

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

FORM 10-Q

(Mark One)

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

For the Quarterly Period Ended June 30, 2023

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 **1-16811**



**United States Steel Corporation**

**United States Steel Corporation**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**25-1897152**

(IRS Employer Identification No.)

**600 Grant Street, Pittsburgh, PA**

(Address of principal executive offices)

**15219-2800**

(Zip Code)

**(412) 433-1121**

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
United States Steel Corporation Common Stock	X	New York Stock Exchange
United States Steel Corporation Common Stock	X	Chicago Stock Exchange

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. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company  Emerging growth company

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

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

Common stock outstanding at July 24, 2023 – 222,963,794 shares

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### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report contains information that may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We intend the forward-looking statements to be covered by the safe harbor provisions for forward-looking statements in those sections. Generally, we have identified such forward-looking statements by using the words “believe,” “expect,” “intend,” “estimate,” “anticipate,” “project,” “target,” “forecast,” “aim,” “should,” “plan,” “goal,” “future,” “will,” “may” and similar expressions or by using future dates in connection with any discussion of, among other things, the construction or operation of new or existing facilities or operating capabilities, the timing, size and form of share repurchase transactions, operating or financial performance, trends, events or developments that we expect or anticipate will occur in the future, statements relating to volume changes, share of sales and earnings per share changes, anticipated cost savings, potential capital and operational cash improvements, changes in the global economic environment, including supply and demand conditions, inflation, interest rates, supply chain disruptions and changes in prices for our products, international trade duties and other aspects of international trade policy, statements regarding our future strategies, products and innovations, statements regarding our greenhouse gas emissions reduction goals, statements regarding existing or new regulations and statements expressing general views about future operating results. However, the absence of these words or similar expressions does not mean that a statement is not forward-looking. Forward-looking statements are not historical facts, but instead represent only the Company’s beliefs regarding future events, many of which, by their nature, are inherently uncertain and outside of the Company’s control. It is possible that the Company’s actual results and financial condition may differ, possibly materially, from the anticipated results and financial condition indicated in these forward-looking statements. Management believes that these forward-looking statements are reasonable as of the time made. However, caution should be taken not to place undue reliance on any such forward-looking statements because such statements speak only as of the date when made. Our Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. In addition, forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from our Company’s historical experience and our present expectations or projections. These risks and uncertainties include, but are not limited to, the risks and uncertainties described in this report and in “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 and those described from time to time in our future reports filed with the Securities and Exchange Commission.

References in this Quarterly Report on Form 10-Q to (i) “U. S. Steel,” “the Company,” “we,” “us,” and “our” refer to United States Steel Corporation and its consolidated subsidiaries unless otherwise indicated by the context and (ii) “Big River Steel” refers to Big River Steel Holdings LLC and its direct and indirect subsidiaries unless otherwise indicated by the context.

**UNITED STATES STEEL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS**  
(Unaudited)

(Dollars in millions, except per share amounts)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
<b>Net sales:</b>				
Net sales	\$ 4,520	\$ 5,794	\$ 8,432	\$ 10,637
Net sales to related parties (Note 19)	488	496	1,046	887
Total (Note 6)	5,008	6,290	9,478	11,524
<b>Operating expenses (income):</b>				
Cost of sales (excludes items shown below)	4,161	4,661	8,114	8,484
Selling, general and administrative expenses	103	112	202	229
Depreciation, depletion and amortization	224	198	445	396
Earnings from investees	(38)	(95)	(25)	(131)
Asset impairment charges	—	151	4	157
Restructuring and other charges (Note 20)	2	17	3	34
Other gains, net	(8)	(8)	(18)	(17)
Total	4,444	5,036	8,725	9,152
<b>Earnings before interest and income taxes</b>	<b>564</b>	<b>1,254</b>	<b>753</b>	<b>2,372</b>
Interest expense	20	39	47	89
Interest income	(34)	(4)	(64)	(5)
Other financial costs	6	18	12	20
Net periodic benefit income	(41)	(61)	(83)	(122)
Net gain from investments related to active employee benefits (Note 16)	(8)	—	(30)	—
Net interest and other financial benefits	(57)	(8)	(118)	(18)
<b>Earnings before income taxes</b>	<b>621</b>	<b>1,262</b>	<b>871</b>	<b>2,390</b>
Income tax expense (Note 12)	144	284	195	530
Net earnings	477	978	676	1,860
Less: Net earnings attributable to noncontrolling interests	—	—	—	—
<b>Net earnings attributable to United States Steel Corporation</b>	<b>\$ 477</b>	<b>\$ 978</b>	<b>\$ 676</b>	<b>\$ 1,860</b>
<b>Earnings per common share (Note 13):</b>				
Earnings per share attributable to United States Steel Corporation stockholders:				
-Basic	\$ 2.12	\$ 3.80	\$ 2.99	\$ 7.17
-Diluted	\$ 1.89	\$ 3.42	\$ 2.67	\$ 6.45

