisitions, and debt repayments. Historically, we have generally financed our liquidity needs with operating cash flows, borrowings under our Prior Credit Facility and our 2022 Credit Facility, and the issuance of common stock. These sources of liquidity may be impacted by various factors, including demand for our products, impacts of the COVID-19 pandemic, investments made by us in acquired businesses, our plant and equipment and other capital expenditures, and expenditures on general infrastructure and information technology.

As of December 30, 2022, we held \$80.4 million of our \$145.3 million of cash and cash equivalents in accounts of our subsidiaries outside of the U.S., which we may repatriate. We manage our foreign cash, intercompany payables and intercompany debt to provide a natural foreign currency hedge against U.S. dollar-denominated trade receivable balances held by our Taiwan location.

A summary of our operating, investing and financing activities are shown in the following table:

(in thousands)	For the years ended		
	December 30	December 31	January 1
	2022	2021	2021
Net cash provided by operating activities	\$ 187,094	\$ 63,184	\$ 82,499
Net cash used in investing activities	(44,735)	(104,946)	(388,525)
Net cash (used in) provided by financing activities	(179,141)	(23,776)	506,722
Effect of exchange rate changes on cash and cash equivalents	2,346	(540)	1,332
(Decrease) increase in cash and cash equivalents	\$ (34,436)	\$ (66,078)	\$ 202,028

We expect that cash on hand, cash flow from operations and availability under our 2022 Credit Facility will be sufficient to fund our operations during the next 12 months from the date of this Annual Report on Form 10-K and beyond.

Operating activities

Cash provided by operating activities primarily consists of net income, adjusted for certain non-cash items, primarily depreciation and amortization, stock-based compensation, and deferred income taxes, offset by net cash invested in working capital.

In the fiscal year ended December 30, 2022, cash provided by operating activities was \$187.1 million and consisted of net income of \$205.3 million plus non-cash items and other adjustments totaling \$45.3 million, less changes in operating assets and liabilities totaling \$63.5 million. Non-cash items and other adjustments consisted primarily of depreciation and amortization of \$49.2 million, stock-based compensation of \$16.4 million, the write off of unamortized loan origination fees of \$1.9 million, and the amortization of loan fees of \$1.1 million, partially offset by a \$18.4 million change in deferred taxes, the amortization of deferred gains on swap agreements of \$3.2 million and gains of \$1.7 million related to disposals of property, plant and equipment. Cash invested in operating assets and liabilities is primarily the result of increases in inventory of \$78.5 million and accounts receivable of \$64.0 million, partially offset by a decrease in prepaids and other current assets of \$18.1 million, and increases in accounts payable of \$40.5 million, accrued expenses of \$11.7 million and income taxes payable of \$8.7 million. The increase in inventory is due to several factors, including natural growth to meet anticipated demand, receipt of long lead time items that had been delayed, and higher levels of safety stock to mitigate supply chain uncertainty. The increases in accounts receivable, accounts payable and accrued expenses reflect normal business growth, as well as the timing of customer collections and vendor payments. The decrease in prepaids and other current assets is primarily due to a lower supply of chassis as we worked through the safety stock that we had secured at the end of 2021.

In the fiscal year ended December 31, 2021, cash provided by operating activities was \$63.2 million and consisted of net income of \$163.8 million plus non-cash items and other adjustments totaling \$41.6 million, less changes in operating assets and liabilities totaling \$142.2 million. Non-cash items and other adjustments consisted primarily of depreciation and amortization of \$43.4 million, stock-based compensation of \$13.9 million, and amortization of loan fees of \$1.6 million, offset by a \$17.1 million change in deferred taxes and various others. Cash invested in operating assets and liabilities is primarily the result of increases in inventory of \$146.5 million, prepaids and other current assets of \$34.5 million, and accounts receivable of \$20.2 million, offset by increases in net income taxes payable of \$26.8 million, accrued expenses of \$21.8 million, and accounts payable of \$10.3 million. The increase in inventory is primarily due to additional raw material purchases to mitigate risks associated with supply chain uncertainty and shortages on certain parts needed to complete a suspension kit, as well as a higher balance of finished goods due to the timing of shipments. The increase in prepaids and other current assets is the result of increased chassis deposits. The increases in net income taxes payable, accrued expenses, accounts receivable and accounts payable are the result of normal business growth and the timing of vendor and tax payments.

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In the fiscal year ended January 1, 2021, cash provided by operating activities was \$82.4 million and consisted of net income of \$91.7 million plus non-cash items and other adjustments totaling \$29.7 million, less changes in operating assets and liabilities totaling \$39.1 million. Non-cash items and other adjustments consisted primarily of depreciation and amortization of \$33.9 million, stock-based compensation of \$8.6 million, and amortization of loan fees of \$1.5 million, offset by a \$14.3 million change in deferred taxes. Cash invested in operating assets and liabilities is primarily the result of increases in prepaids and other current assets of \$66.4 million and accounts receivable of \$18.8 million, partially offset by increases in accounts payable and accrued expenses of \$25.9 million and \$11.2 million, respectively, an increase in income taxes payable of \$1.2 million and a decrease in inventory of \$7.8 million. The increase in prepaids and other current assets is primarily due to deposits on chassis and acquisition-related compensation payments held in escrow, both related to our acquired SCA subsidiary. The changes in inventory, accounts receivable, accounts payable and accrued expenses reflect business growth as well as timing of vendor payments.

Investing activities

Cash used in investing activities primarily relates to strategic acquisitions of businesses and other assets, and investments in our manufacturing and general infrastructure through the acquisition of property and equipment.

In the fiscal year ended December 30, 2022, cash used in investing activities was \$44.7 million, which primarily consisted of \$43.7 million in property and equipment additions, \$3.5 million in cash consideration for our purchase of intellectual property assets, and \$0.7 million in cash consideration to finalize our acquisition of Shock Therapy, partially offset by \$3.2 million in proceeds from the sale of property and equipment.

In the fiscal year ended December 31, 2021, cash used in investing activities was \$104.9 million, which primarily consisted of \$54.8 million in property and equipment additions and \$51.9 million of cash consideration for our acquisitions of Outside Van, Sola Sport and Shock Therapy, partially offset by \$1.8 million in proceeds for the sale of property and equipment.

In the fiscal year ended January 1, 2021, cash used in investing activities was \$388.5 million, which primarily consisted of \$331.5 million of cash consideration for our acquisition of SCA and \$56.7 million in property and equipment additions.

Financing activities

Cash used in or provided by financing activities primarily relates to changes in our capital structure, including the various forms of debt and equity instruments used to finance our business.

In the fiscal year ended December 30, 2022, net cash used in financing activities was \$179.1 million, which primarily consisted of \$404.3 million in payments on our line of credit, \$382.5 million in payments on our term debt, \$4.3 million to repurchase shares of our common stock, net of proceeds from the exercise of stock options, as part of our stock-based compensation program and \$2.7 million in installment payments related to the purchase of the Tuscany non-controlling interest. These changes were partially offset by net proceeds from our 2022 Credit Facility of \$602.4 million, which was used to refinance our Prior Credit Facility, and proceeds from the termination of our 2021 Swap Agreement of \$12.3 million.

In the fiscal year ended December 31, 2021, net cash used in financing activities was \$23.8 million, which primarily consisted of \$12.5 million in payments on our term debt, \$7.0 million to repurchase shares of our common stock, net of proceeds from the exercise of stock options, as part of our stock-based compensation program and \$4.6 million in installment payments related to the purchase of the Tuscany non-controlling interest, partially offset by \$0.3 million in proceeds received from the termination of our 2020 Swap Agreement.

In the fiscal year ended January 1, 2021, net cash provided by financing activities was \$506.7 million, which consisted primarily of \$392.4 million in proceeds, net of issuance costs, from our Prior Credit Facility, which was amended and restated in connection with our acquisition of SCA, partially offset by net payments of \$68.0 million on our line of credit and payments on our term debt of \$5.0 million. In addition, we received \$198.2 million from our June 2020 issuance of common stock. These inflows were partially offset by \$4.3 million to repurchase shares of our common stock, net of proceeds from the exercise of stock options, as part of our stock-based compensation program and \$6.6 million in installment payments related to the purchase of the Tuscany non-controlling interest.

Prior Credit Facility

In June 2019, the Company entered into a credit facility with Bank of America and other named lenders, which was periodically amended and restated and/or amended. The credit facility was amended and restated on March 11, 2020, and further amended on June 19, 2020, June 11, 2021 and December 16, 2021 (as amended, the "Prior Credit Facility"). The Prior Credit Facility (which was terminated on April 5, 2022 and replaced with the 2022 Credit Facility (as discussed below)), would have matured on March 11, 2025, and provided a senior secured revolving line of credit with a borrowing capacity of \$250.0 million and a term loan of \$400.0 million. The term loan was subject to quarterly amortization payments.

2022 Credit Facility

On April 5, 2022, the Company entered into a new credit agreement with Wells Fargo Bank, National Association, and other named lenders (the "2022 Credit Facility"), and concurrently repaid in full and terminated the Prior Credit Facility. The 2022 Credit Facility, which matures on April 5, 2027, provides for revolving loans, swingline loans and letters of credit up to an aggregate amount of \$650.0 million.

On April 5, 2022, the Company borrowed \$475.0 million under the 2022 Credit Facility, which was used to repay all outstanding amounts owed under the Prior Credit Facility and for general corporate purposes. Future advances under the 2022 Credit Facility will be used to finance working capital, capital expenditures and other general corporate purposes of the Company. To the extent not previously paid, all then-outstanding amounts under the 2022 Credit Facility are due and payable on the maturity date.

The Company paid \$2.0 million in debt issuance costs in connection with the 2022 Credit Facility, which were allocated to the line of credit and amortized on a straight-line basis over the term of the facility. Additionally, the Company had \$4.5 million of remaining unamortized debt issuance costs related to the Prior Credit Facility. The Company expensed \$1.9 million of the remaining unamortized debt issuance costs and allocated \$2.5 million to the 2022 Credit Facility.

The Company may borrow, prepay and re-borrow principal under the 2022 Credit Facility during its term. Advances under the 2022 Credit Facility can be either Adjusted Term Secured Overnight Financing Rate ("SOFR") loans or base rate loans. SOFR rate revolving loans bear interest on the outstanding principal amount thereof for each interest period at a rate per annum equal to Term SOFR for such calculation plus 0.10% plus a margin ranging from 1.00% to 2.00%. Base rate revolving loans bear interest on the outstanding principal amount thereof at a rate per annum equal to the highest of (i) Federal Funds Rate plus 0.50%, (ii) the rate of interest in effect for such day as publicly announced from time to time by the administrative agent as its "prime rate", and (iii) Adjusted Term SOFR rate for a one-month tenor plus 1.00%, subject to the interest rate floors set forth therein, plus a margin ranging from 0.00% to 1.00%. At December 30, 2022, the one-month SOFR and three-month SOFR rates were 4.06% and 3.62%, respectively. At December 30, 2022, our weighted-average interest rate on outstanding borrowing was 4.38%.

The 2022 Credit Facility is secured by substantially all of the Company's assets, restricts the Company's ability to make certain payments and engage in certain transactions, and requires that the Company satisfy customary financial ratios. The Company was in compliance with the covenants as of December 30, 2022.

Material Cash Requirements

As of December 30, 2022, we had the following material cash requirements related to commitments or contractual obligations (in thousands):

Payments due by period	Total	Less than 1 year	1-3 years	4-5 years	More than 5 years
Long-term borrowings	\$ 200,000	\$ —	\$ —	\$ 200,000	\$ —
Operating lease obligations	51,073	11,376	18,603	11,445	9,649
Purchase obligations and other	3,357	3,357	—	—	—
Total	<u>\$ 254,430</u>	<u>\$ 14,733</u>	<u>\$ 18,603</u>	<u>\$ 211,445</u>	<u>\$ 9,649</u>

Seasonality

Certain portions of our business are seasonal; we believe this seasonality is due to the delivery of new products. As we have diversified our product offerings and our product launch cycles, seasonal fluctuations are becoming less material.

Inflation

Historically, inflation has not had a material effect on our results of operations. However, significant increases in inflation, particularly those related to wages and increases in the cost of raw materials could have an adverse impact on our business, financial condition and results of operations.

Critical Accounting Policies and Estimates

We have adopted various accounting policies to prepare the consolidated financial statements in accordance with U.S. GAAP. Our significant accounting policies are described in [Note 1. Description of the Business, Basis of Presentation and Summary of Significant Accounting Policies](#) of the Notes to Consolidated Financial Statements. Some of those significant accounting policies require us to make difficult, subjective, or complex judgments or estimates. An accounting estimate is considered to be critical if it meets both of the following criteria: (i) the estimate requires assumptions about matters that are highly uncertain at the time the accounting estimate is made, and (ii) different estimates reasonably could have been used, or changes in the estimate that are reasonably likely to occur may have a material impact on our financial condition or results of operations. The significant accounting policies that management believes are critical to the understanding and evaluating our reported financial results include the following: income taxes, inventory, warranty, goodwill and intangible assets, stock-based compensation, revenue recognition, provision for credit losses and fair value measurement. For further information see [Note 1. Description of the Business, Basis of Presentation and Summary of Significant Accounting Policies](#) of the Notes to Consolidated Financial Statements in this Annual Report on Form 10-K.

Critical Accounting Policies

Income taxes

We are subject to income taxes in the U.S. (federal and state) and foreign jurisdictions. We compute our provision for income taxes using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities. Deferred tax assets and liabilities are measured using the currently enacted tax rates that are expected to apply to taxable income for the years in which those tax assets and liabilities are expected to be realized or settled. The income tax effects of these differences are classified as long-term deferred tax assets and liabilities in our consolidated balance sheets.

Significant judgments are required in order to determine the realizability of these deferred tax assets. In assessing the need for a valuation allowance, we evaluate all significant available positive and negative evidence, including but not limited to, historical operating results, forecasted earnings, estimates of future taxable income of a character necessary to realize the deferred asset, relative proportions of revenue and pre-tax income in the various domestic and jurisdictions in which we operate, and the existence of prudent and feasible tax planning strategies. Changes in the expectations regarding the realization of deferred tax assets could materially impact income tax expense in future periods.

Additionally, our judgments, assumptions, and estimates relative to the provision for income taxes take into account enacted tax laws, regulations, administrative practices, interpretations in various jurisdictions and possible outcomes of current and future audits conducted by tax authorities. Our effective tax rates could be affected by numerous factors, such as changes in our business operations, acquisitions, investments, entry into new businesses and geographies, intercompany transactions, the relative amount of our foreign earnings, losses incurred in jurisdictions for which we are not able to realize related tax benefits, changes in our deferred tax assets and liabilities and their valuation, changes in the laws, regulations, administrative practices, principles, and interpretations related to tax, including changes to the global tax framework and other laws and accounting rules in various jurisdictions.

We utilize a two-step approach to recognizing and measuring uncertain income tax positions. The first step is to determine if the weight of available evidence indicates that it is more likely than not that the tax position will be sustained on audit, including resolution of any related appeals or litigation processes. The second step is to measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement. We consider many factors when evaluating tax positions such as the closing of a tax audit, the refinement of estimates, and the expiration of a statute of limitations that may require periodic adjustments that impact our tax provision in our consolidated statements of income. Interest and penalties associated with income taxes are recorded as income tax expense. Refer to [Note 15. Income Taxes](#) for further details.

Inventories

Inventories are stated at the lower of actual cost (or standard cost which generally approximates actual costs on a first-in first-out basis) or net realizable value. Cost includes raw materials and inbound freight, as well as direct labor and manufacturing overhead for products we manufacture. Net realizable value is based on current replacement cost for raw materials and on a net realizable value for finished goods. Adjustments to reduce the cost of inventory to its net realizable value are made, if required, for estimated excess, obsolete or impaired balances.

We regularly monitor inventory quantities on hand and on order and record write-downs for excess and obsolete inventories based on our estimate of the demand for our products, potential obsolescence of technology, product life cycles, and when pricing trends or forecasts indicate that the carrying value of inventory exceeds our estimated selling price. These factors are affected by market and economic conditions, technology changes, and new product introductions and require estimates that may include elements that are uncertain. Actual demand may differ from forecasted demand and may have a material effect on our gross margin. If inventory is written down, a new cost basis will be established that cannot be increased in future periods.

Warranty

Unless otherwise required by law, the Company generally offers limited warranties on its products for one to two years. We accrue estimated costs related to warranty activities as a component of cost of sales upon product shipment or when information becomes available indicating that an adjustment to the warranty reserves is appropriate. Management estimates are based upon historical and projected product failure rates and historical costs incurred in correcting product failures. The warranty reserve is assessed from time to time for adequacy and adjusted as necessary for specifically identified warranty exposures. Actual warranty expenses are charged against our estimated warranty liability when incurred. Factors that affect our liability include the number of units, historical and anticipated rates of warranty claims, and the cost per claim. An increase in warranty claims or the related costs associated with satisfying these warranty obligations could increase our cost of sales and negatively affect our operating results. Total accrued warranty liabilities were approximately \$17.1 million and \$15.5 million as of December 30, 2022 and December 31, 2021, respectively. Refer to [Note 8. Accrued Expenses](#) for further details.

Goodwill, intangible assets and long-lived assets

Goodwill

Goodwill represents the excess of purchase price over the fair value of the net assets of businesses acquired. On an annual basis, the Company performs a qualitative assessment to determine if it is more likely than not that the fair value of the reporting unit is less than its carrying amount, including goodwill. If the Company determines that the fair value of the reporting unit is less than its carrying amount, it will perform a quantitative analysis; otherwise, no further evaluation is necessary.

For the quantitative impairment test, the Company compares the fair value of the reporting unit to its carrying value, including goodwill. The Company determines the fair value of the reporting unit based on a weighting of income and market approaches. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not impaired and no further testing is performed. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the Company will recognize a loss equal to the excess, limited to the total amount of goodwill allocated to that reporting unit. Impairments, if any, are charged directly to earnings. We completed our most recent annual impairment test in the third quarter of 2022 at which time we had a single reporting unit for purposes of assessing goodwill impairment. No impairment charges have been incurred to date.

Indefinite-lived intangible assets

Certain trademarks and trade names are considered to be indefinite life intangibles, and are not amortized but are subject to testing for impairment annually.

Finite-lived intangible assets

We assess the recoverability of identifiable finite-lived intangible assets whenever events or changes in circumstances indicate that an asset or asset group's carrying amount may be impaired. Impairment of certain finite-lived intangible assets, particularly customer relationships, certain trade names and core technology, is measured by comparing the carrying amount of the asset group to which the assets are assigned to the sum of the undiscounted estimated future cash flows the asset group is expected to generate. If the asset or asset group is considered to be impaired, the amount of such impairment would be measured by the difference between the carrying amount of the asset and its fair value.

Acquisition of certain identifiable definite-lived and indefinite-lived assets

In conjunction with an acquisition of a business, the Company records identifiable definite-lived and indefinite-lived intangible assets acquired at their respective fair values as of the date of acquisition. The estimates used in assessing the fair value for the assets acquired include projected future cash flows, associated discount rates used to calculate present value, asset life cycles, customer retention rates and royalty rates. The fair value calculated for indefinite-lived intangible assets such as certain trade names, in addition to intangible assets that are definite-lived such as customer relationships and other technology-based assets may change during the finalization of the purchase price allocation, due to the significant estimates used in determining their fair value. As a result, the Company may make adjustments to the provisional amounts recorded for certain items as part of the purchase price allocation subsequent to the acquisition, not to exceed one year after the acquisition date, until the purchase accounting allocation is finalized.

Stock-based compensation

The Company measures stock-based compensation for all stock-based awards, including stock options and restricted stock units ("RSUs"), based on their estimated fair values on the date of the grant and recognizes the stock-based compensation cost for time-vested awards on a straight-line basis over the requisite service period. For performance-based RSUs, the number of shares ultimately expected to vest is estimated at each reporting date based on management's expectations regarding the relevant performance criteria. To the extent shares are expected to vest, the stock-based compensation cost is recognized on a straight-line basis over the requisite service period. Stock-based compensation was \$16.4 million, \$13.9 million and \$8.6 million for the fiscal years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively. Refer to [Note 13. Stockholders' Equity](#) for further details. The fair value of each stock option granted is estimated using the Black-Scholes option-pricing model. The Company does not estimate forfeitures in recognizing stock-based compensation expense.

The determination of the grant date fair value of options using an option-pricing model is affected by our common stock fair value as well as assumptions including our expected stock price volatility over the expected term of the options, stock option exercise and cancellation behaviors, risk-free interest rates and expected dividends.

Stock-based compensation expenses are classified in the statements of income based on the department to which the related employee reports. Our stock-based awards subsequent to our IPO have been comprised principally of restricted stock unit awards.

Revenue recognition

Revenue is measured based on the consideration specified in a contract with a customer. The Company recognizes revenue when it satisfies a performance obligation by transferring control over a product to a customer, generally at the time of shipment. Contracts are generally in the form of purchase orders and are governed by standard terms and conditions. For larger OEMs, the Company may also enter into master agreements. Revenues generated from upfit packages generally do not include the vehicle chassis, as the Company is not the principal in this arrangement and the automotive dealer purchases the chassis directly from the OEM. The Company is required to place a deposit on all vehicle chassis that the dealer purchases directly from the OEM, however that deposit is refunded when the chassis is sold through to the end customer.

Provisions for discounts, rebates, sales incentives, returns, and other adjustments are generally provided for in the period the related sales are recorded, based on management's assessment of historical trends and projection of future results. Accrued sales rebates were \$8.7 million and \$8.6 million as of December 30, 2022 and December 31, 2021, respectively. Sales returns allowances have historically been immaterial to the financial statements. Certain pricing provisions that provide the customer with future discounts are considered a material right. Such material rights result in the deferral of revenue that are recognized when the rights are exercised by the customer. Measuring the material rights requires judgments including forecasts of future sales and product mix.

Allowance for credit losses

We record a provision for credit losses deemed not collectible using the aging method. The provision is based on how long a receivable has been outstanding, taking into account the historical credit loss rate and adjusting for both current conditions and forecasts of economic conditions into that expected credit loss rate. If circumstances change, such as higher-than-expected defaults or an unexpected material adverse change in a major customer's ability to meet its financial obligations, we estimate if the recoverability of the amounts due could be reduced by a material amount.

Fair value measurement and financial instruments

ASC 820, *Fair Value Measurements and Disclosures*, requires the valuation of assets and liabilities required or permitted to be either recorded or disclosed at fair value based on hierarchy of available inputs as follows:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices for similar assets and liabilities in active markets, quoted prices for identical assets and liabilities in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

We apply fair value accounting for all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. We define fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities, which are required to be recorded at fair value, we consider the principal or most advantageous market in which we would transact and the market-based risk measurements or assumptions that market participants would use in pricing the asset or liability, such as risks inherent in valuation techniques, transfer restrictions and credit risk.

As of December 31, 2021, the carrying amount of the principal under the Company's Prior Credit Facility approximated fair value because it had a variable interest rate that reflected market changes in interest rates and changes in the Company's net leverage ratio. The Prior Credit Facility was terminated on April 5, 2022 and replaced with the revolving 2022 Credit Facility.

On June 11, 2021, the Company entered into an interest rate swap agreement (the "2021 Swap Agreement") to mitigate the cash flow risk associated with changes in interest rates on its variable rate debt. On April 5, 2022, the Company terminated its 2021 Swap Agreement and entered into a new interest rate swap agreement (the "2022 Swap Agreement"). Refer to [Note 11. Derivatives and Hedging](#) for additional details of the agreement. In accordance with ASC 815, an interest rate swap contract is recognized as an asset or liability on the Consolidated Balance Sheets and is measured at fair value. The fair value was calculated utilizing Level 2 inputs.

Recent Accounting Pronouncements

In December 2019, the FASB issued ASU 2019-12, *Simplifying the Accounting for Income Taxes*, which helps simplify how entities account for income taxes by removing various exceptions related to the recognition of deferred tax liabilities and updating other tax computation requirements. This standard is effective for fiscal years beginning after December 15, 2020 and early adoption is permitted. The Company adopted ASU 2019-12 effective in the first quarter of fiscal year 2021. The adoption of ASU 2019-12 did not have a material impact on the Company's consolidated financial statements.

In October 2020, the FASB issued ASU 2020-10, *Codification Improvements*. The amendments in ASU 2020-10 contain improvements to the Codification to ensure consistency by including disclosure guidance in the appropriate Disclosure Section. This guidance includes an option for an entity to provide certain information either on the face of the financial statements or in the notes. The ASU also provides clarification to various codification topics to improve consistency in guidance application. The amendments are effective for interim and annual reporting periods in fiscal years beginning after December 15, 2020, with early adoption permitted. The Company adopted ASU 2020-10 effective in the first quarter of fiscal year 2021. The adoption of ASU 2020-10 did not have a material impact on the Company's consolidated financial statements and related disclosures.

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. Under ASU 2021-08, an acquirer must recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606. The guidance is effective for interim and annual periods beginning after December 15, 2022, with early adoption permitted. The Company adopted this guidance in the first quarter of 2022. This adoption did not have a material impact on our financial statements.

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In September 2022, the FASB issued ASU 2022-04, Liabilities - Supplier Finance Programs (Subtopic 405): Disclosure of Supplier Finance Program Obligations. Under ASU 2022-04, the buyer in a supplier finance program is required to disclose sufficient information to allow a user of the financial statements to understand the program's nature, activity during the period, changes from period to period, and potential magnitude. The guidance is effective for interim and annual periods beginning after December 15, 2022, with early adoption permitted. These amendments will be applied retrospectively to each period in which a balance sheet is presented, except for the disclosure of rollforward information, which will be applied prospectively. The Company expects to adopt the interim disclosure requirements as applicable during the first quarter of 2023 and the annual disclosure requirements, except for the annual rollforward, in the 2023 Annual Report on Form 10-K. The Company expects to adopt the annual rollforward requirement in the 2024 Annual Report on Form 10-K. The Company is currently evaluating ASU 2022-04 and assessing the impact this guidance will have on its consolidated financial statements and disclosures.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest rate sensitivity

We are exposed to market risk in the normal course of our business operations due to our ongoing investing and financing activities. The risk of loss can be assessed from the perspective of adverse changes in fair values, cash flows and future earnings. We have established policies and procedures governing our management of market risks and the use of financial instruments to manage exposure to such risks. As of December 30, 2022, we had \$200.0 million of indebtedness outstanding under our 2022 Credit Facility. Based on the \$100.0 million of variable interest rate indebtedness that was outstanding as of December 30, 2022, after giving effect to our interest rate swap, a hypothetical 100 basis point increase or decrease in the interest rate would have resulted in an approximately \$1.0 million increase or decrease in interest expense for the year ended December 30, 2022, respectively.

Exchange rate sensitivity

As of December 30, 2022, we are exposed to changes in foreign currency exchange rates. While historically this exposure to changes in foreign currency exchange rates has not had a material effect on our financial condition or results of operations, foreign currency fluctuations could have an adverse effect on our business and results of operations in the future. Historically, our primary exposure has been related to transactions denominated in the Euro, New Taiwanese Dollar, and Canadian Dollar. The majority of our sales, both domestically and internationally, are denominated in U.S. Dollars. Historically, the majority of our expenses have also been in U.S. Dollars and we have been somewhat insulated from currency fluctuations. However, we may be exposed to greater exchange rate sensitivity in the future. Currently, we enter into short-term foreign currency swap contracts to mitigate our foreign currency exposure; however, we may consider strategies to mitigate our foreign currency exposure further in the future if deemed necessary.

Credit and other risks

We are exposed to credit risk associated with cash and cash equivalents, interest rate swap agreement and trade receivables. As of December 30, 2022, the majority of our cash and cash equivalents consisted of cash balances in non-interest bearing checking accounts which significantly exceed the insurance coverage provided on such deposits. We do not believe that our cash equivalents and interest rate swap agreement present significant credit risks because the counterparties to the instruments consist of major financial institutions. Substantially all trade receivable balances of our businesses are unsecured. The credit risk with respect to trade receivables is concentrated by the number of significant customers that we have in our customer base and a prolonged economic downturn could increase our exposure to credit risk on our trade receivables. To manage our exposure to such risks, we perform ongoing credit evaluations of our customers and maintain an allowance for potential credit losses.

We do not currently hedge our exposure to increases in the prices for our primary raw materials.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Our financial statements and the report of our independent registered public accounting firm are included in [Part IV. Report of Independent Registered Public Accounting Firm](#) of this Annual Report on Form 10-K. The index to these reports and our financial statements is included in [Item 15. Exhibits, Financial Statement Schedules](#) below.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Our management, under the direction and with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 30, 2022. Based on the evaluation of our disclosure controls and procedures as of December 30, 2022, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Management's Report on Internal Control Over Financial Reporting

The Management's Report on Internal Control Over Financial Reporting is contained in [Part IV. Management's Report on Internal Control Over Financial Reporting](#) of this Annual Report on Form 10-K and is incorporated herein by reference.

Attestation Report of Independent Registered Public Accounting Firm

Grant Thornton, LLP, the independent registered public accounting firm that audited the Company's consolidated financial statements, has issued an attestation report on the Company's internal control over financial reporting. A report of independent registered public accounting firm is contained in [Part IV. Report of Independent Registered Public Accounting Firm](#) of this Annual Report on Form 10-K.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) identified in connection with the evaluation required by Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 30, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include, but are not limited to, the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

ITEM 9B. OTHER INFORMATION

Not applicable.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information required by this Item regarding our directors and executive officers is incorporated by reference to the sections of our proxy statement to be filed with the SEC in connection with our 2023 Annual Meeting of Stockholders (the "Proxy Statement") entitled "Election of Class I Directors" and "Corporate Governance."

Information required by this Item regarding our corporate governance, including our audit committee and code of ethics, is incorporated by reference to the sections of the Proxy Statement entitled "Corporate Governance" and "The Board of Directors."

Information required by this Item regarding compliance with Section 16(a) of the Exchange Act required by this Item is incorporated by reference to the section of the Proxy Statement entitled "Delinquent Section 16(a) Reports."

ITEM 11. EXECUTIVE COMPENSATION

Information required by this item regarding executive compensation is incorporated by reference to the information set forth under the captions "Executive Compensation," "Director Compensation" and "Corporate Governance" in our Proxy Statement.

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

Information regarding security ownership of certain beneficial owners and management is incorporated by reference to the section of the Proxy Statement entitled "Security Ownership of Certain Beneficial Owners and Management."

Information required by this item regarding securities authorized for issuance under our equity compensation plans is incorporated by reference to the information set forth under the caption "Executive Compensation" in our Proxy Statement.

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

Information required by this Item is incorporated by reference to the section of the Proxy Statement entitled "Certain Relationships and Related Transactions and Director Independence."

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information required by this Item is incorporated by reference to the section of the Proxy Statement entitled "Ratification of Appointment of Independent Registered Public Accounting Firm."

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) Financial Statements

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Consolidated Statements of Stockholders' Equity and Redeemable Non-controlling Interest for the years ended December 30, 2022, December 31, 2021 and January 1, 2021	71
Consolidated Statements of Cash Flows for the years ended December 30, 2022, December 31, 2021 and January 1, 2021	72
Notes to Consolidated Financial Statements	74

(b) Exhibits

See Index to Exhibits	58
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ITEM 16. FORM 10-K SUMMARY

None.

Index to Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed or Furnished Herewith
		Form	File No.	Filing Date	
3.1	Amended and Restated Certificate of Incorporation	10-Q	001-36040	September 19, 2013	
3.2	Amended and Restated Bylaws	10-Q	001-36040	September 19, 2013	
4.1	Form of Common Stock Certificate	S-1	333-189841	July 8, 2013	
4.2	Form of Indenture	S-3	333-203146	March 31, 2015	
4.3	Description of Securities	10-K	001-36040	March 3, 2020	
10.1†	Employment Agreement, dated May 1, 2018, by and between Fox Factory Holding Corp. and Chris Tutton	10-K	001-36040	February 26, 2019	
10.2†	Employment Agreement, dated August 29, 2018, by and between Fox Factory Holding Corp. and Michael C. Dennison	10-K	001-36040	February 26, 2019	
10.3†	Amended and Restated Employment Agreement, dated June 26, 2019, by and between Fox Factory Holding Corp. and Michael C. Dennison	8-K	001-36040	July 1, 2019	
10.4†	Employment Agreement, by and between Fox Factory Holding Corp. and Scott Humphrey, dated August 4, 2020.	8-K	001-36040	August 5, 2020	
10.5†	Employment Agreement by and between Fox Factory, Inc. and Richard T. Winters, dated June 29, 2019.	8-K	001-36040	August 10, 2020	
10.6†	Amendment to the Amended and Restated Employment Agreement, by and between Fox Factory Holding Corp. and Michael C. Dennison, dated August 5, 2020.	8-K	001-36040	August 10, 2020	
10.7†	Amendment to the Amended and Restated Employment Agreement, by and between Fox Factory, Inc. and Richard T. Winters, dated August 5, 2020.	8-K	001-36040	August 10, 2020	
10.8†	Amendment to the Amended and Restated Employment Agreement, by and between Fox Factory, Inc. and Christopher J. Tutton, dated August 5, 2020.	8-K	001-36040	August 10, 2020	
10.9†	Second Amendment to the Employment Agreement, by and between Fox Factory, Inc. and Richard T. Winters, dated August 5, 2022.	8-K	001-36040	August 8, 2022	
10.10†	Fourth Amended and Restated Non-Employee Director Compensation Policy, effective March 2, 2020.	10-K	001-36040	February 25, 2021	
10.11†	Fifth Amended and Restated Non-Employee Director Compensation Policy, effective January 2, 2021.	10-K	001-36040	February 25, 2021	
10.12†	Form of Indemnification Agreement, by and between Fox Factory Holding Corp. and certain of its officers, directors and/or advisors	10-Q	001-36040	October 31, 2018	
10.13†	2008 Stock Option Plan, as amended	S-1	333-189841	July 8, 2013	
10.14†	2008 Non-Statutory Stock Option Plan, as amended	S-1/A	333-189841	August 2, 2013	
10.15†	Fox Factory Holding Corp. 2022 Omnibus Plan	8-K	001-36040	May 6, 2022	
10.16†	Form of Employee Restricted Stock Unit Award Agreement for Non-Employee Directors under 2022 Omnibus Plan (U.S.)	8-K	001-36040	May 6, 2022	
10.17†	Form of Restricted Stock Unit Award Agreement under 2022 Omnibus Plan	8-K	001-36040	May 6, 2022	
10.18†	Form of Performance Share Unit Award Agreement under the 2022 Omnibus Plan	8-K	001-36040	May 6, 2022	
10.20	Pilot Agreement, between the Gainesville and Hall County Development Authority and Fox Factory, Inc., effective June 12, 2020.	8-K	001-36040	June 16, 2020	

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10.21	Bond Purchase Agreement, between the Gainesville and Hall County Development Authority and Fox Factory, Inc., effective June 12, 2020.	8-K	001-36040	June 16, 2020	
10.22	Financing Agreement, between the Gainesville and Hall County Development Authority and Fox Factory, Inc., effective June 12, 2020.	8-K	001-36040	June 16, 2020	
10.23	Lease Agreement, between the Gainesville and Hall County Development Authority and Fox Factory, Inc., effective June 12, 2020.	8-K	001-36040	June 16, 2020	
10.24	Amendment No. 1 to Lease Agreement between the Gainesville and Hall County Development Authority and Fox Factory, Inc., dated December 31, 2020.	10-K	001-36040	February 24, 2022	
10.25	Amendment No. 2 to Lease Agreement between the Gainesville and Hall County Development Authority and Fox Factory, Inc., dated December 31, 2021.	10-K	001-36040	February 24, 2022	
10.26	Deed to Secure Debt and Security Agreement, between the Gainesville and Hall County Development Authority and Fox Factory, Inc., effective June 12, 2020.	8-K	001-36040	June 16, 2020	
10.27	Assignment of Lease Agreement, between the Gainesville and Hall County Development Authority and Fox Factory, Inc., effective June 12, 2020.	8-K	001-36040	June 16, 2020	
10.28	Direct Payment Agreement, between the Gainesville and Hall County Development Authority and Fox Factory, Inc., effective June 12, 2020.	8-K	001-36040	June 16, 2020	
10.29	Credit Agreement, among Fox Factory Holding Corp., Wells Fargo Bank, N.A., as Administrative Agent, Swingline Lender and L/C Issuer, and a group of lenders party thereto, dated April 5, 2022.	8-K	001-36040	April 5, 2022	
10.30†	Deferred Compensation Plan, effective June 30, 2021.	S-8	333-264858	June 29, 2021	
10.31	Securities Purchase Agreement, between Fox Factory, Inc., CWH Holdco, LLC, CWH Blocker Corp., and Thompson Street Capital Partners V, L.P., effective February 17, 2023.				X
21.1	List of Subsidiaries				X
23.1	Consent of Independent Registered Public Accounting Firm				X
24.1	Power of Attorney (contained in signature page to this Annual Report on Form 10-K)				X
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended				X
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, as amended				X
32.1*	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended				X
32.2*	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended				X
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document				X
101.SCH	Inline XBRL Taxonomy Extension Schema Document				X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				X

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101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X
104	Cover page formatted as Inline XBRL and contained in Exhibit 101	X
†	Management contract or compensatory plan.	
X	Filed herewith	
*	In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Annual Report on Form 10-K and will not be deemed "filed" for purposes of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.	

SIGNATURES

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

FOX FACTORY HOLDING CORP.

February 23, 2023

By: /s/ Scott R. Humphrey
**Scott R. Humphrey, Chief Financial Officer and
Treasurer**
**(Principal Financial and Accounting Officer & Duly
Authorized Signatory)**

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Scott R. Humphrey and Michael C. Dennison, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution for him or her, and in his or her name in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the U.S. Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and either of them, his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Michael C. Dennison</u> Michael C. Dennison	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	February 23, 2023
<u>/s/ Scott R. Humphrey</u> Scott R. Humphrey	Chief Financial Officer and Treasurer <i>(Principal Financial and Accounting Officer)</i>	February 23, 2023
<u>/s/ Dudley W. Mendenhall</u> Dudley W. Mendenhall	Chairman	February 23, 2023
<u>/s/ Thomas E. Duncan</u> Thomas E. Duncan	Director	February 23, 2023
<u>/s/ Elizabeth A. Fetter</u> Elizabeth A. Fetter	Director	February 23, 2023
<u>/s/ Jean H. Hlay</u> Jean H. Hlay	Director	February 23, 2023
<u>/s/ Ted D. Waitman</u> Ted D. Waitman	Director	February 23, 2023
<u>/s/ Sidney Johnson</u> Sidney Johnson	Director	February 23, 2023

Management's Report on Internal Control Over Financial Reporting

The management of Fox is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Fox's internal control over financial reporting is a process designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation and fair presentation of financial statements issued for external purposes in accordance with accounting principles generally accepted in the United States of America (GAAP). Under the supervision of our management, including our Chief Executive Officer and Chief Financial Officer, Fox conducted an evaluation of the effectiveness of our internal control over financial reporting.

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

In making its assessment of internal control over financial reporting, management used criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework (2013). Based on the evaluation, our management concluded that its internal control over financial reporting was effective as of December 30, 2022.

Grant Thornton LLP, the independent registered public accounting firm that audited the Company's consolidated financial statements, has issued an attestation report on the Company's internal control over financial reporting, which is included elsewhere in this Annual Report on Form 10-K.

February 23, 2023

/s/ Michael C. Dennison

Michael C. Dennison
Chief Executive Officer

/s/ Scott R. Humphrey

Scott R. Humphrey
Chief Financial Officer and Treasurer

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of
Fox Factory Holding Corp.

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of Fox Factory Holding Corp. (a Delaware corporation) and subsidiaries (the “Company”) as of December 30, 2022 and December 31, 2021, the related consolidated statements of income, comprehensive income, stockholder's equity and redeemable non-controlling interest, and cash flows for each of the three years in the period ended December 30, 2022, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 30, 2022 and December 31, 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 30, 2022, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the Company’s internal control over financial reporting as of December 30, 2022, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”), and our report dated February 23, 2023 expressed an unqualified opinion.

Basis for opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical audit matters

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

Net realizable value of inventory

As discussed in Note 1 to the consolidated financial statements, adjustments are made to reduce the cost of inventory to its net realizable value, if required, for estimated excess, obsolete or impaired balances. Management monitors inventory quantities on hand and on order and records write-downs for estimated excess or obsolescence based on estimated demand for products, obsolescence of technology, product life cycles, and when pricing trends or forecasts indicate that the carrying value of inventory exceeds estimated selling price. We identified the net realizable value of inventory for certain product categories as a critical audit matter.

The principal consideration for our determination that the net realizable value of inventory represents a critical audit matter is that the assessment of the valuation of inventory is complex and includes an estimate of forecasted demand. The demand estimate is subjective and requires the Company to consider significant assumptions such as economic conditions, technology changes, and new product introductions, which are subject to significant uncertainty and therefore require significant auditor judgement.

Our audit procedures related to the net realizable value of inventory included the following, among others:

- We obtained management's analysis for estimated excess or obsolete inventory. We evaluated the appropriateness of management's approach and tested the completeness and accuracy of the underlying data.
- We tested selected inventory items by making inquiries of management and evaluating the appropriateness of judgments and assumptions. We also reviewed industry reports and inquired with management and various staff members outside of the finance function to understand macroeconomic, technology, and product trends.
- We performed a retrospective review by comparing previous demand forecasts to actual usage during the year for a sample of items.
- We compared selected 2023 estimated demand to actual customer sales orders and forecasted demand information as provided by the sales and operations team in order to test the accuracy of demand information included in the calculation.
- We tested the design and operating effectiveness of controls related to the forecasted demand for the Company's products as well as management's review of the net realizable value of inventory.

Realizability of Deferred Tax Assets

As discussed in Note 1 to the consolidated financial statements, deferred tax assets and liabilities are determined based on the temporary differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are provided when necessary to reduce net deferred tax assets to an amount that is more likely than not to be realized. We identified the realizability of deferred tax assets relating to the Company's foreign tax credits as a critical audit matter.

The principal considerations for our determination that the realizability of deferred tax assets relating to the Company's foreign tax credits represent a critical audit matter are the significance of the Company's foreign tax credits and the use of forecasted profitability by jurisdiction and source. The forecasts, including future sales and expenses by jurisdiction, are subject to a high level of estimation uncertainty and subjectivity. As a result, significant auditor judgment is necessary to audit management's judgments and assumptions.

Our audit procedures related to the realizability of deferred tax assets relating to the Company's foreign tax credits included the following, among others:

- We considered the applicability of the Company's international transfer pricing arrangements as it relates to the Company's ability to utilize foreign tax credits.
- We tested the accuracy of the underlying data used in the forecasts by agreeing the baseline 2022 results for selected jurisdictions to general ledger balances.
- We compared the previous year's forecast of future taxable income with the 2022 actual results to assess management's ability to accurately estimate future growth.

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- We evaluated the appropriateness of the assumptions supporting the future revenue growth rate by jurisdiction.
- We tested the design and operating effectiveness of controls related to the generation of the forecasts and assumptions that underpin the assessment of the realizability of deferred tax assets relating to the Company's foreign tax credits.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2008.

San Francisco, California

February 23, 2023

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of
Fox Factory Holding Corp.

Opinion on internal control over financial reporting

We have audited the internal control over financial reporting of Fox Factory Holding Corp. (a Delaware corporation) and subsidiaries (the “Company”) as of December 30, 2022, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 30, 2022, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the consolidated financial statements of the Company as of and for the year ended December 30, 2022, and our report dated February 23, 2023 expressed an unqualified opinion on those financial statements.

