

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): **July 12, 2021**

Charles & Colvard, Ltd.

(Exact name of registrant as specified in its charter)

North Carolina
(State or other jurisdiction of
incorporation)

000-23329
(Commission File
Number)

56-1928817
(I.R.S. Employer
Identification No.)

170 Southport Drive
Morrisville, North Carolina
(Address of principal executive offices)

27560
(Zip Code)

(919) 468-0399
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, no par value per share	CTHR	The Nasdaq Stock Market LLC

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

Emerging growth company

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

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

Effective July 7, 2021, Charles & Colvard, Ltd. (the “Company”), obtained a \$5,000,000 cash secured credit facility (the “Credit Facility”) from JPMorgan Chase Bank, N.A. (“JPMC”). The Credit Facility may be used for general corporate and working capital purposes, including, subject to certain limitations set forth under the Credit Facility, for permitted acquisitions, additional indebtedness for borrowed money, installment obligations, and obligations under capital and operating leases. The Credit Facility will mature on July 31, 2022, and is secured by a deposit account held by JPMC in the amount of \$5,050,000.

The Credit Facility is evidenced by a credit agreement, (the “Credit Agreement”), a Line of Credit Note (the “Note”) and other customary ancillary documents related thereto, executed on July 12, 2021. The Credit Agreement, Note, and ancillary documents contain customary covenants, representations, fees, as well as indemnity, expense reimbursement, and confidentiality provisions. The Credit Facility contains no financial covenants. JPMC is permitted to assign the Credit Facility.

The Company has not requested any advances under the Credit Facility and there is currently no outstanding balance.

There are no mandatory prepayments or line reductions. The Company may elect to prepay advances in whole or in part at any time without penalty.

Amounts advanced under the Credit Facility will accrue interest at a variable rate equal to the sum of the adjusted LIBOR rate (reset monthly) multiplied by a statutory reserve rate for eurocurrency funding as established by the U.S. Federal Reserve Board, plus a margin of 1.25% per annum. Interest is calculated monthly based on the actual days in a month based on a year of 360 days and payable monthly in arrears. Upon and during the continuance of a default under the Credit Facility, JPMC may increase the interest to an amount which is 3% in excess of the interest rate otherwise applicable.

Events of default under the Credit Facility include, without limitation, a change in control, a material adverse change in the business of the Company or in its ability to perform its obligations under the Credit Facility, and other circumstances that JPMC believes may impair the prospect of repayment. If an event of default occurs, JPMC is entitled to take enforcement actions, including accelerating amounts due under the Credit Facility and exercising setoff rights.

The foregoing description of the Credit Facility does not purport to be complete and is qualified in its entirety by reference to the Credit Agreement and Note, a copy of each of which is filed as Exhibits 10.1 and 10.2, respectively, to this Form 8-K and are incorporated herein by reference. A copy of the press release announcing the Credit Facility is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description of Document
10.1	Credit Agreement, dated as of July 12, 2021, by and among Charles & Colvard, Ltd., and JPMorgan Chase Bank, N.A.
10.2	Line of Credit Note, dated as of July 12, 2021, by Charles & Colvard, Ltd. to JP Morgan Chase Bank, N.A.
99.1	Press Release, dated July 13, 2021

SIGNATURE

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

Charles & Colvard, Ltd.

July 13, 2021

By: /s/ Clint J. Pete

Clint J. Pete

Chief Financial Officer



This agreement dated as of July 7, 2021 is between JPMorgan Chase Bank, N.A. (together with its successors and assigns, the "**Bank**"), whose address is 2000 Regency Pkwy, Floor 04, Cary, NC 27518-8506, and Charles & Colvard, Ltd. (individually, the "**Borrower**" and if more than one, collectively, the "**Borrowers**"), whose address is 170 Southport Dr, Morrisville, NC 27560.

1. Credit Facilities.

1.1 Scope. This agreement governs Facility A, and, unless otherwise agreed to in writing by the Bank and the Borrower or prohibited by any Legal Requirement, governs the Credit Facilities as defined below. The Bank has established procedures for the Borrower to obtain advances under any Credit Facilities. Any other procedures that the Bank agrees to regarding obtaining advances, including automatic loan sweeps, shall not change the terms or conditions of this agreement or the other Related Documents regarding the Credit Facilities.

1.2 Facility A (Line of Credit). The Bank has approved a credit facility to the Borrower in a principal amount not to exceed \$5,000,000.00, at any one time outstanding ("**Facility A**"). Credit under Facility A shall be repaid as described in a Line of Credit Note executed at the same time as this agreement, along with any renewals, modifications, extensions, rearrangements, restatements and replacements or substitutions.

Upfront Fee. The Borrower will pay to the Bank an upfront fee of \$10,000.00 (Ten Thousand and 00/100 Dollars) on the closing date which Borrower acknowledges has been fully earned by the Bank. Once paid, the upfront fee shall not be refundable under any circumstances, regardless of whether the transactions or borrowings contemplated hereunder are consummated. The upfront fee shall be paid in U.S. dollars in immediately available funds.