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

**UNITED STATES STEEL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME**  
(Unaudited)

(Dollars in millions)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net earnings	\$ 477	\$ 978	\$ 676	\$ 1,860
Other comprehensive income (loss), net of tax:				
Changes in foreign currency translation adjustments	(1)	(100)	31	(128)
Changes in pension and other employee benefit accounts	(12)	1	(22)	(2)
Changes in derivative financial instruments	33	14	(11)	36
Changes in fair value of active employee benefit investments	(1)	—	2	—
Total other comprehensive income (loss), net of tax	19	(85)	—	(94)
Comprehensive income including noncontrolling interest	496	893	676	1,766
Comprehensive income attributable to noncontrolling interest	—	—	—	—
Comprehensive income attributable to United States Steel Corporation	\$ 496	\$ 893	\$ 676	\$ 1,766

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

**UNITED STATES STEEL CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEET**  
(Unaudited)

(Dollars in millions)	June 30, 2023	December 31, 2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents (Note 7)	\$ 3,080	\$ 3,504
Receivables, less allowance of \$40 and \$38	1,698	1,485
Receivables from related parties (Note 19)	166	150
Inventories (Note 8)	2,540	2,359
Other current assets	351	368
Total current assets	7,835	7,866
Long-term restricted cash (Note 7)	32	31
Operating lease assets	129	146
Property, plant and equipment	22,465	21,222
Less accumulated depreciation and depletion	13,029	12,730
Total property, plant and equipment, net	9,436	8,492
Investments and long-term receivables, less allowance of \$3 and \$4	832	840
Intangibles, net (Note 9)	457	478
Deferred income tax benefits (Note 12)	—	10
Goodwill (Note 9)	920	920
Other noncurrent assets	668	675
Total assets	\$ 20,309	\$ 19,458
<b>Liabilities</b>		
Current liabilities:		
Accounts payable and other accrued liabilities	\$ 2,940	\$ 2,873
Accounts payable to related parties (Note 19)	172	143
Payroll and benefits payable	457	493
Accrued taxes	287	271
Accrued interest	70	67
Current operating lease liabilities	48	49
Short-term debt and current maturities of long-term debt (Note 15)	98	63
Total current liabilities	4,072	3,959
Noncurrent operating lease liabilities	90	105
Long-term debt, less unamortized discount and debt issuance costs (Note 15)	4,153	3,914
Employee benefits	139	209
Deferred income tax liabilities (Note 12)	576	456
Deferred credits and other noncurrent liabilities	461	504
Total liabilities	9,491	9,147
Contingencies and commitments (Note 21)		
<b>Stockholders' Equity (Note 17):</b>		
Common stock (284,815,011 and 282,487,412 shares issued) (Note 13)	285	283
Treasury stock, at cost (60,906,149 shares and 54,089,559 shares)	(1,376)	(1,204)
Additional paid-in capital	5,218	5,194
Retained earnings	6,683	6,030
Accumulated other comprehensive loss (Note 18)	(85)	(85)
Total United States Steel Corporation stockholders' equity	10,725	10,218
Noncontrolling interests	93	93
Total liabilities and stockholders' equity	\$ 20,309	\$ 19,458