Basis for opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s report on Internal Control Over Financial Reporting (“Management’s Report”). Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and limitations of internal control over financial reporting

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

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

/s/ GRANT THORNTON LLP

San Francisco, California

February 23, 2023

FOX FACTORY HOLDING CORP.
Consolidated Balance Sheets
(in thousands, except par value)

	<u>December 30,</u> <u>2022</u>	<u>December 31,</u> <u>2021</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 145,250	\$ 179,686
Accounts receivable (net of allowances of \$443 and \$410 at December 30, 2022 and December 31, 2021, respectively)	200,440	142,040
Inventory	350,620	279,837
Prepays and other current assets	101,364	123,107
Total current assets	<u>797,674</u>	<u>724,670</u>
Property, plant and equipment, net	202,215	192,003
Lease right-of-use assets	48,096	38,752
Deferred tax assets	57,339	34,998
Goodwill	323,978	323,299
Intangibles, net	178,980	197,021
Other assets	10,054	4,986
Total assets	<u>\$ 1,618,336</u>	<u>\$ 1,515,729</u>
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 131,160	\$ 99,984
Accrued expenses	127,729	112,378
Current portion of long-term debt	—	17,500
Total current liabilities	<u>258,889</u>	<u>229,862</u>
Line of credit	200,000	—
Long-term debt, less current portion	—	360,953
Other liabilities	38,061	30,832
Total liabilities	<u>496,950</u>	<u>621,647</u>
Commitments and contingent liabilities (Refer to Note 12. Commitments and Contingent Liabilities)		
Stockholders' equity		
Preferred stock, \$0.001 par value — 10,000 authorized and no shares issued or outstanding as of December 30, 2022 and December 31, 2021	—	—
Common stock, \$0.001 par value — 90,000 authorized; 43,160 shares issued and 42,270 outstanding as of December 30, 2022; 43,010 shares issued and 42,120 outstanding as of December 31, 2021	42	42
Additional paid-in capital	356,239	344,119
Treasury stock, at cost; 890 common shares as of December 30, 2022 and December 31, 2021	(13,754)	(13,754)
Accumulated other comprehensive income	14,782	4,876
Retained earnings	764,077	558,799
Total stockholders' equity	<u>1,121,386</u>	<u>894,082</u>
Total liabilities and stockholders' equity	<u>\$ 1,618,336</u>	<u>\$ 1,515,729</u>

The accompanying notes are an integral part of these consolidated financial statements.

FOX FACTORY HOLDING CORP.
Consolidated Statements of Income
(in thousands, except per share data)

	For the fiscal years ended		
	December 30	December 31	January 1
	2022	2021	2021
Sales	\$ 1,602,491	\$ 1,299,064	\$ 890,554
Cost of sales	1,071,148	866,732	601,007
Gross profit	531,343	432,332	289,547
Operating expenses:			
Sales and marketing	90,801	70,925	52,214
Research and development	56,205	46,567	34,292
General and administrative	116,103	97,241	71,309
Amortization of purchased intangibles	21,537	20,685	17,583
Total operating expenses	284,646	235,418	175,398
Income from operations	246,697	196,914	114,149
Interest and other expense, net:			
Interest expense	8,939	8,162	9,294
Other expense, net	3,994	371	325
Interest and other expense, net	12,933	8,533	9,619
Income before income taxes	233,764	188,381	104,530
Provision for income taxes	28,486	24,563	12,784
Net income	205,278	163,818	91,746
Less: net income attributable to non-controlling interest	—	—	1,072
Net income attributable to Fox stockholders	\$ 205,278	\$ 163,818	\$ 90,674
Earnings per share:			
Basic	\$ 4.86	\$ 3.90	\$ 2.25
Diluted	\$ 4.84	\$ 3.87	\$ 2.22
Weighted-average shares used to compute earnings per share:			
Basic	42,232	42,022	40,229
Diluted	42,384	42,366	40,801

The accompanying notes are an integral part of these consolidated financial statements.

FOX FACTORY HOLDING CORP.
Consolidated Statements of Comprehensive Income
(in thousands)

	For the fiscal years ended		
	December 30, 2022	December 31, 2021	January 1, 2021
Net income	\$ 205,278	\$ 163,818	\$ 91,746
Other comprehensive income			
Interest rate swap, net of tax effects	14,824	3,644	(699)
Foreign currency translation adjustments, net of tax effects	(4,918)	164	1,617
Other comprehensive income	9,906	3,808	918
Comprehensive income	215,184	167,626	92,664
Less: comprehensive income attributable to non-controlling interest	—	—	1,072
Comprehensive income attributable to Fox stockholders	\$ 215,184	\$ 167,626	\$ 91,592

The accompanying notes are an integral part of these consolidated financial statements.

FOX FACTORY HOLDING CORP.
Consolidated Statements of Stockholders' Equity and Redeemable Non-controlling Interest
(in thousands, except per share amounts)

	Common Stock		Treasury		Additional paid-in capital	Accumulated other comprehensive income	Retained earnings	Total stockholders' equity	Redeemable non-controlling interest
	Shares	Amount	Shares	Amount					
Balance - January 3, 2020	39,448	\$ 39	890	\$ (13,754)	\$ 123,274	\$ 150	\$ 312,491	\$ 422,200	\$ 15,719
Issuance of common stock under equity compensation plans, net of shares repurchased for income tax withholding	348	1	—	—	(4,342)	—	—	(4,341)	—
Issuance of common stock, net	2,760	2	—	—	198,233	—	—	198,235	—
Issuance of stock for business acquisition	—	—	—	—	322	—	—	322	—
Adjustment to the fair value of non-controlling interest	—	—	—	—	—	—	(8,184)	(8,184)	8,184
Redeemable non-controlling interest	136	—	—	—	11,169	—	—	11,169	(24,975)
Stock-based compensation expense	—	—	—	—	8,178	—	—	8,178	—
Other comprehensive income	—	—	—	—	—	918	—	918	—
Net income	—	—	—	—	—	—	90,674	90,674	1,072
Balance - January 1, 2021	42,692	\$ 42	890	\$ (13,754)	\$ 336,834	\$ 1,068	\$ 394,981	\$ 719,171	\$ —
Issuance of common stock under equity compensation plans, net of shares repurchased for income tax withholding	318	—	—	—	(7,050)	—	—	(7,050)	—
Stock-based compensation expense	—	—	—	—	14,335	—	—	14,335	—
Other comprehensive income	—	—	—	—	—	3,808	—	3,808	—
Net income	—	—	—	—	—	—	163,818	163,818	—
Balance - December 31, 2021	43,010	\$ 42	890	\$ (13,754)	\$ 344,119	\$ 4,876	\$ 558,799	\$ 894,082	\$ —
Issuance of common stock under equity compensation plans, net of shares repurchased for income tax withholding	150	—	—	—	(4,231)	—	—	(4,231)	—
Stock-based compensation expense	—	—	—	—	16,351	—	—	16,351	—
Other comprehensive income	—	—	—	—	—	9,906	—	9,906	—
Net income	—	—	—	—	—	—	205,278	205,278	—
Balance - December 30, 2022	43,160	\$ 42	890	\$ (13,754)	\$ 356,239	\$ 14,782	\$ 764,077	\$ 1,121,386	\$ —

The accompanying notes are an integral part of these consolidated statements.

FOX FACTORY HOLDING CORP.
Consolidated Statements of Cash Flows
(in thousands)

	For the fiscal years ended		
	December 30, 2022	December 31, 2021	January 1, 2021
OPERATING ACTIVITIES:			
Net income	\$ 205,278	\$ 163,818	\$ 91,746
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	49,242	43,426	33,927
Stock-based compensation	16,351	13,914	8,618
Amortization of loan fees	1,086	1,631	1,543
Write off of unamortized loan origination fees	1,927	—	—
Amortization of deferred gains on prior swap settlements	(3,177)	(48)	—
Gain on disposal of property and equipment	(1,740)	(96)	—
Deferred taxes and uncertain tax positions	(18,445)	(17,096)	(14,291)
Changes in operating assets and liabilities:			
Accounts receivable	(63,957)	(20,230)	(18,771)
Inventory	(78,537)	(146,532)	7,877
Income taxes	8,717	26,789	1,192
Prepays and other assets	18,132	(34,509)	(66,400)
Accounts payable	40,493	10,304	25,892
Accrued expenses and other liabilities	11,724	21,813	11,166
Net cash provided by operating activities	187,094	63,184	82,499
INVESTING ACTIVITIES:			
Acquisition of businesses, net of cash acquired	(714)	(51,881)	(331,531)
Acquisition of other assets	(3,500)	—	(250)
Purchases of property and equipment	(43,701)	(54,846)	(56,744)
Proceeds from sale of property and equipment	3,180	1,781	—
Net cash used in investing activities	(44,735)	(104,946)	(388,525)
FINANCING ACTIVITIES:			
Proceeds from line of credit, net of origination fees	602,356	37,931	225,125
Payments on line of credit	(404,336)	(37,931)	(293,125)
Proceeds from issuance of debt, net of origination fees	—	—	392,385
Repayment of term debt upon refinancing of Prior Credit Facility	(382,500)	(12,500)	(5,000)
Proceeds from sale of common stock, net	—	—	198,236
Installment on purchase of non-controlling interest	(2,700)	(4,550)	(6,556)
Repurchases from stock compensation program, net	(4,231)	(7,050)	(4,343)
Proceeds from termination of swap agreement	12,270	324	—
Net cash (used in) provided by financing activities	(179,141)	(23,776)	506,722
EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS	2,346	(540)	1,332
CHANGE IN CASH AND CASH EQUIVALENTS	(34,436)	(66,078)	202,028
CASH AND CASH EQUIVALENTS—Beginning of year	179,686	245,764	43,736
CASH AND CASH EQUIVALENTS—End of year	\$ 145,250	\$ 179,686	\$ 245,764

The accompanying notes are an integral part of these consolidated statements.

FOX FACTORY HOLDING CORP.
Consolidated Statements of Cash Flows
(in thousands)

SUPPLEMENTAL CASH FLOW INFORMATION:	For the fiscal years ended		
	December 30,	December 31,	January 1,
	2022	2021	2021
Cash paid during the period for:			
Income taxes	\$ 37,493	\$ 14,980	\$ 26,228
Cash paid for interest, net of capitalized interest	\$ 9,922	\$ 6,384	\$ 7,171
Cash paid for amounts included in the measurement of lease liabilities	\$ 10,499	\$ 8,747	\$ 7,095
Non-cash operating activities:			
Right-of-use assets obtained in exchange for lease obligations	\$ 21,167	\$ 20,289	\$ 14,178
Non-cash investing and financing activities:			
Acquisition of non-controlling interest in exchange for equity and installment payments	\$ —	\$ —	\$ 18,419
Capital expenditures included in accounts payable	\$ 2,049	\$ 3,491	\$ 6,997

The accompanying notes are an integral part of these consolidated financial statements.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements
December 30, 2022
(in thousands, except per share amounts)

1. Description of the Business, Basis of Presentation and Summary of Significant Accounting Policies

Fox Factory Holding Corp. (the "Company") designs, engineers, manufactures and markets performance-defining products and systems for customers worldwide. Our premium brand, performance-defining products and systems are used primarily for bicycles ("bikes"), side-by-side vehicles ("side-by-sides"), on-road vehicles with and without off-road capabilities, off-road vehicles and trucks, all-terrain vehicles ("ATVs"), snowmobiles, and specialty vehicles and applications. Some of our products are specifically designed and marketed to the leading cycling and powered vehicle original equipment manufacturers ("OEMs"), while others are distributed to consumers through a global network of dealers and distributors.

Throughout this Annual Report on Form 10-K, unless stated otherwise or as the context otherwise requires, the "Company," "FOX," "Fox Factory," "we," "us," "our," and "ours" refer to Fox Factory Holding Corp. and its operating subsidiaries on a consolidated basis.

Basis of Presentation - The accompanying consolidated financial statements have been prepared in accordance with United States of America ("U.S.") generally accepted accounting principles ("GAAP").

Fiscal Year Calendar - The Company operates using a 52-53 week fiscal year calendar ending on the Friday nearest to December 31. Therefore, the financial results of certain fiscal years and quarters, which will contain 53 and 14 weeks, respectively, will not be exactly comparable to the prior and subsequent fiscal years and quarters, which contain 52 and 13 weeks, respectively. For the fiscal years 2022, 2021 and 2020, the Company's fiscal year ended on December 30, 2022, December 31, 2021 and January 1, 2021 and each had 52 weeks.

Principles of Consolidation - The consolidated financial statements include the Company and its subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

Use of Estimates - The preparation of the Company's consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. These estimates are based on information available as of the date of the financial statements; therefore, actual results could differ from management's estimates.

Foreign Currency Translation and Transaction - The functional currency of the Company's non-U.S. entities is the local currency of the respective operations. The Company translates the financial statements of its non-U.S. entities into U.S. Dollars each reporting period for purposes of consolidation. Assets and liabilities of the Company's foreign subsidiaries are translated at the period-end currency exchange rates while sales and expenses are translated at the average currency exchange rates in effect for the period. The effects of these translation adjustments are a component of other comprehensive income.

Foreign currency transaction losses of \$3,377, \$455, and \$396 for the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively, are included as a component of other income or expense.

Cash and Cash Equivalents - Cash consists of cash maintained in checking or money market accounts. All highly liquid investments purchased with an original maturity date of 90 days or less at the date of purchase are considered to be cash equivalents.

Accounts Receivable - Accounts receivable are unsecured customer obligations which generally require payment within various terms from the invoice date. The receivables are stated at the invoice amount. Financing terms vary by customer. Invoices are considered past due when payment is not received within the terms stated within the contract. Payments of accounts receivable are applied to the specific invoices identified on the customer's remittance advice or if unspecified, generally to the earliest unpaid invoices.

The carrying amount of accounts receivable is reduced by a valuation allowance that reflects management's best estimate of amounts that may not be collected. All accounts or portions thereof deemed to be uncollectible or that may require an excessive collection cost are written off to the allowance for credit losses.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
December 30, 2022
(in thousands, except per share amounts)

Concentration of Credit Risk - Financial instruments, which potentially subject the Company to significant concentrations of credit risk, consist primarily of cash and accounts receivable. As of December 30, 2022 the Company held \$64,859 in cash at U.S. subsidiaries and \$80,391 at subsidiaries outside the U.S. The account balances may significantly exceed the insurance coverage provided on such deposits. Generally, these deposits may be redeemed upon demand and are maintained with financial institutions with reputable credit and therefore bear minimal credit risk. The Company has not experienced any losses in its uninsured accounts.

The Company mitigates its credit risk with respect to accounts receivable by performing ongoing credit evaluations and monitoring of its customers' accounts receivable balances. The following customers accounted for 10% or more of the Company's accounts receivable balance:

	December 30, 2022	December 31, 2021
Customer A	14%	6%
Customer B	9%	11%
Customer C	8%	10%

No other customers were individually significant in any of these periods presented.

The Company depends on a limited number of vendors to supply component parts for its products. The Company purchased 34%, 32%, and 28% of its product components for the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively, from ten vendors. As of December 30, 2022 and December 31, 2021, amounts due to these vendors represented 38% and 10% of accounts payable, respectively.

Allowance for Credit Losses - The Company records a provision for credit losses based on historical experience and a detailed assessment of the collectability of its accounts receivable. The provision is based on how long a receivable has been outstanding, taking into account the historical credit loss rate and adjusting for both current conditions and forecasts of economic conditions into that expected credit loss rate. If circumstances change, such as higher-than-expected defaults or an unexpected material adverse change in a major customer's ability to meet its financial obligations, the Company's estimate of the recoverability of the amounts due could be reduced by a material amount.

The following table presents the activity in the allowance for credit losses:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Allowance for credit losses:			
Balance, beginning of year	\$ 410	\$ 663	\$ 810
Add: bad debt expense (benefit)	446	(14)	103
Less: write-offs, net of recoveries	(413)	(239)	(250)
Balance, end of year	<u>\$ 443</u>	<u>\$ 410</u>	<u>\$ 663</u>

Inventories - Inventories are stated at the lower of actual cost (or standard cost which generally approximates actual costs on a first-in first-out basis) or net realizable value. Cost includes raw materials and inbound freight, as well as direct labor and manufacturing overhead for products we manufacture. Net realizable value is based on current replacement cost for raw materials and on a net realizable value for finished goods. Adjustments to reduce the cost of inventory to its net realizable value are made, if required, for estimated excess, obsolescence or impaired balances.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
December 30, 2022
(in thousands, except per share amounts)

Property and Equipment - Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Maintenance and repairs are charged to expense as incurred, and improvements and betterments are capitalized. When assets are retired or otherwise disposed of, the cost and accumulated depreciation and amortization are removed from the balance sheet and any resulting gain or loss is reflected in operations in the period realized.

Leasehold improvements are amortized on a straight-line basis over the terms of the lease, or the useful lives of the assets, whichever is shorter. The value assigned to land associated with buildings we own is not amortized. Depreciation and amortization periods for the Company's property and equipment are as follows:

<u>Asset Classification</u>	<u>Estimated useful life</u>
Building and building improvements	15-39 years
Information systems, office equipment and furniture	3-7 years
Internal-use computer software	10 years
Land improvements	15 years
Machinery and manufacturing equipment	5-15 years
Transportation equipment	3-5 years

Internal-use Computer Software Costs - Costs incurred to purchase and develop computer software for internal use are capitalized during the application development and implementation stages. These software costs have been for enterprise-level business and finance software that is customized to meet the Company's operational needs. Capitalized costs are included in property and equipment and are amortized on a straight-line basis over the estimated useful life of the software beginning when the software project is substantially complete and placed in service. The Company capitalized \$4,863 in internal use computer software costs during the year ended December 30, 2022. Costs incurred during the preliminary project stage and costs for training, data conversion, and maintenance are expensed as incurred.

Impairment of Long-lived Assets - The Company periodically reviews property and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset is impaired or the estimated useful lives are no longer appropriate. If indicators of impairment exist and the undiscounted projected cash flows associated with such assets are less than the carrying amount of the assets, an impairment loss is recorded to write the assets down to their estimated fair values. Fair value is estimated based on discounted future cash flows. No impairment charges were recorded during the years ended December 30, 2022, December 31, 2021 and January 1, 2021.

Business Combinations - The Company accounts for acquisitions of entities that include inputs and processes and have the ability to create outputs as business combinations. The Company allocates the purchase price of the acquisition to the tangible assets acquired, liabilities assumed and identifiable intangible assets acquired based on their estimated fair values. The excess of the purchase price over those fair values is recorded as goodwill. Acquisition-related expenses and restructuring costs are expensed as incurred. During the measurement period, the Company records adjustments to provisional amounts recorded for assets acquired and liabilities assumed with the corresponding offset to goodwill. After the measurement period, which could be up to one year after the transaction date, subsequent adjustments are recorded to the Company's consolidated statements of income.

FOX FACTORY HOLDING CORP.
Notes to Consolidated Financial Statements - Continued
December 30, 2022
(in thousands, except per share amounts)

Goodwill and Intangible Assets - Goodwill represents the excess of purchase price over the fair value of the net assets of businesses acquired. On an annual basis, the Company makes a qualitative assessment to determine if it is more likely than not that the fair value of the reporting unit is less than its carrying amount, including goodwill. If the Company determines that the fair value of the reporting unit is less than its carrying amount, it will perform a quantitative analysis; otherwise, no further evaluation is necessary. For the quantitative impairment assessment, the Company compares the fair value of the reporting unit to its carrying value, including goodwill. The Company determines the fair value of the reporting unit based on a weighting of income and market approaches. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not impaired and no further testing is performed. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the Company will recognize a loss equal to the excess, limited to the total amount of goodwill allocated to that reporting unit. Impairments, if any, are charged directly to earnings. We completed our most recent annual impairment test in the third quarter of 2022 at which time we had a single reporting unit for purposes of assessing goodwill impairment. No impairment charges have been incurred to date.

Intangible assets including customer relationships, certain trademarks, and the Company's core technology, are subject to amortization over their respective useful lives, and are classified in intangibles, net in the accompanying consolidated balance sheet. These intangibles are evaluated for impairment whenever events or changes in circumstances indicate that the carrying value of the assets may not be fully recoverable. If facts and circumstances indicate that the carrying value might not be recoverable, projected undiscounted net cash flows associated with the related asset or group of assets over their estimated remaining useful lives is compared against their respective carrying amounts. If an asset is found to be impaired, the impairment charge will be measured as the amount by which the carrying amount of an entity exceeds its fair value. Certain trademarks and brands are considered to be indefinite life intangibles, and are not amortized but are subject to testing for impairment annually. No impairments of intangible assets were identified in the years ended December 30, 2022, December 31, 2021 and January 1, 2021.

Self-Insurance - The Company is self-insured for its U.S. employee health and welfare benefits. The Company's liability for self-insurance is based on claims filed and an estimate of claims incurred but not yet reported. The Company considers a number of factors, including historical claims information, when determining the amount of the accrual. Costs related to the administration of the plan and related claims are expensed as incurred. The Company has third-party insurance coverage to limit exposure for individually significant claims. The estimates for unpaid claims incurred as of December 30, 2022 and December 31, 2021 are \$1,988 and \$1,754 respectively, and are recorded within accrued expenses on the consolidated balance sheets.

Revenue Recognition - Revenues are generated from the sale of performance-defining products and systems to customers worldwide. The Company's performance-defining products and systems are solutions that improve performance of powered vehicles and bikes. Powered vehicles include side-by-sides, on-road vehicles with off-road capabilities, off-road vehicles and trucks, ATVs, snowmobiles, specialty vehicles and applications, and motorcycles.

Revenue is measured based on the consideration specified in a contract with a customer. The Company recognizes revenue when it satisfies a performance obligation by transferring control of a product to a customer, generally at the time of shipment. Contracts are generally in the form of purchase orders and are governed by standard terms and conditions. For larger OEMs, the Company may also enter into master agreements. Sales tax and other similar taxes are excluded from revenues. Revenues generated from upfit packages generally do not include the vehicle chassis, as the Company is not the principal in this arrangement and the automotive dealer purchases the chassis directly from the OEM. The Company is required to place a deposit on all vehicle chassis that the dealer purchases directly from the OEM, however that deposit is refunded when the chassis is sold through to the end customer.

Provisions for discounts, rebates, sales incentives, returns, and other adjustments are generally provided for in the period the related sales are recorded, based on management's assessment of historical trends and projection of future results. Certain pricing provisions that provide the customer with future discounts are considered a material right. Such material rights result in the deferral of revenues that are recognized when the rights are exercised by the customer. Measuring the material rights requires judgments including forecasts of future sales and product mix.

Cost of Sales - Cost of sales primarily consists of materials and labor expense in the manufacturing of the Company's products sold to customers. Cost of sales also includes provisions for excess and obsolete inventory, warranty costs, certain allocated costs for facilities, depreciation and other manufacturing overhead. Additionally, it includes stock-based compensation for personnel directly involved with manufacturing the Company's product offerings.

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Shipping and Handling Fees and Costs - The Company includes shipping and handling fees billed to customers in sales. Shipping costs associated with inbound freight are capitalized as part of inventory and included in cost of sales as products are sold.

Sales and Marketing - Our sales and marketing expenses include costs related to our sales, customer service and marketing personnel, including their wages, employee benefits and related stock-based compensation, and occupancy related expenses. Other significant sales and marketing expenses include commissions paid to outside sales representatives, promotional materials and products, our sales office costs, race support and sponsorships of events and athletes, advertising and promotions related to trade shows, and travel and entertainment.

Research and Development - Research and development expenses consist primarily of salaries and personnel costs, including wages, employee benefits and related stock-based compensation for the Company's engineering, research and development teams, occupancy related expenses, fees for third party consultants, service fees, and expenses for prototype tooling and materials, travel, and supplies. The Company expenses research and development costs as incurred.

General and Administrative - General and administrative expenses include costs related to executive, finance, information technology, human resources and administrative personnel, including wages, employee benefits and related stock-based compensation expenses. The Company records professional and contract service expenses, occupancy related expenses associated with corporate locations and equipment, and legal expenses in general and administrative expenses.

Stock-Based Compensation - The Company measures stock-based compensation for all stock-based awards, including stock options and restricted stock units ("RSUs"), based on their estimated fair values on the date of the grant and recognizes the stock-based compensation cost for time-vested awards on a straight-line basis over the requisite service period. For performance-based RSUs, the number of shares ultimately expected to vest is estimated at each reporting date based on management's expectations regarding the relevant performance criteria. To the extent shares are expected to vest, the stock-based compensation cost is recognized on a straight-line basis over the requisite service period. The fair value of each stock option granted is estimated using the Black-Scholes option-pricing model. The Company does not estimate forfeitures in recognizing stock-based compensation expense. The fair value of the RSUs is equal to the fair value of the Company's common stock on the grant date of the award.

Income Taxes - Income taxes are computed using the asset and liability method, under which deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Operating loss and tax credit carryforwards are measured by applying currently enacted tax laws. Valuation allowances are provided when necessary to reduce net deferred tax assets to an amount that is more likely than not to be realized.

The Company accounts for global intangible low-taxed income ("GILTI") in the year the tax is incurred, rather than recognize deferred taxes for temporary basis differences expected to reverse as GILTI in future years. The net GILTI inclusion for the year ended December 30, 2022 was fully offset by foreign tax credits associated with the income.

The Company recognizes the tax effects of an uncertain tax position only if it is more likely than not to be sustained based solely on its technical merits as of the reporting date and then only in an amount more likely than not to be sustained upon review by the tax authorities. The Company considers many factors when evaluating and estimating its tax positions and tax benefits, which may require periodic adjustments and which may not accurately anticipate actual outcomes.

Advertising - Advertising costs are expensed as incurred and recorded as sales and marketing expenses on our Consolidated Statements of Income. Costs incurred for advertising totaled \$4,813, \$2,741, and \$2,188 for the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively.

Warranties - The Company offers limited warranties on its products generally for one to two years. The Company recognizes estimated costs related to warranty activities as a component of cost of sales upon product shipment. The estimates are based upon historical product failure rates and historical costs incurred in correcting product failures. The recorded amount is adjusted from time to time for specifically identified warranty exposures. Actual warranty expenses are charged against the Company's estimated warranty liability when incurred. Factors that affect the Company's liability include the number of units, historical and anticipated rates of warranty claims, and the cost per claim.

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Segments - The Company has determined that it has a single operating and reportable segment; manufacturing, sale and service of performance-defining products. The Company considers operating segments to be components of the Company in which separate financial information is available that is evaluated regularly by the Company's chief operating decision maker in deciding how to allocate resources and in assessing performance. The chief operating decision maker for the Company is the Chief Executive Officer. The Chief Executive Officer reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance.

Fair Value Measurements and Financial Instruments - The Financial Accounting Standards Board ("FASB") has issued Accounting Standards Codification 820, *Fair Value Measurements and Disclosures*, that requires the valuation of assets and liabilities required or permitted to be either recorded or disclosed at fair value based on hierarchy of available inputs as follows:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices for similar assets and liabilities in active markets, quoted prices for identical assets and liabilities in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

The carrying amounts of the Company's financial instruments, including cash, receivables, accounts payable, and accrued liabilities approximate their fair values due to their short-term nature. As of December 31, 2021, amounts owed under the Company's Prior Credit Facility approximated fair value because it had a variable interest rate that reflected market changes in interest rates and changes in the Company's net leverage ratio. The Prior Credit Facility was terminated on April 5, 2022 and replaced with the revolving 2022 Credit Facility.

Certain Significant Risks and Uncertainties - The Company is subject to those risks common in manufacturing-driven markets, including, but not limited to, competitive forces, dependence on key personnel, customer demand for its products, the successful protection of its proprietary technologies, compliance with government regulations, and the possibility of not being able to obtain additional financing when needed. Additionally, the Company has been impacted by the coronavirus ("COVID-19") outbreak. The global outbreak of COVID-19 has negatively affected the U.S. and global economy, disrupted global supply chains, resulted in significant travel and transport restrictions, including mandated closures and orders to "shelter-in-place," and created significant disruption of the financial markets. Despite the Company's efforts to manage and remedy these impacts to the Company, the ultimate impact and the extent to which the COVID-19 pandemic will continue to affect the business, results of operation and financial condition is difficult to predict and depends on numerous evolving factors outside of the Company's control including: the duration and scope of the pandemic; government, social, business and other actions that have been and will be taken in response to the pandemic; and the effect of the pandemic on short and long-term general economic conditions.

Recent Accounting Pronouncements - In December 2019, the FASB issued ASU 2019-12, *Simplifying the Accounting for Income Taxes*, which helps simplify how entities account for income taxes by removing various exceptions related to the recognition of deferred tax liabilities and updating other tax computation requirements. This standard is effective for fiscal years beginning after December 15, 2020 and early adoption is permitted. The Company adopted ASU 2019-12 effective in the first quarter of fiscal year 2021. The adoption of ASU 2021-12 did not have a material impact on the Company's consolidated financial statements.

In October 2020, the FASB issued ASU 2020-10, *Codification Improvements*. The amendments in ASU 2020-10 contain improvements to the Codification to ensure consistency by including disclosure guidance in the appropriate Disclosure Section. This guidance includes an option for an entity to provide certain information either on the face of the financial statements or in the notes. The ASU also provides clarification to various codification topics to improve consistency in guidance application. The amendments are effective for interim and annual reporting periods in fiscal years beginning after December 15, 2020, with early adoption permitted. The Company adopted ASU 2020-10 effective in the first quarter of fiscal year 2021. The adoption of ASU 2020-10 did not have a material impact on the Company's consolidated financial statements and related disclosures.

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In October 2021, the FASB issued ASU 2021-08, Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers. Under ASU 2021-08, an acquirer must recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606. The guidance is effective for interim and annual periods beginning after December 15, 2022, with early adoption permitted. The Company adopted this guidance in the first quarter of 2022. This adoption did not have a material impact on our financial statements.

In September 2022, the FASB issued ASU 2022-04, Liabilities - Supplier Finance Programs (Subtopic 405): Disclosure of Supplier Finance Program Obligations. Under ASU 2022-04, the buyer in a supplier finance program is required to disclose sufficient information to allow a user of the financial statements to understand the program's nature, activity during the period, changes from period to period, and potential magnitude. The guidance is effective for interim and annual periods beginning after December 15, 2022, with early adoption permitted. These amendments will be applied retrospectively to each period in which a balance sheet is presented, except for the disclosure of rollforward information, which will be applied prospectively. The Company expects to adopt the interim disclosure requirements as applicable during the first quarter of 2023 and the annual disclosure requirements, except for the annual rollforward, in the 2023 Annual Report on Form 10-K. The Company expects to adopt the annual rollforward requirement in the 2024 Annual Report on Form 10-K. This adoption is not expected to have a material impact on our financial statements. The Company is currently evaluating ASU 2022-04 and assessing the impact this guidance will have on its consolidated financial statements and disclosures.

2. Revenues

The following table summarizes total sales by product category:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Powered Vehicle products	\$ 921,520	\$ 720,029	\$ 523,694
Specialty Sports products	680,971	579,035	366,860
Total sales	\$ 1,602,491	\$ 1,299,064	\$ 890,554

The following table summarizes total sales by sales channel:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
OEM	\$ 909,550	\$ 718,000	\$ 494,068
Aftermarket	692,941	581,064	396,486
Total sales	\$ 1,602,491	\$ 1,299,064	\$ 890,554

The following table summarizes total sales generated by geographic location of the customer:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
North America	\$ 1,009,203	\$ 811,312	\$ 593,267
Asia	252,275	241,033	144,836
Europe	320,545	230,491	143,817
Rest of the World	20,468	16,228	8,634
Total sales	\$ 1,602,491	\$ 1,299,064	\$ 890,554

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3. Inventory

Inventory consisted of the following:

	December 30, 2022	December 31, 2021
Raw materials	\$ 247,441	\$ 200,460
Work-in-process	9,959	7,539
Finished goods	93,220	71,838
Total inventory	<u>\$ 350,620</u>	<u>\$ 279,837</u>

4. Prepaids and Other Current Assets

Prepaids and other current assets consisted of the following:

	December 30, 2022	December 31 2021
Prepaid chassis deposits	\$ 74,013	\$ 98,618
Advanced payments and prepaid contracts	13,598	14,024
Other current assets	13,753	10,465
Total prepaids and other assets	<u>\$ 101,364</u>	<u>\$ 123,107</u>

5. Property, Plant and Equipment, net

Property, plant and equipment consisted of the following:

	December 30, 2022	December 31, 2021
Building and building improvements	\$ 73,594	\$ 72,088
Information systems, office equipment and furniture	21,655	20,988
Internal-use computer software	30,290	25,700
Land and land improvements	14,493	15,663
Leasehold improvements	20,078	22,835
Machinery and manufacturing equipment	122,748	106,628
Transportation equipment	12,450	7,372
Total property, plant and equipment	295,308	271,274
Less: accumulated depreciation and amortization	(93,093)	(79,271)
Total property, plant and equipment, net	<u>\$ 202,215</u>	<u>\$ 192,003</u>

At the end of March 2022, the Company retired approximately \$6,717 in assets that were fully depreciated in response to the shutdown of our Watsonville, California facility.

Depreciation expense was \$27,705, \$22,741, and \$16,341 for the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively, including \$3,787, \$2,492, and \$2,250 of internal-use software amortization for the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively. The Company capitalized \$4,863 in internal use computer software costs during the year ended December 30, 2022.

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Notes to Consolidated Financial Statements - Continued
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The following table summarizes the allocation of depreciation expense in the accompanying consolidated statements of income:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Cost of sales	\$ 13,741	\$ 11,656	\$ 9,266
General and administrative	11,003	8,780	4,868
Research and development	2,441	2,080	2,044
Sales and marketing	520	225	163
Total depreciation expense	<u>\$ 27,705</u>	<u>\$ 22,741</u>	<u>\$ 16,341</u>

The Company's long-lived assets by geographic location are as follows:

	December 30, 2022	December 31, 2021
United States	\$ 166,544	\$ 161,451
International	35,671	30,552
Total long-lived assets	<u>\$ 202,215</u>	<u>\$ 192,003</u>

6. Leases

The Company has operating lease agreements for administrative, research and development, manufacturing, and sales and marketing facilities. These leases have remaining lease terms ranging from one to ten years, some of which include options to extend the lease term for up to ten years, and some of which include options to terminate the leases within one year. Certain leases are subject to annual escalations as specified in the lease agreements. The Company considered these options in determining the lease term used to establish its right-of-use assets and lease liabilities. These lease agreements do not contain any material residual value guarantees or material restrictive covenants.

As most of the Company's leases do not provide an interest rate, the Company used the incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The weighted-average remaining lease term for the Company's operating leases was 5.64 years and the weighted-average incremental borrowing rate was 2.42% as of December 30, 2022.

Operating lease costs consisted of the following:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Operating lease cost	\$ 11,209	\$ 9,124	\$ 7,201
Other lease costs (1)	3,638	1,122	937
Total lease costs	<u>\$ 14,847</u>	<u>\$ 10,246</u>	<u>\$ 8,138</u>

(1) Includes short-term leases and variable lease costs. The Company elected a policy exclusion permitting leases with an original lease term of less than one year to be excluded from the right-of-use assets and lease liabilities.

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Supplemental balance sheet information related to the Company's operating leases is as follows:

	Balance Sheet Classification		December 30, 2022
Operating lease right-of-use assets	Lease right-of-use assets	\$	48,096
Current lease liabilities	Accrued expenses	\$	10,314
Non-current lease liabilities	Other liabilities	\$	37,098

Maturities of lease liabilities by fiscal year for the Company's operating leases are as follows:

For fiscal year	Total future payments
2023	\$ 11,376
2024	10,480
2025	8,123
2026	7,027
2027	4,418
Thereafter	9,649
Total lease payments	51,073
Less: imputed interest	(3,661)
Present value of lease liabilities	47,412
Less: current portion	(10,314)
Lease liabilities less current portion	<u>\$ 37,098</u>

7. Goodwill and Intangible Assets

Intangible assets, excluding goodwill, are comprised of the following:

	Gross carrying amount	Accumulated amortization	Net carrying amount	Weighted average life (years)
December 30, 2022				
Customer relationships	\$ 195,910	\$ (86,023)	\$ 109,887	10
Core technology	39,291	(34,412)	4,879	8
Trademarks and brands, subject to amortization	12,443	(3,799)	8,644	9
Total	<u>\$ 247,644</u>	<u>\$ (124,234)</u>	123,410	
Trademarks and brands, not subject to amortization			55,570	
Total			<u>\$ 178,980</u>	
December 31, 2021				
Customer relationships	\$ 195,910	\$ (66,240)	\$ 129,670	10
Core technology	35,795	(33,989)	1,806	8
Trademarks and brands, subject to amortization	12,443	(2,468)	9,975	9
Total	<u>\$ 244,148</u>	<u>\$ (102,697)</u>	141,451	
Trademarks and brands, not subject to amortization			55,570	
Total			<u>\$ 197,021</u>	

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The following table summarizes the amortization of intangible assets in the accompanying consolidated statements of income:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Amortization of intangibles	\$ 21,537	\$ 20,685	\$ 17,583

Future amortization expense for finite-lived intangibles as of December 30, 2022 is as follows:

For fiscal year:	Amortization Expense
2023	\$ 21,058
2024	20,851
2025	18,216
2026	17,658
2027	16,307
Thereafter	29,320
Total expected future amortization	<u>\$ 123,410</u>

Goodwill activity consisted of the following:

Balance as of December 31, 2021	\$ 323,299
Acquisitions (Refer to Note 18. Acquisitions)	714
Currency translation and other adjustments	(35)
Balance as of December 30, 2022	<u>\$ 323,978</u>

8. Accrued Expenses

Accrued expenses consisted of the following:

	December 30, 2022	December 31, 2021
Payroll and related expenses	\$ 38,193	\$ 32,968
Current portion of lease liabilities	10,314	9,095
Warranty	17,071	15,510
Income tax payable	40,701	34,845
Accrued sales rebate	8,693	8,568
NCI buyout liability	—	2,700
Other accrued expenses	12,757	8,692
Total accrued expenses	<u>\$ 127,729</u>	<u>\$ 112,378</u>

Activity related to warranties is as follows:

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	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Beginning warranty liability	\$ 15,510	\$ 9,835	\$ 5,649
Charge to cost of sales	11,387	13,603	6,887
Fair value of warranty assumed in acquisition	—	150	3,158
Costs incurred	(9,826)	(8,078)	(5,859)
Ending warranty liability	\$ 17,071	\$ 15,510	\$ 9,835

9. Related Party Transactions

On March 11, 2020, the Company acquired 100% of the issued and outstanding stock of SCA Performance Holdings, Inc. ("SCA"). Refer to [Note 18. Acquisitions](#) for further details of this acquisition. The Company has transactions with an automotive dealership owned by a former owner of SCA, who is now an employee of the Company. The Company purchased approximately \$2,015, \$1,206 and \$1,172 in parts and vehicles, and sold approximately \$1,010, \$538 and \$404 of upfit packages to the dealership during the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively. The Company had \$99 and \$105 in accounts payable, related to this dealership as of December 30, 2022 and December 31, 2021, respectively. The Company had \$50 in accounts receivable related to this dealership as of December 31, 2021. No accounts receivable were outstanding as of December 30, 2022.

On July 22, 2020 the Company, pursuant to a stock purchase agreement with Flagship, Inc., purchased the remaining 20% interest of FF US Holding Corp. for \$24,975 payable in a combination of stock and cash. The cash and stock portions were settled in quarterly installments through July 2022. Refer to [Note 12. Commitments and Contingent Liabilities](#) for additional details of this agreement.

10. Debt

Prior Credit Facility

In June 2019, the Company entered into a credit facility with Bank of America and other named lenders, which was periodically amended and restated and/or amended. The credit facility was amended and restated on March 11, 2020, and further amended on June 19, 2020, June 11, 2021 and December 16, 2021 (as amended, the "Prior Credit Facility"). The Prior Credit Facility (which was terminated on April 5, 2022 and replaced with the 2022 Credit Facility (as discussed below)), would have matured on March 11, 2025, and provided a senior secured revolving line of credit with a borrowing capacity of \$250,000 and a term loan of \$400,000. The term loan was subject to quarterly amortization payments.

2022 Credit Facility

On April 5, 2022, the Company entered into a new credit agreement with Wells Fargo Bank, National Association, and other named lenders (the "2022 Credit Facility"), and concurrently repaid in full and terminated the Prior Credit Facility. The 2022 Credit Facility, which matures on April 5, 2027, provides for revolving loans, swingline loans and letters of credit up to an aggregate amount of \$650,000.

On April 5, 2022, the Company borrowed \$475,000 under the 2022 Credit Facility, which was used to repay all outstanding amounts owed under the Prior Credit Facility and for general corporate purposes. Future advances under the 2022 Credit Facility will be used to finance working capital, capital expenditures and other general corporate purposes of the Company. To the extent not previously paid, all then-outstanding amounts under the 2022 Credit Facility are due and payable on the maturity date.

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The Company paid \$1,980 in debt issuance costs in connection with the 2022 Credit Facility, which were allocated to the line of credit and amortized on a straight-line basis over the term of the facility. Additionally, the Company had \$4,473 of remaining unamortized debt issuance costs related to the Prior Credit Facility. The Company expensed \$1,927 of the remaining unamortized debt issuance costs and allocated \$2,546 to the 2022 Credit Facility.

The Company may borrow, prepay and re-borrow principal under the 2022 Credit Facility during its term. Advances under the 2022 Credit Facility can be either Adjusted Term Secured Overnight Financing Rate ("SOFR") loans or base rate loans. SOFR rate revolving loans bear interest on the outstanding principal amount thereof for each interest period at a rate per annum equal to Term SOFR for such calculation plus 0.10% plus a margin ranging from 1.00% to 2.00%. Base rate revolving loans bear interest on the outstanding principal amount thereof at a rate per annum equal to the highest of (i) Federal Funds Rate plus 0.50%, (ii) the rate of interest in effect for such day as publicly announced from time to time by the administrative agent as its "prime rate", and (iii) Adjusted Term SOFR rate for a one-month tenor plus 1.00%, subject to the interest rate floors set forth therein, plus a margin ranging from 0.00% to 1.00%. At December 30, 2022, the one-month SOFR and three-month SOFR rates were 4.06% and 3.62%, respectively. At December 30, 2022, our weighted-average interest rate on outstanding borrowing was 4.38%.

The 2022 Credit Facility is secured by substantially all of the Company's assets, restricts the Company's ability to make certain payments and engage in certain transactions, and requires that the Company satisfy customary financial ratios. The Company was in compliance with the covenants as of December 30, 2022.

The following table summarizes the line of credit under the 2022 Credit Facility and the Prior Credit Facility:

	December 30, 2022	December 31, 2021
Amount outstanding	\$ 200,000	\$ —
Standby letters of credit	\$ —	\$ 15,000
Available borrowing capacity	\$ 450,000	\$ 235,000
Total borrowing capacity	\$ 650,000	\$ 250,000
Maturity date	April 5, 2027	March 11, 2025

11. Derivatives and Hedging

The Company is exposed to certain risks relating to its ongoing business operations. The primary risk managed by using derivative instruments is interest rate risk. The Company utilizes interest rate swaps to limit its exposure to interest rate risk by converting a portion of its floating-rate debt to a fixed-rate basis, thus reducing the impact of interest rate changes on future interest expense. Interest rate swaps involve the receipt of floating-rate amounts in exchange for fixed-rate interest payments based on the three-month Term SOFR over the lives of the agreements without an exchange of the underlying principal amounts.

As of December 30, 2022 and December 31, 2021, the Company had the following interest rate swap contracts:

Effective Date	Termination Date	Notional Amount	December 30, 2022	December 31, 2021
			Unrealized Gain in AOI	Unrealized Gain in AOI
September 2, 2020	June 11, 2021	\$200,000	\$ 189	\$ 276
July 2, 2021	April 5, 2022	\$200,000	9,180	3,583
April 5, 2022	April 5, 2027	\$100,000	5,087	—
Total			\$ 14,456	\$ 3,859

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On June 11, 2021, the Company terminated its existing swap agreement (the "2020 Swap Agreement") and entered into an interest rate swap agreement (the "2021 Swap Agreement") with a notional amount of \$200,000. On April 5, 2022, the Company terminated its 2021 Swap Agreement and entered into a new interest rate swap agreement (the "2022 Swap Agreement") with a notional amount of \$100,000. The terminated 2020 and 2021 Swap Agreements resulted in unrealized gains of \$324 and \$12,270, respectively, at the termination dates that will continue to be accounted for in accumulated other comprehensive income and amortized into earnings over the term of the associated debt instrument.

The 2022 Swap Agreement has a maturity date of April 5, 2027 and is indexed to a three-month Term SOFR (as defined in the 2022 Swap Agreement). The 2022 Swap Agreement met the criteria as a cash flow hedge under ASC 815, Derivatives and Hedging ("ASC 815"), and is recorded to other assets or other liabilities on the Consolidated Balance Sheets. Refer to [Note 16. Fair Value Measurements and Financial Instruments](#) for additional information on determining the fair value. The unrealized gains or losses, after tax, will be recorded in accumulated other comprehensive income, a component of equity, and are expected to be reclassified into interest expense on the Consolidated Statements of Income when the forecasted transactions affect earnings. As required under ASC 815, the interest rate swap contracts' effectiveness will be assessed on a quarterly basis using a quantitative regression analysis.