2. Definitions and Interpretations.

2.1 Definitions. As used in this agreement, the following terms have the following respective meanings:

- A. "Affiliate"** means any Person directly or indirectly controlling, controlled by or under common control with, another Person.
 - B. "Anti-Corruption Laws"** means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.
 - C. "Collateral"** means all Property, now or in the future subject to any Lien in favor of the Bank, intending to secure, any of the Liabilities.
 - D. "Credit Facilities"** means all extensions of credit from the Bank to the Borrower, existing or extended with this agreement, or hereafter arising.
 - E. "Distributions"** means all dividends and other distributions made to any Equity Owners, other than salary, bonuses, and other compensation for services expended in the current accounting period.
 - F. "Equity Interests"** means equity ownership interests in a business or not for profit entity, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest. **G. "Equity Owner"** means an owner of any Equity Interests.
 - H. "GAAP"** means generally accepted accounting principles in effect from time to time in the United States of America, consistently applied.
 - I. "Legal Requirement"** means any law, order, Sanctions, regulation (or interpretation of any of the foregoing) of any federal, state or local governmental authority or self regulatory organization having jurisdiction over the Bank, any Obligor or any of its Subsidiaries or their respective Properties or any agreement by which any of them is bound.
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- J.** "**Liabilities**" means all indebtedness, liabilities and obligations of every kind and character of the Borrower to the Bank, whether the obligations, indebtedness and liabilities are individual, joint and several, contingent or otherwise, now or hereafter existing, including, without limitation, all liabilities, interest, costs and fees, arising under or from any note, open account, overdraft, credit card, lease, Rate Management Transaction, letter of credit application, endorsement, surety agreement, guaranty, acceptance, foreign exchange contract or depository service contract, whether payable to the Bank or to a third party and subsequently acquired by the Bank, any monetary obligations (including interest) incurred or accrued during the pendency of any bankruptcy, insolvency, receivership or other similar proceedings, regardless of whether allowed or allowable in such proceeding, and all renewals, extensions, modifications, consolidations, rearrangements, restatements, replacements or substitutions of any of the foregoing.
- K.** "**Lien**" means any mortgage, deed of trust, pledge, charge, encumbrance, security interest, collateral assignment or other lien or restriction of any kind.
- L.** "**Notes**" means all promissory notes, instruments and/or contracts now or hereafter evidencing the Credit Facilities.
- M.** "**Obligor**" means any Borrower, guarantor, surety, co-signer, endorser, general partner or other Person who may now or in the future be obligated to pay any of the Liabilities, and any Person providing Collateral.
- N.** "**Organizational Documents**" means, with respect to any Person, certificates of existence or formation, documents establishing or governing the Person including all amendments, and modifications.
- O.** "**Person**" means any individual, business or other entity, or any governmental authority.
- P.** "**Permitted Acquisition**" means any acquisition (whether by purchase, merger, consolidation or otherwise) or series of related acquisitions by the Borrower of all or substantially all the assets of or all or substantially all the Equity Interests in, a Person or division or line of business of a Person; *provided that*: (a) the total cash consideration of such acquisition shall not exceed (i) in connection with any single acquisition, \$10,000,000 and (ii) for all acquisitions made during any fiscal year of the Borrower, \$25,000,000, (b) at the time of and immediately after giving effect thereto on a pro forma basis, no default or event of default has occurred and is continuing or would arise under any provision of this agreement or any of the Related Documents and each of the representations and warranties under this agreement and the Related Documents is true and correct in all respects, (b) such Person or division or line of business is engaged in the same, similar or complementary line of business as the Borrower and the Subsidiaries, (c) the Borrower shall certify (and provide the Bank with a pro forma calculation in form and substance satisfactory to the Bank) that, immediately before and after giving effect to the completion of any such acquisition, the Borrower is in compliance on a pro forma basis with the financial covenants set forth in Section 5.2 hereof (if any), (d) in connection with an acquisition of the Equity Interests of any Person, all Liens on the Property of such Person shall be terminated unless the Bank in its sole discretion consents otherwise, (e) such acquisition is not a hostile or contested acquisition, (f) the Borrower (i) has executed and delivered, or caused to be executed and delivered, such documentation or other instruments (including, without limitation, authorizing documents described in Section 3.1 D. below, security agreements, pledge agreements, control agreements and/or guarantees) and (ii) taken, or authorized the Bank to take on its behalf, all actions (including, without limitation, the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents in connection with such acquisition), in each case, as requested by the Bank in its sole discretion, with respect to any newly acquired or formed Subsidiaries, (g) the Borrower has provided to the Bank all documentation and other information regarding such newly formed or acquired Subsidiaries as may be required to comply with the applicable "know your customer" rules and regulations, including the USA Patriot Act and, and (h) in the case of an acquisition, merger or consolidation involving the Borrower or a Subsidiary of the Borrower, the Borrower or such Subsidiary is the surviving entity of such merger and/or consolidation.
- Q.** "**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.
- R.** "**Rate Management Transaction**" means any transaction (including an agreement with respect thereto) that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option, derivative transaction or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

- S. "**Related Documents**" means this agreement, and any other instrument or document executed in connection with this agreement or with any of the Liabilities.
- T. "**Sanctions**" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, and (b) if the Borrower has operations outside of the United States, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.
- U. "**Sanctioned Country**" means, at any time, a country, region or territory which is the subject or target of any Sanctions.
- V. "**Sanctioned Person**" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by (i) the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, and (ii) if the Borrower has operations outside of the United States, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority (b) any Person operating, organized or resident in a Sanctioned Country (c) any Person controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanction.
- W. "**Subsidiary**" means, as to any particular Person (the "parent"), a Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as well as any other Person of which fifty percent (50%) or more of the Equity Interests is directly or indirectly owned, controlled or held, by the parent or by any Person or Persons controlled by the parent, either alone or together with the parent.

2.2 **Interpretations.** If any provision of this agreement cannot be enforced, the remaining portions of this agreement shall continue in effect. The provisions of this agreement shall control in the event of any conflict or inconsistency between this agreement and the provisions of any other Related Documents. Any reference to a particular document includes all modifications, supplements, replacements, renewals or extensions of that document. Whenever the Bank's determination, consent, or approval is required under this agreement or the other Related Documents or whenever the Bank may at its option take or refrain from taking any action under this agreement or the other Related Documents, such decision shall be in the sole discretion of the Bank.

3. **Conditions Precedent to Extensions of Credit.**

- 3.1 The following conditions must be satisfied before any extension of credit governed by this agreement must be made by the Bank:
- A. **Representations.** The Borrower and any other parties, represent that all statements and information contained in the Related Documents is true and accurate as of the date of the request for credit;
 - B. **No Event of Default.** There has been no default, event of default or event that would constitute a default or event of default (pending giving of notice or a lapse of time or both), of any provision of this agreement, the Notes or any other Related Documents or would result from the extension of credit;
 - C. **Loan Documents.** The Notes, and any other documents which the Bank may reasonably require to give effect to the transactions described in this agreement or the other Related Documents have been delivered to the Bank in form and substance satisfactory to the Bank;
 - D. **Organizational and Authorizing Documents.** The Organizational Documents and all certificates of authority to transact business, certificates of good standing, borrowing resolutions, appointments, officer's certificates, certificates of incumbency, and other documents which empower and authorize or evidence the power and authority of the Borrower or any Obligor (each a "Loan Party") to execute and deliver the Notes and Related Documents have been delivered to the Bank in a form and substance satisfactory to the Bank and confirm that the execution and delivery of the Notes and Related Documents (i) are within the Loan Parties' powers, (ii) have been duly authorized by all necessary action of such Loan Parties' governing body, and (iii) do not contravene the terms of its Organizational Documents or other agreement or document governing its affairs; and

E. **No Prohibition or Onerous Conditions.** The making of the extension of credit is not prohibited by and does not subject the Bank, any Obligor, or any Subsidiary of the Borrower to any penalty or onerous condition.