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

**UNITED STATES STEEL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENT OF CASH FLOWS**  
(Unaudited)

(Dollars in millions)	Six Months Ended June 30,	
	2023	2022
<b>Increase (decrease) in cash, cash equivalents and restricted cash</b>		
<b>Operating activities:</b>		
Net earnings	\$ 676	\$ 1,860
Adjustments to reconcile to net cash provided by operating activities:		
Depreciation, depletion and amortization	445	396
Asset impairment charges	4	157
Restructuring and other charges (Note 20)	3	34
Loss on debt extinguishment	—	2
Pensions and other postretirement benefits	(84)	(106)
Active employee benefit investments	7	—
Deferred income taxes (Note 12)	135	247
Net gain on sale of assets	(2)	(4)
Equity investee earnings, net of distributions received	(24)	(110)
Changes in:		
Current receivables	(232)	(615)
Inventories	(167)	(885)
Current accounts payable and accrued expenses	288	575
Income taxes receivable/payable	48	229
All other, net	(203)	(104)
Net cash provided by operating activities	894	1,676
<b>Investing activities:</b>		
Capital expenditures	(1,353)	(660)
Proceeds from cost reimbursement government grants (Note 21)	—	53
Proceeds from sale of assets	3	12
Other investing activities	—	(7)
Net cash used in investing activities	(1,350)	(602)
<b>Financing activities:</b>		
Issuance of long-term debt, net of financing costs (Note 15)	238	4
Repayment of long-term debt (Note 15)	(20)	(73)
Common stock repurchased (Note 22)	(150)	(522)
Proceeds from government incentives (Note 21)	—	82
Other financing activities	(42)	(39)
Net cash provided by (used in) financing activities	26	(548)
<b>Effect of exchange rate changes on cash</b>	<b>8</b>	<b>(27)</b>
<b>Net (decrease) increase in cash, cash equivalents and restricted cash</b>	<b>(422)</b>	<b>499</b>
<b>Cash, cash equivalents and restricted cash at beginning of year (Note 7)</b>	<b>3,539</b>	<b>2,600</b>
<b>Cash, cash equivalents and restricted cash at end of period (Note 7)</b>	<b>\$ 3,117</b>	<b>\$ 3,099</b>
<b>Non-cash investing and financing activities:</b>		
Change in accrued capital expenditures	\$ (146)	\$ 104
U. S. Steel common stock issued for employee/non-employee director stock plans	28	46
Capital expenditures funded by finance lease borrowings	55	26
Export Credit Agreement (ECA) financing	2	—

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

## Notes to Condensed Consolidated Financial Statements (Unaudited)

### 1. **Basis of Presentation and Significant Accounting Policies**

The year-end Consolidated Balance Sheet data was derived from audited statements but does not include all disclosures required for complete financial statements by accounting principles generally accepted in the United States of America (U.S. GAAP). The other information in these condensed financial statements is unaudited but, in the opinion of management, reflects all adjustments necessary for a fair statement of the results for the periods covered, including assessment of certain accounting matters using all available information such as consideration of forecasted financial information in context with other information reasonably available to us. However, our future assessment of our current expectations could result in material impacts to our consolidated financial statements in future reporting periods. All such adjustments are of a normal recurring nature unless disclosed otherwise. These condensed financial statements, including notes, have been prepared in accordance with the applicable rules of the Securities and Exchange Commission and do not include all of the information and disclosures required by U.S. GAAP for complete financial statements. Additional information is contained in the United States Steel Corporation Annual Report on Form 10-K for the fiscal year ended December 31, 2022, which should be read in conjunction with these condensed financial statements.

### 2. **New Accounting Standards**

During the six months ended June 30, 2023, there were no accounting standards and interpretations issued which are expected to have a material impact on the Company's financial position, operations or cash flows.

### 3. **Recently Adopted Accounting Standards**

In September 2022, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update 2022-04, *Disclosure of Supplier Finance Program Obligations* (ASU 2022-04). ASU 2022-04 requires that an entity disclose certain information about supplier finance programs used in connection with the purchase of goods and services. ASU 2022-04 is effective for all entities with fiscal years beginning after December 15, 2022, and interim periods within those fiscal years, except for the amendment on roll-forward information, which is effective for fiscal years beginning after December 15, 2023. U. S. Steel adopted this guidance effective January 1, 2023, with the exception of the amendment on roll-forward information, which will be adopted in our fiscal year beginning on January 1, 2024.

The Company has a supply chain finance (SCF) arrangement with a third-party administrator which allows participating suppliers, at their sole discretion, to make offers to sell payment obligations of the Company prior to their scheduled due dates at a discounted price to a participating financial institution. The third-party administrator entered into a separate agreement with the Export Import Bank of the United States to guarantee 90 percent of supplier obligations sold for up to \$200 million. No guarantees or collateral are provided by the Company or any of its subsidiaries under the SCF program.

The Company's goal is to capture overall supplier savings and improve working capital efficiency. The agreements facilitate the suppliers' ability to sell payment obligations, while providing them with greater working capital flexibility. The Company has no economic interest in the sale of the suppliers' receivables and no direct financial relationship with the financial institution concerning these services. The Company's obligations to its suppliers, including amounts due and scheduled payment dates, are not impacted by suppliers' decisions to sell amounts under the arrangements. The SCF program requires the Company to pay the third-party administrator the stated amount of the confirmed participating supplier invoices. The payment terms for confirmed invoices range from 75 to 90 days after the end of the month in which the invoice was issued.