The gains and losses, net of tax, related to the derivative instruments designated as cash flow hedges recognized in accumulated other comprehensive income for the years ended December 30, 2022 and December 31, 2021 were gains of \$14,824 and \$3,645, respectively. The gains and losses, related to the effective portion of derivative instruments designated as cash flow hedges recognized in interest expense for the years ended December 30, 2022, December 31, 2021 and January 1, 2021 were a gain of \$2,750 and losses of \$600 and \$115, respectively.

Over the next twelve months, the Company expects to recognize \$3,256 of the \$14,456 of unrealized gains currently included in accumulated other comprehensive income as an offset to interest expense.

12. Commitments and Contingent Liabilities

Indemnification Agreements - In the ordinary course of business, the Company may provide indemnifications of varying scope and terms to customers, vendors, lessors, business partners, and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, services to be provided by the Company or intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with directors and certain officers and employees that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. While the outcome of these matters cannot be predicted with certainty, the Company does not believe that the outcome of any claims under indemnification arrangements will have a material effect on the Company's results of operations, financial position or liquidity.

Legal Proceedings - From time to time, the Company is involved in legal proceedings that arise in the ordinary course of business. Although the Company cannot assure the outcome of any such legal proceedings, based on information currently available, management does not believe that the ultimate resolution of any pending matters, either individually or in the aggregate, will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

Other Commitments - On November 30, 2017, the Company through FF US Holding Corp., acquired the assets of Flagship, Inc. d/b/a Tuscany and issued a 20% interest in FF US Holding Corp. to Flagship, Inc. A stockholders' agreement with Flagship, Inc. provided the Company with a call option (the "Call Option") to acquire the remaining 20% of FF US Holding Corp. at any time from November 30, 2019 through November 30, 2024 at a value that approximates fair market value. On July 22, 2020, the Company exercised the Call Option and, pursuant to a stock purchase agreement with Flagship, Inc., the Company purchased the remaining 20% interest for \$24,975 payable in a combination of stock and cash. The cash portion was settled in quarterly installment payments beginning in July 2020 through July 2022, which amounted to \$6,556, \$4,550 and \$2,700 in 2020, 2021 and 2022, respectively. The Company had no remaining liability as of December 30, 2022. The stock portion of 136 shares were released from escrow on a quarterly basis starting January 2021 through July 2022. The Company released 58 and 78 shares during the years ended December 30, 2022 and December 31, 2021, respectively. The Company had no remaining shares to be released as of December 30, 2022. The exercise of the Call Option effectively canceled the put option held by Flagship, Inc.

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13. Stockholders' Equity**Secondary Stock Offering**

In June 2020, the Company completed a secondary offering whereby it sold 2,760 shares of its common stock at a price of \$76.00 per share for gross proceeds of \$209,760. The net proceeds to the Company after underwriters' discounts and commissions of \$11,015 and \$511 of offering costs was \$198,233. The total shares sold included 360 shares that were sold in connection with the underwriters' option to purchase additional shares. This offering was made pursuant to the Company's registration statement on Form S-3.

The Company did not incur any expenses related to secondary offerings during the fiscal years ended December 30, 2022 and December 31, 2021.

Equity Incentive Plans

The Company has outstanding awards under the following equity incentive plans: the 2008 Stock Option Plan (the "2008 Plan"), the 2008 Non-Statutory Stock Option Plan (the "2008 Non-Statutory Plan") and the 2013 Omnibus Plan (the "2013 Plan"). On February 23, 2022, the Board of Directors, upon recommendation of the Compensation Committee approved the 2022 Omnibus Plan (the "2022 Plan"), which replaced the 2013 Plan. All remaining available shares under the 2013 Plan were rolled into the 2022 Plan and made available for issuance. No further awards will be granted pursuant to the 2008 Plan, the 2008 Non-Statutory Plan. Under the 2022 Plan, the Company has the ability to issue incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards, RSUs, performance units and/or performance shares.

The equity incentive plans are administered by the Compensation Committee of the Board of Directors of the Company, which has the authority to determine the type of incentive award, as well as the terms and conditions of the awards. Options granted under the plans have vesting periods ranging from one to ten years and expire no later than 10 years from the date of grant. RSUs generally vest over a three to four-year period with equal annual installments beginning at the end of one year and the remaining vesting annually thereafter. In addition to time-based vesting criteria, certain of our RSUs include performance-based vesting criteria. As of December 30, 2022, there were 4,889 shares reserved for issuance under the Company's equity incentive plans and 4,463 shares available for grant under the 2022 Plan. The Company generally issues new shares in connection with awards under its equity incentive plans.

Stock-Based Compensation

Compensation expense related to the Company's share-based awards for the fiscal years ended December 30, 2022, December 31, 2021, and January 1, 2021 was \$16,351, \$13,914, and \$8,618, respectively, all of which related to RSUs. No compensation expense related to stock options was incurred during the fiscal years ended December 30, 2022, December 31, 2021, and January 1, 2021.

The following table summarizes the allocation of stock-based compensation in the accompanying consolidated statements of income:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Cost of sales	\$ 957	\$ 710	\$ 625
Sales and marketing	924	803	635
Research and development	946	944	788
General and administrative	13,524	11,457	6,570
Total	<u>\$ 16,351</u>	<u>\$ 13,914</u>	<u>\$ 8,618</u>

As of January 1, 2021, \$421 of stock-based compensation expense related to our executive bonus plan was included in Accrued Expenses on the Consolidated Balance Sheets. This amount was recognized as additional paid in capital during the year ended December 31, 2021 upon the issuance of the underlying restricted stock units.

Stock-based compensation expense capitalized to inventory was not material for the years ended December 30, 2022, December 31, 2021 and January 1, 2021.

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Restricted Stock Units

The Company grants both time-based and performance-based stock awards, which also include a time-based vesting feature. Compensation expense for time-based stock awards is measured at the grant date based on the closing market price of the Company's common stock, and recognized ratably over the vesting period.

For performance-based stock awards, compensation expense is measured based on estimates of the number of shares ultimately expected to vest at each reporting date based on management's expectations regarding the relevant performance criteria. The recognition of compensation expense associated with performance-based stock awards requires defined criteria for assessing achievement and judgment in assessing the probability of meeting the performance goals.

The following table summarizes RSU activity:

	Unvested RSUs	
	Number of shares outstanding	Weighted-average grant date fair value
Unvested at January 3, 2020	427	\$ 44.98
Granted	260	47.46
Canceled	(13)	48.51
Vested	(224)	37.34
Unvested at January 1, 2021	450	50.12
Granted	89	149.08
Canceled	(24)	56.21
Vested	(177)	49.17
Unvested at December 31, 2021	338	76.30
Granted	142	95.34
Canceled	(17)	97.00
Vested	(166)	73.14
Unvested at December 30, 2022	297	\$ 87.05

The fair value of vested RSUs was \$15,140, \$27,213 and \$15,625 for the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively. As of December 30, 2022, the Company had approximately \$17,591 of unrecognized stock-based compensation expense related to RSUs, which will be recognized over the remaining weighted-average vesting period of approximately 1.76 years.

Performance Stock Units

During the year ended December 30, 2022, the Company issued performance share units ("PSUs") to certain executives that represent shares potentially issuable in the future. Issuance is based upon the Company's performance, over a 2-3 year performance period, on certain measures including return on invested capital and free cash flow. The PSUs vest only upon the achievement of the applicable performance goals for the performance period, and, depending on the actual achievement on the performance goals, the grantee may earn between 0% and 200% of the target PSUs. The fair value of performance share units is calculated based on the stock price on the date of grant.

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Notes to Consolidated Financial Statements - Continued
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The following table summarizes the activity for the Company's unvested PSUs for the year ended December 30, 2022:

	Unvested PSUs	
	Number of shares outstanding	Weighted-average grant date fair value
Unvested at January 1, 2021	—	\$ —
Granted	29,000	141.46
Unvested at December 31, 2021	29,000	141.46
Granted	37,000	120.90
Canceled	(4,000)	126.73
Vested	(14,000)	141.46
Unvested at December 30, 2022	<u>48,000</u>	<u>\$ 126.69</u>

The stock-based compensation expense recognized each period is dependent upon our estimate of the number of shares that will ultimately vest based on the achievement of certain performance conditions. Future stock-based compensation expense for unvested performance-based awards could reach a maximum of \$7,178 assuming achievement at the maximum level. The unrecognized stock-based compensation expense is expected to be recognized over a weighted average period of 1.73 years.

Stock Options

The following table summarizes stock option activity:

	Number of shares outstanding	Weighted-average exercise price	Weighted-average remaining contractual life (years)	Aggregate intrinsic value
Balance at January 3, 2020	431	\$ 5.27	2	\$ 27,814
Options exercised	(206)	5.16		19,724
Balance at January 1, 2021	225	5.37	2	22,593
Options exercised	(192)	5.41		25,751
Balance at December 31, 2021	33	5.16	1	5,389
Options exercised	(33)	5.16		2,470
Balance at December 30, 2022	<u>—</u>	<u>—</u>	<u>0</u>	<u>—</u>
Options vested and expected to vest - December 30, 2022	<u>—</u>	<u>—</u>	<u>0</u>	<u>—</u>
Options exercisable - December 30, 2022	<u>—</u>	<u>\$ —</u>	<u>0</u>	<u>\$ —</u>

Aggregate intrinsic value represents the difference between the closing price of the Company's common stock on NASDAQ and the exercise price of outstanding, in-the-money options. No options vested during the year ended December 30, 2022. As of December 30, 2022, stock-based compensation expense related to stock options has been fully recognized.

During the years ended December 30, 2022, December 31, 2021 and January 1, 2021, 33, 192, and 206 shares of common stock, respectively, were issued due to the exercise of stock options, resulting in proceeds to the Company of approximately \$169, \$1,042, and \$1,063, respectively. As of December 30, 2022, stock-based compensation expense related to stock options has been fully recognized.

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14. Earnings Per Share

Basic earnings per share ("EPS") amounts are computed by dividing net income attributable to Fox Factory Holding Corp. stockholders for the period by the weighted average number of common shares outstanding during the period. Diluted EPS amounts are computed by dividing net income for the period by the weighted average number of shares of common stock and potentially dilutive common stock outstanding during the period. Potentially dilutive common shares include shares issuable upon the exercise of outstanding stock options and vesting of restricted stock units, which are reflected in diluted earnings per share by application of the treasury stock method.

The following table presents the calculation of basic and diluted earnings per share:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Net income attributable to FOX stockholders	\$ 205,278	\$ 163,818	\$ 90,674
Weighted average shares used to compute basic earnings per share	42,232	42,022	40,229
Dilutive effect of employee stock plans	152	344	572
Weighted average shares used to compute diluted earnings per share	42,384	42,366	40,801
Earnings per share:			
Basic	\$ 4.86	\$ 3.90	\$ 2.25
Diluted	\$ 4.84	\$ 3.87	\$ 2.22

The Company excluded 20 shares from the calculation of diluted earnings per share for the year ended December 30, 2022 as these shares would have been antidilutive. No potentially dilutive shares were excluded from the calculation of diluted earnings per share for the years ended December 31, 2021 and January 1, 2021, respectively.

15. Income Taxes**Provision for Income Taxes**

The components of income tax expense are as follows:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Current:			
Federal	\$ 33,622	\$ 30,698	\$ 18,061
State	4,372	(138)	1,590
Foreign	11,964	8,617	8,043
Total current	49,958	39,177	27,694
Deferred:			
Federal	(17,447)	(14,447)	(14,589)
State	(2,837)	(23)	373
Foreign	(1,188)	(144)	(694)
Total deferred	(21,472)	(14,614)	(14,910)
Provision for income taxes	\$ 28,486	\$ 24,563	\$ 12,784

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The Company's income before provision for income taxes was subject to taxes in the following jurisdictions for the following periods:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
United States	\$ 197,640	\$ 149,238	\$ 74,777
Foreign	36,124	39,143	29,753
Total income before provision for income taxes	<u>\$ 233,764</u>	<u>\$ 188,381</u>	<u>\$ 104,530</u>

The following table presents a reconciliation of the statutory federal rate and the Company's effective tax rate for the periods presented:

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Tax at federal statutory rate	21.0 %	21.0 %	21.0 %
Foreign derived income benefit	(6.6)	(5.8)	(5.0)
Valuation allowance on foreign tax credits	(3.8)	1.1	0.7
Research and development tax credit	(2.9)	(1.1)	(0.9)
Foreign withholding taxes, net of foreign tax credits	1.1	—	—
Executive compensation deduction limitation	0.8	1.2	0.8
State taxes, net of federal benefit	0.6	1.9	1.8
Stock-based compensation	(0.5)	(5.0)	(5.9)
Change in liability for unrecognized tax benefits	—	(1.4)	0.6
Other	2.5	1.1	(0.9)
Effective tax rate	<u>12.2 %</u>	<u>13.0 %</u>	<u>12.2 %</u>

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Deferred Income Taxes

	December 30, 2022	December 31, 2021
Deferred tax assets:		
Foreign tax credits, including amounts associated with accrued charges	\$ 47,779	\$ 48,329
Inventory	8,222	5,452
Accrued liabilities	7,146	9,319
Lease liability	6,077	3,646
Capitalized research & development	16,502	5,880
Stock-based compensation	—	2,254
Research and development tax credits	3,963	2,721
Other	4,586	625
Total deferred tax asset	94,275	78,226
Valuation allowance	(280)	(9,223)
Net deferred tax asset	93,995	69,003
Deferred tax liabilities:		
Intangible assets	(23,078)	(23,357)
Depreciation	(5,583)	(5,711)
Lease right-of-use asset	(6,232)	(3,783)
Accrued withholding tax on unremitted foreign dividends	—	(854)
Stock-based compensation	(121)	—
Other	(1,642)	(300)
Total deferred tax liability	(36,656)	(34,005)
Net deferred tax asset	\$ 57,339	\$ 34,998

As of December 30, 2022, the Company had foreign tax credits of \$47,779 that begin to expire in 2026, unless previously utilized.

As of December 30, 2022, the Company assessed the realizability of deferred tax assets and evaluated the need for a valuation allowance for deferred tax assets for each jurisdiction based on the framework of ASC 740. For the year ended December 30, 2022, the valuation allowance decreased by \$9,161. U.S. Tax Regulations proposed by the U.S. Treasury and Internal Revenue Service on November 22, 2022, which were early adopted by the Company, provided clarification to earlier guidance and resulted in the Company's ability to utilize certain foreign tax credits related to royalties. As a result, the Company determined a valuation allowance was not needed. Other components of the valuation allowance were not significant. It is reasonably possible that the Company could record a material adjustment to the valuation allowance in the next twelve months.

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Notes to Consolidated Financial Statements - Continued
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Unrecognized Tax Benefits

	For the fiscal years ended		
	December 30 2022	December 31 2021	January 1 2021
Balance - beginning of period	\$ 228	\$ 3,150	\$ 2,300
Increase related to current year tax positions	—	—	664
Increase related to prior year tax positions	—	—	187
Decrease related to prior year tax positions	(109)	(2,923)	—
Increase (decrease) due to expiration of statute of limitations	—	1	(1)
Balance - end of period	<u>\$ 119</u>	<u>\$ 228</u>	<u>\$ 3,150</u>

As of December 30, 2022, the Company had \$119 of unrecognized tax benefits. The Company regularly engages in discussions and negotiations with tax authorities regarding tax matters in various jurisdictions.

The Company's 2019 and forward federal tax returns, state tax returns from 2017 and forward, and foreign tax returns from 2019 and forward are subject to examination by tax authorities.

16. Fair Value Measurements and Financial Instruments

The FASB's Accounting Standards Codification 820, "Fair Value Measurements and Disclosures" requires the valuation of assets and liabilities required or permitted to be either recorded or disclosed at fair value based on hierarchy of available inputs as follows:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices for similar assets and liabilities in active markets, quoted prices for identical assets and liabilities in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

The following table presents the Company's hierarchy for its assets, liabilities and redeemable non-controlling interest measured at fair value on a recurring basis as of the following periods:

	December 30, 2022				December 31, 2021			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets:								
Interest Rate Swap	\$ —	\$ 5,087	\$ —	\$ 5,087	\$ —	\$ 3,583	\$ —	\$ 3,583
Total assets measured at fair value	<u>\$ —</u>	<u>\$ 5,087</u>	<u>\$ —</u>	<u>\$ 5,087</u>	<u>\$ —</u>	<u>\$ 3,583</u>	<u>\$ —</u>	<u>\$ 3,583</u>
Liabilities:								
Prior Credit Facility	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 378,453	\$ —	\$ 378,453
Total liabilities measured at fair value	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 378,453</u>	<u>\$ —</u>	<u>\$ 378,453</u>

There were no transfers of assets or liabilities between Level 1, Level 2 and Level 3 categories of the fair value hierarchy during the years ended December 30, 2022, and December 31, 2021.

As of December 31, 2021, the carrying amount of the principal under the Company's Prior Credit Facility approximated fair value because it had a variable interest rate that reflected market changes in interest rates and changes in the Company's net leverage ratio. The Prior Credit Facility was terminated on April 5, 2022 and replaced with the revolving 2022 Credit Facility.

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On June 11, 2021, the Company entered into the 2021 Swap Agreement to mitigate the cash flow risk associated with changes in interest rates on its variable rate debt. On April 5, 2022, the Company terminated its 2021 Swap Agreement and entered into the 2022 Swap Agreement. Refer to [Note 11. Derivatives and Hedging](#) for additional details of the agreement. In accordance with ASC 815, an interest rate swap contract is recognized as an asset or liability on the Consolidated Balance Sheets and is measured at fair value. The fair value was calculated utilizing Level 2 inputs.

17. Retirement Plan

The Company established a 401(k) plan to provide tax deferred salary deductions for all eligible employees. Participants may make voluntary contributions to the 401(k) plan, limited by certain IRS restrictions. The Company made matching contributions of \$3,649, \$2,655, and \$2,078 for each of the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively.

18. Acquisitions

On March 11, 2020, the Company, through Fox Factory, Inc., acquired 100% of the issued and outstanding stock of SCA from Southern Rocky Holdings, LLC for \$331,853, net of cash acquired and exclusive of vehicle inventory. SCA is a leading OEM authorized specialty vehicle manufacturer for light duty trucks and SUVs with headquarters in Trussville, Alabama. SCA operates under three aftermarket brands: SCA Performance, Rocky Ridge Trucks, and Rocky Mountain Truckworks. This transaction was accounted for as a business combination.

The Company also agreed to an additional \$10,326 of contingent retention incentives for key SCA management of which \$9,036 is cash and \$1,290 is stock, to be held in escrow and payable over two years from the acquisition date. The Company recognized \$955, \$5,160 and \$4,211 in costs associated with such retention incentives during the years ended December 30, 2022, December 31, 2021 and January 1, 2021, respectively. As of December 30, 2022, all contingent retention incentives had been recognized.

The Company's allocation of the purchase price to the net tangible and intangible assets acquired and liabilities assumed is as follows:

Fair market values	
Tangible assets acquired	\$ 28,678
Liabilities assumed	(32,479)
Intangible assets	139,900
Goodwill	195,754
Total	<u>\$ 331,853</u>

The Company incurred \$10,582 of acquisition costs in conjunction with the SCA acquisition, including \$1,750 of transaction compensation during the year ended January 1, 2021 and \$602 of transaction costs during the year ended January 3, 2020. These costs are classified as general and administrative expenses in the accompanying consolidated statements of income. Additional debt issuance costs of \$6,622 were incurred in association with financing the transaction. Refer to [Note 10. Debt](#) for further details.

The values assigned to the identifiable intangible assets were determined by discounting the estimated future cash flows associated with these assets to their present value. The goodwill of \$195,754 reflects the strategic fit of SCA with the Company's operations. The Company will amortize the acquired customer relationships assets over their expected useful lives of 5-10 years. Trademarks, brand names and goodwill are expected to have an indefinite life, and will be subject to impairment testing. The goodwill is not deductible for income tax purposes. SCA previously purchased intangibles in asset acquisitions with a remaining net tax basis approximating \$77,989, which the Company may deduct for income tax purposes.

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On May 21, 2021, the Company, through its wholly owned subsidiary, Fox Factory Australia Pty Ltd., acquired substantially all the assets of Sola Sport Pty Ltd. for \$486. The acquisition was not material to the Company's financial statements.

On May 25, 2021, the Company, through its wholly owned subsidiary, SCA, acquired 100% of the issued and outstanding stock of Manifest Joy LLC, d/b/a Outside Van ("Outside Van"), a custom van conversion company. The total purchase price of \$15,275, net of cash acquired, was allocated to the net liabilities assumed of \$1,057, identifiable intangibles assets of \$5,560 and goodwill acquired of \$10,772 based on their respective fair values as of May 25, 2021, with the excess purchase price allocated to goodwill. The Company will amortize the acquired customer relationship and trade name assets over their expected useful lives of 1 and 10 years, respectively. This purchase was accounted for as a business combination and was not material to the Company's financial statements.

On December 30, 2021, the Company, through its wholly owned subsidiary, Shock Therapy Suspension, Inc., acquired substantially all the assets of Shock Therapy LLC ("STS"), for \$36,834, net of cash acquired. STS is a premier suspension tuning company in the off-road industry, with headquarters in Phoenix, Arizona. This purchase price of STS is allocated to the net assets assumed of \$5,244, identifiable intangible assets of \$7,086 and goodwill acquired of \$24,504, based on their respective fair values as of December 30, 2021. The Company will amortize the acquired non-compete and trade name assets over their expected useful lives of 5 and 10 years, respectively. The acquired goodwill represents the value of combining operations of STS and the Company, and is expected to be deductible for tax purposes. This purchase was accounted for as a business combination and was not material to the Company's financial statements.

19. Subsequent Events

On February 17, 2023 the Company entered into a Securities Purchase Agreement with CWH Holdco, LLC ("CWH"), CWH Blocker Corp., ("Blocker"), Thompson Street Capital Partners V, L.P., and each other member of CWH to purchase all of the outstanding equity of Blocker, and thereafter Blocker will acquire all of the outstanding equity interest of CWH for \$131,600. CWH is the parent company of Custom Wheel House, LLC ("Custom Wheel House"). The transaction will be financed through a combination of cash on hand and the Company's existing 2022 Credit Facility, and is expected to close in March 2023, subject to customary closing conditions. The acquisition is not considered significant to the Company's financial results.

Exhibit 4.3

DESCRIPTION OF SECURITIES

The following description of the terms of the common stock of Fox Factory Holding Corp. (“FOX”) is not complete and is qualified in its entirety by reference to our Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”), and our Amended and Restated Bylaws (the “Bylaws” and together with the Certificate of Incorporation, our “Charter Documents”), both of which are exhibits to our Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q.

Our authorized capital stock consists of 90,000,000 shares of common stock, \$0.001 par value per share, and 10,000,000 shares of undesignated preferred stock, \$0.001 par value per share. The common stock of FOX is listed on the NASDAQ Global Select Market under the symbol “FOXF.”

Dividend rights

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, subject to applicable law, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine.

Voting rights

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. We have not provided for cumulative voting for the election of directors in our Certificate of Incorporation. Our Certificate of Incorporation establishes a classified board of directors that is divided into three classes with staggered three-year terms. Only the directors in one class are subject to election at each annual meeting of our stockholders, with the directors in the other classes continuing for the remainder of their respective three-year terms.

No preemptive or similar rights

Our common stock is not entitled to preemptive rights, and is not subject to conversion, redemption or sinking fund provisions.

Right to receive liquidation distributions

If we become subject to a liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

Preferred stock

Our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences, and rights of the shares of each series and any of its qualifications, limitations or restrictions, in each case, without further vote or action by our stockholders. Our board of directors can also increase or decrease the number of shares of any series of preferred stock, but not above the total number of authorized shares of a series or below the number of shares of that series then outstanding, without any further vote or action by our stockholders. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock.

Options

As of December 30, 2022, we had no outstanding options to purchase shares of our common stock.

Restricted Stock Units

As of December 30, 2022, we had 297,414 shares of common stock issuable upon vesting of restricted stock units granted to our directors, officers and other employees pursuant to our 2022 Omnibus Plan.

Anti-Takeover Effects

The provisions of our Charter Documents, which are summarized below, may have the effect of delaying, deferring, or discouraging another person from acquiring control of our company. These provisions are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed, in part, to encourage persons seeking to acquire control of our company to first negotiate with our board of directors. However, these provisions could have the effect of delaying, discouraging or preventing attempts to acquire us, which could deprive our stockholders of opportunities to sell their securities at prices higher than prevailing market prices.

Our Charter Documents include a number of provisions that could deter hostile takeovers or delay or prevent changes relating to the control of our board of directors or management team, including the following:

- *Board of directors vacancies.* Our Charter Documents authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors is permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. These provisions prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors and promotes continuity of management.
- *Classified board.* Our Charter Documents provide that our board of directors is classified into three classes of directors. A third party may be discouraged from making a tender offer or otherwise attempting to obtain control of us as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors.
- *Advance notice requirements for stockholder proposals and director nominations.* Our Amended and Restated Bylaws provides advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our Amended and Restated Bylaws also specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.
- *No cumulative voting.* The Delaware General Corporate Law provides that stockholders may cumulate votes in the election of directors if the corporation's certificate of incorporation allows for such mechanism. Our Amended and Restated Certificate of Incorporation does not permit cumulative voting.
- *Directors removed only for cause.* Our Amended and Restated Certificate of Incorporation provides that stockholders may remove directors only for cause.
- *Issuance of undesignated preferred stock.* Our board of directors has the authority, without further action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest, or other means.
- *Amendment of Charter Document provisions.* Our Amended and Restated Certificate of Incorporation currently requires any amendment or repeal of the above provisions in our Charter Documents, with the exception of the ability of our board of directors to issue shares of preferred stock and designate any rights, powers and preferences thereto, will require approval by holders of at least two-thirds of the voting power of all then outstanding shares of our capital stock entitled to vote generally in the election of directors.

**SECURITIES PURCHASE AGREEMENT
DATED AS OF FEBRUARY 17, 2023**

AMONG

CWH HOLDCO LLC,

CWH BLOCKER CORP.,

THE SELLERS,

THOMPSON STREET CAPITAL PARTNERS V, L.P.,

solely in its capacity as the Seller Representative,

AND

FOX FACTORY, INC.

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<u>Exhibit C</u>	Form of Subordination, Non-Disturbance and Attornment Agreement

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this “Agreement”) is made as of February 17, 2023, among CWH Holdco LLC, a Delaware limited liability company (the “Company”), CWH Blocker Corp., a Delaware corporation (“Blocker”), Thompson Street Capital Partners V, L.P., a Delaware limited partnership (“TSCP”), in its capacity as the stockholder of Blocker (the “Blocker Stockholder”), each other member of the Company set forth on the signature pages hereto (each such member (other than Blocker), the “Holder,” and, together with Blocker Stockholder, the “Sellers” and each a “Seller”), TSCP, solely in its capacity as the representative of the Sellers (the “Seller Representative”), and Fox Factory, Inc., a California corporation (“Purchaser”).

RECITALS

WHEREAS, the Holders and Blocker are all of the members of the Company and are the owners of all of the membership interests of the Company (the “Company Units”);

WHEREAS, Blocker Stockholder is the record and beneficial owner of all of the issued and outstanding shares of capital stock of Blocker (the “Blocker Shares”);

WHEREAS, the Company owns, directly or indirectly, all of the outstanding equity in Custom Wheel House, LLC, a Delaware limited liability company (“Custom Wheel House” and, together with the Company, the “Company Group”);

WHEREAS, upon the terms and subject to the conditions set forth herein, Purchaser desires to purchase from the Blocker Stockholder, and the Blocker Stockholder desires to sell to Purchaser, all of the Blocker Shares outstanding immediately prior to the Closing for the consideration described herein;

WHEREAS, upon the terms and subject to the conditions set forth herein, Purchaser desires that, immediately after its purchase of the Blocker Shares from the Blocker Stockholder, Blocker purchase from the Holders, and the Holders desire to sell to Blocker, all of the Company Units owned by the Holders (the “Holder Units” and, together with the Blocker Shares, the “Securities”) for the consideration described herein; and

WHEREAS, concurrently with the execution and delivery of this Agreement, certain Sellers (or Affiliates thereof) have entered into Restrictive Covenant Agreements with Purchaser that shall be effective at the Closing.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises, representations, warranties and agreements contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

PURCHASE AND SALE OF THE SECURITIES; CLOSING AND MANNER OF PAYMENT

1.1 Securities. On the terms and subject to the conditions contained in this Agreement, at the Closing:

a) The Blocker Stockholder shall sell, transfer, assign, convey and deliver, as legal and beneficial owner, to Purchaser and Purchaser shall purchase and accept from the Blocker Stockholder, free and clear of all Liens (other than any transfer restrictions imposed by applicable Laws), all right, title and interest in and to the Blocker Shares in consideration of an amount in cash as set forth in Section 1.3; and

b) Immediately thereafter, each Holder shall sell, transfer, assign, convey and deliver to Blocker and Blocker shall purchase and accept from each Holder, free and clear of all Liens (other than any transfer restrictions imposed by applicable Laws), all right, title and interest in and to the Holder Units in consideration of an amount in cash as set forth in Section 1.3. Blocker's purchase of the Holder Units shall be capitalized by Purchaser, which capitalization may, at Purchaser's election, be satisfied by Purchaser paying applicable consideration directly to the Holders and other recipients described in Section 1.3 on behalf of Blocker.

1.2 Calculation of the Aggregate Purchase Price. For purposes of this Agreement:

a) "Accrued Income Taxes" means an amount equal to the liability for unpaid Income Taxes of Blocker and the Company Group, including for the avoidance of doubt any state or local passthrough entity Tax, as of immediately prior to the Closing (which, for the avoidance of doubt, can be a negative number) calculated (i) in accordance with the past practice (including reporting positions, elections and accounting methods) of Blocker and the Company Group in preparing Tax Returns for Income Taxes, (ii) by taking into account any applicable Tax deductions (including Transaction Tax Deductions and any other deductions arising from the transactions contemplated by this Agreement) to the extent such deductions are "more likely than not" deductible in a Pre-Closing Tax Period under applicable Law and have the result of reducing, under applicable Law, the amount of any Income Tax liability otherwise includable in the calculation of Accrued Income Taxes, (iii) by excluding any deferred Income Tax assets or liabilities and (iv) by taking into account any overpayments of estimated Income Taxes of Blocker or the Company Group paid in a Pre-Closing Tax Period that are refundable or can be used as a credit against Income Taxes (but excluding, for the avoidance of doubt, any benefits attributable to net operating loss carryovers to periods other than a Pre-Closing Tax Period).

b) "Aggregate Purchase Price" means an amount equal to:

(i) One Hundred Thirty-One Million and Six Hundred Thousand Dollars (\$131,600,000);

(ii) plus the aggregate amount of Company Cash Equivalents;

(iii) plus the amount by which the Closing Working Capital exceeds the Target Working Capital or minus the amount by which the Target Working Capital exceeds the Closing Working Capital;

(iv) minus the aggregate amount of Company Indebtedness; and

(v) minus the aggregate amount of Transaction Expenses.

c) "Agreed Accounting Principles" has the meaning set forth on Schedule 1.2(c).

d) “Cash Equivalents” means, collectively, the aggregate consolidated amount of cash on hand and in banks, cash equivalents and marketable securities, in each case as determined in accordance with the Agreed Accounting Principles (without regard to any purchase accounting adjustments arising out of the transactions contemplated hereby). For clarity, (i) with respect to bank drafts and outstanding checks (including checks in transit), Cash Equivalents will not be reduced by the amounts thereof where the associated current liability is included in the computation of Closing Working Capital, but Cash Equivalents will be reduced by such amounts where there is no associated current liability or the associated current liability is not included in such computation of Closing Working Capital, and (ii) Cash Equivalents will not include amounts collected by the Company Group or Blocker where the associated accounts receivable is included in the computation of Closing Working Capital, but Cash Equivalents will include amounts collected by the Company Group where the associated accounts receivable is not included in such computation of Closing Working Capital. In addition, Cash Equivalents shall not include any item that otherwise would be Cash Equivalents but is subject to restrictions on use, withdrawal or distribution by Law, contract or otherwise or otherwise appears as “restricted” on the Company Group’s financial statements, including (A) restrictions on repatriations, (B) amounts held in escrow, (C) amounts that are deposited with a third party (other than a bank or similar financial institution) or (D) amounts subject to a lockbox, dominion, control or similar agreement or any other contractual restriction on the ability to freely transfer or use such cash or cash equivalents for any lawful purpose. For the avoidance of doubt, Cash Equivalents shall not include any assets included in Closing Working Capital and shall not include any cash contributed to Blocker by Purchaser in connection with Blocker’s purchase of the Holder Units.

e) “Closing Working Capital” means (i) the consolidated current assets (excluding Company Cash Equivalents) of the Company Group and Blocker, minus (ii) the consolidated current liabilities (excluding any items constituting Company Indebtedness or Transaction Expenses) of the Company Group and Blocker, each as of immediately prior to the Closing in accordance with the Agreed Accounting Principles, and in each case excluding Income Tax receivables, Income Tax payables and deferred Tax assets and liabilities but including, for the avoidance of doubt, current non-Income Tax assets and liabilities. Closing Working Capital shall be based exclusively on the facts and circumstances as they exist as of immediately preceding the Closing and shall exclude the effects of any event, act, change in circumstances or similar development arising or occurring thereafter. For the avoidance of doubt, no assets contributed to Blocker by Purchaser in connection with Blocker’s purchase of the Holder Units will affect or be included in Closing Working Capital.

f) “Company Cash Equivalents” means the Cash Equivalents of the Company Group and Blocker, on a consolidated basis, as of immediately prior to the Closing without taking into account payments of cash at the direction of Purchaser or its Affiliates on the Closing Date following the Closing, including any payments or distributions to Purchaser, its Affiliates or their investors.

g) “Company Indebtedness” means the Indebtedness of the Company Group and Blocker, on a consolidated basis, as of immediately prior to the Closing.

h) “GAAP” means United States generally accepted accounting principles, consistently applied by the Company Group, in effect on the date hereof.

i) “Incentive Plan” means the CWH Holdco LLC Management Cash Incentive Plan and the award agreements thereunder.

j) “Indebtedness” means, without duplication, the sum of the following items, each determined in accordance with the Agreed Accounting Principles: (i) all indebtedness for borrowed money or in respect of loans, advances, interest rate derivative or hedging transactions, forward contracts or other hedging or similar arrangements (including the principal amount thereof and the amount of accrued and unpaid interest thereon), whether or not represented by bonds, debentures, notes or other securities, whether owing to banks, financial institutions or otherwise, (ii) all obligations to pay amounts under a lease of real or personal property which is required to be classified as a capital lease in accordance with GAAP and all payment obligations under conditional sales (or similar) contracts, (iii) the deferred purchase price of goods, services, assets, securities or property (including the maximum potential amount payable with respect to earnouts, purchase price adjustments, royalties or other payments related to acquisitions) other than trade payables included in the calculation of Closing Working Capital, (iv) all unfunded liabilities relating to accrued severance payments owed to employees of the Company Group who terminate employment prior to the Closing, deferred compensation accrued by employees of the Company Group with respect to periods prior to the Closing and all Accrued Bonuses (plus any Employer Payroll Taxes associated therewith), (v) any Taxes deferred under the CARES Act, the Payroll Tax Executive Order or any similar provisions of Law and unpaid as of Closing, (vi) all “withdrawal liability” of a member of the Company Group to a “multiemployer plan” as such terms are defined under ERISA, (vii) all obligations of such Person under acceptance, letter of credit or similar facilities, but in each case only to the extent drawn, (viii) all unpaid amounts pursuant to that certain Advisory Services Agreement, dated as of December 23, 2019, by and between Custom Wheel House and Thompson Street Capital Manager LLC and any other accrued and unpaid management fees owing to Thompson Street Capital Manager LLC or its Affiliates, (ix) all Indebtedness referred to in any of the above clauses secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, provided that such Indebtedness shall only be considered Indebtedness to the extent of the fair market value of the property so encumbered, (x) all payment obligations in the nature of guarantees, assumptions, endorsements or other contracts for any Indebtedness described in any of the above clauses of any other Person (whether directly or indirectly), (xi) Accrued Income Taxes (which, for the avoidance of doubt, may be less than zero, thereby reducing Indebtedness) and (xii) in each case with respect to any of the above clauses, together with all premiums, accrued interest and accrued fees thereon and all prepayment penalties, “breakage costs,” redemption fees, costs, and expenses or premiums and fees and charges with respect to such items if such Indebtedness were to be paid and all other amounts owing pursuant to the instruments evidencing such Indebtedness. No Transaction Expenses shall be Indebtedness. For the avoidance of doubt, Indebtedness shall not include any liabilities included in Closing Working Capital.

k) “Target Working Capital” means Eight Million Two Hundred Seventy Nine Thousand Six Hundred Sixty Nine Dollars (\$8,279,669).

l) “Transaction Expenses” means all fees, commissions, costs and expenses incurred by the Company Group or Blocker on or prior to the Closing or by the Sellers (to the extent the Company Group or Blocker pays or is obligated to pay such fees and expenses incurred by the Sellers) in connection with the negotiation, preparation, execution and performance of this Agreement and the transactions contemplated hereby to the extent not paid in full at or prior to the Closing, including (i) all brokerage or finders’ fees or agents’ commissions or any similar charges, including the amounts payable to Stifel, Nicolaus & Company, Incorporated (the “Company Broker”), (ii) all legal, accounting, financial advisory, consulting and other fees and expenses of third parties, including the amounts payable to Sidley Austin LLP, and (iii) any transaction bonuses, compensation or any change-in-control or other similar payments (but excluding any payments accelerated, triggered or payable as a result of any action of the Company Group following the Closing or Purchaser (for example, terminations of employment after Closing)) payable by the Company Group or Blocker to any of its current or former directors, officers or employees in connection with the execution of this Agreement or the consummation of the transactions contemplated by this Agreement, including all amounts owed under the Incentive Plan (and the award agreements thereunder) and the other bonuses set forth on Schedule 1.2(l), together with the Employer Payroll Taxes payable in connection therewith.

m) “Transaction Tax Deductions” means any and all items of loss, deduction or credit of the members of the Company Group and Blocker for U.S. federal Income Tax and state and local Tax purposes resulting from or attributable to: (i) any compensation payments payable on, in connection with or before the Closing pursuant to this Agreement, (ii) all transaction expenses and payments that are deductible for Tax purposes, including Transaction Expenses and other fees and expenses of legal counsel, accountants, investment bankers and the Seller Representative and (iii) any fees, expenses, premiums and penalties with respect to the prepayment of debt and the write-off or acceleration of the amortization of deferred financing, in each case, for subsection (i) through (iii), to the extent such amounts reduce Aggregate Purchase Price.

n) Notwithstanding anything to the contrary contained herein, no obligation shall be treated as both a Transaction Expense and Indebtedness.

1.3 Manner of Payment of the Aggregate Purchase Price and Other Payments. No later than three (3) Business Days prior to the Closing Date, the Company will deliver in writing to Purchaser its good faith estimate of (x) the Aggregate Purchase Price (the “Estimated Aggregate Purchase Price”) prepared in a manner consistent with the Agreed Accounting Principles and in accordance with the definitions set forth in this Agreement and based upon the most recent reasonably ascertainable financial information of the Company Group (which estimate shall set forth the various components of the Aggregate Purchase Price as set forth in Section 1.2(b)), and (y) the aggregate amount payable at Closing under the Incentive Plan (the “Incentive Plan Closing Payment”) and, together with the Estimated Aggregate Purchase Price, the “Estimated Closing Statement”). Following the delivery of the Estimated Closing Statement, the Company shall afford to Purchaser and its representatives reasonable access during normal business hours upon reasonable advance notice to the books, records, personnel and representatives of the Company Group and their accountants (including the work papers of such accountants subject to execution of customary access letters) involved in the preparation of the Estimated Closing Statement, and the Company shall consider, in good faith, any objections raised by Purchaser and its representatives in connection with the Estimated Closing Statement prior to the Closing (though any such objections shall in no way delay the timing for Closing). At the Closing:

(a) Purchaser shall pay to the Blocker Stockholder, by wire transfer of immediately available funds pursuant to instructions furnished by the Seller Representative, an amount equal to the Blocker Stockholder's Percentage Share of (i) the Estimated Aggregate Purchase Price, minus (ii) the Escrow Amount minus (iii) the Administrative Account Amount; and

(b) Purchaser shall, or shall cause Blocker to,

(i) deposit Two Million Dollars (\$2,000,000.00) (the "Escrow Amount") with U.S. Bank National Association, a national banking association, as escrow agent (the "Escrow Agent"), with such funds to be kept in an account (the "Escrow Account") designated by the Escrow Agent in accordance with the terms of the escrow agreement substantially in the form attached hereto as Exhibit A (the "Escrow Agreement") as security for any amount payable to Purchaser pursuant to Section 1.4;

(ii) pay, in accordance with the Pay-Off Letters, all Company Indebtedness identified on Schedule 1.6(b) (vii);

(iii) pay in full all of the Transaction Expenses by wire transfer of immediately available funds to the account(s) designated by each person to whom such Transaction Expenses are payable, in accordance with the instructions provided in, and as evidenced pursuant to reasonable documentation (including, to the extent applicable, invoices) delivered to Purchaser with, the Estimated Closing Statement (as applicable), including paying to the Company by wire transfer of immediately available funds an amount equal to the Incentive Plan Closing Payment and promptly thereafter (and in no event later than the next regular payroll period in which they can be reasonably processed), Purchaser shall cause the Company to pay to each participant in the Incentive Plan (who has signed a release of claims pursuant to the Incentive Plan) a cash payment through the Company's payroll for his or her applicable share of the amount so delivered to the Company under this clause (iii), less applicable withholding and any applicable Taxes required to be remitted by the Company Group with respect thereto (provided however, that any participant in the Incentive Plan who has not signed a release pursuant to the Incentive Plan shall receive his or her respective payment promptly after the execution of such release);

(iv) pay by wire transfer of immediately available funds pursuant to instructions furnished by the Seller Representative, an amount equal to Five Hundred Thousand Dollars (\$500,000) (the "Administrative Account Amount"); and

(v) pay by wire transfer of immediately available funds pursuant to instructions furnished by the Seller Representative (for the benefit of the Holders, in accordance with each Holder's Percentage Share) an amount equal to the Holders' Percentage Shares of (A) the Estimated Aggregate Purchase Price, minus (B) the Escrow Amount minus (C) the Administrative Account Amount.

1.4 Aggregate Purchase Price Adjustments.

(a) As promptly as possible, but in any event within sixty (60) days after the Closing Date, Purchaser shall cause to be prepared and delivered to the Seller Representative a statement (the "Closing Statement," and the date on which the Closing Statement is delivered to the Seller Representative, the "Delivery Date") setting forth Purchaser's calculation of the amount of the Company Cash Equivalents, Company Indebtedness, Transaction Expenses, Closing Working Capital, the Aggregate Purchase Price and the adjustment necessary to reconcile the Estimated Aggregate Purchase Price to the Aggregate Purchase Price. If Purchaser fails to timely deliver the Closing Statement in accordance with the immediately preceding sentence within such sixty (60) day period, then, at the Seller Representative's sole option, either (i) the Estimated Closing Statement delivered by the Company pursuant to Section 1.3 shall be deemed to be the Closing Statement and the Seller Representative shall have the rights set forth in, and shall be able to review and dispute the Closing Statement in accordance with Section 1.4(c), or (ii) the Final Purchase Price shall be deemed to be equal to the Estimated Aggregate Purchase Price and the Escrow Amount (plus all earnings thereon) shall be released to the Sellers in accordance with Section 1.4(f). The Closing Statement shall be prepared in a manner consistent with the Agreed Accounting Principles and in accordance with the definitions set forth in this Agreement. In preparing the Closing Statement: (A) any and all effects on the assets or liabilities of the Company Group of any distributions, financing or refinancing arrangements entered into by Purchaser, Blocker or the Company Group on or after the Closing Date or any other transaction entered into by Purchaser, Blocker or the Company Group on or after the Closing Date in connection with the consummation of the transactions contemplated by this Agreement shall be entirely disregarded; (B) it shall be assumed that Blocker, the Company Group and their respective businesses shall be continued as a going concern; and (C) there shall not be taken into account any of the plans, transactions or changes that Purchaser intends to initiate or make or cause to be initiated or made on or after the Closing Date with respect to Blocker, the Company Group or their respective businesses or assets, or any facts or circumstances that are unique or particular to Purchaser or any assets or liabilities of Purchaser, or any obligation for the payment of the Aggregate Purchase Price hereunder.