4. **Affirmative Covenants.** The Borrower agrees to do, and cause each of its Subsidiaries to do, each of the following:

- 4.1 **Insurance.** Maintain insurance with financially sound and reputable insurers, that are satisfactory to the Bank. The insurance will cover its Property and business against those casualties and contingencies and in the types and amounts according to sound business and industry practices, and furnish to the Bank, upon request, reports on each existing insurance policy showing such information as the Bank may reasonably request.
- 4.2 **Financial Records.** Maintain proper books and records according to GAAP, that are prepared on a basis consistent with financial statements previously submitted to the Bank.
- 4.3 **Inspection.** Permit the Bank, and its agents on reasonable notice and during normal business hours to: (a) inspect and photograph its Property, to examine and copy files, books and records, and to discuss its business, operations, prospects, assets, and financial condition with the Borrower's or its Subsidiaries' officers and accountants, at times and intervals as the Bank reasonably determines;(b) perform audits, appraisals or other inspections of the Collateral, including the records and documents related to the Collateral; and (c) confirm with any Person any obligations and liabilities of the Person to the Borrower or its Subsidiaries. The Borrower will, and will cause its Subsidiaries to cooperate with any inspection, appraisal or audit.. The Borrower shall be responsible for the reasonable costs and expenses of one inspection during any 12-month period; provided, the Borrower shall be responsible for the reasonable costs and expenses of all inspections conducted while a default has occurred and is continuing.
- 4.4 **Other Agreements.** Comply in all material respects with all terms and conditions of all other material agreements, whether now or hereafter existing, between it and any other Person.
- 4.5 **Financial Reports.** Furnish to the Bank whatever information, statements, books and records the Bank may from time to time reasonably request.
- 4.6 **Notices of Claims, Litigation, Defaults, etc.** Promptly inform the Bank in writing of: (1) all existing and threatened litigation, claims, investigations, administrative proceedings and similar actions or changes in Legal Requirements directly affecting it, of which it has knowledge, that would reasonably be expected to have a materially adverse effect on its business, assets, affairs, or financial condition; (2) the occurrence of any event which gives rise to the Bank's option to terminate the Credit Facilities; (3) any additions to or changes in the locations of its businesses; and (4) any alleged breach by the Bank of any provision of this agreement or of any other Related Document.
- 4.7 **Title to Assets and Property.** Maintain good and marketable title or such other interests in and to all of its Properties consistent with past practices, except for minor imperfections of title arising in the ordinary course of the business that do not, individually or in the aggregate, materially impair the continued use and operation of the specific properties and assets to which they relate, and defend them against all claims and demands of all Persons at any time claiming any interest in them.
- 4.8 **Additional Assurances.** Promptly make, execute and deliver any and all agreements, documents, and instruments that the Bank may request to evidence any of the Credit Facilities, cure any defect in the execution and delivery of any of the Related Documents, perfect any Lien or comply with any Legal Requirement applicable to the Bank or the Credit Facilities.
- 4.9 **Employee Benefit Plans.** Maintain each employee benefit plan as to which it may have any liability, in compliance with all Legal Requirements.

4.10 Banking Relationship. Establish and maintain its primary banking depository and disbursement relationship with the Bank.

4.11 Compliance with Anti-Corruption Laws and Sanctions. Maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

5. Negative Covenants.

5.1 Without the Bank's prior written consent, the Borrower will not and no Subsidiary of the Borrower will:

- A. Debt.** Incur, contract for, assume, or permit to remain outstanding, indebtedness for borrowed money, installment obligations, or obligations under capital leases or operating leases, other than (1) unsecured trade debt incurred in the ordinary course of business, (2) indebtedness owing to the Bank, (3) indebtedness outstanding as of the date hereof that has been disclosed to the Bank in writing and that is not to be paid with proceeds of borrowings under the Credit Facilities, and (4) additional indebtedness for borrowed money, installment obligations and obligations under capital leases or operating leases not to exceed \$5,000,000 in the aggregate.
- B. Liens.** Create or permit to exist any Lien on any of its Property except: existing Liens known to and approved by the Bank; Liens to the Bank; Liens incurred in the ordinary course of business securing current nondelinquent liabilities for taxes, worker's compensation, unemployment insurance, social security and pension liabilities; and Liens incurred in connection with indebtedness permitted pursuant to Section 5.1 A (4) above.
- C. Use of Proceeds.** Use any proceeds of the Credit Facilities: (1) for any personal, family or household purpose; (2) for the purpose of "purchasing or carrying any margin stock" within the meaning of Federal Reserve Board Regulation U; (3) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws; (4) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country except to the extent permitted for a person required to comply with Sanctions; or (5) in any manner that would result in the violation of any Sanctions.
- D. Business Operations and Continuity of Operations.** (1) Engage in any business activities (a) in violation of any Legal Requirement; (b) substantially different from those in which it is presently engaged; (2) fail to maintain its existence, cease operations, liquidate, merge, transfer, acquire or consolidate with any other Person (except in connection with a Permitted Acquisition), change its name, dissolve, divide, or allocate any assets under any plan of division or similar arrangement, create any series limited liability company, allocate any property to any series, or sell any assets out of the ordinary course of business; (3) enter into or permit to exist any arrangement with any Person providing for the leasing by it of Property which has been sold or transferred by it to such Person; (4) change its business organization, the jurisdiction under which its business organization is formed or organized, or its chief executive office, or any places of its businesses; or (5) if the Borrower is an individual, change the name on his/her driver's license or state issued identification card, as applicable, without notifying the Bank within thirty (30) days of the change, or change the state of his/her principal residence, without notifying the Bank within thirty (30) days of the change.
- E. Limitation on Negative Pledge Clauses.** Enter into or permit to exist any agreement with any Person other than the Bank which prohibits or limits its ability to create or permit to exist any Lien on any of its Property, whether now owned or hereafter acquired, except and to the extent required by any provider of indebtedness permitted under 5.1.A.
- F. Conflicting Agreements.** Enter into or permit to exist any agreement containing any provision which would be violated or breached by the performance of its obligations under this agreement or any of the other Related Documents.
- G. Transfer of Ownership.** Permit the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower.

- H. Limitation on Loans, Advances, Investments, and Receivables.** Purchase, hold or acquire any Equity Interest or evidence of indebtedness of, make or permit to exist any loans or advances to, permit to exist any receivable from, or make or permit to exist any investment or acquire any interest whatsoever in, any Person, except: (1) extensions of trade credit to customers in the ordinary course of business on ordinary terms; (2) commercial paper, certificates of deposit, US Treasury or other governmental agency obligations; (3) loans, advances, investments and receivables existing as of the date of this agreement that have been disclosed to and approved by the Bank in writing and that are not to be paid with proceeds of borrowings under the Credit Facilities and (4) Equity Interests of any Subsidiaries as of the effective date of this Agreement; and (5) Permitted Acquisitions.
- I. Organizational Documents.** Unless at least thirty (30) day prior written notice is provided to the Bank, amend or modify any of its Organizational Documents.
- J. Government Regulation.** (1) Be or become subject at any time to any Legal Requirement or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits the Bank from making any advance or extension of credit to it or from otherwise conducting business with it, or (2) fail to provide documentary and other evidence of its identity as may be requested by the Bank at any time to enable the Bank to verify its identity or to comply with any applicable Legal Requirement, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.
- K. Subsidiaries.** Form, create or acquire any Subsidiary (other than in connection with a Permitted Acquisition), unless, (i) the Borrower has provided the Bank with 30 days prior written notice of such formation or acquisition and (ii) prior to or contemporaneously with the formation or acquisition of such Subsidiary, (A) the Borrower (x) has executed and delivered, or has caused such Subsidiary to execute and deliver, such documentation or other instruments (including, without limitation, authorizing documents described in Section 3.1 D. above, security agreements, pledge agreements, control agreements and/or guarantees) and (y) has taken, or has authorized the Bank to take on its behalf, all actions (including, without limitation, the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents in connection with such acquisition), in each case, as requested by the Bank in its sole discretion, with respect to any such newly acquired or formed Subsidiary, and (B) the Borrower has provided to the Bank all documentation and other information regarding such newly formed or acquired Subsidiaries as may be required to comply with the applicable “know your customer” rules and regulations, including the USA Patriot Act.