The underlying costs from suppliers that elected to participate in the SCF program are generally recorded in cost of sales in the Company's Condensed Consolidated Statement of Operations. Amounts due to suppliers who participate in the SCF program are reflected in accounts payable and accrued expenses on the Company's Condensed Consolidated Balance Sheet and payments on the obligations by our suppliers are included in cash used in operating activities in the Condensed Consolidated Statement of Cash Flows. As of June 30, 2023, accounts payable and accrued expenses included \$106 million of outstanding payment obligations which suppliers elected to sell to participating financial institutions.

In October 2021, the FASB issued Accounting Standards Update 2021-08, *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* (ASU 2021-08). ASU 2021-08 requires that an entity recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606, *Revenue from Contracts with Customers*. ASU 2021-08 is effective for public companies with fiscal years beginning after December 15, 2022, and interim periods within those fiscal years, with early adoption of all amendments in the same period permitted. U. S. Steel adopted this guidance effective January 1, 2023 and will apply it to any future business combinations.

### 4. **Segment Information**

U. S. Steel has four reportable segments: North American Flat-Rolled (Flat-Rolled), Mini Mill, U. S. Steel Europe (USSE); and Tubular Products (Tubular). The results of our real estate businesses are disclosed in the Other category.

The chief operating decision maker evaluates performance and determines resource allocations based on a number of factors, the primary measure being earnings (loss) before interest and income taxes. Earnings (loss) before interest and income taxes for reportable segments and the Other category does not include net interest and other financial costs (income), income taxes, stock-based compensation expense, and certain other items that management believes are not indicative of future results.

The accounting principles applied at the operating segment level in determining earnings (loss) before interest and income taxes are generally the same as those applied at the consolidated financial statement level. Intersegment sales and transfers are accounted for at market-based prices and are eliminated at the corporate consolidation level. Corporate-level selling, general and administrative expenses and costs related to certain former businesses are allocated to the reportable segments and Other based on measures of activity that management believes are reasonable.

The results of segment operations for the three months ended June 30, 2023 and 2022 are:

(In millions) Three Months Ended June 30, 2023	Customer Sales	Intersegment Sales	Net Sales	Earnings from investees	Earnings (loss) before interest and income taxes <sup>(a)</sup>
Flat-Rolled	\$ 2,956	\$ 93	\$ 3,049	\$ 29	\$ 231
Mini Mill	619	169	788	—	132
USSE	1,032	7	1,039	—	72
Tubular	398	—	398	9	157
Total reportable segments	5,005	269	5,274	38	592
Other	3	—	3	—	(12)
Reconciling Items and Eliminations	—	(269)	(269)	—	(16)
Total	\$ 5,008	\$ —	\$ 5,008	\$ 38	\$ 564
<b>Three Months Ended June 30, 2022</b>					
Flat-Rolled	\$ 3,724	\$ 147	\$ 3,871	\$ 86	\$ 793
Mini Mill	838	147	985	—	270
USSE	1,342	4	1,346	—	280
Tubular	381	2	383	9	107
Total reportable segments	6,285	300	6,585	95	1,450
Other	5	—	5	—	(12)
Reconciling Items and Eliminations	—	(300)	(300)	—	(184)
Total	\$ 6,290	\$ —	\$ 6,290	\$ 95	\$ 1,254

<sup>(a)</sup> Earnings (loss) before interest and income taxes has been updated for three months ended June 30, 2022 for Flat-Rolled and Reconciling Items and Eliminations. This is the result of a retroactive adjustment for the reclassification of stock-based compensation expense as an item not allocated to segment results. See the schedule of reconciling items to consolidated earnings before interest and income taxes below for further details.



The results of segment operations for the six months ended June 30, 2023 and 2022 are:

(In millions) Six Months Ended June 30, 2023	Customer Sales	Intersegment Sales	Net Sales	Earnings from investees	Earnings (loss) before interest and income taxes <sup>(a)</sup>
Flat-Rolled	\$ 5,526	\$ 183	\$ 5,709	\$ 13	\$ 224
Mini Mill	1,172	239	1,411	—	144
USSE	1,870	13	1,883	—	38
Tubular	903	1	904	12	389
Total reportable segments	9,471	436	9,907	25	795
Other	7	—	7	—	(9)
Reconciling Items and Eliminations	—	(436)	(436)	—	(33)
Total	\$ 9,478	\$ —	\$ 9,478	\$ 25	\$ 753
<b>Six Months Ended June 30, 2022</b>					
Flat-Rolled	\$ 6,678	\$ 199	\$ 6,877	\$ 116	\$ 1,322
Mini Mill	1,556	277	1,833	—	548
USSE	2,593	8	2,601	—	544
Tubular	690	5	695	15	184
Total reportable segments	11,517	489	12,006	131	2,598
Other	7	—	7	—	(5)
Reconciling Items and Eliminations	—	(489)	(489)	—	(221)
Total	\$ 11,524	\$ —	\$ 11,524	\$ 131	\$ 2,372

<sup>(a)</sup> Earnings (loss) before interest and income taxes has been updated for six months ended June 30, 2022 for Flat-Rolled and Reconciling Items and Eliminations. This is the result of a retroactive adjustment for the reclassification of stock-based compensation expense as an item not allocated to segment results. See the schedule of reconciling items to consolidated earnings before interest and income taxes below for further details.