(b) Purchaser shall, and shall cause the Company Group to, provide the Seller Representative (and its representatives) with access during normal business hours to the books, records, supporting data, facilities and personnel of the Company Group for purposes of the Seller Representative's review of the Closing Statement and reasonably cooperate with the Seller Representative (and its representatives) in connection with such review.

(c) The Seller Representative shall have forty-five (45) days following the Delivery Date (the “Dispute Period”) to review the Closing Statement. If the Seller Representative has any objections to the Closing Statement, the Seller Representative shall deliver to Purchaser a statement setting forth its objections thereto (a “Dispute Notice”), which shall identify in reasonable detail those items and amounts to which the Seller Representative objects (the “Disputed Items”). If a Dispute Notice is not delivered to Purchaser during the Dispute Period, the Closing Statement as prepared by Purchaser shall be deemed accepted and agreed to by the Seller Representative and shall be final, binding and non-appealable by the parties hereto. If the Seller Representative delivers a Dispute Notice to Purchaser, Purchaser and the Seller Representative shall attempt to resolve in good faith the Disputed Items within thirty (30) days after delivery of the Dispute Notice. If Purchaser and the Seller Representative are unable to resolve any Disputed Items within such thirty (30) day period, Purchaser and the Seller Representative shall mutually engage and submit such Disputed Items to, and the same shall be finally resolved in accordance with the provisions of this Agreement by the Independent Accountant, who shall act as an expert and not an arbitrator. Purchaser and the Seller Representative shall use their respective commercially reasonable efforts to cause the Independent Accountant to resolve the Disputed Items as soon as practicable, but in any event within thirty (30) days (or such other period of time as Purchaser and the Seller Representative shall agree) after engagement by Purchaser and the Seller Representative, and to set forth in a written statement its final determination of the Closing Statement and the resulting Aggregate Purchase Price based upon its resolution of such Disputed Items and the items and amounts with respect to the Closing Statement that were not Disputed Items. In resolving any Disputed Item, the Independent Accountant may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the least value for such item claimed by either party. Absent manifest mathematical error, the decision of the Independent Accountant shall be deemed final and binding upon the parties and enforceable by a court of competent jurisdiction. Each party shall bear its own costs and expenses in connection with the resolution of such Disputed Items by the Independent Accountant. The fees and expenses of the Independent Accountant shall be allocated between Purchaser and the Sellers so that the amount of fees and expenses paid by the Sellers (with the remainder of such amount being paid by Purchaser) shall be equal to the product of (x) and (y), where (x) is the aggregate amount of such fees and expenses, and where (y) is a fraction, the numerator of which is the amount in dispute that is ultimately unsuccessfully disputed by the Seller Representative (as determined by the Independent Accountant) and the denominator of which is the total value in dispute.

(d) If the Aggregate Purchase Price, based upon the final determination pursuant to Sections 1.4(a) and 1.4(c) (the “Final Purchase Price”), exceeds the Estimated Aggregate Purchase Price (such excess, the “Upward Adjustment Amount”), then promptly (but in any event within five (5) Business Days after the determination of the Final Purchase Price), (i) Purchaser shall pay the Upward Adjustment Amount pursuant to instructions furnished by the Seller Representative (for the benefit of the Sellers in respect of each Seller’s Percentage Share), and (ii) Purchaser and the Seller Representative shall jointly instruct the Escrow Agent to pay the Escrow Amount from the Escrow Account pursuant to instructions furnished by the Seller Representative (for the benefit of the Sellers in respect of each Seller’s Percentage Share). For purposes of this Agreement, a Seller’s “Percentage Share” means the percentage set forth on Schedule 1.4(d) opposite such Seller’s name.

(e) If the Estimated Aggregate Purchase Price exceeds the Final Purchase Price (such excess, the “Downward Adjustment Amount”), then promptly (but in any event within five (5) Business Days after the determination of the Final Purchase Price), Purchaser and the Seller Representative shall jointly instruct the Escrow Agent to pay to Purchaser the Downward Adjustment Amount from the Escrow Account pursuant to instructions furnished by Purchaser. If the Downward Adjustment Amount does not exceed the Escrow Amount, Purchaser and the Seller Representative shall promptly (but in any event within five (5) Business Days after the determination of the Final Purchase Price) jointly instruct the Escrow Agent to pay the amount by which Escrow Amount exceeds the Downward Adjustment Amount from the Escrow Account pursuant to instructions furnished by the Seller Representative (for the benefit of the Sellers in respect of each Seller’s Percentage Share). If the Downward Adjustment Amount exceeds the Escrow Amount (plus all earnings thereon), each Seller shall promptly (but in any event within five (5) Business Days after the determination of the Final Purchase Price) pay to Purchaser its Percentage Share of the amount by which the Downward Adjustment Amount exceeds the Escrow Amount (plus all earnings thereon) pursuant to instructions furnished by Purchaser.

(f) If the Final Purchase Price is equal to the Estimated Aggregate Purchase Price, then promptly (but in any event within five (5) Business Days after the determination of the Final Purchase Price), Purchaser and the Seller Representative shall jointly instruct the Escrow Agent to pay the Escrow Amount from the Escrow Account pursuant to instructions furnished by the Seller Representative (for the benefit of the Sellers in respect of each Seller’s Percentage Share).

(g) Notwithstanding clauses (d) and (e) foregoing, if at any point after a Dispute Notice is delivered by the Seller Representative, (i) it can be determined that, even if all matters remaining in dispute were resolved in Purchaser’s favor, all or a portion of the Escrow Amount would be released to the Seller Representative (for the benefit of the Sellers in respect of each Seller’s Percentage Share), the parties shall deliver joint written instructions to the Escrow Agent to cause the Escrow Agent to make payment of such portion of the Escrow Amount from the Escrow Account to the Seller Representative or (ii) it can be determined that, even if all matters remaining in dispute were resolved in the Seller Representative’s favor (for the benefit of the Sellers in respect of each Seller’s Percentage Share), all or a portion of the Escrow Amount would be released to Purchaser, the parties shall deliver joint written instructions to the Escrow Agent to cause the Escrow Agent to make payment of such portion of the Escrow Amount from the Escrow Account to Purchaser. In either case, for purposes of clauses (d) or (e), the Escrow Amount available for payment shall then be determined after giving effect to this clause (g). For the avoidance of doubt, all earnings on the Escrow Amount shall be paid to Purchaser unless such earnings are used to satisfy any Upward Adjustment Amount owed to the Sellers.

(h) Purchaser agrees that (i) the purpose of the adjustments provided for in this Section 1.4 is to measure changes in the levels of Company Cash Equivalents, Closing Working Capital, Company Indebtedness and Transaction Expenses, in each case, calculated in accordance with the Agreed Accounting Principles, (ii) such adjustments are not intended to permit the introduction of new or different methodologies, practices, procedures, estimation techniques, judgments, classifications, assumptions and principles when determining the levels of Company Cash Equivalents, Closing Working Capital, Company Indebtedness and Transaction Expenses for the purpose of this Section 1.4 (each of which, for the avoidance of doubt, shall be calculated in accordance with the Agreed Accounting Principles), and (iii) the adjustments provided for in this Section 1.4, and the dispute resolution provisions provided for in this Section 1.4, shall be the exclusive remedies for the matters addressed by this Section 1.4. Purchaser agrees that, following the Closing, it will not, and it will cause the Company Group not to, take any actions with respect to the accounting books, records, principles, policies, treatments, categorizations, practices, methods, bases and estimates of the Company Group that would obstruct or prevent the preparation of the Closing Statement as provided in this Section 1.4.

1.5 Time and Place of the Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place by electronic transmission at 9:00 a.m. (CST) on the third (3rd) Business Day following satisfaction or waiver (by the party entitled to the benefit thereof) of all of the closing conditions set forth in ARTICLE VII (other than those to be satisfied at Closing), or at such other time as shall be mutually agreed upon by the Seller Representative and Purchaser. The date on which the Closing occurs in accordance with the preceding sentence is referred to in this Agreement as the “Closing Date”. The Closing shall be effective as of 11:59 p.m. Eastern Time on the Closing Date. All proceedings to be taken and all documents to be executed and delivered by the parties at the Closing will be deemed to have been taken and executed simultaneously (except that Purchaser’s purchase of the Blocker Shares shall be deemed to have occurred immediately prior to Blocker’s purchase of the Holder Units) and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

1.6 Closing Deliveries.

(a) By Purchaser. At or prior to the Closing, Purchaser shall have delivered to the Seller Representative each of the following:

(i) a certificate of Purchaser, executed by a duly authorized officer thereof, dated as of the Closing Date, certifying that the conditions specified in Section 7.2(a) and Section 7.2(b) have been satisfied;

(ii) the Escrow Agreement, in the form attached hereto as Exhibit A, executed by Purchaser, such Escrow Agreement in full force and effect; and

(iii) a true and complete copy of Purchaser’s representation and warranty insurance policy (the “R&W Insurance Policy”) in full force and effect as of the Closing Date.

(b) By the Sellers or Company. At or prior to the Closing, the Sellers, the Company or Blocker, as applicable, shall have delivered, or caused to be delivered, to Purchaser (or, in the case of (ii) and (ix) with respect to the Holders, to Blocker) each of the following:

(i) stock certificates and a stock power for all Blocker Shares owned by the Blocker Stockholder, duly executed by the Blocker Stockholder;

(ii) an assignment of the Holder Units to Blocker in the form attached hereto as Exhibit B, duly executed by each of the Holders;

(iii) a certificate of the Company executed by a duly authorized officer of the Company, dated as of the Closing Date, certifying that the conditions specified in Section 7.3(a), Section 7.3(b) and Section 7.3(c) have been satisfied with respect to the Company;

(iv) a certificate of the Blocker executed by a duly authorized officer of the Blocker, dated as of the Closing Date, certifying that the conditions specified in Section 7.3(a) and Section 7.3(b) have been satisfied with respect to the Blocker Stockholder;

(v) a certificate of each Seller executed by such Seller or a duly authorized officer of each Seller, dated as of the Closing Date, certifying that the conditions specified in Section 7.3(a) and Section 7.3(b) have been satisfied with respect to such Seller;

(vi) the Escrow Agreement, in the form attached hereto as Exhibit A, executed by the Seller Representative, such Escrow Agreement in full force and effect;

(vii) pay-off letters (the “Pay-Off Letters”) with respect to the pay-off amounts of the Company Indebtedness identified on Schedule 1.6(b)(vii) and all Liens and guarantees related to such Indebtedness shall either be terminated and released or the Pay-Off Letters shall specify they will be so automatically terminated and released after satisfaction of the conditions specified therein (and the Pay-Off Letters shall include an undertaking by the applicable agents to thereupon file, or permit the Company, Purchaser or their designees to file, all applicable UCC-3 termination statements, intellectual property security releases, mortgage releases and similar release with respect thereto) and Purchaser shall have received evidence of the foregoing reasonably satisfactory to it;

(viii) evidence of a fully-paid D&O Tail Policy;

(ix) a properly completed and executed IRS Form W-9 for each Seller;

(x) written resignations of the directors and officers of the Company Group and Blocker set forth on Schedule 1.6(b)(x);

(xi) a certificate of the Secretary (or equivalent thereof) of the Company and Blocker certifying, as complete and accurate as of the Closing, attached copies of the Organizational Documents of the Company or Blocker (as applicable), certifying and attaching all requisite resolutions or actions of the board of managers, board of directors and equity holders, as applicable, approving the execution and delivery of this Agreement and the Company’s Ancillary Documents or Blocker’s Ancillary Documents, as applicable, and the consummation of the transactions contemplated hereby and thereby, and certifying to the incumbency and signatures of the officers of the Company and Blocker, as applicable, executing this Agreement and the Company’s Ancillary Documents or Blocker’s Ancillary Documents, as applicable;

(xii) for each Seller that is a trust, a certification of trust, in a form reasonably acceptable to Purchaser, certifying as to the creation of the trust and the powers of the trustee(s);

(xiii) for Blocker Stockholder and Groom Enterprises, Inc., certified copies of the resolutions of the board of directors (or similar governing body) of such Seller, approving the execution and delivery of this Agreement and the Seller's Ancillary Documents and the consummation of the transactions contemplated hereby and thereby;

(xiv) a digital copy of the true and correct contents of the Dataroom as of the Closing Date;

(xv) a subordination, non-disturbance and attornment agreement in favor of the tenant, in the form attached hereto as Exhibit C, for each Leased Premises that is owned by a Related Party and which is subject to a mortgage, deed of trust or similar instrument;

(xvi) evidence of amendment of each of Related Party Lease providing for: (A) the deletion of the fourth sentence of Section 8.2(a) of each such Lease, which references intra-insured insurance policy exclusions, (B) the deletion of the last sentence of Section 8.3(a) of each such Lease, which references a \$5,000 insurance deductible limit, (C) the deletion of the words "with a deductible of not to exceed \$1,000 per occurrence" in the second sentence of Section 8.4(a) of each such Lease, (D) the deletion of the third sentence of Section 8.5(a) of each such Lease, which references delivery of certified copies of insurance policies and (E) Section 8.3(b) of each such Lease being amended to decrease the extended period of indemnity from 180 days to 90 days;

(xvii) evidence of termination of that certain Advisory Services Agreement, dated as of December 23, 2019, by and between Custom Wheel House and Thompson Street Capital Manager LLC;

(xviii) resolutions effecting the termination of the CWH 401(k) Plan in accordance with Section 8.5(c);

(xix) certificates from the Secretary of State of the State of Delaware, dated as of a date not earlier than fifteen (15) calendar days prior to the Closing, as to the existence and good standing of Custom Wheel House, the Company and Blocker;

(xx) a recorded copy of the Substitution of Trustee and Deed of Reconveyance pertaining to that certain Deed of Trust executed by 41720 Corning Place, LLC dated January 8, 2019 and recorded as Document Number 2019-0031565 in Riverside County Official Records;

(xxi) a recorded copy of a Deed of Reconveyance pertaining to that certain Deed of Trust executed by 41720 Corning Place, LLC dated January 3, 2019 and recorded as Document Number 2019-0312030 in Riverside County Official Records; and

(xxii) evidence of termination of the UCC-1 financing statement referenced on Schedule 3.8(a)(2).

1.6 Withholding. Purchaser, the Company Group, and their respective Affiliates, and any other applicable withholding agent, shall be entitled to deduct and withhold from amounts otherwise payable in connection with this Agreement such amounts as they are required to deduct and withhold under any provision of applicable Tax Law; provided, however, that if under applicable Tax Law any amount is required to be deducted or withheld from any such payment to the Sellers (other than any deduction or withholding (x) in respect of payments treated as compensation for U.S. federal income Tax purposes or (y) as a result of a failure to deliver the documents set forth in Section 1.6(b)(ix)), then Purchaser shall promptly notify the Seller Representative of such requirement (which notice shall include the legal authority and the calculation method for the expected withholding), shall consult in good faith with the Seller Representative prior to withholding any amounts payable to the Sellers hereunder and shall cooperate with the Seller Representative to take commercially reasonable steps to minimize or eliminate such withholding or deduction, including by giving the Sellers an opportunity to provide additional information or to apply for an exemption from, or a reduced rate of, withholding. To the extent amounts are so withheld and remitted to the appropriate Governmental Authority, such withheld amounts will be treated for all purposes as having been paid to the Person in respect of whom such deduction and withholding was made.

1.7 Intended Tax Treatment. The parties intend and agree that, for U.S. federal income tax purposes, the purchase of the Holder Units by Blocker as contemplated by this Agreement shall be treated in a manner consistent with Situation One of Revenue Ruling 99-6, 1999-1 C.B. 432. None of the parties will take any position to the contrary on any Tax Return or otherwise, unless required by applicable Law.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Sellers as follows:

2.1 Organization, and Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of California.

2.2 Power and Authority. Purchaser has full corporate power and authority to enter into and perform (a) this Agreement and (b) all documents and instruments executed by Purchaser in connection with this Agreement (collectively, "Purchaser's Ancillary Documents"). The execution, delivery and performance of this Agreement and Purchaser's Ancillary Documents by Purchaser and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action of Purchaser. This Agreement and Purchaser's Ancillary Documents have been duly executed and delivered by Purchaser and constitute a legal, valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with their terms, except as limited by (i) applicable bankruptcy, reorganization, insolvency, moratorium or other similar Laws affecting the enforcement of creditors' rights generally from time to time in effect, and (ii) the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity (regardless of whether enforceability is considered in a proceeding at Law or in equity (collectively (i) and (ii) together, the "General Enforceability Exceptions")).

2.3 Consents. No consent, authorization, Order or approval of, or notice to or filing or registration with, any Governmental Authority or other Person is required for the execution and delivery by Purchaser of this Agreement and Purchaser's Ancillary Documents, and the consummation by Purchaser of the transactions contemplated by this Agreement and Purchaser's Ancillary Documents, in each case, except as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or Purchaser's Ancillary Documents. Neither the execution, delivery and performance of this Agreement and Purchaser's Ancillary Documents by Purchaser, nor the consummation by Purchaser of the transactions contemplated hereby or thereby, will conflict with or result in a breach of any of the terms, conditions or provisions of Purchaser's Organizational Documents or of any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any Governmental Authority or of any arbitration award (each, an "Order"), in each case, except as would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or Purchaser's Ancillary Documents.

2.4 Litigation and Claims. There is no Action pending or, to Purchaser's knowledge, threatened, against Purchaser or its officers or directors: (a) with respect to or affecting Purchaser's ability to perform its obligations hereunder, or (b) that is reasonably likely to prohibit, restrict or materially delay the performance of this Agreement and Purchaser's Ancillary Documents by Purchaser.

2.5 Solvency. Assuming (a) the truth and accuracy of the representations and warranties of the Company, Blocker and the Sellers and (b) the performance and compliance by the Company, Blocker and the Sellers of their respective obligations contained in this Agreement, immediately after giving effect to the transactions contemplated hereby and the incurrence of any indebtedness therewith, the assets of each member of the Company Group will exceed the liabilities of each such member, as applicable. In connection with the consummation of the transactions contemplated hereby and the incurrence of any indebtedness in connection therewith, Purchaser does not intend that Blocker or any member of the Company Group would incur, and does not believe that any such member or Blocker will incur, debts that would be beyond such member's or Blocker's ability to pay as the debts mature. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of any member of the Company Group or Blocker.

2.6 Accredited Investor. Purchaser is acquiring the Securities for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities Laws. Purchaser is an "accredited investor" as defined in Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933 (the "Securities Act"). Purchaser acknowledges that the Securities have not been registered under the Securities Act or any state or foreign securities Laws and that the Securities may not be sold, transferred, offered for sale, assigned, pledged, hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is pursuant to the terms of an effective registration statement under the Securities Act and the Securities are registered under any applicable state or foreign securities Laws or sold pursuant to an exemption from registration under the Securities Act and any applicable state or foreign securities Laws.

2.7 Funding. Purchaser has, and at the Closing will have, sufficient immediately available U.S. funds and the financial ability to make all of the payments contemplated to be made by Purchaser under this Agreement, and Purchaser has and will have at the Closing the resources and capabilities (financial and otherwise) to perform its obligations under this Agreement.

2.8 WARN Act. Purchaser has no present plans or intention to carry out, following the Closing, any plant closing or mass layoff which would violate the federal Worker Adjustment and Retraining Notification Act or any similar applicable state or local Law (collectively, the “WARN Act”) at any facility of the Company Group’s businesses (assuming for purposes of this subsection that no notice would be given in connection with any such closing or layoff).

2.9 Brokers and Finders. Neither Purchaser nor any of its Affiliates has retained, engaged or entered into any Contract with any Person who is or will be entitled to a broker’s commission, finder’s fee, investment banker’s fee or similar payment in connection with (a) the negotiation, execution or performance of this Agreement or (b) introducing the parties hereto to each other.

2.10 Independent Investigation.

(a) PURCHASER ACKNOWLEDGES AND AGREES THAT (I) IT HAS CONDUCTED ITS OWN INQUIRY AND INDEPENDENT INVESTIGATION OF THE FINANCIAL CONDITION, ASSETS, LIABILITIES, PROPERTIES AND PROJECTED OPERATIONS OF THE COMPANY GROUP AND AFTER SUCH INVESTIGATION HAS IDENTIFIED THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AS THE SOLE REPRESENTATIONS AND WARRANTIES ON WHICH PURCHASER IS RELYING IN MAKING ITS DETERMINATION AS TO THE PROPRIETY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND PURCHASER IS RELYING SOLELY ON SUCH EXPRESS REPRESENTATIONS AND WARRANTIES OF THE COMPANY EXPRESSLY CONTAINED IN ARTICLE III, BLOCKER EXPRESSLY CONTAINED IN ARTICLE IV AND OF EACH SELLER EXPRESSLY CONTAINED IN ARTICLE V AND (II) ANY AND ALL PRIOR REPRESENTATIONS AND WARRANTIES MADE BY ANY OF THE COMPANY GROUP, THE SELLERS, ANY NON-RECOURSE PARTY OR THE COMPANY BROKER, WHETHER VERBALLY OR IN WRITING, ARE MERGED INTO THIS AGREEMENT, IT BEING INTENDED THAT NO SUCH PRIOR REPRESENTATIONS OR WARRANTIES SHALL SURVIVE THE EXECUTION AND DELIVERY OF THIS AGREEMENT.

(b) PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN ARTICLES III, IV OR V OR IN THE ANCILLARY DOCUMENTS, (I) NONE OF THE COMPANY GROUP NOR ANY NON-RECOURSE PARTY NOR BLOCKER NOR ANY SELLER MAKES ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER, INCLUDING IN RESPECT OF ANY MEMBERS OF THE COMPANY GROUP OR ANY OF THE THEIR RESPECTIVE BUSINESSES, ASSETS, LIABILITIES, OPERATIONS, PROSPECTS OR CONDITION (FINANCIAL OR OTHERWISE), INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR THE PHYSICAL CONDITION OR VALUE OF ANY ASSETS, THE NATURE OR EXTENT OF ANY LIABILITIES, THE PROFITABILITY, EARNINGS PERFORMANCE OR PROSPECTS OF THE BUSINESS OF ANY MEMBER OF THE COMPANY GROUP OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE COMPANY GROUP OR BLOCKER, THE EFFECTIVENESS OR THE SUCCESS OF ANY OPERATIONS OR THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION MEMORANDA, PRESENTATIONS, DOCUMENTS, PROJECTIONS, MATERIAL OR OTHER INFORMATION (FINANCIAL OR OTHERWISE) REGARDING THE COMPANY GROUP FURNISHED TO PURCHASER OR ITS REPRESENTATIVES OR MADE

AVAILABLE TO PURCHASER OR ITS REPRESENTATIVES, INCLUDING THROUGH OR IN ANY MANAGEMENT PRESENTATION, DATA ROOM (INCLUDING ANY ELECTRONIC DATA SHARING OR INFORMATION EXCHANGE WEBSITE OR MEDIA) OR EMAIL OR IN ANY OTHER FORM IN EXPECTATION OF, OR IN CONNECTION WITH, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, AND (II) NO REPRESENTATIONS, WARRANTIES, COVENANTS, ASSURANCES OR OTHER INDUCEMENTS ARE MADE, OR HAVE BEEN MADE, BY THE COMPANY GROUP, ANY NON-RECOURSE PARTY, BLOCKER, SELLERS OR THE COMPANY BROKER OR ANY OF THEIR RESPECTIVE AFFILIATES OR REPRESENTATIVES (INCLUDING, FOR THE SAKE OF CLARITY, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS) WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN THE DISCUSSION MATERIALS DISTRIBUTED BY THE COMPANY BROKER (THE “CONFIDENTIAL INFORMATION PRESENTATION”), IN THE MANAGEMENT PRESENTATION OR MATERIALS DISTRIBUTED BY OR ON BEHALF OF THE COMPANY BROKER OR THE COMPANY GROUP OR THEIR RESPECTIVE AFFILIATES OR REPRESENTATIVES OR IN THE INFORMATION OBTAINED BY PURCHASER PURSUANT TO SECTION 8.1, AND NONE OF THEM SHALL HAVE ANY LIABILITY OF ANY NATURE TO PURCHASER ARISING OUT OF THE USE OF ANY SUCH INFORMATION. PURCHASER AGREES AND ACKNOWLEDGES THAT ANY ESTIMATES, FORECASTS OR PROJECTIONS FURNISHED OR MADE AVAILABLE TO IT CONCERNING THE COMPANY GROUP (INCLUDING IN THE CONTENTS OF THE CONFIDENTIAL INFORMATION PRESENTATION, ANY MANAGEMENT PRESENTATION AND IN ANY DATA ROOM OR DILIGENCE MATERIALS) REGARDING ITS PROPERTIES, BUSINESS OR ASSETS MAY NOT HAVE BEEN PREPARED IN ACCORDANCE WITH GAAP OR STANDARDS APPLICABLE UNDER THE SECURITIES ACT, AND SUCH ESTIMATES, AND THE ESTIMATES REFLECTED IN THE FINANCIAL STATEMENTS AND THE INTERIM FINANCIAL STATEMENTS, REFLECT NUMEROUS ASSUMPTIONS AND ARE SUBJECT TO MATERIAL RISKS AND UNCERTAINTIES. PURCHASER ACKNOWLEDGES THAT ACTUAL RESULTS MAY VARY, PERHAPS MATERIALLY. PURCHASER ACKNOWLEDGES AND AGREES THAT NO PERSON SHALL HAVE ANY CLAIM UNDER ANY CIRCUMSTANCES AGAINST ANY SELLER, BLOCKER, THE COMPANY GROUP OR ANY OF THEIR RESPECTIVE NON-RECOURSE PARTIES WITH RESPECT TO SUCH ESTIMATES, FORECASTS OR PROJECTIONS, THAT NO REPRESENTATION OR WARRANTY IS MADE WITH RESPECT THERETO, AND THAT NO PERSON SHALL BE ENTITLED TO RELY THEREON FOR ANY PURPOSE, INCLUDING IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OR THE FINANCING THEREOF.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company makes the following representations and warranties to Purchaser. All representations and warranties of the Company are made subject to the exceptions noted in the schedule delivered by the Company to Purchaser concurrently herewith and identified by the parties as the “Disclosure Schedule.”

3.1 Organization and Standing.

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. The Company has all necessary corporate power and authority to conduct its business as its business is now being conducted, to own or use the assets or property that it purports to own or use and to enter into the Material Contracts. Except as set forth on Schedule 3.1(a), the Company is duly qualified to transact business and is in good standing in each jurisdiction where the use of the assets, the character of its properties owned or held under lease or the nature of its activities makes such qualifications necessary, and each such jurisdiction is set forth on Schedule 3.1(a).

(b) Custom Wheel House is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Custom Wheel House has all necessary limited liability company power and authority to conduct its business as its business is now being conducted, to own or use the assets or property that it purports to own or use and to enter into the Material Contracts. Except as set forth on Schedule 3.1(b), Custom Wheel House is duly qualified to transact business and is in good standing in each jurisdiction where the use of the assets, the character of its properties owned or held under lease or the nature of its activities makes such qualifications necessary, and each such jurisdiction is set forth on Schedule 3.1(b).

(c) The Company does not have any Subsidiaries other than Custom Wheel House and, other than the Equity Securities of Custom Wheel House, the Company does not own any Equity Securities of any other Person. Custom Wheel House does not have any Subsidiaries and Custom Wheel House does not own any Equity Securities of any other Person.

(d) True and complete copies of the Organizational Documents of each member of the Company Group and all amendments thereto, all equity records and all minute books and records of each member of the Company Group have been delivered to Purchaser. The minute books and records of each member of the Company Group contain true and complete copies of all resolutions adopted by the members of such Person, the board of managers, directors or equivalent governing body of such Person, and any other action formally taken by such Person. No member of the Company Group is in violation of any of its Organizational Documents.

3.2 Power and Authority. The Company has full power and authority to enter into and perform this Agreement. Each Member of the Company Group has full power and authority to enter into and perform all documents and instruments executed by such member of the Company Group in connection with this Agreement (collectively the "Company's Ancillary Documents"). The execution, delivery and performance of this Agreement and the Company's Ancillary Documents by each member of the Company Group and the consummation by each member of the Company Group of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action of each member of the Company Group. This Agreement and the Company's Ancillary Documents have been duly executed and delivered by each member of the Company Group and constitute a legal, valid and binding agreement of each member of the Company Group, enforceable against each member of the Company Group in accordance with their terms, except as limited by the General Enforceability Exceptions.

3.3 Consents. Except as set forth in Schedule 3.3, no consent, notice, authorization, Order or approval of, or filing or registration with, any Governmental Authority or other Person is required for the execution and delivery by any member of the Company Group of this Agreement or the Company's Ancillary Documents and the consummation of the transactions contemplated by this Agreement and the Company's Ancillary Documents.

3.4 Capitalization.

(a) Schedule 3.4(a) sets forth a true and complete list of each class and number of authorized, issued and outstanding Equity Securities of each member of the Company Group. All of the Equity Securities of the Company Group have been validly issued, are fully paid, freely negotiable or transferrable and free of any additional payment obligations, preemptive rights, options, proxies, voting trusts, voting agreements, judgments, pledges, charges, escrows, rights of first refusal or first offer, transfer restrictions, Liens or other encumbrances, except (i) as set forth in the Organizational Documents of the Company Group or (ii) any transfer restrictions imposed by applicable Laws. All of the Equity Securities of the Company Group are non-assessable and are owned beneficially and of record by the Persons and in the amounts set forth on Schedule 3.4(a).

(b) Except as set forth on Schedule 3.4(b), there are no outstanding Equity Securities agreements or other Contracts relating to the issued or unissued Equity Securities of any member of the Company Group to which any member of the Company Group is a party, including the voting or transfer thereof. All Equity Securities of the Company Group were issued in compliance with all applicable federal and state securities Laws and were not issued in violation of the applicable Organizational Documents of the Company Group.

(c) Except as set forth on Schedule 3.4(c), there are no outstanding equity appreciation rights, phantom equity, options, warrants, convertible securities, virtual stock or other equity or equity-based compensation award, plan, agreement or other similar arrangement in existence with respect to any member of the Company Group.

(d) Except as set forth on Schedule 3.4(d), since the Relevant Date, no distribution of capital or dividends or similar payments have been declared, promised or made by any member of the Company Group and no such distributions or dividends remain declared but unpaid. No insolvency or similar proceedings have been commenced or applied for in respect of any member of the Company Group. No issued and outstanding Equity Securities of any member of the Company Group are certificated.

3.5 Financial.

(a) Copies of the audited consolidated balance sheets and the related consolidated statements of operations, members' equity and cash flows of the Company Group for the periods therein ended December 31, 2021 and December 31, 2020 are contained in Schedule 3.5(a). Such financial statements described in the preceding sentence are referred to herein as the "Financial Statements." Copies of the unaudited consolidated balance sheet and the related consolidated statements of operations, members' equity and cash flows of the Company Group for the twelve month period ended December 31, 2022 are also contained in Schedule 3.5(a). Such financial statements described in the preceding sentence are referred to herein as the "Interim Financial Statements." December 31, 2022 is referred to herein as the "Interim Financial Statement Date." The Financial Statements and Interim Financial Statements were derived from the books and records of the Company Group and present fairly, in all material respects, the financial position of the applicable members of the Company Group as of the dates thereof and the results of operations, changes in owners' equity and cash flows of the applicable members of the Company Group for the periods covered by said statements, in conformity with the Agreed Accounting Principles, except as disclosed therein and, in the case of the Interim Financial Statements, except for the absence of schedules and footnote disclosures and any year-end audit adjustments, which in the aggregate are not material. The Company Group has delivered to Purchaser all letters, if any, from the Company Group's auditors to any member of the Company Group's board of managers, directors or equivalent governing body or the audit committee thereof during the thirty-six (36) months preceding the execution of this Agreement, together with copies of all responses thereto.

(b) No member of the Company Group has liabilities except for: (i) liabilities specifically reflected and adequately reserved against in the Interim Financial Statements; (ii) liabilities which have been incurred by the Company Group subsequent to the date of the Interim Financial Statements in the ordinary course of business and which do not result from any breach of contract, breach of warranty, tort, claim or lawsuit arising as of or prior to Closing; (iii) liabilities under the executory portion of any written Contract by which the Company Group is bound and which was entered into in the ordinary course of business and which do not result from any breach of contract, breach of warranty, tort, claim or lawsuit arising as of or prior to Closing; and (iv) liabilities under the executory portion of Permits (as defined below) issued to, or entered into by, the Company Group in the ordinary course of business and which do not result from any violation of Law, breach of contract, breach of warranty, tort, claim or lawsuit arising as of or prior to Closing.

(c) No member of the Company Group has any Indebtedness except as disclosed on Schedule 3.5(c). Except for the Promissory Note – Paycheck Protection Program (the “PPP Loan”) disclosed on Schedule 3.5(c), no member of the Company Group has participated in any lending program implemented in response to the COVID-19 pandemic, including the U.S. Small Business Administration’s Paycheck Protection Program or the Federal Reserve’s Main Street Lending Program. No member of the Company Group has deferred any payroll or other employment Taxes other than such deferrals that have been repaid in full as of the date of this Agreement. Each member of the Company Group was, at the time the PPP Loan was applied for and at the time of repayment, eligible to participate in the U.S. Small Business Administration’s Paycheck Protection Program. The certifications made by the Company Group to the United States Small Business Administration relating to the application for the PPP Loan were true and correct and made in good faith. The Company Group was, at all times, in material compliance with the terms and conditions of the PPP Loan. The PPP Loan was fully repaid on April 30, 2020 and has no impact on the transactions contemplated by this Agreement.

(d) The books of account and other financial records of the members of the Company Group, all of which have been made available to Purchaser, are complete and correct in all material respects and represent actual, bona fide transactions.

3.6 Receivables; Inventory.

(a) All of the trade receivables and notes receivable which are reflected on the Financial Statements or the Interim Financial Statements, or which arose subsequent to the date of the Interim Financial Statements, arose out of bona fide, arms-length transactions in the ordinary course of business, in a manner substantially consistent with the regular credit practices of the Company Group and are properly reflected in the Financial Statements or Interim Financial Statements (as the case may be) in accordance with the Agreed Accounting Principles. To the Company’s Knowledge, all such receivables are good and collectible (or have been collected) in the ordinary course of business in accordance with their terms, and at the aggregate recorded amounts thereof, using normal collection practices, less the amount of applicable reserves for doubtful accounts and for allowances and discounts. All such reserves, allowances and discounts were and are adequate and consistent in extent with reserves, allowances and discounts previously maintained by the Company Group in the ordinary course of business. No such receivable is or was subject to any rebate, discount, counterclaim, dispute or set off, and the Company Group has not issued any credits or credit memos in respect thereof.

(b) All inventory of the Company Group, whether or not reflected in the Interim Financial Statements, consists of a quality and quantity usable and salable in the ordinary course of business, except for obsolete items and items of below standard quality, all of which have been written off or written down to net realizable value in the Interim Financial Statements in accordance with the Agreed Accounting Principles. All inventories not written off have been priced at a rolling weighted-average cost basis, which is consistent with the regular practices of the Company Group. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Company Group.

3.7 Equipment. The furniture, fixtures, equipment (including office equipment), computer hardware and all other tangible personal property owned or leased by any member of the Company Group (collectively, the “Equipment”) (a) are adequate and suitable for their present and intended uses and are sufficient for the conduct of the Company Group’s business as conducted immediately prior to the Closing and constitute all of the Equipment necessary to conduct such business as currently conducted, (b) are in good working order, operating condition and are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs, (c) have no defects (whether patent or latent) that materially detract from the value or which materially interfere with the present use, (d) have been maintained in accordance with normal industry practice in all material respects and (e) comply in all material respects with valid and current certificates of occupancy or similar Permits to the extent required by Law for the use thereof.

3.8 Title to Assets; Sufficiency of Assets. The Company Group has good and marketable title to, or has a valid and enforceable leasehold interest in, all tangible assets and properties (real, personal or mixed), wherever located, held or used in the conduct of its business as presently conducted, free and clear of any Liens, other than Permitted Liens. Except as set forth in Schedule 3.8(a), no unreleased mortgage, trust deed, chattel mortgage, security agreement, financing statement or other instrument encumbering any of the Company Group’s assets has been recorded, filed, executed or delivered. Except as set forth in Schedule 3.8(b), no Seller or any Related Party (as defined below) owns or has an interest in or to any asset used in the conduct of the Company Group’s business as presently conducted. All Equipment and other items of tangible personal property and assets of the Company Group are in good working order, operating condition, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are capable of being used for their intended purposes (ordinary wear and tear excepted) and are adequate, suitable and usable in the ordinary course of business. The tangible and intangible rights, assets and properties held by the Company Group include all of the tangible and intangible rights, assets and properties necessary to conduct the operations of the Company Group as presently conducted, and none of such rights, assets or properties are owned or held by any Seller.

3.9 Insurance. Schedule 3.9 sets forth a list of all insurance policies which are owned by a member of the Company Group or which name a member of the Company Group as an insured and which relate to the business of the Company Group or the employees of a member of the Company Group (other than any such policy maintained in connection with any Employee Plan), copies of which have been delivered to Purchaser (the “Insurance Policies”). All of the Insurance Policies are in full force and effect, and no member of the Company Group has received notice of termination or non-renewal of any Insurance Policies. Since the Relevant Date, the Company Group has not received: (a) any notice of cancellation of any Insurance Policy or refusal of coverage thereunder; (b) any notice that any issuer of any Insurance Policy has filed for protection under applicable bankruptcy Laws or is otherwise in the process of liquidating or has been liquidated; or (c) any other indication that the Insurance Policies are no longer in full force or effect or that the issuer of any Insurance Policy is no longer willing or able to perform its obligations thereunder. Since the Relevant Date, no member of the Company Group has been advised of any adverse change in the Company Group’s relationship with its insurers or in the premiums payable pursuant to the Insurance Policies. The Company Group has complied with each such Insurance Policy and has not failed to give any notice or present any claim thereunder in respect of any currently pending or threatened claims against any member of the Company Group for which coverage is available under any such Insurance Policy in a due and timely manner. All premiums due to date under the Insurance Policies have been paid, no default by any member of the Company Group exists thereunder and, with respect to any material claims made under the Insurance Policies, no insurer has delivered to any member of the Company Group any written “reservation of rights” or refused in writing to cover all or any portion of such claims or, to the Company’s Knowledge, provided any unwritten notice of intent

to deliver a “reservation of rights” or to refuse to cover all or any portion of such claims. The Company Group has not received any written or, to the Company’s Knowledge, unwritten, notice of any proposed material increase in the premiums payable for coverage, or proposed reduction in the scope (or discontinuation) of coverage, under any Insurance Policy. The Company Group’s liability in respect of its warranty program has not been, and to the Company’s Knowledge, is not expected to be greater than the applicable reserve for product warranty claims set forth, as applicable, on the face of the Financial Statements and Interim Financial Statements.

3.10 Related-Party Transactions. Schedule 3.10 sets forth every direct or indirect business relationship (other than normal employment relationships) between any member of the Company Group, on the one hand, and the present or former officers, directors, employees, managers, members, partners or shareholders (including the Sellers) of any member of the Company Group or members of any Seller’s family (or any entity in which any of them controls or has a material financial interest, directly or indirectly), on the other hand (each, a “Related Party”). Except as set forth in Schedule 3.10, no Related Party (or Affiliate of a Related Party) (other than the Company Group) directly or indirectly: (a) owns any property or right, whether tangible or intangible, which is used by any member of the Company Group; (b) has any claim or cause of action against any member of the Company Group; (c) owes any money to any member of the Company Group or is owed money from any member of the Company Group; (d) is a party to any Contract or other arrangement, whether written or oral, with any member of the Company Group; or (e) provides services or resources to any member of the Company Group or is dependent on services or resources provided by any member of the Company Group (each, a “Related Party Arrangement”).

3.11 Conduct of Business. Except as set forth in Schedule 3.11, since the Interim Financial Statement Date, the Company Group has conducted its business in the ordinary course, and no member of the Company Group has:

- (a) issued, sold or entered into any agreements or commitments to issue or sell any Equity Securities or securities convertible into or exchangeable for Equity Securities;
 - (b) amended the Organizational Documents of the Company Group;
 - (c) sold or in any way transferred, licensed exclusively or otherwise disposed of any of its assets or property, except for sales of products or services, and cash applied in payment of liabilities, in the ordinary course of business;
 - (d) suffered any casualty, damage, destruction or loss, or any material interruption in use, of any material assets or property (whether or not covered by insurance), on account of fire, flood, riot, strike or other hazard or act of God;
 - (e) made or suffered any material change in the conduct or nature of any aspect of its business;
 - (f) waived any right or canceled or compromised any debt or claim, other than in the ordinary course of business;
 - (g) made (or committed to make) capital expenditures in an amount which exceeds \$50,000 for any item or \$100,000 in the aggregate;
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(h) entered into, terminated or received written notice of termination of any Material Contracts, other than terminations at the end of the term in accordance with the terms of any such Material Contract;

(i) (i) increased (whether in cash, equity or property) the compensation payable to any employee, officer, director or manager of any member of the Company Group, except for merit-based increases in base salary or wage rate in the ordinary course of business, (ii) terminated, amended, established or adopted any Employee Plan (as defined below) (or any plan, agreement or arrangement that would be an Employee Plan if in existence on the date hereof), other than as required by Law, (iii) amended any employee benefit plan or arrangement, other than as required by Law, (iv) entered into or amended any employment, compensation, collective bargaining, severance, retention, change in control or similar Contract, (v) hired or terminated any employee who has an annual compensation in excess of \$50,000 or (vi) made any payment or commitment for any severance or termination payment or any bonus, profit sharing, deferred compensation payment or other incentive payment to any such person, other than pursuant to any Employee Plan or other existing written agreement, policy or plan of the Company Group or as required by applicable Law;

(j) borrowed any money or issued any bonds, debentures, notes or other securities evidencing money borrowed;

(k) made any payments or distributions to its employees, officers or directors, except such amounts as constitute currently effective compensation for services rendered or reimbursement for reasonable ordinary and necessary out-of-pocket business expenses;

(l) made any change in accounting methods or principles;

(m) purchased any asset (whether or not in the ordinary course of business) for a cost in excess of \$50,000;

(n) delayed the collection of any accounts or other receivables or the payment of any accounts or other payables or settled, or agreed to settle, any dispute or litigation;

(o) incurred any liabilities, except liabilities incurred in the ordinary course of business and liabilities incurred in connection with or as a result of this Agreement and the transactions contemplated hereby;

(p) paid, declared or set aside any dividend or other distribution on its securities of any class or purchased, exchanged or redeemed any of its securities of any class;

(q) (i) prepared or filed any Tax Return inconsistent with past practice or, on any such Tax Return, took any position, made any election or adopted any method that is inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods (including positions, elections or methods that would have the effect of deferring income to periods ending after the Closing Date or accelerating deductions to periods ending on or before the Closing Date), (ii) settled or compromised any claim or assessment related to Taxes, (iii) entered into any allocation Contract, sharing Contract, indemnity Contract, closing Contract or similar Contract the primary purpose of which related to Taxes, (iv) otherwise settled any dispute relating to Taxes, (v) requested any ruling or similar guidance with respect to Taxes, (vi) consented to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes with any Taxing Authority, (vii) filed any amended Tax Return or (viii) surrendered any right to claim a refund of Taxes;

(r) without limitation by the enumeration of any of the foregoing, except for the execution of this Agreement, entered into any transaction other than in the ordinary course of business; or

(s) entered into any agreement or commitment to do any of the foregoing.

3.12 Material Adverse Effect. Except as set forth in Schedule 3.12, since the Interim Financial Statements Date, no member of the Company Group has suffered or, to the Company's Knowledge, been threatened with any Material Adverse Effect.