5.2 Financial Covenants. Without the prior written consent of the Bank, the Borrower will not:

Intentionally omitted.

6. Representations.

6.1 Representations and Warranties by the Borrower. To induce the Bank to enter into this agreement, the Borrower represents and warrants as of the date of this agreement and as of the date of each request for credit under the Credit Facilities that each of the following statements is true and correct and shall remain so until all Credit Facilities and all Liabilities under the Notes and other Related Documents are paid in full:

- (a) its name as it appears in this agreement is its exact name as it appears in its most recently filed public organic record and other Organizational Documents,
- (b) the execution and delivery of this agreement and the other Related Documents to which it is a party, and the performance of the obligations they impose, do not violate any Legal Requirement, conflict with any agreement by which it is bound, or require the consent or approval of any other Person,
- (c) this agreement and the other Related Documents have been duly authorized, executed and delivered by all parties thereto (other than the Bank) and are valid, enforceable and binding agreements, except as may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by general principles of equity,
- (d) all balance sheets, profit and loss statements, and other financial statements prepared in accordance with U.S. GAAP applied on a consistent basis with prior financial statements and other information furnished to the Bank are accurate and fairly reflect the financial condition of the Persons to which they apply on their effective dates, which financial condition has not changed materially and adversely since those dates,

(e) no litigation, claim, investigation, administrative proceeding or similar action is pending or, to Borrower's knowledge, threatened against it, and no other event has occurred which may materially affect it or any of its Subsidiaries' financial condition, properties, business, affairs or operations, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by the Bank in writing,

(f) all of its tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being contested by it in good faith and for which adequate reserves have been provided,

(g) it is not an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended,

(h) there are no defenses or counterclaims, offsets or adverse claims, demands or actions of any kind, personal or otherwise, that it could assert with respect to this agreement or the Credit Facilities,

(i) it owns, or is licensed to use, all trademarks, trade names, copyrights, technology, know-how and processes necessary for the continued current conduct of its business, and

(j) there has been no default, event of default or event that would constitute a default or event of default (pending giving of notice or a lapse of time or both), of any provision of this agreement, the Notes or any other Related Documents.

6.2 Representations and Warranties Regarding Anti-Corruption Laws and Sanctions. The Borrower represents and warrants as of the date of this agreement and as of the date of each request for credit under the Credit Facilities that the Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective directors and officers and to the knowledge of the Borrower its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary, any of their respective directors, officers or to the knowledge of the Borrower employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No advance, letter of credit, use of proceeds or other transaction contemplated by the Credit Facilities will violate Anti-Corruption Laws or applicable Sanctions.

7. Default/Remedies.

7.1 Events of Default/Acceleration. If any of the following events occurs, the Notes shall become due immediately, without notice, at the Bank's option:

- A. Any Obligor fails to pay when due any of the Liabilities, or any amount payable with respect to any of the Liabilities, or under any Note, any other Related Document.
- B. Any Obligor or any of its Subsidiaries: (i) fails to observe or perform any term, covenant, condition or agreement of any of the Related Documents or any other agreement, now or hereafter in effect, with the Bank, or any Affiliate of the Bank or their respective successors and assigns; or (ii) makes any materially incorrect or misleading representation to the Bank.
- C. Any Obligor (i) terminates or revokes or purports to terminate or revoke its guaranty or any Obligor's guaranty becomes unenforceable in whole or in part; or (ii) fails to perform promptly under its guaranty.
- D. Any Obligor or any of its Subsidiaries (i) defaults under the terms of any agreement or instrument relating to any debt for borrowed money (other than the debt evidenced by the Related Documents) and the effect of such default will allow the creditor to declare the debt due before its stated maturity; or (ii) fails to pay when due any other debt in excess of \$250,000 individually and \$1,000,000 in the aggregate to any Person (including the Bank), or under any agreement or instrument evidencing other debt to any Person.

- E. There is any loss, theft, damage, or destruction of any Collateral not covered by insurance, but excluding any lack of coverage representing a deductible or self-inured retention as provided in the Company's insurance policies approved by lender.
- F. Any event occurs that would permit the Pension Benefit Guaranty Corporation to terminate any employee benefit plan of any Obligor or any Subsidiary of any Obligor.
- G. Any Obligor or any of its Subsidiaries: (i) becomes insolvent or unable to pay its debts as they become due; (ii) makes an assignment for the benefit of creditors; (iii) consents to or commences any proceeding under any bankruptcy, reorganization, liquidation, insolvency or similar laws; (iv) conceals or removes any of its Property, with intent to hinder, delay or defraud any of its creditors; (v) makes or permits a transfer of any of its Property, which is reasonably likely to be characterized as fraudulent under any bankruptcy, fraudulent conveyance or similar law; or (vi) makes a transfer of any of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid.
- H. A custodian, receiver, or trustee is appointed for any Obligor or any of its Subsidiaries or for a substantial part of their respective Property.
- I. Any Obligor or any of its Subsidiaries, without the Bank's prior written consent: (i) liquidates, divides or allocates any assets under a plan of division or similar arrangement, creates any series limited liability company, allocates any property to any series, or is dissolved; (ii) merges or consolidates with any other Person (except in connection with a Permitted Acquisition); (iii) leases, sells or otherwise conveys a material part of its assets or business outside the ordinary course of its business; (iv) leases, purchases, or otherwise acquires a material part of the assets of any other Person, except (x) in the ordinary course of its business or (y) in connection with a Permitted Acquisition; or (v) agrees to do any of the foregoing; provided, however, that any Subsidiary of an Obligor may merge or consolidate with any other Subsidiary of that Obligor, or with the Obligor, so long as the Obligor is the survivor.
- J. Proceedings are commenced under any bankruptcy, reorganization, liquidation, or similar laws against any Obligor or any of its Subsidiaries and remain undismissed for sixty (60) days after commencement; or any Obligor or any of its Subsidiaries consents to the commencement of those proceedings.
- K. Any attachment, seizure, sequestration, levy, or garnishment is issued against any Property of any Obligor or any of its Subsidiaries or any Collateral.
- L. Any individual Obligor dies, or a guardian or conservator is appointed for any individual Obligor or all or any portion of their respective Property, or the Collateral.
- M. Any material adverse change occurs in: (i) the Property, financial condition, business, assets, liabilities, or operations of any Obligor or any of its Subsidiaries; (ii) any Obligor's ability to perform its obligations under the Related Documents; or (iii) the Collateral.