A summary of total assets by segment is as follows:

(In millions)	June 30, 2023	December 31, 2022
Flat-Rolled	\$ 8,170	\$ 7,936
Mini Mill <sup>(a)</sup>	6,808	5,787
USSE	6,169	5,823
Tubular	1,139	1,140
Total reportable segments	\$ 22,286	\$ 20,686
Other	\$ 129	\$ 141
Corporate, reconciling items, and eliminations <sup>(b)</sup>	(2,106)	(1,369)
Total assets	\$ 20,309	\$ 19,458

<sup>(a)</sup> Includes assets of \$2.3 billion and \$1.4 billion at June 30, 2023 and December 31, 2022, respectively, related to a new technologically advanced flat rolled steelmaking facility, Big River 2 ("BR2"), currently under construction near Osceola, Arkansas.

<sup>(b)</sup> The majority of corporate, reconciling items, and eliminations is comprised of cash and the elimination of intersegment amounts.

The following is a schedule of reconciling items to consolidated earnings before interest and income taxes:

(In millions)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Items not allocated to segments:				
Restructuring and other charges (Note 20)	\$ (2)	\$ (17)	\$ (3)	\$ (34)
Stock-based compensation expense (Note 11)	(12)	(16)	(23)	(32)
Asset impairment charges	—	(151)	(4)	(157)
Environmental remediation charges	(2)	—	(2)	—
Other charges, net	—	—	(1)	2
<b>Total reconciling items</b>	<b>\$ (16)</b>	<b>\$ (184)</b>	<b>\$ (33)</b>	<b>\$ (221)</b>

## 5. Disposition

The Company has previously committed to, and continues to intend to, pursue the disposition of certain assets related to a component of its flat-rolled business. As of June 30, 2023, the Company accrued a total of \$120 million for severance, exit costs and employee benefits. \$1 million of these charges were incurred during the six months ended June 30, 2023. No payments for these charges have been made as of June 30, 2023.

## 6. Revenue

Revenue is generated primarily from contracts to produce, ship and deliver steel products, and to a lesser extent, raw materials sales such as iron ore pellets and coke by-products and real estate sales. Generally, U. S. Steel's performance obligations are satisfied and revenue is recognized when title transfers to our customer for product shipped or services are provided. Revenues are recorded net of any sales incentives. Shipping and other transportation costs charged to customers are treated as fulfillment activities and are recorded in both revenue and cost of sales at the time control is transferred to the customer. Costs related to obtaining sales contracts are incidental and are expensed when incurred. Because customers are invoiced at the time title transfers and U. S. Steel's right to consideration is unconditional at that time, U. S. Steel does not maintain contract asset balances. Additionally, U. S. Steel does not maintain contract liability balances, as performance obligations are satisfied prior to customer payment for product. U. S. Steel offers industry standard payment terms.

The following tables disaggregate our revenue by product for each of the reportable business segments for the three months and six months ended June 30, 2023 and 2022, respectively:

### Net Sales by Product (In millions):

Three Months Ended June 30, 2023	Flat-Rolled	Mini Mill	USSE	Tubular	Other	Total
Semi-finished	\$ 77	\$ —	\$ 38	\$ —	\$ —	\$ 115
Hot-rolled sheets	549	331	507	—	—	1,387
Cold-rolled sheets	958	102	80	—	—	1,140
Coated sheets	922	184	357	—	—	1,463
Tubular products	—	—	15	393	—	408
All Other <sup>(a)</sup>	450	2	35	5	3	495
<b>Total</b>	<b>\$ 2,956</b>	<b>\$ 619</b>	<b>\$ 1,032</b>	<b>\$ 398</b>	<b>\$ 3</b>	<b>\$ 5,008</b>

<sup>(a)</sup> Consists primarily of sales of raw materials and coke making by-products.