3.13 Contracts.

(a) Schedule 3.13(a) correctly and completely lists and describes all Material Contracts to which any member of the Company Group is a party or is bound. All Material Contracts and all other contracts or instruments to which any member of the Company Group is a party or is bound are legal, valid, in full force and binding upon the Company Group, and to the Company's Knowledge, the other party thereto, and no breach or default by the Company Group has occurred (or been alleged to have occurred) thereunder and, to the Company's Knowledge, no breach or default by any other contracting party has occurred thereunder. To the Company's Knowledge, no event, occurrence or condition exists which, with the lapse of time, the giving of notice, or both, or the happening of any further event or condition, would become a breach or default by any member of the Company Group under any Material Contract or other contract or instrument to which any member of the Company Group is a party or is bound. Complete and accurate copies of all written Material Contracts (including any amendments, supplements, modifications or waivers thereto) have been delivered to Purchaser. "Material Contracts" means any written or verbal:

(i) purchase orders and purchase contracts in excess of \$50,000 each;

(ii) Contracts for capital expenditures in excess of \$50,000 each;

(iii) Contracts with any Significant Customer or Significant Supplier;

(iv) Contracts relating to the acquisition or disposition (whether by merger, sale of stock, sale of a material amount of assets or otherwise) of (A) a business by the Company Group or (B) of any member of the Company Group to the extent that any member of the Company Group or Blocker has ongoing obligations or liabilities;

(v) Contracts that include any right of first offer or right of first refusal in favor of the counterparty or Contracts that provide for “most favored nations” terms or establish exclusive sale or purchase obligations with respect to any product or service anywhere in the world;

(vi) Contracts that restrict the freedom of any member of the Company Group to engage in any line of business or to compete with any Person or which contain any exclusivity, non-competition, non-solicitation or no-hire provisions;

(vii) Contracts containing “requirements” provisions or other provisions obligating any member of the Company Group to purchase or obtain a minimum or specified amount of any product or service from any Person;

(viii) Contracts with respect to any Indebtedness;

(ix) Contracts or other agreements that provide for severance, retention or stay bonus, advance notice of termination, change in control bonus, accelerated vesting or any other amount or benefit that will be payable or due as a result of any of the transactions or events contemplated by this Agreement;

(x) franchise, joint venture, partnership, strategic alliance, co-marketing, co-promotion, co-packaging or joint development Contracts or similar Contracts involving a sharing of profits, losses, costs or liabilities by the Company Group with any Person (other than a member of the Company Group or the Blocker);

(xi) agency, distribution, dealer, sales representatives or similar Contracts, management, partnership, joint venture, strategic partnership or operating Contracts or other similar Contracts or any Contracts involving an obligation by any member of the Company Group to make commission or similar variable payments;

(xii) each written warranty, guaranty or other similar undertaking extended by the Company Group, other than any such written warranty, guaranty or similar undertaking contained in any member of the Company Group’s standard form contracts made available to Purchaser;

(xiii) Contracts conferring a power of attorney to act on behalf of any members of the Company Group;

(xiv) the Leases (as defined below);

(xv) leases and subleases of personal property where the annual payments thereunder exceed \$50,000 or which cannot be canceled by the Company Group without payment or penalty upon notice of sixty (60) days or less;

(xvi) Contracts containing a “key man” provision;

(xvii) Contracts involving any resolution or settlement of any actual or threatened Action, release of or compromise with respect to any claims or that limit or restrict the use of the Company Group Intellectual Property by the Company Group (A) with a value of greater than \$50,000 entered into since the Relevant Date or (2) which impose material continuing obligations on any member of the Company Group;

(xviii) Government Contracts;

(xix) Contracts (including any collective bargaining agreement) with any labor union, employee association or other labor organization;

(xx) each employment, deferred compensation, severance and similar agreement, in each case, other than any Employee Plan;

(xxi) all licenses, sublicenses, and other Contracts pursuant to which any other Person (other than any member of the Company Group) is authorized to use any Company Group Intellectual Property;

(xxii) all licenses, sublicenses, and other Contracts pursuant to which any member of the Company Group is authorized to use any Intellectual Property Rights owned by any other Person, other than commercial off-the-shelf software licensed on standard terms by any member of the Company Group on a non-exclusive basis from third parties in the ordinary course of business for an annual license fee of \$50,000 or less; and

(xxiii) all other Contracts to which any member of the Company Group is a party or by which any member of the Company Group or any of its assets is bound and which have a notice for termination period of more than six (6) months or obligate such member of the Company Group to make an annual payment of more than \$50,000 or total payments of more than \$100,000 during the term of such Contract.

(b) Neither the Company Group nor any of its owners, directors, officers or employees has been suspended or debarred from contracting with, or bidding on contracts or subcontracts with, any Governmental Authority; no such exclusion, suspension or debarment has been initiated or, to the Company's Knowledge, threatened; and the consummation of the transactions contemplated by this Agreement will not result in any such exclusion, suspension or debarment of any member of the Company Group. No member of the Company Group has been audited or investigated by any Governmental Authority and no such audit or investigation has been threatened. To the Company's Knowledge, there is no valid basis for the exclusion, suspension or debarment of any member of the Company Group from bidding on contracts or subcontracts with any Governmental Authority or any claim pursuant to an audit or investigation by any Governmental Authority. No member of the Company Group has Contracts that require it to obtain or maintain a security clearance with any Governmental Authority.

3.14 Conflicts. Except as set forth on Schedule 3.14, neither the execution of, or the performance by any Seller or any member of the Company Group according to the terms of, this Agreement or the Company's Ancillary Documents would, directly or indirectly (with or without notice or lapse of time), (a) be a breach or default or give rise to any remedy or right of termination or acceleration or impairment of any right or benefit of any member of the Company Group under any Contract; (b) be prohibited, prevented or delayed pursuant to any Contract, or require the consent of or otherwise give any other party to such Contract the right to refuse to give consent to the consummation of the transactions contemplated hereby or to elect to terminate such Contract, require any Seller or any member of the Company Group to give notice to any other party of the transactions contemplated hereby, or provide that, or give any other party the right to declare, as a result of the consummation of the transactions contemplated hereby, such Contract shall be canceled, terminated or modified in a manner adverse to such member of the Company Group; (c) contravene, conflict with or result in a breach of any of the terms, conditions or provisions of the Organizational Documents of the Company Group; (d) contravene or conflict with or constitute a violation of any Law or Order applicable to the Company Group; (e) give any Governmental Authority or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under any Law or any Order to which any member of the Company Group may be subject; or (f) result in the imposition or creation of any encumbrance upon or with respect to any of the assets of the Company Group's business.

3.15 Permits. Schedule 3.15 includes a true and complete list of every license, permit, franchise, privilege, variance, immunity, clearance, exemption, waiver, authorization, registration, accreditation, certification, pre-qualification, security clearance and approval applied for, pending by, issued or given by any Governmental Authority to any member of the Company Group, which is in effect or has been applied for (collectively, the "Permits"). All such Permits are in full force and effect, and there are no defaults thereunder or action pending or, to the Company's Knowledge, threatened by any Governmental Authority that seek the revocation, cancellation, suspension or adverse modification thereof, and all information submitted to the applicable Governmental Authority in order to obtain each Permit was true, accurate and correct when submitted. The Company Group is and has been in material compliance with, and the business of the Company Group has been conducted in accordance with, all terms and conditions of each Permit, and no event has occurred or condition or state of facts exists that constitutes or, after notice or lapse of time or both, would constitute a breach or default under any such Permit or that permits or, after notice or lapse of time or both, would permit, revocation, suspension, modification, termination or nonrenewal of any such Permit, or that might adversely affect the rights of any member of the Company Group under any such Permit. No notice of deficiency, cancellation, default or any dispute concerning any Permit, or any event, condition or state of facts described in the preceding clause, has been received by or is known to any member of the Company Group. No Action is pending or, to the Company's Knowledge, threatened to revoke, terminate or amend any Permit. The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby will not result in a modification, impairment, revocation, suspension or limitation of any Permit or any breach, default or forfeiture of any rights thereunder. Except as set forth on Schedule 3.15, no Permit requires the consent, approval or act of, or the making of any filing with, any Governmental Authority in order to remain in full force and effect after the execution and delivery of this Agreement. The Permits constitute all licenses, permits, franchises, privileges, variances, immunities, clearances, exemptions, authorizations, registrations, accreditations, certifications, pre-qualification, security clearance, approvals and agreements which are required in order for the Company Group to conduct its business as presently conduct.

3.16 Compensation and Benefits.

(a) Schedule 3.16(a) includes a true and complete list of each Employee Plan. For purposes of this Agreement, the term “Employee Plan” means each “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and other employee benefit or compensation plan, practice, policy, agreement or arrangement, including any bonus, compensation, commission, deferred compensation, stock purchase, stock option, stock appreciation, equity or Equity Security-based, severance, retention, salary continuation, vacation, holiday, paid time off, sick leave, fringe benefit, perquisite, incentive, insurance, employment, change in control, Code Section 125, Code Section 501(c) (9), welfare or similar plan, practice, policy, agreement or arrangement, whether or not subject to ERISA, in each case which is maintained, administered or contributed to by any member of the Company Group, which provides benefits to current or former employees or service providers(or any dependents of the foregoing) to the Company Group, or with respect to which a member of the Company Group is a party or could have any liability (including contingent liability).

(b) All Employee Plans comply with and are and have been maintained and operated in all respects in accordance with their respective terms and with each applicable provision of ERISA, the Code and all other applicable Laws, including all filing and disclosure requirements imposed on the plan sponsor thereunder. Each Employee Plan intended to qualify under Section 401(a) of the Code (including, without limitation, the CWH 401(k) Plan) is so qualified and has received a currently effective favorable determination letter from, or may rely on a favorable opinion or advisory letter issued by, the Internal Revenue Service (“IRS”) and there are no facts or circumstances that could (i) adversely affect the qualified status of any such Employee Plan or (ii) result in a penalty or other liability under the IRS Closing Agreement Program if discovered during an IRS audit or investigation. Each trust funding such an Employee Plan is and has been tax-exempt and each such trust agreement remains qualified under the Code. Full payment has been made of all contributions, premiums, benefits, distributions, administrative expenses and other amounts which are obligated to be paid in connection with, from or to any Employee Plan attributable to any period prior to the Closing. There is no unfunded liability relating to any Employee Plan that is not reflected in the Financial Statements or, with respect to accruals properly made on or after the Interim Financial Statements Date, in the books and records of the Company Group. With respect to the CWH 401(k) Plan, the Company Group has not (i) received any amendment from the sponsor of the plan document that the Company Group failed to execute or (ii) requested that any amendment be prepared for the current plan year that has not been executed.

(c) With respect to each Employee Plan, the Company Group has delivered to Purchaser true, current and complete copies of, as applicable (i) all plan documents (or, in the case of any unwritten Employee Plan, a description of the terms and conditions thereof), related trust agreements or other funding or financing arrangement, insurance contracts and policies, ERISA fiduciary indemnification agreements, administrative services agreements, and all amendments thereto, (ii) the most recent summary plan description and all summaries of material modifications thereto, (iii) the Form 5500 annual reports and accompanying schedules and actuarial reports, as filed, for the completed plan years since the Relevant Date, (iv) all documents and correspondence received from or provided to the United States Department of Labor, the Pension Benefit Guaranty Corporation, the IRS or any other Governmental Authority since the Relevant Date, (v) the ERISA bond, (vi) the most recent determination, advisory or opinion letter issued by the IRS, (vii) nondiscrimination and coverage testing results for the most recently completed plan years since the Relevant Date and (viii) IRS Forms 1094-C and 1095-C filed with the IRS since the Relevant Date and IRS confirmations of the filings thereof.

(d) Neither the Company Group nor any of its current or former ERISA Affiliates, nor any of their respective predecessors, has at any time maintained, administered, participated in, contributed to (or was required to contribute to) or had any obligation or liability (including contingent liability) under (i) any plan which is subject to Section 302 or Title IV of ERISA or Section 412 of the Code, (ii) any multiemployer plan (as defined in Section 3(37) of ERISA) or (iii) any single-employer plan (as defined in Section 4001(a)(15) of ERISA) that is subject to Section 4063, 4064 or 4069 of ERISA or Section 413(c) of the Code. The Company Group has never participated in, and has no liability with respect to, a “multiple employer welfare arrangement” within the meaning of Section 3(40)(A) of ERISA. There are no pending or, to the Company’s Knowledge, threatened claims against or otherwise involving any Employee Plan (other than routine claims for benefits), and there are no pending or, to the Company’s Knowledge, threatened Actions by the IRS, the United States Department of Labor or other Governmental Authority with respect to any Employee Plan, and, to the Company’s Knowledge, there are not any facts or circumstances that could give rise to any material liability in the event of any such claim or Action. The Company Group has not terminated an employee benefit or compensation plan or arrangement for which the Company Group could have any existing or continuing liability or obligation relating thereto. Each Employee Plan may be terminated at any time by the Company Group without incurring liability.

(e) The Company Group has complied in all material respects with COBRA and does not provide or have any obligation to provide medical, life insurance or other welfare benefits to any individual (other than to beneficiaries and dependents of active employees) at a time when he or she is not an employee of the Company Group (other than as required under Section 4980B of the Code or similar Law). Neither the Company Group nor any of its ERISA Affiliates has any liability on account of any violation of COBRA. The Company Group has complied, in all material respects, with the PPACA and with the security requirements of the Health Insurance Portability and Accountability Act of 1996. The Company Group has not incurred (whether or not assessed, and including on account of an ERISA Affiliate), and does not reasonably expect to incur, any excise Taxes or other penalties under PPACA (including with respect to the failure to comply with the reporting requirements under Sections 6055 and 6056 of the Code, as applicable).

(f) Each Employee Plan subject to Section 409A of the Code has been administered, operated and maintained in all respects according to the requirements of Section 409A of the Code and all applicable guidance thereunder. No Person is entitled to receive any additional payments (including any “gross up,” reimbursement or similar payment) from the Company Group as a result of the imposition of any Tax under Section 409A or Section 4999 of the Code.

(g) No non-exempt “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) has occurred that involves any Employee Plan. No fiduciary (within the meaning of Section 3(21) of ERISA) of any Employee Plan subject to Part 4 of Subtitle B of Title I of ERISA has committed a breach of fiduciary duty. The Company Group has not, nor to the Company’s Knowledge, has any other Person, engaged in any transaction with respect to any Employee Plan that could reasonably be expected to subject the Company Group or any of its employees to any Tax, penalty (civil or otherwise) or other liability under ERISA, the Code or other applicable Law. The Company Group does not have any liability (including contingent liability) under Chapter 43 of the Code, and nothing has occurred that could reasonably be expected to subject the Company Group to any such liability.

(h) Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with any other event) will or could reasonably be expected to (i) entitle any current or former director, officer, employee, consultant or other individual service provider of the Company Group to any payment (including severance pay or similar compensation), any cancellation of indebtedness or any increase in compensation; (ii) result in the acceleration of payment, funding or vesting under any Employee Plan; or (iii) result in any increase in benefits payable under any Employee Plan. None of the Employee Plans limit or otherwise restrict the Company Group's ability to terminate the employment of any employee for any reason without liability. No amount or benefit that could be, or has been, received (whether in cash or property or the vesting of property or the cancellation of indebtedness) by any current or former employee, officer or director of the Company Group who is a "disqualified individual" within the meaning of Section 280G of the Code would reasonably be expected to be characterized as an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code) as a result of the consummation of the transaction contemplated by this Agreement.

3.17 Employees.

(a) No member of the Company Group is a party to or subject to any collective bargaining agreements or other Contract with any labor organization or other representative of any Company Group employees, nor is any such Contract, as of the date of this Agreement, being negotiated. No labor union or other collective bargaining unit represents or, to the Company's Knowledge, claims to represent any of the Company Group's employees; and to the Company's Knowledge, there is no union campaign being conducted to solicit cards from employees to authorize a union to request a National Labor Relations Board certifications election with respect to the Company Group's employees (if applicable). There are no pending, or to the Company's Knowledge, threatened, and since the Relevant Date to the date hereof, no Company Group employees have engaged in any strikes, lockouts, pickets, slowdowns, stoppages or labor grievances with respect to their employment with any member of the Company Group. To the Company's Knowledge, there are not currently and since the Relevant Date to the date hereof, there have not been any union organization activities (including union organization campaigns or requests for representation) with respect to any employees of the Company Group and their employment by any member of the Company Group.

(b) The Company Group has provided to Purchaser a true and correct list of all employees and independent contractors of any member of the Company Group, containing: (i) their names and status as an employee or contractor; (ii) the entity with which they are employed or engaged; (iii) their start dates and number of years of continuous service; (iv) their positions and job titles; (v) their work location (city and state), (vi) their fulltime, part-time or temporary status; (vii) their base salaries or base hourly wage or contract rate; (viii) their target bonus rates or target commission rates; (ix) any other compensation payable to them (including compensation payable pursuant to any other bonus, deferred compensation, commission arrangements or other compensation and/or severance payments); (x) any promises or commitments made to them with respect to changes or additions to their compensation or benefits; (xi) their visa status, if applicable; (xii) designation of whether they are classified as exempt or non-exempt for purposes of the Fair Labor Standards Act and any similar state law; and (xiii) accrued but unused vacation time and/or paid time off.

(c) The Company Group is, and at all times has been, in compliance in all material respects with all applicable Laws pertaining to employment and employment practices, including wages, hours, compensation, employee classification (either as exempt or non-exempt, or as a contractor versus employee), fringe benefits, paid sick leave, employment or termination of employment, leave of absence rights, employment policies, immigration, terms and conditions of employment, labor or employee relations, affirmative action, equal employment opportunity and fair employment practices, disability rights or benefits, workers' compensation, unemployment compensation and insurance, health insurance continuation, whistle-blowing, plant closings and mass layoffs, privacy rights, harassment, discrimination, retaliation and working conditions or employee safety or health.

(d) Except as set forth in Schedule 3.17(d), there are no currently pending, and since the Relevant Date, have not been any Actions against any member of the Company Group, or to the Company's Knowledge, threatened to be brought or filed, by or with any Person or any Governmental Authority or arbitrator in connection with the employment or engagement of any current or former employee, applicant, contractor or other service provider of any member of the Company Group, including any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage or hours violations, unpaid wages, misclassification, unpaid commissions, wrongful termination or any other employment related matter arising under applicable Laws. The Company Group has not implemented or effectuated a "plant closing," "mass layoff," partial "plant closing," "relocation" or "termination" (each as defined in WARN) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of any member of the Company Group. There have not been any Actions to which any member of the Company Group or, to the Company's Knowledge, any employee of any member of the Company Group was or is a party, concerning any alleged misfeasance or malfeasance issues with respect to an employee of any member of the Company Group, including any financial, accounting, Tax, conflict of interest, illegal activity, fraudulent or deceptive conduct, discrimination/sexual harassment or whistleblowing issues. To the Company's Knowledge, there is no reasonable basis on which a Governmental Authority could commence any such Action. No member of the Company Group, nor the Sellers, or any Person acting at the request of either of the foregoing has initiated or conducted any internal investigations or inquiries concerning any such misfeasance or malfeasance issues with respect to any employee of any member of the Company Group.

(e) Each Person providing services to the Company Group that has been characterized as a consultant or independent contractor and not as an employee has been properly characterized pursuant to applicable Law as such and the Company Group does not have any liability or obligations arising out of the hiring or retention of Persons to provide services to the Company Group and treating such Persons as consultants or independent contractors and not as employees. All employees of the Company Group have been correctly classified as exempt or non-exempt for purposes of the Fair Labor Standards Act and any similar state Law, and overtime has been properly recorded and paid for all such employees classified as non-exempt.

(f) To the Company's Knowledge no allegations of harassment, discrimination or misconduct have been made against any (i) officer, member or director of any member of the Company Group, or (ii) any employee of any member of the Company Group who, directly or indirectly, supervises or has managerial authority over other employees or service providers of such member of the Company Group. The Company Group has not entered into any settlement agreement or conducted any investigation related to allegations of harassment, discrimination or misconduct by an employee, contractor, director, member, officer or other representative of the Company Group.

(g) No member of the Company Group has ever been the subject of an audit nor has any member of the Company Group been the subject of an Action from the United States Department of Homeland Security, including Immigration and Customs Enforcement (or any predecessor thereto, including the United States Customs Service or the Immigration and Naturalization Service) or any other immigration-related enforcement Action. The Company Group is in compliance with all immigration Laws.

3.18 Taxes. Except as set forth on Schedule 3.18:

(a) all Taxes (whether or not shown on any Tax Return) for which any member of the Company Group is liable have been timely paid;

(b) all material Tax Returns required to have been filed by or with respect to any member of the Company Group have been timely filed, and all such Tax Returns are true, correct, complete and accurate and disclose all Taxes required to be paid by or with respect to any member of the Company Group for the periods covered thereby;

(c) no extension of time within which to file any such Tax Return is in effect;

(d) no waiver of any statute of limitations relating to Taxes for which any member of the Company Group may be liable is in effect, and no written request for such a waiver is outstanding;

(e) there is no material action, suit, investigation, audit, claim or assessment pending or, to the Company's Knowledge, proposed or threatened with respect to Taxes for which any member of the Company Group may be liable;

(f) all material deficiencies asserted or assessments made as a result of any examination of the Tax Returns referred to in clause (b) have been paid in full or otherwise finally resolved;

(g) the Company has not made any election to apply the BBA Audit Rules prior to the time otherwise required by the BBA Audit Rules;

(h) the Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a penalty for substantial understatement of income Tax under Section 6662 of the Code;

(i) the Company is and has been since its formation classified and treated as a partnership for federal and applicable state and local income tax purposes;

(j) the Company has not engaged in any "reportable transaction" as defined in the Treasury Regulations promulgated under Section 6011 of the Code;

(k) no member of the Company Group (i) is party to or bound by any tax sharing agreement, Tax indemnity obligation or similar contract with respect to Taxes, (ii) has not requested, received, or entered into any Tax ruling, loss determination, or advance pricing contract with any Taxing Authority, (iii) will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (A) change or improper use of an accounting method for a Pre-Closing Tax Period under Section 481 of the Code (or any corresponding or similar provision of state, local or foreign Income Tax Law), (B) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Income Tax Law) executed on or prior to the Closing Date, (C) installment sale under Section 453 of the Code or open transaction disposition made on or prior to the Closing Date, (D) prepaid amount received or deferred revenue recognized prior to the Closing, or (E) reason under Section 965(a) of the Code or election pursuant to Section 965(h) of the Code (or any similar provision of state, local or foreign Law);

(l) no member of the Company Group has (i) deferred the payment of any Taxes pursuant to Section 2302 of the CARES Act or pursuant to IRS Notice 2020-65, (ii) obtained a loan under the Paycheck Protection Program described in Section 1102 of the CARES Act, or (iii) claimed the employee retention credit pursuant to Section 2301 of the CARES Act;

(m) no property owned by the Company Group is (i) subject to the anti-churning rules of Section 197(f)(9) of the Code, (ii) “tax-exempt bond financed property” within the meaning of Section 168(g)(1)(C) of the Code, (iii) “limited use property” within the meaning of IRS Revenue Procedure 2001-28, or (iv) subject to Section 168(g)(1)(A) of the Code;

(n) the Company timely made and had in effect an election under Section 754 of the Code at the time of and with respect to Blocker’s acquisition of its Company Units;

(o) there are no Liens for Taxes upon the assets of the Company Group except Permitted Liens; and

(p) all material Taxes which any member of the Company Group is required by Law to withhold or to collect for payment have been duly withheld and collected and have been paid to the appropriate Governmental Authority or set aside or reserved on the books of such member of the Company Group.

3.19 Litigation. There is no Action or other compliance or enforcement action before any Governmental Authority pending or, to the Company’s Knowledge, threatened, (a) against any member of the Company Group or its directors, managers, officers, employees, shareholders, partners or members (each, in their capacity as such), (b) with respect to or affecting the Company Group’s operations, business, employees or financial condition or (c) related to the consummation of the transactions contemplated hereby. To the Company’s Knowledge, no event (or series of related events) has occurred that would reasonably be expected to give rise to any such Action. Schedule 3.19 contains a complete and accurate list and description (and any settlement terms) of all Actions filed since the Relevant Date or, to the Company’s Knowledge, threatened in the last twelve (12) months by or against any member of the Company Group or by or against any member of the Company Group’s directors, managers, officers, employees, partners, shareholders or members, with respect to or affecting the Company Group’s operations, business, employees or financial condition, or related to the consummation of the transactions contemplated hereby.

3.20 Laws. No member of the Company Group is a party to or bound by any Order (or Contract entered into in any Action) with respect to its properties, assets, personnel or business activities. No member of the Company Group has been in material violation of or delinquent or non-compliant in respect of any applicable Law, including Environmental Laws, Vehicle Safety Laws, and Laws relating to equal employment opportunities, fair employment practices (including with respect to non-discrimination, retaliation and harassment), affirmative action requirements, unfair labor practices, labor relations, terms and conditions of employment, classification of employees and independent contractors, occupational health and safety, wages and hours, overtime and exemptions therefrom, leaves, disabilities, payment of commissions, facility closings and layoffs, whistleblowing, immigration, safety and health, workers' compensation, privacy and confidentiality, data security, the collection and payment of withholding social security or similar Taxes, and zoning ordinances and building codes. The Company Group has not received any written notice from any Governmental Authority or any other Person regarding any actual, alleged or potential violation of, or failure to comply with, any term or requirement of any applicable Law or any other Action. Each Contract and other financial arrangements and relationships entered into by any member of the Company Group with customers, vendors, suppliers, employees and contractors is in material compliance with all applicable Laws.

3.21 Real Estate.

(a) The Company Group does not own, and has never owned, any real property. The Company Group is not obligated or bound by any options, obligations or rights of first refusal or contractual rights to sell, lease or acquire any real property. Except as set forth on Schedule 3.21 (such premises, the "Leased Premises"), the Company Group does not lease, sublease, license or occupy any real property. The Leased Premises are leased, subleased, licensed to or occupied by the Company Group pursuant to each lease, sublease, license or occupancy agreement set forth on Schedule 3.21, a true and complete copy of which, including all amendments thereto, has been delivered to Purchaser (each "Lease"). Each Lease is in full force and effect and all rentals, royalties or other payments accruing thereunder prior to the date hereof have been fully paid. The Company Group (and, to the Company's Knowledge, the landlord or other third party) is in compliance with, and no default by any member of the Company Group (or, to the Company's Knowledge, the landlord or other third party) exists under, each Lease, nor to the Company's Knowledge does any condition exist that, with the giving of notice or the passage of time or both would constitute a default under each Lease. The Company Group has the right to use all of the Leased Premises for the full term of each Lease (and any renewal options) relating thereto. The Company Group has valid leasehold interests in the Leased Premises, free and clear of all Liens, other than Permitted Liens. The Company Group has not assigned, transferred or pledged any interest in any Lease.

(b) The Leased Premises: (i) are not in possession of any adverse possessors; (ii) are not subject to any leases or tenancies of any kind (except for each Lease); (iii) are used in a manner which is consistent with and permitted by applicable zoning ordinances and other Laws or regulations without special use approvals or permits and are not classified as a non-conforming use; (iv) are, and have been, since the Relevant Date, in the peaceful possession of the Company Group; (v) are served by all water, sewer, electrical, telephone, drainage and other utilities required for the Company Group's operations; (vi) require no work or improvements to bring it into compliance with any applicable Law; (vii) are in good condition and repair (ordinary wear and tear expected) and suitable and adequate for continued use in the manner in which they are currently used; and (viii) do not require material expenditures to be made for the repair, replacement or maintenance of any improvements. To the Company's Knowledge, there is no Action pending, threatened or contemplated relating to the Leased Premises. There is no violation in any material respect of any recorded restriction, condition or agreement affecting the Leased Premises. The Company Group has not received notice of any violation of any zoning, building, health, safety, disability, environmental, pollution control, fire or similar Law, ordinance, Order, directive or regulation respecting the Leased Premises or any part thereof. Since the Relevant Date, there has been no damage or loss to the Leased Premises by any fire or other casualty, any act of God or any hazard prior to the date hereof. The Company Group has not received any notice of proposed increases in real estate tax assessments for the Leased Premises. To the Company's Knowledge, there are no options, rights of first offer or rights of first refusal to purchase or lease any of the Leased Premises or any portion thereof or interest therein. True and complete copies of the most recent subordination, non-disturbance and attornment agreements and estoppels with respect to the Leased Premises currently in the possession, control or custody of the Company Group have been provided to Purchaser.

3.22 Environmental Matters.

(a) The Company Group is, and since the Relevant Date has been, in compliance in all material respects with all applicable Environmental Laws.

(b) The Company Group has obtained, possesses and is, and since the Relevant Date has been, in compliance in all material respects with all Environmental Permits required for the Leased Premises and the operation of the business of the Company Group, all such Environmental Permits are valid and in full force and effect, and there are no facts or circumstances that would reasonably be expected to result in the revocation, cancellation, suspension or adverse modification of any such Environmental Permit.

(c) The Company Group has not received any written or, to the Company's Knowledge, unwritten, notice of any claim, demand, information request, complaint or Order, and there is no Action pending, or to the Company's Knowledge, threatened, alleging any violation of, or liability or obligation (including any investigatory, corrective or remedial obligation) under any Environmental Laws.

(d) There has been no Release or threatened Release of any Hazardous Material at, in, under, from, or on (i) the Leased Premises, (ii) any property formerly owned, leased or operated by the Company Group during the ownership or tenancy of or possession or use by the Company Group thereof or (iii) at any other site or location, in each case, in violation of applicable Environmental Laws or in a manner that could reasonably be expected to result in liability to the Company Group.

(e) The Company Group has not assumed by Contract or operation of Law any liability of any third party arising under or related to any Environmental Law or Environmental Permit.

(f) There is not now, nor to the Company's Knowledge, has there ever been, at, on, under or in the Leased Premises, any (i) treatment, storage or disposal of any Hazardous Material, except use or storage for maintenance purposes in the ordinary course of business, (ii) underground storage tank or (iii) landfill.

(g) The Company Group has not (i) manufactured, sold or offered to sell any part or component the purpose of which is to bypass, defeat or render inoperative any device or element of design that is installed on or in a motor vehicle required for compliance with Environmental Laws, or (ii) violated any certificate of conformity or executive order issued under Environmental Laws.

(h) The Company Group has made available to Purchaser complete and accurate copies of all environmental site assessments, compliance audits, notices of violation, Orders, and other material environmental reports related to the business of the Company Group, the Leased Premises or any property formerly owned, leased or operated by the Company that are in the possession, custody or control of the Company Group.

3.23 Intellectual Property.

(a) The Company Group is the sole and exclusive owner, free and clear of all Liens, of all Company Group Registered Intellectual Property. With respect to the Company Intellectual Property that is not owned by a member of the Company Group, either the Company or a member of the Company Group possesses valid and enforceable rights to use such Company Intellectual Property as currently used in the conduct of the business of the Company Group as currently conducted. Schedule 3.23(a) contains an accurate and complete list of all Company Group Registered Intellectual Property, specifying as to each (i) the nature of such right, (ii) the ownership thereof (including any other Person who possesses any ownership interest therein), (iii) the Governmental Authority that has issued or recorded a registration or certificate or similar document with respect thereto or with which an application for such a registration, certificate or similar document is pending, and (iv) any applicable registration, certificate or application number(s). All Company Group Registered Intellectual Property is valid, subsisting and enforceable. All required filings and fees related to the Company Group Registered Intellectual Property have been timely paid with the applicable Governmental Authority or registrar. All Company Group Intellectual Property is fully transferable, alienable and licensable by the Company Group without restriction and without payment of any kind to any Person, and, to the Company's Knowledge, there is no event or condition that would reasonably be expected to render any Company Group Intellectual Property invalid or unenforceable.

(b) Schedule 3.23(b) identifies each item of Company Group Intellectual Property, including Company Group Software, other than commercial off-the-shelf software licensed on standard terms by the Company Group on a non-exclusive basis from third parties in the ordinary course of business, that is material to the operation of the business of the Company Group as currently conducted, including any unregistered Company Group Intellectual Property, in which any member of the Company Group has or purports to have an ownership or licensed interest of any nature (whether exclusively, jointly with another Person or otherwise).

(c) All current and former employees, independent contractors and consultants who contributed to the discovery, creation or development of Company Group Intellectual Property have transferred all rights, title and interest in such Company Group Intellectual Property to the Company Group pursuant to a valid, enforceable, perpetual and irrevocable written assignment to the Company Group to such Company Group Intellectual Property. Without limiting the generality of the foregoing, no current or former employee, independent contractor or consultant of any member of the Company Group has any right, title or interest in respect of the Company Group Intellectual Property. Except as set forth in Schedule 3.23(c), the Company Group has not assigned or transferred ownership of, agreed to so assign or transfer ownership of, or granted or agreed to grant any exclusive license of or exclusive right to use, any Company Group Intellectual Property. The Company Group owns or otherwise has all Intellectual Property Rights necessary for, the conduct of its business as currently conducted.

(d) Since the Relevant Date, the Company Group and the operation of the business of the Company Group as conducted since the Relevant Date have not and do not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any other Person. There are no claims pending, settled since the Relevant Date or, to the Company's Knowledge, threatened against (including any demands or invitations to license Intellectual Property Rights of a Person) any member of the Company Group alleging that such member of the Company Group and/or the operation of the business of the Company Group is or has infringed, misappropriated or otherwise violated any Intellectual Property Rights of a Person. To the Company's Knowledge, no Person has infringed, misappropriated or otherwise violated any Company Group Intellectual Property and/or the Intellectual Property Rights therein. There are no claims pending, settled since the Relevant Date or, to the Company's Knowledge, threatened against any Person alleging the infringement, misappropriation or other violation of any Company Group Intellectual Property.

(e) No Company Group Intellectual Property is subject to any outstanding Order, office action or settlement agreement that (i) may restrict in any manner the use, transfer or licensing thereof by any member of the Company Group, (ii) may affect its validity or enforceability or (iii) may require a member of the Company Group to grant to any other Person any license, immunity or other right with respect to any Company Group Intellectual Property. No member of the Company Group has received any notices threatening to pursue any such outstanding Action, Order or office action.

(f) All current and former employees, consultants and contractors of the Company Group involved with the development of Company Group Intellectual Property have executed appropriate proprietary rights and invention assignment agreements, and no such employees, consultants and contractors have asserted any claims of ownership with respect to Company Group Intellectual Property.

(g) The Company Group has taken commercially reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in its confidential information, including maintaining policies requiring all employees, consultants and independent contractors to agree to preserve confidential information of the Company Group.

(h) The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, will not, with or without notice or the lapse of time or both, result in any other Person having (or give or purport to give any other Person) the right or option to a license, covenant not to sue, immunity or other rights with respect to Company Group Intellectual Property or the Intellectual Property Rights of Purchaser.

(i) Schedule 3.23(i) identifies: (i) each item of Open Source Software that is contained in, distributed with or used in the development of any product and/or service (including the Company Group Software) owned, developed (or currently being developed), used, marketed, distributed, licensed or sold by any member of the Company Group (each, a “Company Group Product” and collectively, the “Company Group Products”); (ii) the applicable license agreement (including the name and version of such agreement) for each such item of Open Source Software; and (iii) such Company Group Product to which each such item of Open Source Software relates. The use, marketing, distribution, licensing and sale of Company Group Products by any member of the Company Group do not violate any license terms applicable to any item of Open Source Software, and the Company Group has all rights in each item of Open Source Software disclosed, or required to be disclosed, in Schedule 3.23(i) as needed for the Company Group to conduct its business as currently conducted, without violation of any license terms pertaining to such Open Source Software or infringement of third-party Intellectual Property Rights. No Company Group Product contains, is derived from, is distributed with or is being developed using Open Source Software that is licensed under any terms that impose a requirement or condition that any Company Group Product or part thereof: (A) be disclosed or distributed in source code form; (B) be licensed for the purpose of making modifications or derivative works; or (C) be redistributable at no charge.

(j) To the Company’s Knowledge, there are no material defects in any of the Software included in the Company Group Products that would prevent any such Software from performing substantially in accordance with its user specifications and in the manner in which it was designed. Neither the Company Group IT Systems nor any of the Company Group Products contains any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user’s consent.

(k) No source code for any Company Group Products has been delivered, licensed or made available to any escrow agent or other Person who is not, as of the date of this Agreement, an employee of the Company Group. No member of the Company Group has a duty or obligation (whether present, contingent or otherwise) to deliver, license or make available the source code for any Company Group Products to any escrow agent or other Person. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to, result in the delivery, license or disclosure of the source code for any Company Group Products to any other Person.

(l) None of the Company Group Intellectual Property or Company Group Products is subject to a right of any other Person to terminate any right in any Company Group Intellectual Property in such Company Group Product, including pursuant to 17 U.S.C. Sections 203 or 304(c), and no member of the Company Group has received any written notice of any exercise or intent to exercise any such right. No Governmental Authority or entity, university or educational institution has sponsored research and development in connection with the business of the Company Group under an agreement or arrangement that would provide such Governmental Authority or entity, university or educational institution with any claim of ownership to any Company Group Intellectual Property.

(m) Schedule 3.23(m) contains a true and correct list of all Social Media Accounts that the Company Group uses, operates or maintains, including in connection with marketing or promoting any Company Group Product. All use of the Social Media Accounts complies with and has complied with (i) all terms and conditions, terms of use, terms of service and other Contracts applicable to such Social Media Accounts, and (ii) applicable Law.

(n) Schedule 3.23(n) contains each Company Group Privacy Policy in effect at any time since the formation of each member of the Company Group. Each Company Group Privacy Policy: (i) is displayed on each website of the Company Group and is incorporated into each applicable end user agreement or website terms of use; (ii) states that User Data may be transferred in a merger, acquisition, change of control, reorganization or sale of assets; and (iii) states that sensitive personal information is not collected automatically by any Company Group Product, though users may voluntarily provide such information. Each member of the Company Group has materially complied at all times since the Relevant Date with all of the Company Group Privacy Policies and with all applicable Privacy Requirements. Subject to compliance with applicable Privacy Requirements, each member of the Company Group is entitled to use the Company Group Data stored on the Company Group IT Systems to such extent as is necessary for the conduct of its business operations as currently carried out. Neither (A) the execution, delivery or performance of this Agreement or any of the other agreements, instruments or documents contemplated hereby; (B) the consummation of any of the transactions contemplated hereby or thereby; nor (C) Purchaser's possession or use of the User Data in compliance with the Company Group Privacy Policies or any Law pertaining to privacy, in each case will result in any violation of any applicable Privacy Requirements. All Company Group Data owned or used by the Company Group is free and clear of all Liens. No member of the Company Group has received any written notice of any Action against any member of the Company Group (nor has the Company Group received any written threat thereof) from any Governmental Authority, customer or any other party regarding any member of the Company Group's collection, use or disclosure of Personal Data.

(o) No member of the Company Group has ever suffered, and to the Company's Knowledge, no third party that stores or maintains Company Group Data on behalf of a member of the Company Group has since the Relevant Date suffered, a Security Incident with respect to any Company Group Data. All Company Group IT Systems have been properly maintained, in all material respects, by technically competent personnel, in accordance with standards set by the manufacturers or otherwise in accordance with prudent industry standards, to ensure proper operation, monitoring and use. The Company Group IT Systems are in good working condition to effectively perform all information technology operations (including with respect to working condition and capacity) necessary to conduct the business of the Company Group as currently conducted. The Company Group has in place a commercially reasonable written disaster recovery program, including providing for the regular back-up and prompt recovery of the data and information necessary to the conduct of the business of the Company Group as currently conducted (including such data and information that is stored on magnetic or optical media in the ordinary course) without material disruption to, or material interruption in, the conduct of the business of the Company Group as currently conducted. The Company Group has established and is in compliance with a written information security program that: (i) includes administrative, technical and physical safeguards designed to safeguard the security, confidentiality and integrity of the Company Group Data; (ii) is designed to protect against Security Incidents; and (iii) satisfies all applicable Privacy Requirements. No member of the Company Group has experienced a significant outage or material malfunction of all or any portion of the Company Group IT Systems since the Relevant Date. The Company Group has obtained written agreements from all third parties to which it has provided access to Personal Data that bind, and since the Relevant Date have bound, the third party to at least the same restrictions, obligations and conditions that apply to the Company Group with respect to such Personal Data. The Company Group has performed a security risk assessment of the Company Group IT Systems no less frequently than annually that meets all applicable Privacy Requirements and have remediated all vulnerabilities identified by such assessment that were categorized as "critical" or "high."

3.24 Key Relationships. To the Company's Knowledge, no Significant Customer or Significant Supplier (as each is defined below) (a) intends to (i) terminate its direct or indirect business relationship with the Company Group, (ii) not renew such relationship or issue a request for proposal for future business, or (iii) otherwise limit or alter its business relationship with the Company Group in any material respect or (b) is (i) insolvent or the subject of any bankruptcy, reorganization or similar proceeding or (ii) intends to liquidate, dissolve, file for bankruptcy or seek a receiver, assignment for the benefit of creditors, arrangement of debts or similar arrangement or protection. There are no current renegotiations of any material amounts paid or payable to Significant Customers or Significant Suppliers and no Significant Customers or Significant Suppliers have made written demand for such renegotiation. There are no material disputes pending between the Company Group and any Significant Customers or Significant Suppliers. Schedule 3.24 lists each Significant Customer and Significant Supplier and details the aggregate dollar value of total amount, for the fiscal year ended December 31, 2022, of payments received from each such Significant Customer and payments paid to each such Significant Supplier, respectively. "Significant Customer" means any of the top twenty (20) customers of the Company Group measured in terms of goods or services sold for the fiscal year ended December 31, 2022. "Significant Supplier" means any of the top twenty (20) suppliers of the Company Group measured in terms of goods or services purchased for the fiscal year ended December 31, 2022. Since January 1, 2023, the Company Group has not experienced any material interruptions in the supply of goods or services to the Company Group.

3.25 Product Liability; Product Warranty; Recalls.

(a) Except as would not reasonably be expected to subject the Company Group to material liability, each product designed, manufactured, distributed, marketed, sold, offered for sale, installed, maintained or delivered by any member of the Company Group (each, a “Company Group Obligation”) is and has been in conformity with all (x) applicable product specifications, (y) applicable Laws, including Vehicle Safety Laws and (z) applicable contractual obligations and express or implied warranties made by the Company Group. To the Company’s Knowledge, the Company Group has no liability for remedy or replacement of any such products or other damages in connection therewith or any other customer or product obligations (including product recalls or post-sale warnings), and, to the Company’s Knowledge, there exist no facts or circumstances that would reasonably be expected to result in or form the basis for a product recall or post-sale warning in connection with any such products. To the Company’s Knowledge, none of the Company Group’s suppliers, vendors, licensees or franchisees has made, is planning to make, or has been required to make any recall, post-sale warning or withdrawal of a Company Group Obligation. Each Company Group Obligation contains warnings that comply in all material respects with applicable Law.

(b) No member of the Company Group has received any written or, to the Company’s Knowledge, unwritten, notice of any failure to self-certify to any applicable Federal Motor Vehicle Safety Standards (“FMVSS”) with respect to a Company Group Obligation. No member of the Company Group has made any alteration or modification to any motor vehicle equipment that is a Company Group Obligation that has taken such component out of compliance with Vehicle Safety Laws.

(c) No member of the Company Group has made any recall, post-sale warning or withdrawal of a Company Group Obligation under applicable Laws, including Vehicle Safety Laws, and no member of the Company Group is subject to any obligation on the part of such member of the Company Group to undertake, or to bear, all or any portion of the costs of any recall, post-sale warning or withdrawal with respect to such Company Group Obligation.

(d) No member of the Company Group is, and since the Relevant Date has not been, subject to any pending or threatened claim arising out of any injury to individuals or property as a result of the ownership, possession or use of any Company Group Obligation. Since the Relevant Date to the date hereof, all Company Group Obligations have been without design defects or manufacturing defects and there have not been any, and there currently are no, Actions pending or, to the Company’s Knowledge, threatened, against or involving any such Company Group Obligations, or against any member of the Company Group, or any class of claims or lawsuits involving any such Company Group Obligation, in each case, resulting from an alleged defect in any such Company Group Obligation or any alleged failure to warn with respect to any such Company Group Obligation. As of the date hereof, no member of the Company Group is, and since the Relevant Date has not been, subject to any government investigation, request for information, written notice, warning letter or enforcement action arising out of any obligations of any member of the Company Group under Vehicle Safety Laws with respect to any Company Group Product. No member of the Company Group has committed any act or failed to commit any act, which would result in, and since the Relevant Date there has been no occurrence which would give rise to or form the basis of, any product liability or liability for breach of warranty (whether covered by insurance or not) for any Company Group Obligation. There are no claims pending or, to the Company’s Knowledge, threatened against any member of the Company Group with respect to a breach of any warranty made by or on behalf of such member of the Company Group.