7.2 **Remedies.** At any time after the occurrence of a default, the Bank may do one or more of the following: (a) cease permitting the Borrower to incur any Liabilities; (b) terminate any commitment of the Bank evidenced by any of the Notes; (c) declare any of the Notes to be immediately due and payable, without notice of acceleration, presentment and demand or protest or notice of any kind, all of which are hereby expressly waived; (d) exercise all rights of setoff; and (e) exercise any and all other rights pursuant to any of the Related Documents.

- A. **Generally.** The rights of the Bank under this agreement and the other Related Documents are in addition to other rights (including without limitation, other rights of setoff) the Bank may have contractually, by law, in equity or otherwise, all of which are cumulative and hereby retained by the Bank. Each Obligor agrees to stand still with regard to the Bank's enforcement of its rights, including taking no action to delay, impede or otherwise interfere with the Bank's rights to realize on any Collateral.
- B. **Bank's Right of Setoff.** If default shall have occurred, the Bank and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special time or demand, provisional or final) at any time held and other obligations at any time owing by the Bank or any Affiliate to or for the credit or the account of any Borrower against any of and all the Liabilities, irrespective of whether or not the Bank shall have made any demand under the Related Documents and although such obligations may be unmatured. The rights of the Bank under this Section are in addition to other rights and remedies (including other rights of setoff) which the Bank may have.

8. Miscellaneous.

- 8.1 Notice.** Any notices and demands under or related to this agreement shall be in writing and delivered to the Borrower at its address stated in this agreement and if to the Bank, Manager Wholesale Lending Services, JPMorgan Chase Bank, N.A., 10 S. Dearborn, IL1-1145 (Floor L2), Chicago, IL 60603-2300 with a copy addressed to Sara Coronado, JPMorgan Chase Bank, N.A., 2000 Regency Pkwy, Floor 04, Cary, NC 275188506, by one of the following means: (a) by hand; (b) by overnight courier service; or (c) by certified or registered mail. Notice shall be deemed given upon receipt. Any party may change its address for purposes of the receipt of notices and demands by giving notice of the change in the manner provided in this provision.
- 8.2 Statements.** The Bank may provide the Borrower with account statements or invoices with respect to any of the Liabilities ("Statements"). Unless otherwise agreed to herein, the Bank is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrower's convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Liabilities. If the Borrower pays the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrower shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Bank of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Bank's right to receive payment in full at another time.
- 8.3 No Waiver.** No delay on the part of the Bank in the exercise of any right or remedy waives that right or remedy. No single or partial exercise by the Bank of any right or remedy precludes any other future exercise of it or the exercise of any other right or remedy. The making of an advance during the existence of any default or subsequent to the occurrence of a default or when all conditions precedent have not been met shall not constitute a waiver of the default or condition precedent. No waiver or indulgence by the Bank of any default is effective unless it is in writing and signed by the Bank, nor shall a waiver on one occasion bar or waive that right on any future occasion.
- 8.4 Integration; Severability.** This agreement, the Notes, and the other Related Documents embody the entire agreement and understanding between the Borrower and the Bank and supersede all prior agreements and understandings relating to their subject matter. If any one or more of the obligations of the Borrower under this agreement, the Notes, or the other Related Documents or any provision thereof is held to be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining obligations of the Borrower and the remaining provisions shall not in any way be affected or impaired; and the invalidity, illegality or unenforceability in one jurisdiction shall not affect the validity, legality or enforceability of such obligations or provisions in any other jurisdiction.
- 8.5 Governing Law and Venue.** This agreement and (unless stated otherwise therein) all Related Documents shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to its laws of conflicts). The Borrower agrees that any legal action or proceeding with respect to any of its obligations under this agreement may be brought by the Bank in any state or federal court located in the State of New York, as the Bank in its sole discretion may elect. By the execution and delivery of this agreement, the Borrower submits to and accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of those courts. The Borrower waives any claim that the State of New York is not a convenient forum or the proper venue for any such suit, action or proceeding.
- 8.6 Non-Liability of the Bank.** The relationship between the Borrower on one hand and the Bank on the other hand shall be solely that of borrower and lender. The Bank shall have no fiduciary obligations to the Borrower. The Bank is not to be deemed an Affiliate of the Borrower or any of its Subsidiaries.
- 8.7 Indemnification of the Bank.** The Borrower agrees to indemnify, defend and hold the Bank, its parent companies, Subsidiaries, Affiliates, their respective successors and assigns and each of their respective shareholders, directors, officers, employees and agents (collectively, the "**Indemnified Persons** ") harmless for, from any and against any and all loss, liability, obligation, damage, penalty, judgment, claim, deficiency, expense, interest, penalties, attorneys' fees (including the fees and expenses of any attorneys engaged by the Indemnified Person) and amounts paid in settlement ("**Claims**") to which any Indemnified Person may become subject arising out of or relating to the Credit Facilities, the Liabilities under this agreement or any other Related Documents or the Collateral, except to the limited extent that the Claims are proximately caused by the Indemnified Person's gross negligence or willful misconduct. The indemnification provided for in this paragraph shall survive the termination of this agreement and shall not be affected by the presence, absence or amount of or the payment or nonpayment of any claim under, any insurance.