<b>Three Months Ended June 30, 2022</b>	<b>Flat-Rolled</b>	<b>Mini Mill</b>	<b>USSE</b>	<b>Tubular</b>	<b>Other</b>	<b>Total</b>
Semi-finished	\$ 80	\$ —	\$ 62	\$ —	\$ —	\$ 142
Hot-rolled sheets	710	507	636	—	—	1,853
Cold-rolled sheets	1,108	123	123	—	—	1,354
Coated sheets	1,364	206	456	—	—	2,026
Tubular products	—	—	21	379	—	400
All Other <sup>(a)</sup>	462	2	44	2	5	515
<b>Total</b>	<b>\$ 3,724</b>	<b>\$ 838</b>	<b>\$ 1,342</b>	<b>\$ 381</b>	<b>\$ 5</b>	<b>\$ 6,290</b>

<sup>(a)</sup> Consists primarily of sales of raw materials and coke making by-products.

<b>Six Months Ended June 30, 2023</b>	<b>Flat-Rolled</b>	<b>Mini Mill</b>	<b>USSE</b>	<b>Tubular</b>	<b>Other</b>	<b>Total</b>
Semi-finished	\$ 136	\$ —	\$ 70	\$ —	\$ —	\$ 206
Hot-rolled sheets	1,103	663	855	—	—	2,621
Cold-rolled sheets	1,859	174	151	—	—	2,184
Coated sheets	1,775	332	697	—	—	2,804
Tubular products	—	—	27	893	—	920
All Other <sup>(a)</sup>	653	3	70	10	7	743
<b>Total</b>	<b>\$ 5,526</b>	<b>\$ 1,172</b>	<b>\$ 1,870</b>	<b>\$ 903</b>	<b>\$ 7</b>	<b>\$ 9,478</b>

<sup>(a)</sup> Consists primarily of sales of raw materials and coke making by-products.

<b>Six Months Ended June 30, 2022</b>	<b>Flat-Rolled</b>	<b>Mini Mill</b>	<b>USSE</b>	<b>Tubular</b>	<b>Other</b>	<b>Total</b>
Semi-finished	\$ 129	\$ —	\$ 63	\$ —	\$ —	\$ 192
Hot-rolled sheets	1,224	906	1,229	—	—	3,359
Cold-rolled sheets	2,079	215	262	—	—	2,556
Coated sheets	2,560	430	939	—	—	3,929
Tubular products	—	—	36	685	—	721
All Other <sup>(a)</sup>	686	5	64	5	7	767
<b>Total</b>	<b>\$ 6,678</b>	<b>\$ 1,556</b>	<b>\$ 2,593</b>	<b>\$ 690</b>	<b>\$ 7</b>	<b>\$ 11,524</b>

<sup>(a)</sup> Consists primarily of sales of raw materials and coke making by-products.

## 7. **Cash, Cash Equivalents and Restricted Cash**

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within U. S. Steel's Condensed Consolidated Balance Sheets that sum to the total of the same amounts shown in the Condensed Consolidated Statement of Cash Flows:

<b>(In millions)</b>	<b>June 30, 2023</b>	<b>December 31, 2022</b>	<b>June 30, 2022</b>
Cash and cash equivalents	\$ 3,080	\$ 3,504	\$ 3,035
Restricted cash in other current assets	5	4	—
Long-term restricted cash	32	31	64
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 3,117</b>	<b>\$ 3,539</b>	<b>\$ 3,099</b>

Amounts included in restricted cash represent cash balances which are legally or contractually restricted, primarily for electric arc furnace construction, environmental liabilities and other capital projects and insurance purposes.

## 8. **Inventories**

The last-in, first-out (LIFO) method is the predominant method of inventory costing for our Flat-Rolled and Tubular segments. The first-in, first-out (FIFO) and moving average methods are the predominant inventory costing methods for our Mini Mill segment and the FIFO method is the predominant inventory costing method for our USSE segment. At June 30, 2023 and December 31, 2022, the LIFO method accounted for 42 percent and 43 percent of total inventory values, respectively.

(In millions)	June 30, 2023	December 31, 2022
Raw materials	\$ 1,088	\$ 1,098
Semi-finished products	964	811
Finished products	446	398
Supplies and sundry items	42	52
<b>Total</b>	<b>\$ 2,540</b>	<b>\$ 2,359</b>

Current acquisition costs for LIFO inventories were estimated to exceed the above inventory values by \$1.5 billion and \$1.2 billion at June 30, 2023 and December 31, 2022, respectively. As a result of the liquidation of LIFO inventories, cost of sales decreased and earnings before interest and income taxes increased by \$3 million and \$12 million for the three months and six months ended June 30, 2023, respectively. Cost of sales increased and earnings before interest and income taxes decreased by \$1 million for the three months ended June 30, 2022, and cost of sales decreased and earnings before interest and income taxes increased by \$7 million for the six months ended June 30, 2022, respectively, as a result of liquidation of LIFO inventories.