3.26 Compliance with Anti-Corruption and Anti-Bribery Laws. Each member of the Company Group and its officers, directors, managers, members, employees, agents, distributors, contractors or other Persons associated with or acting on its behalf have not since the Relevant Date, directly or indirectly, taken any action, or engaged in any activity, practice or conduct that would result in a violation by such member of the Company Group or any of its officers, directors, managers, members, employees, agents, distributors, contractors or other Persons associated with or acting on its behalf of the Anti-Corruption and Anti-Bribery Laws. Without limiting the generality of the foregoing, no member of the Company Group nor any of its officers, directors, managers, members, employees, agents, distributors, contractors or other Persons associated with or acting on its behalf have since the Relevant Date, directly or indirectly: (a) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (b) authorized, offered, promised or made any unlawful payment to foreign or domestic Government Officials; (c) made any contribution, gift, bribe, rebate, payoff, influence payments, kick-back or other payment to any person, private or public, regardless of form, whether in money, property or services to obtain favorable treatment in securing business, to pay for favorable treatment for business secured, to obtain special concessions or for special concessions already obtained, for or in respect of the Company Group or any Affiliate of the Company Group, or in violation of any Law; or (d) otherwise taken any action which would cause it to be in violation of any Anti-Corruption and Anti-Bribery Laws. There are no pending or, to the Company's Knowledge, threatened claims, charges, investigations, violations, settlements, civil or criminal enforcement actions, lawsuits or other court actions against any member of the Company Group or any of its officers, directors, managers, members, employees, agents, distributors, contractors or other Persons associated with or acting on its behalf with respect to any Anti-Corruption and Anti-Bribery Laws. There are no actions, conditions or circumstances pertaining to any member of the Company Group's activities, or the activities of any of its officers, directors, managers, members, employees, agents, distributors, contractors or other Persons associated with or acting on its behalf, that, to the Company's Knowledge, would reasonably be expected to give rise to any future claims, charges, investigations, violations, settlements, civil or criminal actions, lawsuits or other court actions under any Anti-Corruption and Anti-Bribery Laws. The Company Group has established and maintains a compliance program and internal controls and procedures appropriate to the applicable requirements of Anti-Corruption and Anti-Bribery Laws.

3.27 Export Control Laws and Customs Laws.

(a) Each member of the Company Group is, and since the Relevant Date has been, in material compliance with (i) all United States and other applicable customs laws; (ii) all United States and other applicable export and import control Laws, including those administered by the United States Customs and Border Protection, United States Department of Homeland Security, United States Department of Commerce and the United States Department of State; and (iii) all United States and other applicable Laws relating to unsanctioned foreign boycotts, including the Arms Export Control Act, the International Traffic in Arms Regulations, 22 C.F.R. Parts 120-130, the Export Administration Act ("EAA"), the Export Administration Regulations, 15 C.F.R. Parts 730-774, the International Emergency Economic Powers Act ("IEEPA") and the antiboycott and embargo regulations and guidelines issued under the EAA and IEEPA. Each member of the Company Group has obtained all necessary United States and other government approvals, permits or licenses required to fulfill any pending commitments or obligations of such member of the Company Group.

(b) No additional duties, including any antidumping duties, countervailing duties, safeguards or duties imposed under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), are applicable to the products that the Company Group is currently importing, or at any point since the Relevant Date has imported, into the United States, except tariffs on goods from China imposed under Section 301 of the Trade Act (19 U.S.C. 2411).

3.28 Sanctions Laws.

(a) No member of the Company Group has since the Relevant Date failed to comply with any applicable sanctions Laws, including those administered by the United States Department of the Treasury, the United States Department of Commerce, the United States Department of State, the European Union and the United Nations (“Sanctions Authority”).

(b) No member of the Company Group, nor such member of the Company Group’s Affiliates, directors, officers, employees and agents are “Sanctioned Parties,” defined to include (i) a party that appears on the Office of Foreign Assets Control’s (“OFAC”) Specially Designated Nationals and Blocked Persons List, the OFAC Consolidated List, the European Union Consolidated List, the United States Department of Commerce Bureau of Industry and Security’s Entity List, Unverified List or Denied Persons List, or are otherwise designated as a party with whom business is restricted or prohibited by a Sanctions Authority; (ii) the government, including any political subdivision, agency or instrumentality thereof, of any country against which a Sanctions Authority maintains comprehensive economic sanctions or an embargo, which as of the date hereof includes the Crimea and so-called Donetsk People’s Republic and the Luhansk People’s Republic regions of Ukraine, Cuba, Iran, North Korea and Syria (“Sanctioned Country”); (iii) an ordinary resident of, or entity registered in or established under the jurisdiction of a Sanctioned Country; (iv) a party acting or purporting to act, directly or indirectly, on behalf of, or a party owned or controlled by, any of the parties listed in clauses (i), (ii) or (iii). No member of the Company Group nor its directors or officers have, directly or indirectly, conducted any business or other dealings involving any Sanctioned Party or Sanctioned Country.

3.29 Bank Accounts. Schedule 3.29 sets forth the name of each bank, securities broker or other financial institution in which the Company Group has an account, and the names of all Persons authorized to draw thereon or have access thereto.

3.30 Names and Locations. (a) Since the Relevant Date, no member of the Company Group has used any name or names under which it has invoiced account debtors, maintained records concerning its assets or otherwise conducted the business of the Company Group, other than Dusty Times, GMZ Race Products, Method Race Wheels and Tensor Tire (b) all of the assets of the Company Group are located at the locations set forth on Schedule 3.30.

3.31 Brokers and Finders. Except for the Company Broker, no member of the Company Group nor any of its Affiliates has retained, engaged or entered into any Contract with any Person who is or will be entitled to a broker’s commission, finder’s fee, investment banker’s fee or similar payment in connection with (a) the negotiation, execution or performance of this Agreement or (b) introducing the parties hereto to each other.

3.32 Occupational Safety and Health Matters.

(a) The Company Group's operation of its business and the Leased Premises are and since the Relevant Date have been in compliance in all material respects with all applicable Occupational Safety and Health Laws.

(b) No member of the Company Group has, since the Relevant Date, received any written citation, notice or Order alleging liability with respect to any Occupational Safety and Health Law.

(c) To the Company's Knowledge, there is no reasonable basis for any Action with respect to any Occupational Safety and Health Laws by any Governmental Authority or other Person. No such Actions are pending or, to the Company's Knowledge, have been threatened.

3.33 Government Contracts.

(a) Schedule 3.33 lists each Government Contract, which is currently active in performance or has otherwise not been closed, identified by contract name, customer, customer's contract or order number and date of award. The Company has made available to Purchaser true and correct copies of each Government Contract listed on Schedule 3.33, together with all amendments, modifications or supplements thereto.

(b) Schedule 3.33 lists each Government Bid, for which (i) no notice of award decision has been received by the Company Group, (ii) the Company Group has not been excluded from the competitive range or (iii) the Company Group has not otherwise received notice that such Government Bid was unsuccessful as of the date of this Agreement, identified by the Person to whom such Government Bid was made, the date submitted, the subject matter of such Government Bid and the anticipated award date. The Company has made available to Purchaser true and correct copies of each Government Bid listed on Schedule 3.33, together with all amendments, modifications or supplements thereto.

(c) Between the Relevant Date and the date of this Agreement, with respect to each Government Contract to which any member of the Company Group is or, during such period, has been a party: (i) the Company Group has complied in all material respects with all material terms and conditions of such Government Contract; (ii) the Company Group complied in all material respects with all requirements of applicable Law pertaining to such Government Contract, including the Truth in Negotiations Act, the FAR and the Cost Accounting Standards; (iii) all representations and certifications executed, acknowledged or set forth in or pertaining to such Government Contract were current, accurate and complete as of their effective date, and the Company Group complied in all material respects with all such representations and certifications; and (iv) no termination for default or cure notice or show cause notice under the FAR has been issued in writing and remains unresolved (and is currently in effect as of the date of this Agreement) pertaining to any Government Contract by any Governmental Authority or prime contractor or subcontractor to a Governmental Authority.

(d) With respect to any Government Contract, the Company Group has not taken any action or received any written notice from a Governmental Authority, and is not a party to any litigation which would reasonably be expected to give rise to (i) liability under the False Claims Act, (ii) claims for price adjustments under the Truth in Negotiations Act or (iii) other written requests for reductions in the prices of the Government Contracts, including claims based on actual or alleged defective pricing. There has not been any material audit, inspection, survey or examination of records by a Governmental Authority of the Company Group with respect to any material irregularity, material misstatement or material omission arising under or relating to any of its Government Contracts or Government Bids, or any of its employees or representatives with respect to such Government Contracts or Government Bids, nor has the Company Group received written notice or, to the Company's Knowledge an oral notice, of any such audit, inspection, survey, examination of records or investigation that is reasonably likely to result in any material liability for the Company Group.

(e) With respect to any Government Contract under which final payment was received by the Company Group since the Relevant Date, the Company Group does not have credible evidence that a Principal, Employee, Agent or Subcontractor (as such terms are defined by FAR 52.203-13(a)) of the Company Group has committed a violation of federal criminal Law involving fraud, conflict of interest, bribery or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act and the Company Group has not conducted between the Relevant Date and the date hereof a formal internal investigation to determine whether credible evidence exists that a Principal, Employee, Agent or Subcontractor of the Company Group has committed any such violations. The Company Group has not been, since the Relevant Date, nor is, as of the date hereof, a party to any material administrative or civil litigation involving alleged material false statements, false claims or other violations of applicable Law with respect to any Government Contract.

(f) Since the Relevant Date, neither the Company Group nor any of its officers, directors or employees has been or is under indictment or civil, administrative or criminal investigation involving a Government Contract or Government Bid, including any allegations of defective performance or work product, mischarging, factual misstatement, failure to act or other material omission or alleged irregularity. Since the Relevant Date, the Company Group has not entered into any consent order or administrative agreement relating directly or indirectly to any Government Contract or Government Bid.

(g) Neither the Company Group nor any of its directors or officers is, or has been since the Relevant Date, formally suspended or debarred or formally proposed for suspension or debarment by a Governmental Authority from participation in the award of contracts with any Governmental Authority or has been declared ineligible for contracting with any Governmental Authority.

3.34 No Other Representations. Except for the representations and warranties contained in this ARTICLE III or in Company's Ancillary Documents, neither the Company nor any other person acting on behalf of the Company, makes any representation or warranty, express or implied, regarding the Company or any member of the Company Group.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BLOCKER

Blocker makes the following representations and warranties to Purchaser:

4.1 Organization and Standing.

(a) Blocker is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. The Blocker has all necessary corporate power and authority to conduct its business as its business is now being conducted.

(b) True and complete copies of the Organizational Documents of Blocker and all amendments thereto, all equity records and all minute books and records of Blocker have been delivered to Purchaser. The minute books and records of Blocker contain true and complete copies of all resolutions adopted by Blocker, the board of directors or equivalent governing body of Blocker, and any other action formally taken by such Person. Blocker is not in violation of any of its Organizational Documents.

4.2 Power and Authority. Blocker has full corporate power and authority to enter into and perform (a) this Agreement and (b) all documents and instruments executed by Blocker in connection with this Agreement (collectively "Blocker's Ancillary Documents"). The execution, delivery and performance of this Agreement and Blocker's Ancillary Documents by Blocker and the consummation by Blocker of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action of Blocker. This Agreement and Blocker's Ancillary Documents have been duly executed and delivered by Blocker and constitute a legal, valid and binding agreement of Blocker, enforceable against Blocker in accordance with their terms, except as limited by the General Enforceability Exceptions.

4.3 Consents. No consent, authorization, Order or approval of, or notice to or filing or registration with, any Governmental Authority or other Person is required for the execution and delivery by Blocker of this Agreement or Blocker's Ancillary Documents, and the consummation by Blocker of the transactions contemplated by this Agreement and Blocker's Ancillary Documents. Neither the execution, delivery and performance of this Agreement or Blocker's Ancillary Documents by Blocker, nor the consummation by Blocker of the transactions contemplated hereby or thereby, will, directly or indirectly (with or without notice or lapse of time) (a) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Contract to which Blocker is a party or is otherwise bound; (b) contravene, conflict with or result in a breach of any of the terms, conditions or provisions of Blocker's Organizational Documents; (c) contravene or conflict with or constitute a violation of any Law or Order applicable to Blocker; (d) give any Governmental Authority or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under any Law or any Order to which Blocker may be subject; or (e) result in the imposition or creation of any encumbrance upon or with respect to any of the assets of the Company Group's business.

4.4 Capitalization.

(a) Blocker has the authorized and issued and outstanding equity as indicated on Schedule 4.4(a). Blocker has no other classes of authorized, issued or outstanding Equity Securities. Blocker has not issued any equity appreciation rights, phantom equity, options, warrants, convertible securities, virtual stock or other equity or equity-based compensation award, plan, agreement or other similar arrangement.

(b) Except as set forth on Schedule 4.4(b), all of the issued and outstanding Blocker Shares have been validly issued, are fully paid, are freely negotiable or transferrable, are non-assessable and are owned of record by the Blocker Stockholder, free and clear of all additional payment obligations, preemptive rights, options, proxies, voting trusts, voting agreements, judgments, pledges, charges, escrows, rights of first refusal or first offer, Liens and transfer restrictions, except any transfer restrictions imposed by applicable Laws.

(c) There are no outstanding subscriptions, options, warrants, rights (including preemptive rights), calls, convertible securities or other agreements or commitments of any character relating to the issued or unissued capital stock, registered capital or other securities of Blocker obligating Blocker to issue any securities of any kind. Blocker is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire any of the Blocker Shares.

(d) There are no outstanding Equity Securities agreements or other Contracts relating to the issued or unissued Equity Securities of Blocker to which Blocker is a party, including the voting or transfer thereof. All Equity Securities of Blocker were issued in compliance with all applicable federal and state securities Laws.

(e) Except for the Company Group, Blocker does not own any direct or indirect interest in any person and is not subject to any obligation to purchase or otherwise acquire any equity or other securities in any person.

(f) Since the Relevant Date, no distribution of capital or dividends or similar payments have been declared, promised or made by Blocker and no such distributions or dividends remain declared but unpaid. No insolvency or similar proceedings have been commenced or applied for in respect of Blocker.

4.5 Financial; Operational. Other than the Financial Statements and the Interim Financial Statements, Blocker does not have any stand-alone financial statements. Other than its ownership interest in the Company Group, Blocker has no material assets, liabilities, business operations or Contracts. Blocker does not have an account with any bank, securities broker or other financial institution.

4.6 Indebtedness. Blocker does not have any Indebtedness.

4.7 Employees. Blocker has not had and does not have any employees or any persons that would be treated as employees for federal Income Tax purposes. Blocker has not sponsored, maintained or contributed to, and does not sponsor, maintain or contribute to any employee benefit plan.

4.8 Litigation, Claims and Laws. No Action has ever been brought against, there is no Action pending and, to the knowledge of Blocker, there is no Action threatened against Blocker (or its directors, officers, employees or shareholders, each, in their capacity as such) with respect to or affecting Blocker, or with respect to the consummation of the transactions contemplated hereby. To the knowledge of Blocker, there are no proceedings or governmental investigations before any commission or other administrative authority, pending or threatened against Blocker (or its directors, officers, employees or shareholders, each, in their capacity as such) with respect to or affecting Blocker, or with respect to the consummation of the transactions contemplated hereby. Blocker is not a party to or bound by any Order and Blocker is not, and has not been, in material violation of any applicable Law.

4.9 Intellectual Property. Blocker has no Intellectual Property Rights used by the Company Group in connection with the Company Group's business.

4.10 Real Estate. Blocker does not own, and has never owned or leased any real property.

4.11 Brokers. Except for the Company Broker, neither Blocker nor its Affiliates has retained, engaged or entered into any Contract with any Person who is or will be entitled to a broker's commission, finder's fee, investment banker's fee or similar payment in connection with (a) the negotiation, execution or performance of this Agreement or (b) introducing the parties hereto to each other.

4.12 Taxes.

(a) All Tax Returns required to have been filed by Blocker on or before the date hereof have been timely filed (taking into account extensions properly obtained) and each such Tax Return is true, correct, and complete in all material respects;

(b) Blocker has timely paid all Taxes due and payable by it, whether or not shown to be due on the Tax Returns referred to in clause (a);

(c) no extension of time within which to file any income Tax Return referred to in clause (a) is in effect (other than any ordinary course extension properly obtained);

(d) no written waiver of any statute of limitations relating to Income Taxes for which Blocker is liable is in effect;

(e) there is no material audit or administrative or judicial proceeding pending with respect to Taxes payable by Blocker;

(f) all material deficiencies asserted in writing or assessments made as a result of any examination of the Tax Returns referred to in clause (a) by a Governmental Authority have been paid in full or otherwise finally resolved;

(g) there are no material Liens for Taxes upon the assets of Blocker except for Permitted Liens;

(h) Blocker has not received written notice from any Taxing Authority of a pending (and, to the knowledge of Blocker, there are no threatened) claims for the assessment or collection of any Taxes with respect to Blocker;

(i) there are no closing agreements or similar arrangements, which are still in effect, with any Taxing Authority with respect to the determination of the Tax liability of Blocker;

(j) Blocker is not, and has never been, a member of any “affiliated group” of corporations within the meaning of Section 1504 of the Code, and Blocker (i) does not have any Liability for the Taxes of any Person (other than as a partner of the Company for Income Tax purposes) as a transferee or successor, or by contract, or (ii) is not a party to any Tax allocation, indemnity or sharing agreement for which Blocker may be liable for after the Closing Date, but, in each case, excluding obligations under contracts or agreements the primary subject matter of which is not Taxes;

(k) Blocker will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change or improper use of an accounting method for a Pre-Closing Tax Period under Section 481 of the Code (or any corresponding or similar provision of state, local or foreign Income Tax Law), (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Income Tax Law) executed on or prior to the Closing Date, (iii) installment sale under Section 453 of the Code or open transaction disposition made on or prior to the Closing Date, (iv) prepaid amount received or deferred revenue recognized prior to the Closing, or (v) reason under Section 965(a) of the Code or election pursuant to Section 965(h) of the Code (or any similar provision of state, local or foreign Law);

(l) Blocker has not engaged in any “reportable transaction” as defined in the Treasury Regulations promulgated under Section 6011 of the Code;

(m) all material Taxes which Blocker is required by Law to withhold or to collect for payment have been duly withheld and collected and have been paid to the appropriate Governmental Authority or set aside or reserved on the books of Blocker; and

(n) during the last two (2) years, Blocker has not been a party to any transaction treated by the parties thereto as one to which Section 355 of the Code applied.

4.13 No Other Representations. Except for the representations and warranties contained in this ARTICLE IV or in Blocker’s Ancillary Documents, neither Blocker nor any other person acting on behalf of Blocker, makes any representation or warranty, express or implied, regarding Blocker.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each Seller, individually and not jointly, represents and warrants with respect to himself, herself or itself, as the case may be, to Purchaser as follows:

5.1 Power and Authority. In the case of each Seller that is not an individual, such Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. If such Seller is a corporation, limited liability company, partnership, trust or other entity, such Seller has full power and authority to enter into and perform (a) this Agreement and (b) all documents and instruments executed by such Seller in connection with this Agreement (collectively, the “Seller’s Ancillary Documents”). If such Seller is a corporation, limited liability company, partnership, trust or other entity, the execution, delivery and performance of this Agreement and such Seller’s Ancillary Documents by such Seller and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action of such Seller. If such Seller is a natural person, such Seller has the requisite capacity to enter into and perform this Agreement and such Seller’s Ancillary Documents. This Agreement and such Seller’s Ancillary Documents have been duly executed and delivered by such Seller and constitute a legal, valid and binding agreement of such Seller, enforceable against such Seller in accordance with their terms, except as limited by the General Enforceability Exceptions.

5.2 Ownership. Such Seller holds of record and owns beneficially, and holds good and valid title to, the number and type of Securities listed opposite such Seller’s name on Schedule 5.2, free and clear of all Liens, except (a) as set forth in the Company’s Organizational Documents or (b) any transfer restrictions imposed by applicable Laws. Except pursuant to this Agreement, the Company’s Organizational Documents and federal or state securities Laws, in each case, as applicable, (i) there is no Contract pursuant to which such Seller has, directly or indirectly, granted any option, warrant or other right to any Person to acquire any Equity Securities in the Company Group or Blocker, and (ii) such Seller is not a party to, and the Securities set forth opposite such Seller’s name in Schedule 5.2 are not subject to, any shareholders agreement, voting agreement, voting trust, proxy or other Contract relating to the transfer or voting of such Securities.

5.3 Litigation. There are no Actions currently pending or, to the knowledge of such Seller, threatened, against or affecting such Seller or any of such Seller’s Affiliates that challenge the validity or enforceability of this Agreement or seek to enjoin or prohibit consummation of, or seek other material equitable relief with respect to, the transactions contemplated by this Agreement or that would reasonably be expected to impair or delay such Seller’s ability to consummate the transactions contemplated by this Agreement.

5.4 Brokers. Except for the Company Broker, such Seller has not retained, engaged or entered into any Contract with any Person who is or will be entitled to a broker’s commission, finder’s fee, investment banker’s fee or similar payment in connection with (a) the negotiation, execution or performance of this Agreement or (b) introducing the parties hereto to each other.

5.5 Consent. No consent, authorization, Order or approval of, or notice to or filing or registration with, any Governmental Authority or other Person is required for the execution and delivery by such Seller of this Agreement or Seller's Ancillary Documents, and the consummation by such Seller of the transactions contemplated by this Agreement Seller's Ancillary Documents. Neither the execution, delivery and performance of this Agreement or the Seller's Ancillary Documents by such Seller, nor the consummation by such Seller of the transactions contemplated hereby or thereby, will, directly or indirectly (with or without notice or lapse of time): (i) if such Seller is a corporation, limited liability company, partnership, trust or other entity, contravene, conflict with or result in a breach of any of the terms, conditions or provisions of such Seller's Organizational Documents; (ii) contravene or conflict with or constitute a violation of any Law or Order applicable to such Seller; (iii) give any Governmental Authority or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under any Law or any Order to which such Seller may be subject; (iv) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Contract; or (v) result in the imposition or creation of any encumbrance upon or with respect to any of the assets of the Company Group's business.

5.6 No Other Representations. Except for the representations and warranties contained in this ARTICLE V or in Seller's Ancillary Documents, no such Seller, nor any other person acting on behalf of such Seller, makes any representation or warranty, express or implied, regarding such Seller or any other Seller.

ARTICLE VI

CONDUCT PRIOR TO THE CLOSING

6.1 The Company's Obligations. The following are the Company's and Blocker's obligations prior to Closing:

(a) Information. The Company and Blocker shall, and shall cause each other member of the Company Group to, upon reasonable advance notice, at Purchaser's sole cost and expense, give to Purchaser's officers, employees, agents, attorneys, consultants, accountants and lenders reasonable access during normal business hours to all of the properties, books, contracts, documents, insurance policies and records of the Company Group to the extent reasonably requested by Purchaser; provided, however, that (x) this provision shall not require the Company, Blocker or any other member of the Company Group to permit any access, or to disclose any information, that in the reasonable judgment of the Company could reasonably be expected to result in (A) the disclosure of any trade secrets of third parties or a violation of any of its obligations with respect to confidentiality, (B) the loss of attorney-client privilege with respect to such information or (C) the violation of any Law or Order, and (y) in no event shall Purchaser be permitted to conduct any environmental inspections or reviews that involve sampling or other invasive testing at any of the properties without first obtaining the Company's prior written consent thereto. Purchaser agrees that such investigation shall be conducted in such a manner as to not unreasonably interfere with the operations of the Company Group. Notwithstanding anything to the contrary contained herein, prior to the Closing, without the prior written consent of the Seller Representative, which may not be unreasonably withheld, delayed or conditioned, Purchaser shall not, directly or indirectly, contact any suppliers to, or customers or other business relations of, the Company Group other than with respect to matters unrelated to the transactions contemplated by this Agreement.

(b) Consents. The Company and Blocker shall, and shall cause each other member of the Company Group to, use commercially reasonable efforts, and upon the request of the Company, Purchaser shall use commercially reasonable efforts to cooperate with the Company Group and Blocker, to obtain the consents, approvals, agreements or waivers listed on Schedule 6.1(b) hereto; provided, however, that no party shall be required to pay any funds, commence or participate in any litigation or offer or grant any material accommodation (financial or otherwise) to any third party in connection with the obligations described in this Section 6.1(b).

(c) Ordinary Course. Except (i) as otherwise contemplated by this Agreement, (ii) as consented to in writing by Purchaser (which Purchaser agrees shall not be unreasonably withheld or delayed), (iii) as reasonably necessary to respond to the effects or impacts of the COVID-19 pandemic or any mutation thereof or related health condition or (iv) as may be required to comply with applicable Law, the Company shall, and shall cause each other member of the Company Group to, use commercially reasonable efforts to carry on their respective businesses in the ordinary course of business in all material respects and to preserve intact its business, operations, material tangible property and other assets, Permits, rights, goodwill and relations with Significant Customers and Significant Suppliers, maintain its books and records in the ordinary course of business and to use commercially reasonable efforts to keep available the services of officers and employees of the Company Group in the ordinary course of business.

(d) Negative Covenants. Except (i) as otherwise contemplated by this Agreement, (ii) as reasonably necessary to respond to the effects or impacts of the COVID-19 pandemic or any mutation thereof or related health condition, (iii) as may be required to comply with applicable Law or (iv) as set forth on Schedule 6.1(d), neither the Company nor Blocker shall, and shall cause each other member of the Company Group to not, without the prior written consent of Purchaser (which Purchaser agrees shall not be unreasonably conditioned, withheld or delayed):

(i) amend its certificate of formation, certificate of incorporation, operating agreement or bylaws (or equivalent Organizational Documents);

(ii) issue, grant, sell, pledge or transfer to any Person any equity of any class or issue or become a party to any subscriptions, warrants, rights, options, convertible securities or other agreements or commitments of any character relating to the issued or unissued equity, or to other Equity Securities, or grant any equity appreciation or similar rights, or make any other change in the capital structure;

(iii) materially increase the salary or target annual bonus payable to any employee, except in the ordinary course of business or to the extent required under the terms of any Employee Plan or Material Contract or to comply with applicable Law;

(iv) (A) award, amend, terminate, or accelerate the vesting of any bonuses or equity-based compensation to, any employee, except in the ordinary course of business or to the extent required under the terms of any Employee Plan or Material Contract or to comply with applicable Law, or (B) establish, adopt, enter into, amend or terminate any Employee Plan (or any plan, program or agreement that would be an Employee Plan if in effect on the date hereof), except as required by applicable Law or in the ordinary course of business; or (C) provide loans to any employee;

- (v) hire, terminate (other than for cause or poor performance) or promote any employee, except in the ordinary course of business with respect employees whose base salary is less than \$125,000;
 - (vi) adopt any collective bargaining or other agreement with a labor union, whether written or oral;
 - (vii) sell, transfer or otherwise dispose of any material asset or property, except for sales of inventory in the ordinary course of business and for transfers of cash in payment of the Company Group's liabilities;
 - (viii) grant any Lien (other than granting or suffering to exist a Permitted Lien) on any material asset used in the conduct of the business of the Company Group (whether tangible or intangible);
 - (ix) enter into or amend in any material respect, or waive any material claim or right under, or terminate any Material Contract or Lease, or enter into any Contract that, if in existence on the date hereof, would be a Material Contract or Lease, in each case, other than in the ordinary course of business;
 - (x) make any material change in any method of accounting or accounting practice or policy used, other than such changes as are required by GAAP or applicable Law;
 - (xi) make any material change in cash management practices and policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory controls, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;
 - (xii) enter into any commitment for capital expenditures in excess of \$100,000 for any individual commitment and \$500,000 for all such commitments in the aggregate, other than as set forth in the Company Group's budget made available to Purchaser;
 - (xiii) purchase, lease, or otherwise acquire the right to own, use or lease any property or assets for an amount in excess of \$100,000, individually (in the case of a lease, per annum) or \$500,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business;
 - (xiv) acquire by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;
 - (xv) incur, assume, guarantee, transfer, assign or cancel any entitlements or Indebtedness, other than in the ordinary course of business;
 - (xvi) grant any loan to (or forgiveness of any loan to), or enter into any other transaction or agreement with, any equity holder, manager, director or officer of the Company Group or Blocker;
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(xvii) enter into any settlement or release with respect to any material Action, unless such settlement or release contemplates only the payment of money prior to the Closing without ongoing limits on the conduct or operation of Blocker or the Company Group or the business of the Blocker or the Company Group;

(xviii) (A) amend any material Tax Return; (B) make or change any material Tax election in a manner inconsistent with past practice; (C) change any annual Tax accounting period or material method of Tax accounting; (D) enter into any closing agreement; (E) settle any claim or assessment in respect of any material amount of Tax; (F) request any Tax ruling; (G) enter into any material Tax sharing or similar agreement or arrangement (excluding any commercial agreement entered into in the ordinary course of business for a principal purpose not related to Taxes and containing customary tax indemnification); (H) surrender any right to claim a material Tax refund, offset or other reduction in Tax liability; or (I) consent to any extension or waiver of the limitations period applicable to any material Tax claim or assessment;

(xix) effect any merger, consolidation, recapitalization, reclassification, liquidation, dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(xx) encumber, impair, abandon, fail to diligently maintain, transfer or otherwise dispose of any right, title or interest in or to any Company Group Intellectual Property;

(xxi) accelerate (including by offering unusual discounts) the collection of any material accounts receivable in advance of when the same would have been collected in the ordinary course of business, or delay paying any material accounts payable beyond when the same would have been paid in the ordinary course of business;

(xxii) take any action to terminate or amend any Insurance Policy (unless renewed or replaced on commercially reasonable terms);

(xxiii) pay, declare or set aside any dividend or other distribution on its securities of any class or purchase, exchange or redeem any of its securities of any class;

(xxiv) enter into a material new line of business or abandon or discontinue any existing line of business; or

(xxv) authorize or enter into any legally binding commitment with respect to any of the foregoing.

(e) Exclusivity. From the date hereof until the earlier of the Closing or the termination of this Agreement, the Company will, and will cause Sellers, Blocker, the Company and each other member of the Company Group's respective officers, directors, managers and employees to not, directly or indirectly, (i) solicit, knowingly encourage or initiate any proposal relating to any Acquisition Proposal, (ii) engage or participate in negotiations or discussions concerning, or provide any non-public information to any person in connection with, any Acquisition Proposal, (iii) provide information or documentation to any other Person with respect to an Acquisition Proposal or (iv) enter into any contract, agreement, instrument, arrangement, communication or understanding with any Person relating to any Acquisition Proposal or agree to or approve any Acquisition Proposal. As used herein, the term "Acquisition Proposal" means any proposal relating to a possible sale, exchange or other disposition (whether by merger, reorganization, recapitalization, business combination or otherwise) of all or any part of the Equity Securities or material assets of Blocker or the Company Group (other than sales of assets in the ordinary course of business) except, in each case, to Purchaser.

6.2 Purchaser's Obligations. The following are Purchaser's obligations prior to Closing:

(a) Confidentiality. Purchaser shall comply with its obligations under that certain Mutual Non-Disclosure Agreement, dated October 3, 2022, between Custom Wheel House and Purchaser (the "Confidentiality Agreement"), except that contacts with respect to the Company Group's customers and suppliers with respect to matters related to the transactions contemplated by this Agreement shall be arranged in accordance with the last sentence of Section 6.1(a).

6.3 Joint Obligations. The following shall apply with equal force to the Company and Purchaser prior to Closing:

(a) Consummate Transaction. Each of the Company, Blocker and Purchaser shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate the transactions contemplated hereby as soon as practicable and to obtain satisfaction or waiver of the conditions precedent to the consummation of the transactions contemplated hereby as soon as practicable.

(b) Breach. Neither the Company, Blocker nor Purchaser shall intentionally perform any act which, if performed, or intentionally omit to perform any act which, if omitted to be performed, would prevent or excuse the performance of this Agreement by any party hereto.

(c) Government Approvals.

(i) Subject to the terms and conditions herein provided, each of the parties hereto shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, and in any case, prior to the Outside Date (including the satisfaction, but not waiver, of the conditions precedent set forth in Article VII that are within such party's reasonable control). Each of the parties hereto shall use commercially reasonable efforts to obtain consents of all Governmental Authorities necessary to consummate the transactions contemplated by this Agreement.

(ii) Each party to this Agreement shall promptly notify the other parties hereto of any oral or written communication it receives from any Governmental Authority relating to the matters that are the subject of this Agreement, consult with the other parties to this Agreement with respect to and provide any necessary information and assistance as the other parties may reasonably request with respect to all notices, submissions or filings made by or on behalf of such party with any Governmental Authority, permit the other parties hereto to review in advance any communication proposed to be made by such party (or its advisors) to any Governmental Authority and provide the other parties hereto with copies of all correspondence, filings or other communications between them or any of their representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement; provided, however, that materials may be redacted before being provided to the other party as necessary to (x) comply with contractual arrangements or (y) address reasonable privilege or confidentiality concerns. No party to this Agreement shall agree to participate in any meeting or discussion with any Governmental Authority in respect of any such filings, investigation or other inquiry unless, to the extent reasonably practicable, it consults with the other parties hereto in advance and, to the extent reasonably practicable and permitted by such Governmental Authority, gives the other parties hereto the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, the parties to this Agreement will coordinate and cooperate fully with each other in connection with obtaining all required consents, authorizations, orders or approvals of any Governmental Authority. Nothing in this Section 6.3(c) shall be applicable to Tax matters. For the avoidance of doubt, with respect to any cooperation, notice, communication, consultation, provision of assistance or notification or other requirement set forth in in Section 6.3(c), Purchaser shall be entitled to provide such cooperation, notice, communication, consultation, provision of assistance or notification or other requirement solely to the Seller Representative.

ARTICLE VII

CONDITIONS TO CLOSING

7.1 Conditions to Obligations of Each Party. The respective obligations of the Sellers and Purchaser to close the transactions contemplated hereby is subject to fulfillment (or waiver by the Seller Representative or Purchaser, as applicable) of all of the following conditions on or prior to the Closing Date:

(a) no Governmental Authority of competent jurisdiction shall have issued any Order or Law that is in effect and that renders the closing of the transactions contemplated hereby illegal, or prohibits, enjoins, restrains or otherwise prevents the closing of the transactions contemplated hereby; and

(b) no party shall have received written notification from the Antitrust Division of the Department of Justice or the Federal Trade Commission that an investigation or review of the transactions contemplated by this Agreement under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, or any other similar Law that is designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization, restraint of trade or lessening of competition, will be or has been commenced.

7.2 Conditions to the Sellers' Obligations. The obligation of the Sellers to close the transactions contemplated hereby is subject to the fulfillment (or waiver by the Seller Representative) of all of the following conditions on or prior to the Closing Date:

(a) each of the representations and warranties of Purchaser contained in this Agreement (read without regard to any materiality qualifiers) shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date (other than such representations and warranties that are expressly made as of an earlier date which need only be true and correct in all respects as of such earlier date), except where the failure of such representations and warranties to be true and correct in all respects, in the aggregate, would not reasonably be expected to materially and adversely affect the ability of Purchaser to consummate the transactions contemplated hereby;

(b) Purchaser shall not be in material breach of any covenant or agreement of Purchaser required to be performed by Purchaser under this Agreement at or prior to the Closing; and

(c) Purchaser shall have delivered to the Seller Representative the item required under Section 1.6(a)(i).

7.3 Conditions to Purchaser's Obligations. The obligation of Purchaser to close the transactions contemplated hereby is subject to the fulfillment (or waiver by Purchaser) of all of the following conditions on or prior to the Closing Date:

(a) (i) the representations and warranties of the Company, Blocker and the Sellers contained in this Agreement (other than the Fundamental Representations of the Company, Blocker and the Sellers) (read without giving effect to any "materiality", "material", "Material" or "Material Adverse Effect" or words of similar import) shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date (other than such representations and warranties that are expressly made as of an earlier date which need only be true in all respects, as of such earlier date), except where the failure of such representations and warranties to be true and correct in all respects would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (ii) the Fundamental Representations of the Company, Blocker and the Sellers contained in this Agreement shall be true and correct in all respects (except for *de minimis* inaccuracies) as of the Closing Date as though made on and as of the Closing Date. For purposes of this Agreement, "Fundamental Representations" means the representations and warranties of the Company, Blocker and the Sellers, respectively, contained in the first two sentences of Section 3.1(a) and the first two sentences of Section 3.1(b) and Section 3.1(c) (Organization and Standing), Section 3.2 (Power and Authority), Sections 3.4(a) and 3.4(b) and 3.4(c) (Capitalization), Section 3.31 (Brokers), Section 4.1(a) (Organization and Standing), Section 4.2 (Power and Authority), Section 4.4 (excluding Section 4.4(f)) (Capitalization), Section 4.11 (Brokers), Section 5.1 (Power and Authority) Section 5.2 (Ownership) and Section 5.4 (Brokers);

(b) the Company, Blocker and the Sellers shall not be in material breach of any covenant or agreement required to be performed by the Company, Blocker and the Sellers under this Agreement at or prior to the Closing;

(c) since the date of this Agreement, there shall not have occurred any Material Adverse Effect; and

(d) the Sellers, the Company or Blocker, as applicable, shall have executed and delivered, or caused to be executed and delivered, to Purchaser the items required under Section 1.6(b) (provided, however, that the delivery of the items contemplated in Sections 1.6(b)(x), 1.6(b)(xx) and 1.6(b)(xxi) shall not be a condition to Closing).

7.4 Frustration of Closing Conditions. Neither Purchaser nor the Sellers may rely on the failure of any condition set forth in this ARTICLE VII to be satisfied if such failure was caused by such party's failure to act in good faith or comply with its obligations under this Agreement.

ARTICLE VIII

POST-CLOSING AGREEMENTS

8.1 Access to Records. Purchaser shall cause the Company Group to provide access to the books and records of the Company Group to the Seller Representative, the Sellers and their respective designees and representatives, for reasonable business purposes at all reasonable times during normal business hours, for a six (6) year period after the Closing Date, to the extent relating to the business of the Company Group prior to the Closing Date, as reasonably required by the Seller Representative or the Sellers. As used in this Section 8.1, the right of access includes the right to make extracts or copies. Notwithstanding the foregoing, (a) Purchaser shall not be required to provide access to or disclose information that Purchaser determines could jeopardize its attorney-client privilege or would unreasonably interfere with the business or operations of Purchaser or any of its Affiliates and (b) Purchaser shall not be required to disclose to any Person (or to provide access to any properties, books or records that could reasonably be expected to result in the disclosure to any Person of) any trade secrets, proprietary know how, processes or patent, trademark, trade name, service mark or copyright applications or product development, or pricing and marketing plans nor be required to permit or cause or seek to cause others to permit any Person to have access to or to copy or remove from the properties of Purchaser or its Affiliates (including the Company Group), any documents, drawings or other materials that might reveal any such information. Notwithstanding anything herein to the contrary, with respect to any Action between the parties hereto (or their respective Affiliates), this Section 8.1 shall be inapplicable and the normal rules of discovery shall apply.

8.2 Compliance with WARN Act. Prior to the Closing Date, the Company Group shall have responsibility for making any and all necessary employee notifications under the WARN Act in connection with any terminations of employment of employees, and for any financial obligations and liabilities in connection therewith or otherwise required in connection with any terminations of employment of employees. Purchaser shall have such responsibility with respect to employees to the extent such responsibility arises after the Closing Date. The Sellers have provided to Purchaser a true and correct list of the names and the sites of employment or facilities of those individuals who suffered an "employment loss" (as defined in the WARN Act) at any site of employment or facility of the Company Group during the ninety (90)-day period prior to the date of this Agreement. The Sellers shall update such list and provide it to Purchaser immediately prior to the Closing Date with respect to the ninety (90)-day period prior to the Closing Date.

8.3 Officers and Directors Liability.

(a) For a period of six (6) years after the Closing Date, Purchaser shall, and shall cause each member of the Company Group and Blocker, as applicable, to indemnify and hold harmless, and provide advancement of expenses to, all of the respective past and present directors, managers and officers of each member of the Company Group and Blocker (collectively, the “Indemnitees”) to the same extent the Indemnitees are entitled to be indemnified or have the right to advancement of expenses pursuant to the Organizational Documents of such member of the Company Group and Blocker, as applicable, and the indemnification agreements with such member of the Company Group or Blocker set forth on Schedule 8.3 (the “Indemnification Agreements”), as applicable, in existence on the Closing Date with, or for the benefit of, any Indemnitee for acts or omissions occurring on or prior to the Closing Date.

(b) Except as required by applicable Law, for a period of six (6) years after the Closing Date, Purchaser shall not, and shall not permit the Company Group or Blocker to, amend, repeal or modify any provision providing for rights to indemnification and exculpation from liability for acts or omissions occurring on or prior to the Closing Date now existing in favor of the Indemnitees contained in the Organizational Documents of the Company Group and Blocker, as applicable, and the Indemnification Agreements, as applicable, in existence on the Closing Date with, or for the benefit of, any Indemnitee for acts or omissions occurring on or prior to the Closing Date in each case, in a manner adverse to any Indemnitee.

(c) At the Closing, the Company shall obtain a “tail” officers’ and directors’ liability insurance policy naming the Indemnitees as direct beneficiaries with a claims period of at least six (6) years from the Closing Date in respect of acts or omissions occurring on or prior to the Closing Date (such policy, the “D&O Tail Policy”), and such D&O Tail Policy must contain terms with respect to coverage and be in an amount not less favorable than the officers’ and directors’ liability insurance policy maintained by members of the Company Group and Blocker in existence on the Closing Date

(d) The provisions of this Section 8.3 are intended to be for the benefit of, and shall be enforceable by, each of the parties described in this Section 8.3, their heirs and their personal representatives and shall be binding on all successors and permitted assigns of each member of the Company Group, Blocker and Purchaser. Purchaser shall cause the surviving or resulting entity of any merger, consolidation or similar transaction involving any member of the Company Group or Blocker to assume the obligations imposed by this Section 8.3.

8.4 Tax Matters.

(a) Transfer Taxes. Purchaser, on the one hand, and the Sellers (in accordance with each Seller’s Percentage Share), on the other hand, shall each be liable for fifty percent (50%) of any real property transfer or gains Tax, sales Tax, use Tax, stamp Tax, stock transfer Tax, or other similar Tax imposed on the transactions contemplated by this Agreement.

(b) Tax Returns.

(i) The Seller Representative, at its expense, shall prepare and timely file or cause to be prepared and timely filed when due (taking into account all extensions properly obtained) all Tax Returns for any taxable period that ends on or prior to the Closing Date in respect of the Company Group and Blocker (“Pre-Closing Tax Returns”). All such Pre-Closing Tax Returns will be prepared in a manner consistent with the past practices of the Company Group and Blocker, as applicable, to the extent a past practice exists with respect to the relevant issue, except as otherwise required by applicable Law. The Seller Representative shall provide a copy of each such Pre-Closing Tax Return to Purchaser at least thirty (30) days before filing (or, if such due date is within thirty (30) days following the Closing Date, as promptly as practicable following the Closing Date) for review, comment and approval (such approval not to be unreasonably withheld, conditioned or delayed) and shall consider in good faith any changes that are reasonably requested by Purchaser. Purchaser shall prepare any Tax Returns of the Company Group and Blocker for a Straddle Period (“Straddle Period Tax Returns”) in a manner consistent with the past practices of the Company Group and Blocker, as applicable, to the extent a past practice exists with respect to the relevant issue, except as otherwise required by applicable Law or this Agreement. Purchaser shall provide a copy of each such Straddle Period Tax Return to the Seller Representative at least thirty (30) days before filing for review and, to the extent relating to a Pre-Closing Tax Period, comment and approval (such approval not to be unreasonably withheld, conditioned or delayed) and shall consider in good faith any changes that are reasonably requested by the Seller Representative.

(ii) None of Purchaser or any Affiliate of Purchaser shall (or shall cause or permit any member of the Company Group to) amend, refile or otherwise modify (or grant an extension of any statute of limitation with respect to), or make or change any Tax election with respect to, any Pre-Closing Tax Return or Straddle Period Tax Return or file any Pre-Closing Tax Return or Straddle Period Tax Return of a type not previously filed or in a jurisdiction not previously filed, in each case to the extent relating to a Pre-Closing Tax Period without Purchaser providing notice to the Seller Representative and, in each case, except as required by applicable Law, without the prior written consent of the Seller Representative (which consent shall not be unreasonably withheld, conditioned or delayed).