- 8.8 Counterparts.** This agreement and any Related Document may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same of such agreement or document.
- 8.9 Advice of Counsel.** The Borrower acknowledges that it has had the opportunity to be advised by counsel, in the negotiation, execution and delivery of this agreement and any other Related Documents.
- 8.10 Recovery of Additional Costs.** If the imposition of or any change in any Legal Requirement, or the interpretation or application of any thereof by any court or administrative or governmental authority (including any request or policy not having the force of law) shall impose, modify, or make applicable any taxes (except federal, state, or local income or franchise taxes imposed on the Bank), reserve requirements, liquidity requirements, capital adequacy requirements, Federal Deposit Insurance Corporation (FDIC) deposit insurance premiums or assessments, or other obligations which would (A) increase the cost to the Bank for extending, maintaining or funding the Credit Facilities, (B) reduce the amounts payable to the Bank under the Credit Facilities, or (C) reduce the rate of return on the Bank's capital as a consequence of the Bank's obligations with respect to the Credit Facilities, then the Borrower agrees to pay the Bank such additional amounts as will compensate the Bank therefor, within five (5) days after the Bank's written demand for such payment. The Bank's demand shall be accompanied by an explanation of such imposition or charge and a calculation in reasonable detail of the additional amounts payable by the Borrower, which explanation and calculations shall be conclusive in the absence of manifest error.
- 8.11 Expenses.** To the extent not prohibited by law, and regardless of whether the transactions contemplated by this agreement are consummated, the Borrower is liable to the Bank and agrees to pay on demand all reasonable costs and expenses of every kind incurred (or charged by internal allocation) in connection with the negotiating, preparing, making, servicing and collection (in bankruptcy or otherwise) of the Credit Facilities and the realization on any Collateral and any other amounts owed under this agreement or the Related Documents, including without limitation reasonable attorneys' fees and court costs. The obligations of the Borrower under this section shall survive the termination of this agreement.
- 8.12 Assignments.** The Borrower agrees that the Bank may at any time sell, assign or transfer one or more interests or participations in all or any part of its rights and obligations in the Notes to one or more purchasers whether or not related to the Bank. Notwithstanding anything to the contrary in this agreement, the Bank may at any time pledge or assign a security interest in all of any portion of its rights under this agreement to secure obligations of the Bank to a Federal Reserve Bank or a Federal Home Loan Bank; provided that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.
- 8.13 Marketing Consent.** The Borrower hereby authorizes the Bank, at Bank's sole expense, and without any prior approval by or compensation to the Borrower, to include the Borrower's name and logo in advertising, marketing, tombstones, case studies and training materials, posted on the Internet (including social media), on the Bank's Intranet, in pitchbooks and materials sent to prospective and existing customers, in newspapers or journals and to give such other publicity to this agreement and any related products and services, as Bank may from time to time determine in its sole discretion.
- 8.14 Waivers.** To the maximum extent not prohibited by applicable Legal Requirements, each Obligor waives (a) any right to receive notice of the following matters before the Bank enforces any of its rights: (i) any demand, diligence, presentment, dishonor and protest, or (ii) any action that the Bank takes regarding any Person, any Collateral, or any of the Liabilities, that it might be entitled to by law or under any other agreement; (b) any right to require the Bank to proceed against the Borrower, any other Obligor or any Collateral, or pursue any remedy in the Bank's power to pursue; (c) any defense based on any claim that any Obligor's obligations exceed or are more burdensome than those of the Borrower; (d) the benefit of any statute of limitations affecting liability of any Obligor or the enforcement hereof; (e) any defense arising by reason of any disability or other defense of the Borrower or by reason of the cessation from any cause whatsoever (other than payment in full) of the obligation of the Borrower for the Liabilities; and (f) any defense based on or arising out of any defense that the Borrower may have to the payment or performance of the Liabilities or any portion thereof. Each Obligor consents to any extension or postponement of time of its payment without limit as to the number or period, to any substitution, exchange or release of all or any part of any Collateral, to the addition of any other party, and to the release or discharge of, or suspension of any rights and remedies against, any Obligor.

- 8.15 Confidentiality.** The Bank agrees that it will treat information provided by the Borrower or its representatives to the Bank (the "**Information**") as confidential; provided, however, that the Bank may disclose the Information (a) to its Affiliates and its and its Affiliates' directors, employees, officers, auditors, consultants, agents, counsel and advisors (such Affiliates and such Persons collectively, "**Representatives**"), it being understood that its Representatives shall be informed by the Bank of the confidential nature of such Information and be instructed to comply with the terms of this section to the same extent as is required of the Bank hereunder; (b) in response to a subpoena or other legal process, or as may otherwise be required by law, order or regulation, or upon the request or demand of any governmental or regulatory agency or authority having jurisdiction over the Bank or its Representatives or to defend or prosecute a claim brought against or by the Bank and/or its Representatives; (c) to actual and prospective assignees, actual and prospective participants, and actual and prospective swap counterparties, provided that all such participants, assignees or swap counterparties execute an agreement with the Bank containing provisions substantially the same as those contained in this section; (d) to holders of Equity Interests in the Borrower, other than holders of any Equity Interest in a publicly traded company; (e) to any Obligor; and (f) with the Borrower's consent. The restrictions contained in this section shall not apply to Information which (a) is or becomes generally available to the public other than as a result of a disclosure by the Bank or its Representatives in breach of this section, or (b) becomes available to the Bank or its Representatives from a source, other than the Borrower or one of its agents, who is not known to the Bank or its Representatives to be bound by any obligations of confidentiality to the Borrower, or (c) was known to the Bank or its Representatives prior to its disclosure to the Bank or its Representatives by the Borrower or one of its agents or was independently developed by the Bank or its Representatives, or (d) was or is, after the date hereof, disclosed (or required to be disclosed) by the Borrower to the Bank or any of its Representatives under or in connection with any existing financing relationship between the Borrower and the Bank or any of its Representatives, the disclosure of which shall be governed by the agreements executed in connection with such financing relationship. Any Person required to maintain the confidentiality of the Information as provided in this section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Bank acknowledges that it and its Representatives are aware that the United States securities laws prohibit any person who has material non-public information about a company from purchasing or selling securities of such company, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.
- 8.16 Electronic Signature.** Delivery of an executed counterpart of a signature page of this document and any Related Document that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of such document. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this document and any Related Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Bank to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it. If the Bank agrees to accept any Electronic Signature, it shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the signer(s) without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the signer(s) hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Bank and signer(s) of this document or any Related Document, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this document and any Related Document shall have the same legal effect, validity and enforceability as any paper original, (ii) agrees that the Bank may, at its option, create one or more copies of this document and any Related Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this document and any Related Document based solely on the lack of paper original copies of this document and any Related Document, respectively, including with respect to any signature pages thereto and (iv) waives any claim against the Bank for any liabilities arising solely from the Bank's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as a result of the failure of the signer(s) hereto to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature. For purposes of this section, "**Electronic Signature**" shall mean, an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

8.17 Limitation of Liability. To the extent permitted by applicable law, no party hereto shall assert, and each such party hereby waives, any liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or

as a result of, this Agreement, any other Related Document, or any agreement or instrument contemplated hereby or thereby, the Credit Facilities or the use of the proceeds thereof; provided that, nothing in this clause shall relieve the Borrower of any obligation it may have to indemnify an Indemnified Person against special, indirect, consequential or punitive damages asserted against such Indemnified Person by a third party.

9. USA PATRIOT ACT NOTIFICATION. The following notification is provided to the Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each Person that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for the Borrower: When the Borrower opens an account, if it is an individual the Bank will ask for its name, taxpayer identification number, residential address, date of birth, and other information that will allow the Bank to identify it, and, if it is not an individual the Bank will ask for its name, taxpayer identification number, business address, and other information that will allow the Bank to identify it. The Bank may also ask, if the Borrower is an individual, to see its driver's license or other identifying documents, and if it is not an individual, to see its Organizational Documents or other identifying documents.

10. WAIVER OF SPECIAL DAMAGES. WITH RESPECT TO THIS AGREEMENT AND ALL RELATED DOCUMENTS, THE BORROWER WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE BANK IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

11. JURY WAIVER. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, THE BORROWER AND THE BANK (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE BORROWER AND THE BANK ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE OTHER RELATED DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE BANK TO PROVIDE THE FINANCING DESCRIBED HEREIN.