## 9. Intangible Assets and Goodwill

Intangible assets that are being amortized on a straight-line basis over their estimated useful lives are detailed below:

(In millions)	Useful Lives	As of June 30, 2023			As of December 31, 2022		
		Gross Carrying Amount	Accumulated Amortization	Net Amount	Gross Carrying Amount	Accumulated Amortization	Net Amount
Customer relationships	22 Years	\$ 413	\$ 46	\$ 367	\$ 413	\$ 37	\$ 376
Patents	5-15 Years	17	13	4	17	12	5
Energy Contract	2 Years	54	43	11	54	32	22
Total amortizable intangible assets		\$ 484	\$ 102	\$ 382	\$ 484	\$ 81	\$ 403

Amortization expense was \$21 million and \$22 million for the six months ended June 30, 2023 and 2022, respectively.

Total estimated amortization expense for the remainder of 2023 is \$21 million. We expect approximately \$98 million in total amortization expense from 2024 through 2028 and approximately \$263 million in remaining amortization expense thereafter.

The carrying amount of acquired water rights with indefinite lives as of June 30, 2023 and December 31, 2022 totaled \$75 million.

Below is a summary of goodwill by segment for the six months ended June 30, 2023:

	Flat-Rolled	Mini Mill	USSE	Tubular	Total
Balance at December 31, 2022	\$ —	\$ 916	\$ 4	\$ —	\$ 920
Additions	—	—	—	—	—
Balance at June 30, 2023	\$ —	\$ 916	\$ 4	\$ —	\$ 920

## 10. Pensions and Other Benefits

The following table reflects the components of net periodic benefit (income) cost for the three months ended June 30, 2023 and 2022:

(In millions)	Pension Benefits		Other Benefits	
	2023	2022	2023	2022
Service cost	\$ 8	\$ 11	\$ 2	\$ 2
Interest cost	55	39	17	12
Expected return on plan assets	(82)	(89)	(15)	(23)
Amortization of prior service cost (credit)	4	1	(6)	(6)
Amortization of actuarial net loss (gain)	3	18	(18)	(13)
Net periodic benefit income, excluding below	(12)	(20)	(20)	(28)
Multiemployer plans	21	19	—	—
Settlement, termination and curtailment losses <sup>(a)</sup>	—	3	—	2
Net periodic benefit cost (income)	\$ 9	\$ 2	\$ (20)	\$ (26)

(a) During the three months ended June 30, 2022, pension and other postretirement benefits incurred special termination charges of approximately \$5 million due to workforce restructuring.

The following table reflects the components of net periodic benefit (income) cost for the six months ended June 30, 2023 and 2022:

(In millions)	Pension Benefits		Other Benefits	
	2023	2022	2023	2022
Service cost	\$ 16	\$ 22	\$ 3	\$ 4
Interest cost	110	78	34	24
Expected return on plan assets	(164)	(178)	(30)	(45)
Amortization of prior service cost (credit)	9	1	(12)	(13)
Amortization of actuarial net loss (gain)	6	36	(36)	(26)
Net periodic benefit income, excluding below	(23)	(41)	(41)	(56)
Multiemployer plans	42	38	—	—
Settlement, termination and curtailment losses <sup>(a)</sup>	—	4	—	2
Net periodic benefit cost (income)	\$ 19	\$ 1	\$ (41)	\$ (54)

(a) During the six months ended June 30, 2022, pension and other postretirement benefits incurred special termination charges of approximately \$6 million due to workforce restructuring.

### Employer Contributions

During the first six months of 2023, U. S. Steel made cash payments of \$41 million to the Steelworkers Pension Trust and \$2 million of pension payments not funded by trusts.

During the first six months of 2023, cash payments of \$20 million were made for other postretirement benefit payments not funded by trusts.

Company contributions to defined contribution plans totaled \$13 million and \$12 million for the three months ended June 30, 2023 and 2022, respectively. Company contributions to defined contribution plans totaled \$24 million and \$23 million for the six months ended June 30, 2023 and 2022, respectively.