(iii) All Tax Returns prepared by Purchaser or the Seller Representative pursuant to this Section 8.4(b) shall claim any and all Transaction Tax Deductions in a Pre-Closing Tax Period to the extent such Transaction Tax Deductions are “more likely than not” deductible in a Pre-Closing Tax Period under applicable Law and applying the safe harbor contained in IRS Revenue Procedure 2011-29.

(c) Contest Provisions.

(i) Purchaser shall promptly notify the Seller Representative in writing upon receipt by Purchaser, any of its Affiliates or, after the Closing Date, any member of the Company Group or Blocker, of notice of any pending or, to the knowledge of the Company, threatened federal, state, local or foreign Tax audits, assessments or other proceeding relating to any Pre-Closing Tax Return or Straddle Period Tax Return or relating to a Tax for which the Sellers may be liable pursuant to this Agreement (each, a “Pre-Closing Audit”).

(ii) The Seller Representative shall, at its expense, have the sole right (but not the obligation) to represent the Company Group or the Blocker's interests in any Pre-Closing Audit that relates solely to Pre-Closing Tax Returns or to a Tax for which the Sellers may be liable pursuant to this Agreement, and to employ counsel of the Seller Representative's choice; provided, however, that Purchaser and its authorized representatives shall have the right, at Purchaser's expense, to be present at, participate in, consult with the Seller Representative, and receive copies of all correspondence with respect to any such Pre-Closing Audit.

(iii) Neither Purchaser nor the Seller Representative shall be entitled to settle, either administratively or after the commencement of litigation, any Pre-Closing Audit without the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed).

(iv) The Company shall make (and the Sellers and the Seller Representative shall cooperate to make) any available election pursuant to Section 6226 of the Code with respect to any audit, examination or other examination with respect to Income Taxes for all Pre-Closing Tax Periods.

(d) Pre-Closing Tax Refunds. Without duplication for any amounts included in the calculation of Closing Working Capital, Company Indebtedness or otherwise in the Final Purchase Price, the Sellers shall be entitled to any refund of (or credit against) Taxes of any member of the Company Group or Blocker allocable to any Pre-Closing Tax Period, in each case, together with any interest received or credited with respect to such refund; provided that the Blocker Stockholder shall be entitled to any such refund or credit to the extent of the amount that is attributable solely to Blocker. At the written request of the Seller Representative, Purchaser shall, and shall cause its Affiliates to, take such steps as may be reasonably available to secure any such refund or credit at the Seller Representative's expense, including through the filing of amended Tax Returns, and the amount of any such refund or credit, net of any Tax or reasonable out-of-pocket expenses, shall be paid to (or at the direction of) the Seller Representative (on behalf of all of the Sellers) promptly upon receipt of such refund or the filing of the Tax Return in which such credit appears. To the extent any such refund of Taxes that was paid to a party pursuant to this Section 8.4(d) is subsequently disallowed or reduced, any such disallowed amount or reduction, including any Taxes arising from the disallowance or reduction of such refund, shall be promptly repaid by such party after notification of such disallowance or reduction by the other party.

(e) Assistance and Cooperation. After the Closing Date, each of the Seller Representative and Purchaser shall (and shall cause their respective Affiliates to):

(i) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Taxes described in Section 8.4(a) (relating to sales, transfer and similar Taxes);

(ii) assist the other party in preparing any Tax Returns relating to the Company Group and Blocker which such other party is responsible for preparing and filing;

(iii) cooperate fully in preparing for and defending any audits of, or disputes with any Governmental Authority regarding, any Tax Returns of the Company Group and Blocker;

(iv) make available to the other and to any Governmental Authority as reasonably requested all information, records, and documents relating to Taxes of the Company Group and Blocker; and

(v) furnish the other with copies of all correspondence received from any Governmental Authority in connection with any Tax audit or information request relating to Taxes of the Company Group and Blocker.

(f) Purchase Price Allocation. Within sixty (60) days following Closing, Purchaser shall deliver to the Seller Representative a schedule (the "Tax Allocation Schedule") allocating the amount paid to the Holders among the assets of the Company for purposes of determining amounts attributable to unrealized receivables and inventory items under Section 751 of the Code for the Seller Representative's review and approval (which shall not be unreasonably withheld, conditioned or delayed). The Tax Allocation Schedule shall be reasonable. Purchaser and the Sellers, and their respective Affiliates, each agree to file all federal, state, local and foreign Tax Returns in accordance with the Tax Allocation Schedule finally agreed pursuant to this Section 8.4(f).

(g) Liability for Taxes. The Sellers shall, severally in accordance with their respective Percentage Shares, be liable for and pay, and pursuant to ARTICLE XI shall indemnify Purchaser against and hold harmless Purchaser from and against, (i) all Taxes imposed on the Company Group and Blocker for or with respect to any Pre-Closing Tax Period, (ii) all Taxes of the Sellers (other than any Taxes for which Purchaser is responsible pursuant to Section 8.4(a)) and (iii) all Taxes of any Person imposed on any member of the Company Group or Blocker as a transferee, successor or by Contract to the extent the relationship or transaction giving rise to such liability first arose prior to the Closing Date; provided, however, that the Sellers shall not be liable for or pay, and shall not indemnify Purchaser from and against, (A) any Taxes to the extent of the amount taken into account in the calculation of Closing Working Capital or Company Indebtedness or (B) any Taxes imposed on any member of the Company Group as a result of transactions occurring on the Closing Date that are properly allocable to the portion of the Closing Date after the Closing; provided, further, that the Blocker Stockholder shall be responsible for one hundred percent (100%) of any such Taxes imposed on Blocker for any Pre-Closing Tax Period.

(h) Straddle Period Tax Allocation. For purposes of Section 8.4(g), the portion of any Taxes of the Company Group or Blocker for a Straddle Period attributable to the portion of such Straddle Period ending on the Closing Date will be determined: (i) in the case of real property, business personal property and ad valorem Taxes, by apportioning such Taxes on a per diem basis and (ii) in the case of all other Taxes, on a closing of the books basis. For purposes of this Section 8.4(h), any exemption, deduction, credit or other item that is calculated on an annual basis will be apportioned on a per diem basis.

(i) Certain Defined Terms. For the purposes of this Agreement, "Pre-Closing Tax Period" means any taxable period ending on or prior to the Closing Date and the portion of any Straddle Period ending on and including the Closing Date, and "Straddle Period" means any taxable year or period beginning on or before and ending after the Closing Date.

8.5 Employee Matters.

(a) For a period commencing on the Closing Date and ending no earlier than the date that is three-months after the Closing Date, Purchaser shall, and shall cause its Affiliates to, provide each individual who is an employee of a member of the Company Group immediately prior to the Closing (a “Company Employee”) with a base salary or hourly wage and incentive compensation opportunities that are no less favorable in the aggregate to such Company Employee than the base salary or hourly wage and incentive compensation opportunities offered to such Company Employee immediately prior to the Closing. Notwithstanding anything set forth herein to the contrary, nothing in this Agreement shall create any obligation on the part of Purchaser or any of its Affiliates to continue the employment of any Company Employee for any definite period following the date of this Agreement.

(b) For a period commencing on the Closing Date and ending no earlier than December 31, 2023, Purchaser shall cause the Employee Plans that are “employee welfare benefit plans,” as defined in Section 3(1) of ERISA, to remain in effect, on the same terms as are in effect as of the Closing, to provide employee benefits to each Company Employee who remains employed by the Company Group during such period.

(c) Prior to the Closing Date, the Company Group shall take all actions and adopt resolutions necessary to terminate the CWH 401(k) Plan, effective as of the date immediately preceding the Closing Date, contingent on the Closing occurring. The form and substance of all such resolutions and any written actions shall be subject to the prior review and approval of Purchaser, which approval shall not be unreasonably conditioned, delayed or withheld, and the Company Group shall deliver to Purchaser, prior to Closing, an executed copy of the resolutions and any written actions. Purchaser shall, or shall cause an Affiliate, to take all actions necessary for Company Employees to be eligible to participate in a defined contribution pension plan that is qualified under Section 401(a) (the “Purchaser 401(k) Plan”) as of immediately following the Closing and Purchaser shall allow Company Employees to directly rollover their account balances under the CWH 401(k) Plan to the Purchaser 401(k) Plan, excluding outstanding participant loans in the CWH 401(k) Plan.

(d) Purchaser shall, and shall cause its Affiliates to, honor, recognize and permit each Company Employee to use all accrued but unused vacation and paid time off as of the date of this Agreement. Unless otherwise expressly agreed to by the applicable Company Employee, until the end of the bonus determination period that includes the date of this Agreement, Purchaser shall, and shall cause its Affiliates to, maintain and honor the performance bonus programs for Company Employees existing as of the date of this Agreement and pay to the Company Employees the bonuses they have accrued under such programs at the end of the bonus determination period that includes the date of this Agreement in accordance with the terms of such programs as in effect on the date of this Agreement.

(e) Regardless of anything else contained herein, this Section 8.5 shall not be construed to establish or amend, or to prohibit the amendment or termination of, any Employee Plans or any other plans, policies, programs, agreements, or arrangements or create any rights or obligations except between the parties to this Agreement. No Company Employee or other person not a party to this Agreement shall be entitled to assert any claim hereunder.

8.6 R&W Insurance Policy. Except in the case of Fraud (as defined herein), Purchaser agrees that the R&W Insurance Policy shall expressly exclude any right of subrogation in favor of any party against the Sellers or any of the Sellers' officers, managers, directors, direct or indirect equity holders, employees or agents under this Agreement or in respect of the transactions contemplated hereby. Purchaser will not, without the prior written consent of the Seller Representative, amend, modify or waive any provision of the R&W Insurance Policy in a manner that is detrimental to the Sellers.

8.7 Confidentiality. The Confidentiality Agreement will continue in full force and effect until the Closing, at which time such Confidentiality Agreement will terminate. If, for any reason, the Closing does not occur, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms.

ARTICLE IX

SELLER REPRESENTATIVE

9.1 Appointment of Seller Representative. Each Seller hereby irrevocably constitutes and appoints Thompson Street Capital Partners V, L.P. as the Seller Representative and as such Seller's attorney-in-fact and agent, with full power of substitution, to act on behalf of such Seller in connection with the execution and performance of this Agreement and the transactions contemplated hereby. This power is irrevocable and coupled with an interest, and shall not be affected by the death, incapacity, illness, dissolution or other inability to act of any of the Sellers. The authority granted to the Seller Representative in this Section 9.1 shall apply notwithstanding any dispute or disagreement among the Sellers, or between any Seller and the Seller Representative.

9.2 Authority. Without limitation of the authority granted to the Seller Representative in Section 9.1, each Seller hereby irrevocably grants the Seller Representative full power and authority:

(i) to execute and deliver, on behalf of such Seller, and to accept delivery of, on behalf of such Seller, such waivers, consents, amendments, agreements, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other documents as the Seller Representative determines, in its sole discretion, to be necessary or appropriate to consummate this Agreement or the transactions contemplated hereby;

(ii) to acknowledge receipt of the Aggregate Purchase Price for any Securities held by such Seller as payment in full thereof and to designate the manner of payment of such Aggregate Purchase Price and to certify, on behalf of such Seller, as to the accuracy of the representations and warranties and compliance with covenants of the Company and the Sellers under, or pursuant to the terms of, this Agreement;

(iii) to receive, collect and hold any payments due to such Seller, on behalf of such Seller, for distribution to such Seller in accordance with the terms of this Agreement;

(iv) to (i) interpret the terms and provisions of this Agreement and the agreements executed in connection herewith, (ii) receive service of process in connection with any claims under this Agreement, (iii) give and receive notices and communications, (iv) dispute or refrain from disputing, on behalf of such Seller, any claim made by Purchaser under this Agreement, (v) make any determinations and settle any matters in connection with the adjustments to the Aggregate Purchase Price and the Post-Closing Adjustment pursuant to Section 1.4, (vi) negotiate and compromise, on behalf of such Seller, any dispute that may arise under, and to exercise or refrain from exercising any remedies available under, this Agreement and (vii) execute, on behalf of such Seller, any settlement agreement (including consent to settlement of any indemnification or other claim under Section 1.4(e), Section 8.4, Section 9.5 or Article XI), release or other document with respect to such dispute or remedy;

(v) to defend, enforce and protect, on behalf of such Seller, any claim, rights and interests of such Seller against Purchaser, or any claim by Purchaser against such Seller, arising out of or under or in any manner relating to this Agreement and the transactions contemplated hereby;

(vi) to engage attorneys, accountants and other agents and incur such other expenses on behalf and at the expense of such Sellers;

(vii) to retain the Administrative Account Amount and a portion of the Aggregate Purchase Price, if any, that is to be paid to the Sellers post-Closing ("Additional Administrative Funds") as a fund and to invest such amounts so retained for the benefit of the Sellers and to use such fund for the payment of (i) the Sellers' obligations to pay any purchase price adjustment to Purchaser, (ii) transaction expenses (including legal, accounting, banking and other professional fees and expenses) to be paid by the Sellers in connection with the transactions contemplated by this Agreement, (iii) any expenses (including legal, accounting, banking and other professional fees and expenses) incurred by the Seller Representative on the Sellers' behalf after the Closing Date with respect to any post-Closing matters (including any negotiations or disputes with respect to the Closing Statement, any purchase price adjustment or any remedy claims) in connection with this Agreement or the transactions contemplated hereby, or (iv) for other reasonable purposes in connection with this Agreement as the Seller Representative shall determine in its sole discretion;

(viii) to amend, on behalf of such Seller, this Agreement (other than this ARTICLE IX) or any of the instruments to be delivered to Purchaser by such Seller pursuant to this Agreement; and

(ix) to give such instructions and to take such action or refrain from taking such action, on behalf of such Seller, as the Seller Representative deems, in its sole discretion, necessary or appropriate to carry out the provisions of this Agreement, including payment instructions with respect to any portion of the Administrative Account Amount or Additional Administrative Funds released by the Seller Representative for payment to the Sellers.

9.3 Reliance. Each Seller hereby agrees that:

(a) in all matters in which action by the Seller Representative is required or permitted, notwithstanding any dispute or disagreement among the Sellers, or between any Seller and the Seller Representative, Purchaser shall be entitled to deal exclusively with and rely exclusively on (without further evidence of any kind whatsoever) any and all action taken by the Seller Representative under this Agreement without any liability to, or obligation to inquire of, any Seller, regardless of whether Purchaser has knowledge of any such dispute or disagreement;

(b) notice to the Seller Representative, delivered in a manner provided herein, shall be deemed to be notice to the Sellers for purposes of this Agreement;

(c) the power and authority of the Seller Representative, as described in this Agreement, shall continue in force until all rights and obligations of the Sellers under this Agreement shall have terminated, expired or been fully performed;

(d) such Seller may not take any action with respect to its rights and obligations hereunder without the express written consent of the Seller Representative; and

(e) if the Seller Representative becomes unable to perform its responsibilities hereunder or resigns from such position, such Seller (or, if applicable, its respective heir, legal representative, successor and assign) who holds the greatest ownership percentage as of the date hereof, as listed on Schedule 1.4(d), shall select another representative to fill such vacancy, and the substituted representative shall be deemed to be the Seller Representative for all purposes of this Agreement.

9.4 Actions by the Sellers. Notwithstanding the foregoing, each Seller agrees, at the request of the Seller Representative: (a) to take all actions necessary or appropriate to consummate the transactions contemplated hereby (including delivery of such Seller's Securities and acceptance of the consideration therefor) individually on such Seller's own behalf, and (b) to deliver, individually on such Seller's own behalf, any other documents required of such Seller pursuant to this Agreement.

9.5 Indemnification of Seller Representative. Each Seller shall severally indemnify and hold harmless each Seller Rep Party from and against any damages (except damages caused by such Seller Rep Party's willful misconduct) that such Seller Rep Party may suffer or incur in connection with any action or omission taken or omitted to be taken by the Seller Representative (or by any Seller Rep Party on behalf of the Seller Representative) pursuant to this ARTICLE IX. "Seller Rep Party" means the Seller Representative, its Affiliates and each of their officers, directors, managers, employees, agents, advisors, partners, members and shareholders. Each Seller shall bear its pro-rata share (based on aggregate proceeds received under this Agreement) of such damages. No Seller Rep Party shall be liable to any Seller with respect to any action or omission (except for such Seller Rep Party's willful misconduct) taken or omitted to be taken by the Seller Representative (or by any Seller Rep Party on behalf of the Seller Representative) pursuant to this ARTICLE IX.

The provisions of this ARTICLE IX shall be binding upon the heirs, legal representatives, successors and assigns of each Seller, and any references in this Agreement to a Seller shall mean and include the successors to the rights of the Sellers hereunder, whether pursuant to testamentary disposition, the Laws of descent and distribution or otherwise.

ARTICLE X
TERMINATION

10.1 Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time prior to the Closing:

(a) at the election of the Seller Representative or Purchaser on or after on March 31, 2023 (the “Outside Date”) by delivery of written notice to the other party, given in accordance with Section 12.2, if the Closing shall not have occurred by 5:00 p.m. (CST) on such date; provided, however, that the right to terminate this Agreement under this Section 10.1(a) shall not be available to any party (which term, in the case of the Seller Representative, shall for purposes of this Section 10.1(a) refer to Blocker, the members of the Company Group, the Sellers and/or the Seller Representative, as the context may require) whose breach of this Agreement or failure to fulfill any obligation under this Agreement has been the primary cause of, or resulted in, the failure of the Closing to occur on or before such date;

(b) by the mutual written consent of Purchaser and the Seller Representative;

(c) by the Seller Representative or Purchaser by delivery of written notice to the other party if there shall be in effect a final, non-appealable Order of a Governmental Authority prohibiting or permanently enjoining the consummation of the transactions contemplated under this Agreement; provided, that no party shall have the right to terminate this Agreement pursuant to Section 10.1(c) if such Order resulted primarily from such party’s (which term, in the case of the Seller Representative, shall for purposes of this Section 10.1(c) include Blocker, the members of the Company Group, the Sellers and/or Seller Representative, as the context may require) breach of any representation or warranty made by it herein or the failure of such party to fulfill any of its agreements, covenants or obligations in this Agreement;

(d) by Purchaser by delivery of written notice to the Seller Representative if (i) Purchaser is not in breach of any of its obligations hereunder that would proximately give rise to the failure of a condition set forth in Sections 7.2(a) or 7.2(b) and (ii) the Sellers, Blocker or the Company is in breach of any of their respective representations, warranties or obligations hereunder that renders or would render the conditions set forth in Sections 7.3(a) or 7.3(b) incapable of being satisfied, and such breach is either (A) not capable of being cured prior to the Outside Date or (B) if curable, is not cured within the earlier of (x) twenty (20) Business Days after the giving of written notice by Purchaser to the Seller Representative and (y) two (2) Business Days prior to the Outside Date; provided, however, that Purchaser may not terminate this Agreement pursuant to this Section 10.1(d) if such breach is curable by the Sellers, Blocker, or the Company through the exercise of commercially reasonable efforts and the Sellers, Blocker, or the Company continue to exercise commercially reasonable efforts to cure such breach; or

(e) by the Seller Representative by delivery of written notice to Purchaser if (i) the Sellers, Blocker and the Company are not in breach of any of their respective obligations hereunder that would proximately give rise to the failure of a condition set forth in Sections 7.3(a) or 7.3(b) and (ii) Purchaser is in breach of any of its representations, warranties or obligations hereunder that renders or would render the conditions set forth in Sections 7.2(a) or 7.2(b) incapable of being satisfied, and such breach is either (A) not capable of being cured prior to the Outside Date or (B) if curable, is not cured within the earlier of (x) twenty (20) Business Days after the giving of written notice by the Seller Representative to Purchaser and (y) two (2) Business Days prior to the Outside Date; provided, however, that the Seller Representative may not terminate this Agreement pursuant to this Section 10.1(e) if such breach is curable by Purchaser through the exercise of commercially reasonable efforts and Purchaser continues to exercise commercially reasonable efforts to cure such breach.

10.2 Procedure Upon Termination. Subject to Section 10.3, in the event of termination and abandonment by Purchaser or the Seller Representative, or both, pursuant to Section 10.1 hereof, written notice thereof shall forthwith be given to the other parties, and this Agreement shall terminate, and the transactions contemplated hereby shall be abandoned, without further action by Purchaser, the Sellers, the Seller Representative, Blocker or the Company.

10.3 Effect of Termination. In the event that this Agreement is validly terminated in accordance with Section 10.1 and Section 10.2, this Agreement shall become void and have no effect, and there shall be no liability hereunder on the part of any party, except that the provisions of this Section 10.3, Section 8.7 (Confidentiality), and the provisions of ARTICLE XII (Miscellaneous) shall remain in full force and effect and survive any termination of this Agreement in accordance with its terms, and except that such termination shall not relieve any party of any liability or any damages for Fraud or any willful breach of this Agreement or impair the right of any party hereto to compel specific performance by the other party or parties, as the case may be, of such party's surviving obligations following termination of this Agreement. In the event that this Agreement is terminated in accordance with Section 10.1, Purchaser acknowledges and agrees that all documents, copies thereof, and all materials received from or on behalf of Sellers or the Company, any of their subsidiaries, Affiliates or representatives relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, shall continue to be subject to the Confidentiality Agreement, which shall remain in full force and effect notwithstanding the termination of this Agreement. For purposes of this Agreement, a "willful breach" shall mean a material breach of any covenant set forth in this Agreement that is a consequence of an act undertaken, or a failure to take, by the breaching party with the knowledge that the taking of such act or failing to act would, or would be reasonably expected to, cause a breach of this Agreement. For purposes hereof, a failure to consummate the Closing when required hereunder shall be deemed a willful breach of this Agreement.

ARTICLE XI
INDEMNIFICATION

11.1 Survival.

(a) Subject to the limitations and other provisions of this Agreement, (i) the Fundamental Representations shall survive the Closing and shall remain in full force and effect until the date that is six (6) years from the Closing Date, (ii) the representations and warranties set forth in Section 3.18 (Taxes) and Section 4.12 (Taxes) shall survive until ninety (90) days following the expiration of the statute of limitations period (including all extensions thereof) applicable to the underlying subject matter being represented and (iii) the representations and warranties set forth in Section 2.1 (Organization and Standing), Section 2.2 (Power and Authority) and Section 2.9 (Brokers and Finders) (collectively, the “Purchaser Surviving Representations”) shall survive the Closing and shall remain in full force and effect until the date that is six (6) years from the Closing Date.

(b) Without limiting the terms of the R&W Insurance Policy, except in the case of Fraud and with respect to the Fundamental Representations, the representations and warranties set forth in Section 3.18 (Taxes) and Section 4.12 (Taxes) and the Purchaser Surviving Representations, (i) none of the representations or warranties in this Agreement (including the Disclosure Schedule) or any certificate delivered pursuant to Section 1.6(a)(i), 1.6(b)(iii), 1.6(b)(iv) or 1.6(b)(v) shall survive the Closing, and (ii) upon Closing, each party waives all rights, claims and causes of action it may have for any breach of or inaccuracy in such representations or warranties, and no party shall have any liability in respect thereof.

(c) None of the covenants, obligations or agreements in this Agreement (including the Disclosure Schedule), which by its terms contemplates performance at or prior to the Closing, shall survive the Closing; provided, however, that claims with respect to breaches of such covenants, obligations or agreements may be made for a period of twelve (12) months after the Closing Date. This Section 11.1(c) shall not limit any covenant, obligation or agreement which by its terms contemplates performance after the Closing.

(d) The covenants, obligations and agreements in this Agreement (including the Disclosure Schedule) which by their terms are to be performed following the Closing (including, for the avoidance of doubt, the covenants set forth in Section 8.4) shall survive the Closing until fully performed in accordance with their terms.

(e) Any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation, warranty, covenant or obligation and such claims shall survive until finally resolved.

11.2 Indemnification by the Sellers. Subject to the other terms and conditions of this ARTICLE XI, from and after the Closing:

(a) the Sellers will, severally (and not jointly) in accordance with such Seller's Percentage Share, indemnify and hold Purchaser and its Affiliates (including the Company Group and Blocker after Closing), successors and permitted assigns (collectively, the "Purchaser Indemnified Parties") harmless from and against, and pay to or reimburse the applicable Purchaser Indemnified Parties the amount of any losses, damages, liabilities, deficiencies, Actions, demands, claims, causes of action, damages, judgments, interest, awards, penalties, fines, assessments, costs, fees, Taxes or expenses of whatever kind (including reasonable attorneys' fees, reasonable consultants' and experts' fees and expenses and all reasonable amounts paid in investigation, defense or settlement of any of the foregoing) (collectively, "Losses") (i) arising out of or resulting from the breach or failure to be true and correct of any Fundamental Representation made by the Company in ARTICLE III or the representations and warranties set forth in Section 3.18 (Taxes) or (ii) for which Sellers are responsible or liable, or which are otherwise allocated to Sellers, pursuant to Section 8.4;

(b) the Blocker Stockholder will indemnify and hold the Purchaser Indemnified Parties harmless from and against, and pay to the applicable Purchaser Indemnified Parties the amount of any Losses arising out of or resulting from the breach or failure to be true and correct of any Fundamental Representation made by Blocker in ARTICLE IV or the representations and warranties set forth in Section 4.12 (Taxes);

(c) each Seller will indemnify and hold the Purchaser Indemnified Parties harmless from and against, and pay to the applicable Purchaser Indemnified Parties the amount of any Losses arising out of or resulting from the breach or failure to be true and correct of any Fundamental Representation made by such Seller in ARTICLE V;

(d) the Sellers will, severally (and not jointly) in accordance with such Seller's Percentage Share, indemnify and hold the Purchaser Indemnified Parties harmless from and against, and pay to the applicable Purchaser Indemnified Parties the amount of any Losses arising out of or resulting from, the breach or non-performance of any covenant, obligation or agreement made by any Seller or the Seller Representative or, with respect to covenants, obligations or agreements to be performed prior to Closing, made by the Company or Blocker, set forth in this Agreement (provided that only the applicable Seller will be obligated to indemnify the Purchaser Indemnified Parties under this Section 11.2(d) in connection with any individual Seller's breach or non-performance (excluding, for the avoidance of doubt, actions taken by the Seller Representative in its capacity as such for which all Sellers shall be responsible)); and

(e) the Sellers will, severally (and not jointly) in accordance with such Seller's Percentage Share, indemnify and hold the Purchaser Indemnified Parties harmless from and against, and pay to the applicable Purchaser Indemnified Parties, the amount of any Losses arising out of any Company Indebtedness or Transaction Expenses, to the extent not taken into account in the calculation of Final Purchase Price.

11.3 Indemnification by Purchaser. Subject to the provisions of this ARTICLE XI, from and after the Closing, Purchaser will indemnify and hold the Sellers and their respective Affiliates, successors and permitted assigns (collectively, the “Seller Indemnified Parties”) harmless from and against, and shall pay to the applicable Seller Indemnified Parties the amount of any Losses arising out of or resulting from: (a) the breach or failure to be true and correct of any Purchaser Surviving Representations; and (b) the breach or non-performance of any covenant, obligation or agreement made by Purchaser set forth in this Agreement which by its terms contemplates performance after the Closing. Any indemnification payment owed to the Seller Indemnified Parties pursuant to this Section 11.3 shall be delivered to the Seller Representative (for the benefit of the Sellers) and the Seller Representative shall be required to pay or cause to be paid such payment to each Seller in accordance with such Seller’s Percentage Share of such Losses.

11.4 Certain Limitations.

(a) Except in the case of Fraud, (i) no Seller shall have any indemnification obligations for Losses, in the aggregate, under this Agreement in excess of the amount of Aggregate Purchase Price actually received by, or held on behalf of, such Seller and (ii) Purchaser shall not have any indemnification obligations for Losses, in the aggregate, under this Agreement in excess of the amount of the Aggregate Purchase Price.

(b) Neither the Purchaser Indemnified Parties nor the Seller Indemnified Parties shall be entitled to recover under this ARTICLE XI for any particular Loss pursuant to this Agreement if such Loss was reflected in the calculation of Aggregate Purchase Price.

(c) Any claim for indemnification under this ARTICLE XI for which each Seller (rather than a single Seller or a single group of related Sellers) may be liable or responsible shall be asserted by the applicable Purchaser Indemnified Party against all Sellers.

(d) The amount of any Loss for which indemnification is provided under this ARTICLE XI shall be net of: (i) any amounts recovered by the Indemnified Party under other sources of indemnification, insurance policies or otherwise with respect to such Loss and (ii) net of any Tax benefits realized by the Indemnified Party or any of its Affiliates as a result of and within two (2) years of such Loss; provided, however that Losses shall not be reduced by (A) any costs and expenses incurred by the Indemnified Party in connection with the collection or recovery of such offsetting recoveries or (B) any deductibles, retentions or co-insurance amounts paid or incurred by the Indemnified Party (and, for the avoidance of doubt, the costs, expenses, deductibles, retention and co-insurance amounts referred to in the forgoing subsections (A) and (B) shall be included in the definition of Losses).

(e) In no event shall any Seller or Purchaser be liable for any punitive damages, other than to the extent actually awarded to a third party.

(f) The Indemnified Party shall use commercially reasonable efforts to (i) recover under other sources of indemnification, insurance policies (including the R&W Insurance Policy if recovery is available thereunder) or otherwise with respect to any Losses indemnifiable hereunder and (ii) mitigate any Losses indemnifiable hereunder; provided, however, that the conclusion of recovery efforts under other sources of indemnification, insurance policies (including the R&W Insurance Policy) or otherwise shall not be a condition to the Indemnified Party's right to seek or recover any indemnifiable amounts from the Indemnifying Party. Notwithstanding the foregoing, no Indemnified Party shall be required to (i) initiate, prosecute or maintain any suit or proceeding involving a Governmental Authority to mitigate any Losses, (ii) take any actions that would materially interfere with or impact the business or Tax planning of such Indemnified Party, (iii) maintain or renew any insurance policies or any minimum amounts of coverage thereunder or (iv) make any claim against any insurance policy to the extent related to a matter that is excluded or otherwise carved out from coverage thereunder.

(g) If an Indemnified Party receives payments from a source described in clause (i) of Section 11.4(d) in respect of a claim for Losses for which it has already received payment from the Indemnifying Party under this ARTICLE XI, the Indemnified Party shall pay to the Indemnifying Party, within five (5) Business Days after such payment is received, an amount equal to the lesser of (x) the amount received from such sources in respect of such claim and (y) the amount received from the Indemnifying Party in respect of such claim.

(h) For purposes of this Article XI, in determining where there has been a breach of any representation, warranty, covenant, agreement or obligation, and in calculating the amount of any Loss with respect to any such breach, any qualifications in such representation, warranty, covenant, agreement or obligation referencing the terms "materiality", "material", "Material" or "Material Adverse Effect" or words of similar import shall be disregarded.

(i) Anything to the contrary herein notwithstanding, the Sellers shall not have any right to seek any indemnification or contribution from or remedy against any member of the Company Group or Blocker whether arising prior to or after the Closing Date in respect of any breach of any representation or warranty by any member of the Company Group or Blocker or the failure of any member of the Company Group or Blocker to comply with any covenant, agreement or obligation to be performed by any member of the Company Group or Blocker on or prior to the Closing Date and the Sellers hereby waive such claim they may have against any member of the Company Group or Blocker with respect thereto whether at law, in equity or otherwise.

(j) The remedies provided in this ARTICLE XI, subject to the limitations set forth in this ARTICLE XI, shall, from and after the Closing, be the sole and exclusive remedies of the Purchaser Indemnified Parties with respect to any and all claims resulting from, relating (directly or indirectly) to or arising out of this Agreement, the Securities, the Company Group's businesses, operations, assets, liabilities, actions or inactions, the subject matter of this Agreement or the transactions contemplated hereby, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, whether at law or in equity, or otherwise, other than in the case of Purchaser Non-Released Claims. Purchaser hereby acknowledges and agrees that, from and after Closing, except as provide in this ARTICLE XI and other than in the case of Purchaser Non-Released Claims, Purchaser shall have no right or remedy to take any action against the Sellers in respect of, and the Sellers shall have no liability to Purchaser in respect of, any breach by such Seller of any representations or warranties contained herein or any failure to comply with any of the conditions, covenants, obligations or agreements contained herein. Except for (i) a claim pursuant to this ARTICLE XI, (ii) a claim in accordance with Section 1.4, (iii) any claim pursuant to Section 8.4, (iv) a claim for Fraud or (v) a claim under an Ancillary Document (other than any certificate delivered pursuant to Section 1.6(b)(iii), 1.6(b)(iv) or 1.6(b)(v)) (clauses (i) through (v) under this Section 11.4(j)), together with the claims referenced in clauses (A) and (B) of the last sentence of this Section 11.4(j), are collectively referred to as the "Purchaser Non-Released Claims"), from and after the Closing, Purchaser shall not, and shall cause its Affiliates (including the Company Group) and its and their respective Non-Recourse Parties to not, file any claim related to this Agreement against any Seller. In furtherance of the foregoing and except with respect to the Purchaser Non-Released Claims, Purchaser, for itself and for its Non-Recourse Parties, hereby expressly waives, from and after the Closing, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action it may have against any of the Sellers, their Affiliates and each of their and their respective Affiliates' Non-Recourse Parties relating to the subject matter of this Agreement. The provisions of this Section 11.4(j) shall not, however, prevent or limit a cause of action hereunder, or otherwise limit or affect any right or ability to make, pursue, enforce or prosecute any claim, (A) with respect to Fraud, (B) to obtain an injunction or injunctions to prevent breaches of this Agreement, to enforce specifically the terms and provisions hereof or to obtain other equitable remedies with respect hereto (including any rights or remedies described in Section 12.15) or (C) against the R&W Insurance Policy.

(k) The remedies provided in this ARTICLE XI, subject to the limitations set forth in this ARTICLE XI, shall, from and after the Closing, be the sole and exclusive remedies of the Seller Indemnified Parties with respect to any and all claims resulting from, relating (directly or indirectly) to or arising out of this Agreement, other than in the case of Seller Non-Released Claims. Sellers hereby acknowledge and agree that, from and after Closing, other than in the case of Seller Non-Released Claims, Sellers shall have no right or remedy to take any action against Purchaser in respect of, and Purchaser shall have no liability to any Seller in respect of, any breach by Purchaser of any representations or warranties contained herein or any failure to comply with any of the conditions, covenants, obligations or agreements contained herein. Except for (i) a claim pursuant to this ARTICLE XI, (ii) a claim in accordance with Section 1.4, (iii) a claim for Fraud or (iv) a claim under an Ancillary Document (other than the certificate delivered pursuant to Section 1.6(a)(i)) (clauses (i) through (iv) under this Section 11.4(k)), together with the claims referenced in clauses (A) and (B) of the last sentence of this Section 11.4(k), are collectively referred to as the "Seller Non-Released Claims"), from and after the Closing, Sellers shall not, and shall cause its Affiliates and its and their respective Non-Recourse Parties to not, file any claim related to this Agreement against Purchaser. In furtherance of the foregoing and except with respect to the Seller Non-Released

Claims, each Seller, for itself and for its Non-Recourse Parties, hereby expressly waives, from and after the Closing, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action it may have against Purchaser, Purchaser's Affiliates and its and their Non-Recourse Parties relating to the subject matter of this Agreement. The provisions of this Section 11.4(k) shall not, however, prevent or limit a cause of action hereunder, or otherwise limit or affect any right or ability to make, pursue, enforce or prosecute any claim, (A) with respect to Fraud or (B) to obtain an injunction or injunctions to prevent breaches of this Agreement, to enforce specifically the terms and provisions hereof or to obtain other equitable remedies with respect hereto (including any rights or remedies described in Section 12.15).

11.5 Procedures. Whenever any claim shall arise for indemnification hereunder, the party making the claim under this ARTICLE XI (the "Indemnified Party") shall promptly provide written notice of such claim to the party against whom such claim is asserted under this ARTICLE XI (the "Indemnifying Party"); provided, however, that the failure to notify the Indemnifying Party will not relieve the Indemnifying Party of any liability or obligation that it may have to any Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such claim is prejudiced by the Indemnified Party's failure to give such notice. Such notice by the Indemnified Party shall: (a) describe the claim in reasonable detail; (b) include copies of all material written evidence thereof; and (c) indicate the estimated amount, if known and reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. In connection with any claim giving rise to indemnity hereunder resulting from or arising out of any Action by a Person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party within thirty (30) days of receipt of the Indemnified Party's request for indemnification, may assume the defense of any such Action with counsel reasonably satisfactory to the Indemnified Party. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume the defense (and the Indemnified Party shall be entitled to have sole control over the defense and the Indemnifying Party shall be responsible for any reasonable attorneys' fees or other reasonable expenses incurred by the Indemnified Party regarding its participation in the defense) of an Action if: (i) such Action involves criminal allegations against the Indemnified Party; (ii) such Action demands injunctive or other equitable relief against the Indemnified Party; (iii) the Indemnified Party reasonably determines, after consultation with its outside legal counsel, that a conflict of interest exists such that it would be inappropriate for a single counsel to represent both the Indemnifying Party and the Indemnified Party in connection with such Action under applicable standards of legal ethics; or (iv) such Action involves an amount equal to more than twice the amount that the Indemnifying Party would be responsible for indemnity hereunder; provided, however, that the Indemnified Party shall not, without the written consent of the Indemnifying Party (such consent not to be unreasonably withheld, conditioned or delayed), (A) settle or compromise any third-party Action or (B) permit a default or consent to entry of any judgment, in each case, unless the claimant and such party provide to such other party an unqualified release from all liability in respect of the third-party Action. If the Indemnifying Party controls the defense of an Action, the Indemnified Party shall be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense, subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party does not assume the defense of any such Action, the Indemnified Party may, but shall not be obligated to, defend against such Action in such manner as it may deem appropriate, including settling such Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any Losses resulting therefrom. The Seller Representative (on behalf of the Sellers) and Purchaser shall cooperate with each other in all reasonable respects in connection with the defense of any third-party Action, including: (i) making available records relating to such claim; and (ii) furnishing, without expense (other

than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such claim. The Indemnifying Party shall not consent to the entry of a judgment or settle any Action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that the Indemnifying Party may settle any Action without the Indemnified Party's prior written consent that (i) only involves the payment of monetary damages that are paid in full by the Indemnifying Party and does not include any requirement that the Indemnified Party take or refrain from taking any actions other than compliance with any nondisclosure obligations related to the terms of such settlement contained in the settlement agreement, (ii) provides, in customary form, for the unconditional release of the Indemnified Party from all liabilities and obligations in connection with such Action, (iii) does not involve any statement, finding or admission of any fault of, breach of contract by, or violation of Law by, the Indemnified Party; (iv) includes a reasonable confidentiality obligation by the third party claimant of the terms of the settlement in any settlement agreement; and (v) the Indemnified Party is an express third party beneficiary of the settlement agreement, entitled to enforce such settlement agreement.

ARTICLE XII

MISCELLANEOUS

12.1 Publicity.

(a) Prior to Closing, Purchaser and the Seller Representative shall consult with each other before issuing any press release or making any public statement with respect to this Agreement and shall not issue any such press release or make any such public statement prior to the Closing without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding anything to the contrary in this Agreement, including Section 12.1(a), Purchaser and/or any Affiliate of Purchaser shall be permitted to (i) (A) file a copy of this Agreement with the United States Securities and Exchange Commission and to make any other filings and disclosures (including with the United States Securities and Exchange Commission) to the extent required by applicable Laws or the rules of any relevant securities exchange and (B) make current and periodic filings describing the Agreement and the transactions contemplated hereby and describing the Company Group and its Affiliates with the United States Securities and Exchange Commission; and (ii) issue press releases or participate in interviews and/or make other media appearances and/or participate in earnings calls and investor meetings, presentations and conferences (A) as may be required under any applicable Laws or any applicable securities exchange rules or (B) as otherwise consistent with past practices of Purchaser and/or any direct or indirect parent or Affiliate of Purchaser; provided, however, with respect to clauses (i) and (ii) above, Purchaser shall have afforded the Seller Representative, for a reasonable period prior to the making of such periodic filings, press release or statement (in each case if in writing), a reasonable opportunity to review the portion describing the transactions and shall take into account in good faith any comments from the Seller Representative; provided, however that the Seller Representative shall not have any consent or approval rights with respect to any such filings, release or statement to the extent it is required by applicable Law or the rules of any relevant securities exchange and shall have no consent, approval or review rights with respect to any periodic filings, release or statement that contains only information included in a filing, release or statement previously made pursuant to and in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, including Section 12.1(a), nothing in this Agreement shall prohibit Purchaser from

disclosing this Agreement or any information relating to the transactions contemplated by this Agreement to its Affiliates or any other Persons associated with Purchaser, including its legal, accounting, Tax and other advisors, who are subject to a confidentiality obligation with respect to such information.

(c) Notwithstanding anything to the contrary in this Agreement, including Section 12.1(a), nothing in this Agreement shall prohibit (i) any Seller from disclosing any information relating to the transactions contemplated by this Agreement to its Affiliates or any other Persons associated with such Seller, including its legal, accounting, Tax and other advisors, who are subject to a confidentiality obligation with respect to such information, and (ii) the Seller Representative and its representatives from disclosing the terms and existence of this Agreement and the transactions contemplated hereby to its sponsors and limited partners or investors and prospective limited partners or investors of the foregoing in connection with its or their customary fundraising and reporting activities. Any press release or public statement issued in compliance with this Section 12.1 shall be deemed to not be in violation of the Confidentiality Agreement or this Agreement.

12.2 Notices. All notices, demands and other communications to be given hereunder shall be in writing and shall be deemed to have been given (a) on the date delivered by hand to the applicable address below, (b) if sent on a Business Day by email before 5:00 p.m. (sender's time) on the day sent by email, when transmitted (c) if sent by email on a day other than a Business Day or if sent by email after 5:00 p.m. (sender's time) on the day sent by email, on the Business Day following transmission, or (d) the day following the day (except if not a Business Day, then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service. Notices, demands and communications, in each case to the respective parties, shall be sent to the applicable address set forth below:

If to the Sellers or the Seller Representative or:

Thompson Street Capital Partners V, L.P.
7676 Forsyth Blvd.
Suite 2700
St. Louis, Missouri 63105
Attention: Jeff Aiello and Clayton Milburn
Address on file.

with a copy (which shall not constitute notice) to:

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attention: Roger Wilen and Brent Steele
Address on file.

If to Purchaser:

Fox Factory, Inc.
2055 Sugarloaf Circle, 3rd Floor
Duluth, GA 30097
Attention: Toby D. Merchant
Address on file.

with a copy (which shall not constitute notice) to:

Squire Patton Boggs (US) LLP
201 E. Fourth Street, Suite 1900
Cincinnati, OH 45202
Attention: Evan A. Toebbe
Address on file.

and/or to such other respective addresses and/or addressees as may be designated by notice given in accordance with the provisions of this Section 12.2.

12.3 Expenses. Except as otherwise provided in this Agreement, including Section 8.4(a), each party hereto shall bear all fees and expenses incurred by such party in connection with, relating to or arising out of the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including financial advisors', attorneys', accountants' and other professional fees and expenses; provided, however, that the Sellers shall bear the fees and expenses of the cost of the D&O Tail Policy and the fees of the Escrow Agent.

12.4 Entire Agreement. This Agreement, the instruments contemplated herein or to be delivered by the parties pursuant to the provisions hereof (including the Ancillary Documents) and the Confidentiality Agreement, constitute the entire agreement among the parties hereto and supersede any prior understandings, agreements, representations, warranties, assurances or other inducements, by or among the parties hereto, written or oral, which may have related to the subject matter hereof in any way.

12.5 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by any Seller without the prior written consent of Purchaser, or by Purchaser without the prior written consent of the Seller Representative, and any attempted assignment without such consent shall be void and of no force and effect; provided, however, that after the Closing, any Seller may assign this Agreement to any of its beneficial owners or successors by operation of Law; provided, Purchaser may assign (collaterally or otherwise) or secure its rights to or in favor of any bank or financial institution or other Person (including to a security trustee or agent acting on their behalf) by way of security for borrowings or credit support purposes of Purchaser or its Affiliates; provided, that no such assignment shall in any way affect such Seller's or Purchaser's obligations or liabilities under this Agreement.