Borrower:

Charles & Colvard, Ltd

By: /s/ Don O'Connell

Don O'Connell

Printed Name

President & CEO

Title

Date Signed: 7/12/2021

Bank:

JPMorgan Chase Bank, N.A.

By: /s/ Thomas Gallagher

Thomas Gallagher

Printed Name

VP, Credit Risk

Title

Date Signed: 7/12/2021



Line of Credit Note

\$5,000,000.00

Date: July 7, 2021

Promise to Pay. On or before July 31, 2022, for value received, Charles & Colvard, Ltd (the "Borrower") promises to pay to JPMorgan Chase Bank, N.A., whose address is 2000 Regency Pkwy, Floor 04, Cary, NC 27518-8506 (the "Bank") or order, in lawful money of the United States of America, the sum of Five Million and 00/100 Dollars (\$5,000,000.00) or so much thereof as may be advanced and outstanding, plus interest on the unpaid principal balance computed on the basis of the actual number of days elapsed in a year of 360 days at the "Adjusted LIBOR Rate" (the "Note Rate") and at the rate of 3.00% Per Annum above the Note Rate, at the Bank's option, upon the occurrence of any default under this Note, whether or not the Bank elects to accelerate the maturity of this Note, from the date such increased rate is imposed by the Bank.

Definitions. As used in this Note, the following terms have the following respective meanings:

"**Adjusted LIBOR Rate**" means, with respect to the relevant Interest Period, the sum of (i) the Applicable Margin plus (ii) (a) the LIBOR Rate applicable to such Interest Period multiplied by (b) the Statutory Reserve Rate.

"**Applicable Margin**" means 1.25% Per Annum.

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to LIBOR:

- (i) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or
- (ii) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or
- (iii) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that the term "Business Day" shall also exclude any day on which banks are not open for general business in London.

"**Federal Reserve Board**" means the Board of Governors of the Federal Reserve System of the United States of America.

"**Interest Period**" means each consecutive one month period, the first of which shall commence on the date of this Note, ending on the day which corresponds numerically to such date one (1) month thereafter, provided, however, that if there is no such numerically corresponding day in such first succeeding month, such Interest Period shall end on the last Business Day of such first succeeding month. If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next succeeding Business Day, provided, however, that if said next succeeding Business Day falls in a new calendar month, such Interest Period shall end on the immediately preceding Business Day.

"**LIBOR Rate**" means with respect to any LIBOR advance for any Interest Period, the London interbank offered rate ("**LIBOR**") as administered by ICE Benchmark Administration (or any other person that takes over the administration of such rate for Dollars, the "**IBA**") for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as shall be selected by the Bank in its reasonable discretion; in each case, the "LIBOR Screen Rate") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; *provided that*, if any LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Note. If no LIBOR Screen Rate is available to the Bank, the applicable LIBOR Rate for the relevant Interest Period shall instead be the rate determined by the Bank to be the rate at which the Bank offers to place U.S. dollar deposits having a maturity equal to such Interest Period with first-class banks in the London interbank market at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period.

LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the IBA for purposes of the IBA setting LIBOR. As a result, it is possible that commencing in 2022, LIBOR may no longer be available or deemed an appropriate reference rate upon which to determine the interest rate on LIBOR Rate advances. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. In the event that a Benchmark Transition Event occurs, the "Alternate Rate of Interest" provision below provides a mechanism for determining an alternative rate of interest. The Bank will notify the Borrower in advance of any change to the reference rate upon which the interest rate on LIBOR Rate advances is based. However, the Bank does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or other rates in the definition of "LIBOR Rate" or with respect to any alternative, successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBOR Rate or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.

"**Per Annum**" means for a year deemed to be comprised of 360 days.

"**Prime Rate**" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Bank) or any similar release by the Federal Reserve Board (as determined by the Bank). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) established by the Federal Reserve Board to which the Bank is subject with respect to the Adjusted LIBOR Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Federal Reserve Board). Such reserve percentages shall include those imposed pursuant to such Regulation D of the Federal Reserve Board. LIBOR Rate advances shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Bank under such Regulation D of the Federal Reserve Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

Illegality/Temporary Unavailability. If:

- (i) any applicable domestic or foreign law, treaty, rule or regulation now or later in effect (whether or not it now applies to the Bank) or the interpretation or administration thereof by a governmental authority charged with such interpretation or administration, or compliance by the Bank with any guideline, request or directive of such an authority (whether or not having the force of law), shall make it unlawful or impossible for the Bank to maintain or fund the advances evidenced by this Note, or
- (ii) the Bank determines that quotations of interest rates for the relevant deposits referred to in the definition of Adjusted LIBOR Rate are not being provided for purposes of determining the interest rate on the advances evidenced by this Note, or
- (iii) the Bank determines that the relevant interest rates referred to in the definition of Adjusted LIBOR Rate do not accurately cover the cost to the Bank of making funding or maintaining the advances evidenced by this Note,

then, upon notice of such circumstances from the Bank to the Borrower: (a) the obligation of the Bank to make advances shall be suspended until the Bank notifies the Borrower that the circumstances giving rise to the suspension no longer exists, and (b) subject to the terms and conditions of this Note and the other Related Documents, the entire outstanding balance of any advance shall be replaced with an advance bearing interest at the greater of (x) Prime Rate and (y) 2.50% (the "**Interim Rate**"), and the Borrower may request advances upon this Note bearing interest at the Interim Rate.

Alternate Rate of Interest. If a Benchmark Transition Event occurs, Bank may, by notice to Borrower, select an alternate rate of interest for LIBOR that gives due consideration to the then-evolving or prevailing market convention for determining a rate of interest for loans in US Dollars at such time (the "**Alternate Rate**"); Borrower acknowledges that the Alternate Rate may include a mathematical adjustment using any then-evolving or prevailing market convention or method for determining a spread adjustment for the replacement of LIBOR. For avoidance of doubt, all references to LIBOR shall be deemed to be references to the Alternate Rate when the Alternate Rate becomes effective in accordance with this section. In addition, the Bank will have the right, from time to time by notice to Borrower to make technical, administrative or operational changes (including, without limitation, changes to the definition of "Interest Period", timing and frequency of determining rates and making payments of interest and other administrative matters) that the Bank decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of the Alternate Rate. The Alternate Rate, together with all such technical, administrative and operational changes as specified in any notice, shall become effective at the later of (i) the fifth Business Day after the Bank has provided notice (including without limitation for this purpose, by electronic means) to the Borrower (the "**Notice Date**") and (ii) a date specified by the Bank in the notice, without any further action or consent of the Borrower, so long as Bank has not received, by 5:00 pm Eastern time on the Notice Date, written notice of objection to the Alternate Rate from the Borrower. Any determination, decision, or election that may be made by the Bank pursuant to this section, including any determination with respect to a rate or adjustment or the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the Borrower. Until an Alternate Rate shall be determined in accordance with this section, the interest rate shall be the Interim Rate. In no event shall the Alternate Rate be less than zero.