12.6 Schedules and Exhibits. The schedules (including the Disclosure Schedule) and exhibits constitute an integral part of this Agreement as if fully rewritten herein and shall be considered incorporated herein. The information and disclosures set forth on any particular Disclosure Schedule shall be deemed to be disclosed and incorporated by reference with respect to all other schedules to the extent that the applicability of such information and disclosures to such other schedules is reasonably apparent from the face of such information or disclosure. The inclusion of any information or disclosure in the Disclosure Schedule shall not be deemed an admission that such information or disclosure is material for the purposes of this Agreement. The inclusion of any information or disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or Law will not be construed as an admission or indication that any such breach or violation exists or has actually occurred. Unless the Agreement specifically provides otherwise, neither the specification of any item or matter in any representation or warranty contained in this Agreement nor the inclusion of any specific item in any Disclosure Schedule is intended to imply that such item or matter, or other items or matters, are or are not in the ordinary course of business, and no party shall use the fact of the setting forth or the inclusion of any such item or matter in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in any Disclosure Schedule is or is not in the ordinary course of business for purposes of this Agreement. The inclusion of any item in the Disclosure Schedule is not intended to imply that the items so included, or other items, are or are not required to be disclosed (including, without limitation, whether such items are required to be disclosed as threatened or reasonably likely to have a Material Adverse Effect) and no party shall use the fact of the inclusion of any item in the Disclosure Schedule in any dispute or controversy between the parties as to whether any obligation, item or matter not described or included in the Disclosure Schedule is or is not required to be disclosed (including, without limitation, whether such items are required to be disclosed as threatened or reasonably likely to have a Material Adverse Effect) for purposes of this Agreement. Matters reflected in any Disclosure Schedule are not necessarily limited to matters required by the Agreement to be so reflected. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. The headings contained in the Disclosure Schedule are for convenience of reference only, do not themselves form a part of the Disclosure Schedule and shall not affect the meaning or interpretation of any of the disclosures set forth in the Disclosure Schedule. The attachments to the Disclosure Schedule form an integral part of the Disclosure Schedule and are incorporated by reference for all purposes as if set forth fully therein.

12.7 Amendment; Waiver. This Agreement shall not be modified or amended except pursuant to an instrument in writing duly executed by an authorized representative on behalf of the Company, Purchaser and the Seller Representative. In addition, any term or condition or any failure of a party hereto to comply with any obligation, covenant, agreement or condition contained herein may be waived only if set forth in an instrument in writing and duly executed by an authorized representative of the waiving party. The failure in any one or more instances of a party hereto to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said party of any breach of any of the terms, covenants or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

12.8 Counterparts and Electronic Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A facsimile, .pdf image or other copy of a signature of a party hereto, including execution and delivery of the Agreement by electronic exchange bearing the copies of the signature of a party hereto, shall be deemed an original for purposes of this Agreement.

12.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction so as to best give effect to the intent of the parties hereto under this Agreement.

12.10 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without regard to the choice of laws or conflicts of laws provisions thereof.

12.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, shall confer on any person other than the parties hereto, and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, including third-party beneficiary rights, except as provided in Article XI and Section 8.3.

12.12 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, SUIT, ACTION OR CAUSE OF ACTION, INQUIRY, PROCEEDING OR INVESTIGATION ARISING IN WHOLE OR IN PART UNDER, RELATED TO, BASED ON, OR IN CONNECTION WITH, THIS AGREEMENT, THE SUBJECT MATTER HEREOF OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 12.12 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 12.12 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

12.13 Consent to Jurisdiction. Subject to Section 1.4(c) (which shall govern any dispute arising thereunder), the parties to this Agreement submit to the exclusive jurisdiction of the state and federal courts located within the State of Delaware (and the appropriate appellate courts) in respect of the interpretation and enforcement of the provisions of this Agreement and any related agreement, certificate or other document delivered in connection herewith, and by this Agreement, waive, and agree not to assert, any defense in any action for the interpretation or enforcement of this Agreement and any related agreement, certificate or other document delivered in connection herewith, that they are not subject thereto or that such action may not be brought or is not maintainable in such courts or that this Agreement may not be enforced in or by such courts or that their property is exempt or immune from execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper. Each party hereto waives personal service of any and all process upon it, and consents that all services of process be made by registered or certified mail, return receipt requested, directed to it at its address as set forth in Section 12.2, and service so made shall be treated as completed when received. Nothing in this Section 12.13 shall affect the right of the parties hereto to serve legal process in any other manner permitted by Law.

12.14 Definitions. Unless this Agreement expressly provides otherwise, each definition herein applies (i) for purposes of this entire Agreement and (ii) to other grammatical variations of the defined term.

(a) “Accrued Bonus” means the aggregate amount accrued or to be accrued pursuant to the Agreed Accounting Principles pursuant to multi-year, annual, quarterly, and/or periodic bonuses, commissions, profit sharing, revenue sharing or other cash incentive compensation for current or former employees, directors or individual independent consultants of any member of the Company Group in respect of any year or performance period prior to the Closing Date or in which the Closing Date occurs (including the Employer Payroll Taxes thereon).

(b) “Action” means any dispute, controversy, charge, complaint, demand, litigation, arbitration, suit, audit, claim, counterclaim, action, proceeding (including any civil, criminal, administrative, investigative, enforcement, regulatory or appellate proceeding), hearing, inquiry, examination or investigation commenced, brought, conducted or heard by or before any, or otherwise involving, any court, arbitrator or other Governmental Authority.

(c) “Affiliate” means, with respect to any Person, any other Person which Controls such Person, which such Person Controls, or which is under common Control with such Person, in each case, directly or indirectly through one or more intermediaries.

(d) “Ancillary Documents” means, collectively, Purchaser’s Ancillary Documents, Company’s Ancillary Documents, Blocker’s Ancillary Documents and Seller’s Ancillary Documents.

(e) “Anti-Corruption and Anti-Bribery Laws” means the United States’ Foreign Corrupt Practices Act of 1977 or any other applicable anti-corruption or anti-bribery Laws or any similar Laws of any other jurisdiction where the Company Group operates or conducts business.

(f) “BBA Audit Rules” means the provisions of Chapter 63, subchapter D of the Code.

(g) “CARES Act” means The Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), “Division N - Additional Coronavirus Response and Relief” of the Consolidated Appropriations Act, 2021 (H.R. 133), and any administrative or other guidance published with respect thereto by any Governmental Authority (including IRS Notices 2020-22 and 2020-65), or any other law intended to address the consequences of COVID-19 (including the FFCRA).

(h) “COBRA” means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code or similar state Laws.

(i) “Code” means the United States Internal Revenue Code of 1986, as amended.

(j) “Company Group Data” means all data contained in the Company Group IT Systems or the databases (including all User Data) of the Company Group and all other information and data compilations used by, or necessary to the business of, the Company Group.

(k) “Company Group Intellectual Property” shall mean (i) all Company Group Registered Intellectual Property and (ii) any other Intellectual Property Rights owned by or licensed to any member of the Company Group.

(l) “Company Group IT Systems” means, collectively, all information technology and computer systems (including Software, information technology and telecommunication hardware, databases and other equipment) relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data or information, whether or not in electronic format, used in or necessary to the conduct of the business of the Company Group as presently conducted.

(m) “Company Group Privacy Policy” means each external or internal, past or present privacy policy of the Company and/or any of its Affiliates, including any policy relating to: (i) the privacy of users of any Company Group Product; (ii) the collection, storage, disclosure or transfer of any User Data; and (iii) any employee information.

(n) “Company Group Registered Intellectual Property” means all Registered Intellectual Property at any time owned by, filed in the name of or applied for by any member of the Company Group and/or any of its Affiliates.

(o) “Company Group Software” means any Software which is used in and necessary or useful for or otherwise material to the conduct of the business of the Company Group as presently conducted.

(p) “Contract” means any written, oral, implied or other agreement (including “click-through” agreement), contract, subcontract, license, lease, understanding, arrangement, obligation, promise, instrument, note, guaranty, indemnity, representation, warranty, deed, assignment, power of attorney, certificate, purchase order, sale order, work order, insurance policy, benefit plan, commitment, covenant, assurance or undertaking of any nature.

(q) “Control” means the power to direct or cause the direction of the management and policies of a Person, directly or indirectly, through voting securities, Contract or otherwise.

(r) “CWH 401(k) Plan” means the Custom Wheel House, LLC 401(k) Plan.

(s) “Dataroom” means the electronic documentation site hosted by Donnelley Financial Solutions named “Project PreRunner”, as established by the Sellers and/or the Company Group.

(t) “Employer Payroll Taxes” means, with respect to any particular compensatory payment, an amount equal to the employer portion of any Social Security, Medicare or other similar Taxes required to be paid with respect to such payment.

(u) “Environmental Laws” means any Law or binding policy of any Governmental Authority, as well as any Order or permit issued, promulgated, approved, or entered thereunder, relating to pollution or protection of the environment, natural resources, human health and safety, occupational health and safety, Hazardous Materials (including the use, handling, transportation, production, disposal, discharge, Release, or storage thereof), or the reporting or remediation of environmental contamination.

(v) “Environmental Permits” means any Permit required by or from any Governmental Authority under any Environmental Law.

(w) “Equity Securities” means any of the following: (i) limited liability company membership interests, corporate shares, membership or participation units or similar interests, and general and limited partnership interests, (ii) rights to receive a share of profits and losses or a distribution of assets (including phantom stock, stock appreciation, profit participation and other similar rights), (iii) other securities commonly regarded as equity securities, (iv) any right to acquire any of the foregoing, including subscriptions, warrants, options, preemptive rights, calls or commitments of any kind and (v) any right to convert into, exercise or exchange for any of the foregoing.

(x) “ERISA Affiliate” means any entity, trade or business (whether or not incorporated) that is treated as a single employer with the Company Group under Section 4001(b) of ERISA or Sections 414(b), (c), (m) or (o) of the Code.

(y) “FAR” means the Federal Acquisition Regulation, codified at Title 48 of the Code of Federal Regulations.

(z) “Fraud” means, with respect to any Person, (i) an actual and intentional fraud by such Person in the making of any representation or warranty expressly set forth in this Agreement, with knowledge or belief that such statement is false, (ii) with the intent to induce another party to act or refrain from acting in reliance upon it to its detriment, and (iii) such other party, in reasonable reliance upon such false statement and with ignorance to the falsity of such statement, acts or refrains from taking action and suffers loss by reason of such reliance. For the avoidance of doubt, the definition of “Fraud” in this Agreement is limited to actual and intentional fraud and does not include, and no claim may be made by any Person in relation to this Agreement or the transactions contemplated hereby (A) for constructive fraud or other claims based on constructive knowledge or (B) for negligent misrepresentation, equitable fraud, any tort based on negligence or recklessness or any other fraud based claim or theory that is other than actual and intentional fraud.

(aa) “Governmental Authority” means any domestic or foreign national, state, multi-state, regional or municipal or other local government, any subdivision, body, court, tribunal, judicial or arbitral body, agency, commission or authority thereof exercising any executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or any quasi-governmental or private body established to perform such functions.

(ab) “Government Bid” means any quotation, bid or proposal by any member of the Company Group that, if accepted or awarded, would lead to a Contract with a Governmental Authority, including a prime contractor or a higher tier subcontractor to a Governmental Authority, for the design, manufacture or sale of products or the provision of services by any member of the Company Group.

(ac) “Government Contract” means any prime contract, subcontract, letter contract, purchase order, task order or delivery order (in each case, including any amendments, modifications, extensions, renewals and other agreements with respect thereto) (i) between any member of the Company Group and a Governmental Authority to provide supplies or services or (ii) entered into by any member of the Company Group as a subcontractor (at any tier) to provide supplies or services in connection with a Contract between another entity and a Governmental Authority.

(ad) “Government Official” means any appointed or elected official, any government employee, any political party, party official, or candidate for political office,

or any director, officer, employee, agent or other person, in each case acting in his or her capacity as a representative of a Governmental Authority.

(ae) “Hazardous Material” means and includes petroleum, crude oil or any fraction thereof, asbestos and asbestos containing materials, polychlorinated biphenyls, all per- and polyfluoroalkyl substances, lead-based paint, toxic mold and any other substance defined, designated, identified or classified as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance under, or for which liability or standards of care are imposed by, any Environmental Law.

(af) “Income Taxes” means any income, franchise, net profits, excess profits or similar Taxes measured on the basis of net income.

(ag) “Independent Accountant” means an independent accounting or valuation firm of nationally recognized standing that is mutually agreed upon by the parties hereto.

(ah) “Intellectual Property Rights” means, on a worldwide basis, any and all tangible and intangible intellectual property, industrial or proprietary rights (by whatever name or term known or designated) arising under law or equity, whether or not filed, perfected, registered or recorded and whether now or later existing, filed, issued or acquired, including: (i) any and all United States and foreign patents and utility models and equivalent or similar rights anywhere in the world (collectively, “Patents”); (ii) any and all United States and foreign copyrights, works of authorship, mask works, moral rights and other copyrightable subject matter throughout the world (collectively, “Copyrights”); (iii) any and all United States and foreign trademarks, service marks, trade names, logos, mottos, slogans, taglines, corporate names, product names, service names, character names and Internet domain names and addresses, all other indicia of commercial source or origin, and all goodwill associated therewith throughout the world (collectively, “Trademarks”); (iv) any and all trade secrets under applicable law and other rights in know-how and confidential or proprietary information, including any and all (A) processing, manufacturing, marketing, business or customer information, (B) inventions, processes, ideas, formulae, algorithms, specifications, designs and methods, and (C) all documentation relating thereto (including papers, blueprints, drawings, reports, diaries, annotations and notebooks) (collectively, “Trade Secrets”); (v) any and all other intellectual and industrial property and proprietary rights (of every kind and nature throughout the world and however designated) whether or not analogous to any of the foregoing rights (including character rights, “rental” rights, remuneration rights, packaging rates, merchandising rights, advertising rights, rights of publicity, and all other commercial rights), whether arising by operation of law, contract, license or otherwise; (vi) any and all tangible embodiments of any of the foregoing, in any form and in any media; (vii) any and all registrations, applications, renewals, extensions, continuations, continuations-in-part, provisionals, divisionals, reissues and re-examinations thereof now or hereafter in force throughout the universe (including rights in any of the foregoing) (collectively, “Registrations”); and (viii) any and all Liens (whether past, present or future) arising from or related to any of the foregoing, including the sole, exclusive and independent right to enforce any and all such Liens.

(ai) “Knowledge” of the Company Group and words of similar import shall be deemed to include the actual knowledge as of the Closing Date of Kevin Fitzgerald, Sr., Jeff Wegener, Jeff Aiello, Kevin Fitzgerald, Jr., Colbey Groom, Brian Godfrey and Matt Harris, after and assuming reasonable inquiry of those employees of any member of the Company Group knowledgeable about the relevant subject matter.

(aj) “Laws” means (i) all federal, state, regional, provincial, local or foreign laws, including constitutions, statutes, ordinances, codes, rules, regulations, resolution, Orders and directives, (ii) any binding judicial or administrative interpretation of any of the foregoing and (iii) any other regulation or rule of any Governmental Authority.

(ak) “Liens” means any encumbrances, liens (statutory or other), security interests, equitable interest, claims, easements, mortgages, deeds of trust, options, pledges, deposits, hypothecations, charges, rights of first refusal or rights of first offer, preemptive rights, rights-of-way, easements, encroachments, title defects, or restrictions of any kind (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset) and any agreement or arrangement to create any of the foregoing or having similar effect.

(al) “Material Adverse Effect” means any event, occurrence, circumstance, development, change or fact that, when considered individually or in the aggregate, has had a material adverse effect on (x) the financial condition, assets, operations, employees, liabilities, results of operations or businesses of the Company Group, taken as a whole, or (y) the ability of Blocker, any Seller or the Company to perform their obligations under this Agreement or to consummate the transactions contemplated hereby; provided that, for purposes of this Agreement, a Material Adverse Effect will not include any changes, events, circumstances, occurrences or developments resulting or arising from: (i) the general deterioration in the economy affecting the United States or any other geographic region in which the Company Group operates or the industries in which the Company Group operates; (ii) financial, banking, credit or securities markets (including any disruption thereof and any decline in the price of any security or any market index); (iii) political or regulatory conditions in the United States or any other geographic region in which the Company Group operates; (iv) changes in the industries in which the Company Group operates; (v) natural disasters, (vi) pandemics or epidemics (including COVID-19); (vii) the effect of any change in, or change in interpretation of, applicable Law or in GAAP or applicable accounting standards; (viii) any effect resulting from the announcement, pendency or performance of the transactions contemplated hereby, including by reason of the identity of Purchaser or any communication by Purchaser regarding the plans or intentions of Purchaser with respect to the conduct of the business of the Company Group, and including any loss, diminution or disruption of any of the foregoing on any relationships, contractual or otherwise, with existing or prospective customers, suppliers, distributors, collaboration partners, employees or regulators; (ix) the effect of any action taken, or failure to take any action, in each case, to the extent such action or failure to take action is required by the express terms of this Agreement or to which Purchaser has approved, consented or requested; (x) any breach by Purchaser of any of its obligations under this Agreement; or (xi) any failure by any member of the Company Group to meet any projections, estimates or forecasts (financial, operational or otherwise) for any period (provided that the underlying causes thereof, to the extent not otherwise excluded by this definition, may be deemed to contribute to and may be taken into account in determining the occurrence of a “Material Adverse Effect”); except in the case of the foregoing clauses (i), (ii), (iii), (iv), (vi) or (vii) to the extent such event, occurrence, circumstance, development, change or fact is (or would reasonably be expected to be) disproportionately adverse with respect to the Company Group or the business of the Company Group compared to other Persons in the industry in which the Company Group conducts business.

(am) “Occupational Safety and Health Law” means any Action designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program mandated by a Governmental Authority.

(an) “Open Source Software” means any Software, including programs, libraries, drivers, header files, APIs and scripts, that is, contains, or is derived in any manner (in whole or in part) from any software that is distributed as “free software” (as defined by the Free Software Foundation), “open source software” (i.e., software distributed under any license approved by the Open Source Initiative as set forth in www.opensource.org), or similar licensing or distribution terms.

(ao) “Organizational Documents” means with respect to any Person, the articles of incorporation, certificate of incorporation, articles of organization, certificate of formation, certificate of limited partnership, bylaws, limited liability company agreement, operating agreement, partnership agreement, trust instruments, stockholders’ agreement, voting agreement, joint venture agreement, registration rights agreement and all other similar documents, instruments or certificates executed, adopted or filed in connection with the creation, formation or organization of such Person, including any amendments and other modifications thereto.

(ap) “Payroll Tax Executive Order” means the Presidential Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, as issued on August 8, 2020 and including any administrative or other guidance published with respect thereto by any Governmental Authority.

(aq) “Permitted Lien” means (i) Liens for Taxes and other governmental charges and assessments which are not yet due and payable or which are being contested in good faith through appropriate proceedings and for which adequate reserves have been maintained in accordance with GAAP; (ii) statutory Liens of landlords, carriers, warehousemen, mechanics and materialmen or other like Liens incurred in the ordinary course of business for sums not yet due; (iii) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (iv) easements, covenants, rights-of-way and other similar restrictions or conditions of record, imperfections of title or encumbrances that are not material in amount or do not materially detract from the value of or materially impair the existing use of the property affected by such imperfection or encumbrance; (v) Liens securing the Company Indebtedness to the extent such Liens are removed on the Closing Date pursuant to the Pay-Off Letters; (vi) Liens arising under operating equipment leases (that do not constitute Company Indebtedness) with third parties entered into in the ordinary course of business and under which the Company Group is not in default; (vii) matters that would be disclosed by an accurate survey of the Leased Premises; (viii) zoning, entitlement, building and other land use regulations imposed by a Governmental Authority having jurisdiction over the Leased Premises; (ix) Liens that have been placed by any developer, landlord or landlord’s financing sources on real property over which the Company Group has easement rights or on the fee title of the real property constituting the Leased Premises or any statutory liens of landlords on the Leased Premises; and (x) Liens identified on Schedule 12.14(qq).

(ar) “Personal Data” means the name, street address, telephone number, e-mail address, photograph, social security number, driver’s license number, passport number, or customer or account number, or any other piece of information that alone or together with other information allows the identification of a natural Person. “Personal Data” also includes “personal information,” “personal data,” and “personally identifiable information,” as such terms and similar terms may be defined under applicable Laws relating to the privacy or security of information of, about or relating to natural Persons.

(as) “PPACA” means the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act.

(at) “Privacy Requirements” means all of the following: (i) all Laws relating to the privacy or security of Personal Data; (ii) requirements under the Payment Card Industry Data Security Standard (PCI DSS); (iii) obligations of any member of the Company Group relating to the privacy or security of Personal Data under any Contract into which such Company Group member has entered or by which such Company Group member is otherwise bound; and (iv) all representations or obligations in any Company Group Privacy Policy.

(au) “Processing,” “Process,” or “Processed” means any collection, access, acquisition, storage, protection, use, recording, maintenance, operation, dissemination, re-use, disposal, disclosure, re-disclosure, deletion, destruction, sale, transfer, modification, or any other processing of Personal Data.

(av) “Registered Intellectual Property” means all United States, international and foreign: (i) Patents and Registrations therefor; (ii) registered Trademarks and Registrations therefor; (iii) registered Copyrights and Registrations therefor; and (iv) any other registered Intellectual Property Right that is the subject of an application, certificate, filing, or registration for such rights that is issued by or filed with any Governmental Authority or registrar at any time.

(aw) “Related Party Lease” means each of (i) that certain Standard Industrial/Commercial Single-Tenant Lease—Net, dated as of June 20, 2017, by and between FFE, LLC and Custom Wheel House, as further amended, (ii) that certain Standard Industrial/Commercial Single-Tenant Lease—Gross, dated as of February 28, 2013, by and between FFE, LLC and Custom Wheel House, as further amended and (iii) that certain Standard Industrial/Commercial Single-Tenant Lease—Net, dated as of January 17, 2019, by and between FFE, LLC (as successor in interest to 41720 Corning Place, LLC) and Custom Wheel House, as further amended.

(ax) “Release” means any release, spill, emission, leaking, injection, deposit, disposal, discharge, dispersal, pumping, leaching or migration into the indoor or outdoor environment or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

(ay) “Relevant Date” means December 23, 2019.

(az) “Security Incident” means any unauthorized Processing of Personal Data, any unauthorized access to the Company Group IT Systems, or any cybersecurity or similar incident that may require notification to any Person, Governmental Authority, or any other entity under Privacy Requirements, including, but not limited to, a ransomware attack or a denial-of-service attack.

(ba) “Social Media Accounts” means any and all accounts, profiles, pages, feeds, registrations and other presences on or in connection with any: (i) social media or social networking website or online service; (ii) blog or microblog; (iii) mobile application; (iv) photo, video or other content-sharing website; (v) virtual game world or virtual social world; (vi) rating and review website; (vii) wiki or similar collaborative content website; or (viii) message board, bulletin board, or similar forum.

(bb) “Software” means all (i) computer programs, including all software implementations of algorithms, models and methodologies, whether in source code, executable code or object code, (ii) databases and compilations, including all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow charts and other work product used to design, plan, organize and develop any of the foregoing,

screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, (iv) websites, social media networks and apps, and (v) documentation, including user manuals and other training documentation, related to any of the foregoing.

(bc) “Subsidiary” means, with respect to any Person (the “Owner”), each other Person that is a corporation, joint venture, trust, partnership, limited liability company or any other entity (i) of which the securities or other interests having the power to elect a majority of that other Person’s board of directors or similar governing body are held by the Owner or one or more of its Subsidiaries (other than securities or other interests having such power only upon the happening of a contingency that has not occurred) or (ii) over which the Owner has, directly or indirectly, the power to direct its business and policies

(bd) “Tax Return” means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including any information return, claim for refund, amended return or declaration of estimated Tax.

(be) “Taxes” means any federal, state, local or foreign net income, gross income, gross receipts, net profits, excess profits, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, unemployment, payroll, withholding, alternative or add-on minimum, ad valorem, value-added, transfer or stamp tax, or any other similar tax, custom, duty, governmental fee, escheat or unclaimed property liability or other like assessment or charge, together with any interest or penalty, imposed by any Governmental Authority and “Tax” means any one of the foregoing Taxes.

(bf) “Taxing Authority” means the IRS and any other Governmental Authority exercising any authority to impose, assess or collect any Tax or any other authority exercising Tax regulatory authority.

(bg) “User Data” means any Personal Data or other data or information collected by or on behalf of the Company Group and/or its Affiliates from users of any Company Group Product.

(bh) “Vehicle Safety Laws” means any Laws relating to motor vehicle equipment implemented by any Governmental Authority. This shall include Laws of the National Highway Traffic Safety Administration (“NHTSA”) and the Consumer Product Safety Commission (“CPSC”), including the National Traffic and Motor Vehicle Safety Act, FMVSS (including self-certification thereto), the Transportation Recall Enhancement Accountability and Documentation (“TREAD”) Act, and the Consumer Product Safety Act (“CPSA”).

The following terms are defined in the following sections of this Agreement:

Defined Terms

Where Found

Accrued Income Taxes 1.2(a)
Administrative Account Amount 1.3(b)(iv)
Aggregate Purchase Price 1.2(b)
Agreed Accounting Principles 1.2(c)
Blocker Shares Recitals
Blocker Stockholder Preamble
Blocker’s Ancillary Documents 4.2

Cash Equivalents 1.2(d)
Company Preamble
Company Employee 8.5
Company Group Product 3.23(i)
Company Units Recitals
Confidential Information Presentation 2.10(b)
Confidentiality Agreement 6.2(a)
Copyright 12.14(hh)
Closing 1.5
Closing Date 1.5
Closing Statement 1.4
Closing Working Capital 1.2(e)
Company's Ancillary Documents 3.2
Company Cash Equivalents 1.2(f)
Company Indebtedness 1.2(g)
Delivery Date 1.4(a)
Disclosure Schedule ARTICLE III
Dispute Notice 1.4(c)
Dispute Items 1.4(c)
Dispute Period 1.4(c)
Downward Adjustment Amount 1.4(e)
Employee Plan 3.16(a)
Equipment 3.7
ERISA 3.16(a)
Escrow Account 1.3(a)
Escrow Agent 1.3(a)
Escrow Agreement 1.3(a)
Escrow Amount 1.3(a)
Estimated Aggregate Purchase Price 1.3
Estimated Closing Statement 1.3
Final Purchase Price 1.4(d)
Financial Statements 3.5(a)
Fundamental Representations 7.3(a)
GAAP 1.2(h)
Holder Units Preamble
Holder Units Recitals
Incentive Plan 1.2(i)
Incentive Plan Closing Payment 1.3
Indebtedness 1.2(j)
Indemnified Party 11.5
Indemnifying Party 11.5
Insurance Policies 3.9
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Interim Financial Statements 3.5(a)
Interim Financial Statement Date 3.5(a)
IRS 3.16
Leased Premises 3.21(a)
Material Contracts 3.13(a)
OFAC 3.28(b)
Officer 3.8
Order 2.2
Outside Date 10.1(a)
Patents 12.14(hh)
Percentage Share 1.4(d)

Permits 3.15
Pre-Closing Audit 8.4(c)(i)
Pre-Closing Tax Returns 8.4(b)(i)
Pre-Closing Tax Period 8.4(d)
Purchaser Preamble
Purchaser's Ancillary Documents 2.2
Purchaser's Benefit Programs 8.5(b)
Registrations 12.14(hh)
Registered Intellectual Property 3.23(a)
Related Party 3.10
R&W Insurance Policy 1.6(a)(iii)
Sanctioned Country 3.28(b)
Sanctioned Parties 3.28(b)
Sanctions Authority 3.28(a)
Securities Recitals
Securities 2.6
Seller Representative Preamble
Seller Rep Party 9.5
Seller's Ancillary Documents 5.1
Significant Customer 3.24
Significant Supplier 3.24
Straddle Period Tax Returns 8.4(b)
Straddle Period 8.4(g)
Target Working Capital 1.2(k)
Tax Allocation Schedule 8.4(f)
Trademarks 12.14(hh)
Trade Secrets 12.14(hh)
Transaction Expenses 1.2(l)
Transaction Tax Deductions 1.2(m)
TSCP Preamble
Upward Adjustment Amount 1.4(d)
WARN Act 2.8

12.15 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by a party in accordance with their specific terms or were otherwise breached by a party hereto. It is accordingly agreed that (a) each party hereto shall be entitled to equitable relief, without proof of actual damages, including in the form of an injunction or injunctions or orders for specific performance to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, (b) the right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, the parties would not have entered into this Agreement. Such equitable relief shall be in addition to any other remedy to which the parties hereto are entitled at law or in equity as a remedy for such nonperformance, breach or threatened breach. Any party seeking an injunction, a decree or order of specific performance shall not be required to provide any bond or other security in connection with any such injunction and any party against whom such injunction is entered agrees not to request or demand any bond or security in connection therewith. The parties shall not assert that a remedy of specific performance or other equitable relief is unenforceable, invalid, contrary to law or inequitable for any reason, and shall not assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. If, prior to the Outside Date, any party brings an Action pursuant to this Section 12.15, the Outside Date shall be automatically extended (i) for the period during which such Action is pending, plus ten (10) Business Days or (ii) by such other time period established by the court presiding over such Action on good cause shown, as the case may be.

12.16 Interpretation. Unless the context indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The term “person” or “Person” shall be construed broadly to include any individual, any type of business entity (including a corporation, joint-stock company, partnership, limited liability company, joint venture, association or unincorporated association), any other type of legal entity (including a trust), or any other entity or organization, but shall not include any Governmental Authority. All references to “Company Group” shall mean any member of the Company Group, unless context otherwise requires. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation” or “but not limited to.” The terms “herein,” “hereunder,” “hereby,” “herewith” and “hereof” and words of like import, unless otherwise stated, refer to this entire Agreement as a whole (including any schedules and exhibits hereto) and not to any particular provision of this Agreement, and Article, Section, Schedules and Exhibit references are to the Articles, Sections, Schedules and Exhibits of this Agreement unless otherwise specified. Any capitalized terms used in any Schedule or Exhibit attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are incorporated in and made a part of this Agreement as if set forth in full herein. The term “pending” shall mean pending (but shall not be construed as referring to any Action against the Company Group that has been filed but not yet served on the Company Group), and “threatened” means threatened (and shall be construed as referring, without limitation, to any Action against the Company Group that has been filed but not yet served on the Company Group). The words describing the singular number will include the plural and vice versa. The phrase “made available,” “delivered” or “provided” (or terms of similar import) shall mean that a true, correct and complete copy of such document or item (together with all amendments, supplements or other modifications thereto or waivers thereof) has been made available for viewing in the Dataroom, as such materials were posted to the Dataroom prior to the date hereof and not removed on or prior to the date hereof. When this Agreement provides that a party and its Affiliates shall take, or not take, an action, such party shall be responsible to cause such Affiliate to take such action. “Business Day” means any day other than a Saturday, Sunday or a national or New York State holiday or a day on which commercial banks in New York City are generally closed to the public. All references to “dollars” or “\$” will be deemed references to the lawful money of the United States of America. The word “or” shall not be exclusive. Any reference to a “party” shall include such party’s predecessors, successors and permitted assigns, unless otherwise specified. With respect to a person, the word “representatives” shall be deemed to include any director, officer, employee, agent, consultants or advisor to such person that is acting on such person’s behalf, including any attorney accountant, broker, financial advisor or other service provider. Unless the context otherwise requires, references herein: (a) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement and includes all addenda, exhibits, or schedules thereto; and (b) any reference to a “copy” or “copies” of any document, instrument, or agreement means a copy or copies that are complete and correct. Any provision hereof permitting a party or its representatives to have access to books and records of another party shall be deemed to include obtaining such access electronically to the extent the first party or its representatives so requests and such books and records are maintained in electronic format. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party hereto by virtue of the authorship of any provisions of this Agreement.

12.17 Headings. The headings contained in this Agreement are for convenience of reference only, do not themselves form a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.

12.18 Limitation on Recourse. This Agreement may only be enforced against, and all claims or causes of action (whether in contract, in tort, at law, in equity or otherwise) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, termination, performance or non-performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as a party hereto (but only to the extent of the specific obligations of such party hereto set forth herein). No person who is not a named party to this Agreement, including any past, present or future officer, director, employee, agent, general or limited partner, manager, management company, member, stockholder, equity holder, controlling person, representative or Affiliate, or any heir, executor, administrator, successor or assign of any of the foregoing, of any named party to this Agreement (“Non-Recourse Party”), shall have any liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose liability of a party to this Agreement against its owners or Affiliates) for any liability based on, in respect of, by reason of, arising under, out of, in connection with, or related in any manner to this Agreement.

12.19 Release. Each Seller agrees that, effective as of the Closing Date, such Seller will be deemed to have released and discharged each member of the Company Group and Blocker from any and all claims, demands and causes of action, whether known or unknown, liquidated or contingent, to the extent based upon or arising out of the dealings among such Seller, on the one hand, and any member of the Company Group or Blocker or their respective Non-Recourse Parties, on the other hand, on or prior to the Closing (collectively, the “Seller Released Claims”). Each Seller acknowledges that the Laws of many states provide substantially the following: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.” Each Seller acknowledges that such provisions are designed to protect a Person from waiving claims that it does not know exist or may exist. Nonetheless, each Seller agrees that, effective as of the Closing Date, such Seller will be deemed to waive any such provision (subject to the limitations herein). Each Seller further agrees that it will not, directly or indirectly, or cause any Person to, (a) institute a lawsuit or other legal proceeding to the extent based upon, arising out of, or relating to any of the Seller Released Claims or (b) participate, assist, or cooperate in any such proceeding except as otherwise required by applicable Law. Notwithstanding the foregoing, each Seller shall retain and does not release (i) its rights and interests under the terms and conditions of this Agreement and the Ancillary Documents or (ii) Purchaser with respect to any such causes of action, claims, demands, damages, judgments, debts, dues and suits of every kind to the extent arising out of Purchaser’s Fraud.

12.20 Representation of the Sellers and Seller Representative. The parties to this Agreement acknowledge and agree that Sidley Austin LLP has represented the Seller Representative (in its capacity as such), and not the Sellers (other than the Seller Representative also in its capacity as a Seller), in connection with the entry into this Agreement and the consummation of the transactions contemplated hereby, provided that all files of Sidley Austin LLP relating to this Agreement or any of the transactions contemplated by this Agreement shall be deemed to be files relating to Sidley Austin LLP's representation of the Seller Representative and not the Company Group. Purchaser agrees, on its own behalf and on behalf of its Affiliates, that, following the Closing, Sidley Austin LLP may serve as counsel to any one or more Seller or the Seller Representative, or any of their officers, directors or Affiliates in connection with any matters related to this Agreement and the transactions contemplated hereby, including any litigation, claim or obligation arising out of or relating to this Agreement or the transactions contemplated by this Agreement (all of the foregoing individual and collectively hereinafter "Transaction Related Matters"), notwithstanding any representation by Sidley Austin LLP as specified below, prior to the Closing of the Company Group. Purchaser, Blocker and the Company (on behalf of itself and its subsidiaries) hereby (a) waive any claim they have or may have that Sidley Austin LLP has a conflict of interest by representing any Seller or the Seller Representative, or any of their officers, directors or Affiliates, in Transaction Related Matters or is otherwise prohibited from engaging in such representation, and (b) agree that, in the event that a dispute involving Transaction Related Matters arises after the Closing between Purchaser, Blocker, the Company or any of its subsidiaries and the Sellers (including the Seller Representative) or any of the Sellers' Affiliates, Sidley Austin LLP may represent the Sellers (including the Seller Representative) or any of the Sellers' Affiliates in such dispute even though the interests of such person(s) may be directly adverse to Purchaser, Blocker, the Company or its subsidiaries. Purchaser, Blocker and the Company (on behalf of itself and its subsidiaries) also further agree that, as to all communications among Sidley Austin LLP and the Company Group, Blocker and the Sellers (including the Seller Representative) or the Sellers' Affiliates and representatives, that relate in any way to this Agreement or the transactions contemplated by this Agreement, the attorney-client privilege and the expectation of client confidence belongs to the Sellers and may be controlled by the Sellers and shall not pass to or be claimed by Purchaser, Blocker, the Company or any of its subsidiaries. To the extent any documents in the files of Sidley Austin LLP in respect of this Agreement or the transactions contemplated by this Agreement constitute property of the client, only the Seller Representative (and not the Company or any of its subsidiaries) will hold such property rights in such documents to the extent that they are related primarily to Transaction Related Matters. To the extent that Sidley Austin LLP has represented a member of the Company Group in matters not related to this Agreement or the transactions contemplated by this Agreement, (i) the attorney-client privilege and the expectation of client confidence shall belong to the Company Group; and (ii) to the extent any files of Sidley Austin LLP in respect of such representations constitute property of the client, the Company Group will hold the property rights. Notwithstanding the foregoing, in the event that a dispute arises between Purchaser, Blocker, the Company or any of its subsidiaries and a third party other than a party to this Agreement after the Closing, Blocker or the Company Group may assert the attorney-client privilege to prevent disclosure of confidential communications by Sidley Austin LLP to such third party; provided, however, that if the property rights in such communications are specified herein as owned or controlled by the Seller Representative, then neither Blocker nor the Company nor any such subsidiary may waive such privilege without the prior written consent of the Seller Representative, which will not unreasonably be withheld and whose consent or refusal will be timely provided in writing.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

PURCHASER:

FOX FACTORY, INC.

By: /s/ Michael C. Dennison
Name: Michael C. Dennison
Title: Chief Executive Officer

[Signature Page to Securities Purchase Agreement]

COMPANY:

CWH HOLDCO LLC

By: /s/ Jeff Aiello
Name: Jeff Aiello
Title: President

BLOCKER:

CWH BLOCKER CORP.

By: /s/ Jeff Aiello
Name: Jeff Aiello
Title: President

SELLER REPRESENTATIVE:

THOMPSON STREET CAPITAL PARTNERS V, L.P.,
in its capacity as the Seller Representative

By: Thompson Street Capital V GP, L.P.
Its general partner

By: Thompson Street Capital LLC,
Its general partner

By: /s/ James A. Cooper
Name: James A. Cooper
Title: Managing Principal

SELLERS:

2020 KEVIN R. FITZGERALD GIFT TRUST DATED DECEMBER 22, 2020

/s/ Eileen P. Fitzgerald

Eileen P. Fitzgerald, as trustee of the 2020 Kevin R. Fitzgerald Gift Trust dated December 22, 2020

2020 EILEEN P. FITZGERALD GIFT TRUST DATED DECEMBER 22, 2020

/s/ Kevin R. Fitzgerald

Kevin R. Fitzgerald, as trustee of the 2020 Eileen P. Fitzgerald Gift Trust dated December 22, 2020

PAIGE A. FITZGERALD IRREVOCABLE TRUST DATED NOVEMBER 27, 2009

/s/ Paige A. Fitzgerald

Paige A. Fitzgerald, as trustee of the Paige A. Fitzgerald Irrevocable Trust dated November 27, 2009

KEVIN ROBERT FITZGERALD, JR. AND KELLY JO FITZGERALD REVOCABLE TRUST DATED DECEMBER 6, 2019

/s/ Kevin Robert Fitzgerald, Jr.

Kevin Robert Fitzgerald, Jr., as trustee of the Kevin Robert Fitzgerald, Jr. and Kelly Jo Fitzgerald Revocable Trust dated December 6, 2019

/s/ Kelly Jo Fitzgerald

Kelly Jo Fitzgerald, as trustee of the Kevin Robert Fitzgerald, Jr. and Kelly Jo Fitzgerald Revocable Trust dated December 6, 2019

KEVIN R. FITZGERALD, JR. IRREVOCABLE TRUST DATED OCTOBER 29, 2009

/s/ Kevin R. Fitzgerald, Jr.

Kevin R. Fitzgerald, Jr., as trustee of the Kevin R. Fitzgerald, Jr. Irrevocable Trust dated October 29, 2009

[Signature Page to Securities Purchase Agreement]

RYANN L. FITZGERALD IRREVOCABLE TRUST DATED NOVEMBER 27, 2009

/s/ Ryann L. Fitzgerald

Ryann L. Fitzgerald, as trustee of the Ryann L. Fitzgerald Irrevocable Trust dated November 27, 2009

GROOM ENTERPRISES, INC.

By: /s/ Colbey Daniel Groom

Name: Colbey Daniel Groom

Title: President

EIRMOC EQUITIES, LLC

By: New York Private Bank & Trust, a division of Emigrant Bank

By: /s/ George J. Dickson, Jr.

Name: George J. Dickson, Jr.

Title: Executive Vice President

EMIGRANT CAPITAL CORPORATION

By: /s/ Christopher Hammond

Name: Christopher Hammond

Title: Executive Vice President

THOMPSON STREET CAPITAL PARTNERS V, L.P.

By: Thompson Street Capital V GP, L.P.
Its general partner

By: Thompson Street Capital LLC,
Its general partner

By: /s/ James A. Cooper

Name: James A. Cooper

Title: Managing Principal

[Signature Page to Securities Purchase Agreement]

Exhibit 21.1

Fox Factory Holding Corp.
List of Subsidiaries as of December 30, 2022

Company Name	State or Other Jurisdiction of Incorporation or Organization	Name under which Business is Conducted
Fox Factory Australia Pty Ltd	Australia	Sola Sport/Fox Australia
RFE Holding (Canada) Corp.	British Columbia, Canada	Race Face / Easton
Fox Factory, Inc.	California	Fox Factory, Inc.
FF US Holding Corp.	Delaware	FF US Holding Corp.
FF US Acquisition Corp.	Delaware	Tuscany
ST USA Holding Corp.	Delaware	Sport Truck, USA
RT Acquisition Corp.	Delaware	Ridetech
SCA Performance Holdings, Inc.	Delaware	SCA Performance Holdings, Inc.
SCA Performance, Inc.	Delaware	SCA Performance, Inc.
Rocky Ridge Trucks, Inc.	Delaware	Rocky Ridge Trucks, Inc.
Rocky Ridge Real Estate, LLC	Delaware	Rocky Ridge Real Estate, LLC
Rocky Mountain Truckworks, Inc.	Delaware	Rocky Mountain Truckworks, Inc.
Shock Therapy Suspension, Inc.	Delaware	Shock Therapy
FF US Holding LLC	Georgia	FF US Holding LLC
Fox Factory GmbH	Germany	Fox Factory GmbH
FF Indiana Holding LLC	Indiana	FF Indiana Acquisition Corp.
Manifest Joy LLC	Oregon	Outside Van
Outsidetruck LLC	Oregon	Outside Van
Outsidevan LLC	Oregon	Outside Van
Outsideparts LLC	Oregon	Outside Van
Fox Factory Switzerland GmbH	Switzerland	Fox Factory Switzerland GmbH LLC
Fox Factory UK Limited	United Kingdom	Fox Factory UK Limited

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated February 23, 2023, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Fox Factory Holding Corp. on Form 10-K for the year ended December 30, 2022. We consent to the incorporation by reference of said reports in the Registration Statements of Fox Factory Holding Corp. on Forms S-8 (File No. 333-264858, File No. 333-257516 and File No. 333-192238) and Form S-3ASR (File No. 333-239231).

/s/ GRANT THORNTON LLP

San Francisco, California
February 23, 2023

EXHIBIT 31.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Michael C. Dennison, certify that:

1. I have reviewed this Annual Report on Form 10-K of Fox Factory Holding Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Michael C. Dennison

Michael C. Dennison
Chief Executive Officer
February 23, 2023

EXHIBIT 31.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Scott R. Humphrey, certify that:

1. I have reviewed this Annual Report on Form 10-K of Fox Factory Holding Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Scott R. Humphrey

Scott R. Humphrey
Chief Financial Officer and Treasurer
February 23, 2023

EXHIBIT 32.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K for the fiscal year ended December 30, 2022 of Fox Factory Holding Corp. (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael C. Dennison, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Michael C. Dennison

Michael C. Dennison
Chief Executive Officer
(Principal Executive Officer)
February 23, 2023

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Fox Factory Holding Corp. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

EXHIBIT 32.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K for the fiscal year ended December 30, 2022 of Fox Factory Holding Corp. (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Scott R. Humphrey, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Scott R. Humphrey

Scott R. Humphrey
Chief Financial Officer and Treasurer
(Principal Financial Officer and Treasurer)
February 23, 2023

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Fox Factory Holding Corp. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.