Interest/Usury. In no event shall the interest rate exceed the maximum rate allowed by law. Any interest payment that would for any reason be unlawful under applicable law shall be applied to principal.

Interest will be computed on the unpaid principal balance from the date of each borrowing.

Interest Payments. Until maturity, the Borrower will pay consecutive monthly installments of interest only commencing July 31, 2021.

The Borrower shall make all payments on this Note and the other Related Documents, without setoff, deduction, or counterclaim, to the Bank at the Bank's address above or at such other place as the Bank may designate in writing. If any payment of principal or interest on this Note shall become due on a day that is not a Business Day, the payment will be made on the next succeeding Business Day. Payments shall be allocated among principal, interest and fees at the discretion of the Bank unless otherwise agreed or required by applicable law. Acceptance by the Bank of any payment that is less than the payment due at that time shall not constitute a waiver of the Bank's right to receive payment in full at that time or any other time.

Authorization for Direct Payments (ACH Debits). To effectuate any payment due under this Note or under any other Related Documents, the Borrower hereby authorizes the Bank to initiate debit entries to Account Number _____ at the Bank and to debit the same to such account. This authorization to initiate debit entries shall remain in full force and effect until the Bank has received written notification of its termination in such time and in such manner as to afford the Bank a reasonable opportunity to act on it. The Borrower represents that the Borrower is and will be the owner of all funds in such account. The Borrower acknowledges: (1) that such debit entries may cause an overdraft of such account which may result in the Bank's refusal to honor items drawn on such account until adequate deposits are made to such account; (2) that the Bank is under no duty or obligation to initiate any debit entry for any purpose; and (3) that if a debit is not made because the abovereferenced account does not have a sufficient available balance, or otherwise, the payment may be late or past due.

Late Fee. Any principal or interest which is not paid within 10 days after its due date (whether as stated, by acceleration or otherwise) shall be subject to a late payment charge of five percent (5.00%) of the total payment due, in addition to the payment of interest, up to the maximum amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per late charge. The Borrower agrees to pay and stipulates that five percent (5.00%) of the total payment due is a reasonable amount for a late payment charge. The Borrower shall pay the late payment charge upon demand by the Bank or, if billed, within the time specified.

Purpose of Loan. The Borrower acknowledges and agrees that this Note evidences a loan for a business, commercial, agricultural or similar commercial enterprise purpose, and that no advance shall be used for any personal, family or household purpose. The proceeds of the loan shall be used only for the Borrower's general corporate purposes.

Credit Facility. The Bank has approved a credit facility to the Borrower in a principal amount not to exceed the face amount of this Note. The credit facility is in the form of advances made from time to time by the Bank to the Borrower. This Note evidences the Borrower's obligation to repay those advances. The aggregate principal amount of debt evidenced by this Note is the amount reflected from time to time in the records of the Bank. Until the earliest to occur of maturity, any default, event of default, or any event that would constitute a default or event of default but for the giving of notice, the lapse of time or both, the Borrower may borrow, pay down and reborrow under this Note subject to the terms of the Related Documents.

Miscellaneous. This Note binds the Borrower and its successors, and benefits the Bank, its successors and assigns. Any reference to the Bank includes any holder of this Note. This Note is subject to that certain Credit Agreement by and between the Borrower and the Bank, dated April 5, 2021, and all amendments, restatements and replacements thereof (the "Credit Agreement") to which reference is hereby made for a more complete statement of the terms and conditions under which the loan evidenced hereby is made and is to be repaid. The terms and provisions of the Credit Agreement are hereby incorporated and made a part hereof by this reference thereto with the same force and effect as if set forth at length herein. No reference to the Credit Agreement and no provisions of this Note or the Credit Agreement shall alter or impair the absolute and unconditional obligation of the Borrower to pay the principal and interest on this Note as herein prescribed. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. If any one or more of the obligations of the Borrower under this Note or any provision hereof is held to be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining obligations of the Borrower and the remaining provisions shall not in any way be affected or impaired; and the invalidity, illegality or unenforceability in one jurisdiction shall not affect the validity, legality or enforceability of such obligations or provisions in any other jurisdiction.

Time is of the essence under this Note and in the performance of every term, covenant and obligation contained herein.

Address: 170 Southport Dr
Morriesville, NC 27560

Borrower:

Charles & Colvard, Ltd

By: /s/ Don O'Connell

Don O'Connell
Printed Name

President & CEO
Title

Date 7/12/2021

Signed: _____



CHARLES & COLVARD

Charles & Colvard Forms Strategic Banking Relationship with JPMorgan Chase

RESEARCH TRIANGLE PARK, N.C. – July 13, 2021 – Charles & Colvard, Ltd. (Nasdaq: CTHR) (the “Company”), a globally recognized fine jewelry company specializing in lab created moissanite and lab grown diamonds, announced its new strategic commercial banking relationship with JPMorgan Chase Bank, N.A., which includes entering into a \$5 million credit facility, executed July 12, 2021, following the termination of the Company’s prior credit facility with White Oak Commercial Finance, effective July 9, 2021. This broad-ranging banking relationship provides a foundation for the Company to solidify its financial objectives and a basis to expand its financial capabilities going forward.

“I believe this transition is a great move for the company and positions us to be able to scale our business in a meaningful way,” said Don O’Connell, President and CEO of Charles & Colvard. “We value JPMorgan Chase’s banking expertise and can tap into their creative solutions for all of our financial and banking needs. This strategic partnership allows us to execute on our key initiatives in order to take the business to the next level.”

“By aligning with a global financial firm like JPMorgan Chase, Charles & Colvard gains access to our global banking platform, expertise in e-commerce, and innovative banking solutions, to help fuel their momentum,” said Leon Chisolm, Commercial Banking Market Executive for the Triangle region. “Charles & Colvard is at a perfect point to capitalize on their business model, and we are pleased to be their financial services provider as they grow and scale.”

About Charles & Colvard, Ltd.

Charles & Colvard, Ltd. (Nasdaq: CTHR) believes fine jewelry can be accessible, beautiful and conscientious. Charles & Colvard is the original pioneer of lab-created moissanite, a rare gemstone formed from silicon carbide. The Company brings revolutionary gemstones and jewelry to market through its pinnacle Forever One™ moissanite brand and its premium Caydia™ lab grown diamond brand. Consumers seek Charles & Colvard fashion, bridal and fine jewelry because of its exceptional quality, incredible value and shared beliefs in environmental and social responsibility. Charles & Colvard was founded in 1995 and is based in North Carolina's Research Triangle Park. For more information, please visit www.charlesandcolvard.com.

Contacts:

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