## 11. Stock-Based Compensation Plans

U. S. Steel has outstanding stock-based compensation awards that were granted by the Compensation & Organization Committee (the Committee) of the Board of Directors, or its designee, under the 2005 Stock Incentive Plan (the 2005 Plan) and the 2016 Omnibus Incentive Compensation Plan, as amended and restated (the Omnibus Plan). On April 26, 2016, the Company's stockholders approved the Omnibus Plan and, between 2016 and the present, authorized the Company to issue up to 32,700,000 shares in the aggregate of U. S. Steel common stock under the Omnibus Plan. While the awards that were previously granted under the 2005 Plan remain outstanding, all future awards will be granted under the Omnibus Plan. As of June 30, 2023, there were 6,074,201 shares available for future grants under the Omnibus Plan.

Recent grants of stock-based compensation consist of restricted stock units, total stockholder return (TSR) performance awards and return on capital employed (ROCE) performance awards. Shares of common stock under the Omnibus Plan are issued from authorized, but unissued stock. The following table is a summary of the awards made under the Omnibus Plan during the first six months of 2023 and 2022.

Grant Details	2023		2022	
	Shares <sup>(a)</sup>	Fair Value <sup>(b)</sup>	Shares <sup>(a)</sup>	Fair Value <sup>(b)</sup>
Restricted Stock Units	1,274,520	\$ 29.90	1,165,130	\$ 24.28
Performance Awards <sup>(c)</sup>				
TSR	185,120	\$ 37.41	225,030	\$ 28.53
ROCE <sup>(d)</sup>	357,020	\$ 29.35	396,280	\$ 23.60

<sup>(a)</sup> The share amounts shown in this table do not reflect an adjustment for estimated forfeitures.

<sup>(b)</sup> Represents the per share weighted average for all grants during the period.

<sup>(c)</sup> The number of performance awards shown represents the target share grant of the award.

<sup>(d)</sup> A portion of ROCE awards granted in 2023 and 2022 are not shown in the table because they were granted in cash.

U. S. Steel recognized pretax stock-based compensation expense in the amount of \$12 million and \$16 million in the three-month periods ended June 30, 2023 and 2022, respectively and \$23 million and \$32 million in the first six months of 2023 and 2022, respectively.

As of June 30, 2023, total future compensation expense related to nonvested stock-based compensation arrangements was \$67 million, and the weighted average period over which this expense is expected to be recognized is approximately 26 months.

### Stock Options

There have been no stock options granted since 2017 other than the 171,000 performance-based stock options granted in December 2021, which are further described below.

The 171,000 performance-based stock options granted in December 2021, which were valued using a lattice model, do not become vested and exercisable until the Company's 20-trading day average closing stock price meets or exceeds the following stock price hurdles during the seven-year period beginning on the grant date, as follows:

20-trading day Average Closing Stock Price Achievement During 7-Year Period Beginning on Grant Date <sup>(a)</sup>	Percentage of Performance-Based Stock Options Exercisable
\$ 35.00	33.33 %
\$ 45.00	33.33 %
\$ 55.00	33.34 %

<sup>(a)</sup> The \$35.00 tranche vested in April 2022.

### Stock Awards

Restricted stock units awarded as part of annual grants generally vest ratably over three years. Their fair value is the average market price of the underlying common stock on the date of grant. Restricted stock units granted in connection with new-hire or retention grants generally cliff vest three years from the date of the grant.

TSR performance awards may vest at varying levels at the end of a three-year performance period if U. S. Steel's total shareholder return compared to the total shareholder return of a peer group of companies meets performance criteria during the three-year performance period. TSR is calculated as follows: 20 percent for each year in the three-year performance period and 40 percent for the full three-year period. TSR performance awards may vest and payout 50 percent at the threshold level, 100 percent at the target level and 200 percent at the maximum level for payouts. Payment for performance in between the threshold percentages will be interpolated. The fair value of the performance awards is calculated using a Monte-Carlo simulation.

ROCE performance awards may vest at the end of a three-year performance period contingent upon meeting ROCE performance goals approved by the Committee. For the 2022 and 2023 ROCE performance awards, each year in the three-year performance period is weighted at 20 percent and the full three-year period is weighted at 40 percent of the total award. ROCE performance awards may vest and payout 50 percent at the threshold level, 100 percent at the target level and 200 percent at the maximum level for payouts. Payment for performance in between the threshold percentages will be interpolated. The fair value of the ROCE performance awards is the average market price of the underlying common stock on the date of grant.

In December 2021 and August 2022, special performance-based restricted stock unit awards (PSUs) were granted to members of the Company's executive leadership team. Shares are earned based on the achievement of certain pre-set

quantitative performance criteria during the four-year performance period, January 1, 2022 through December 31, 2025. Shares may vest following the expiration of the Performance Period if the Company satisfies the performance criteria.

The Chief Executive Officer was granted PSUs that vest with the following, equally weighted, performance metrics: (i) EBITDA margin expansion, (ii) greenhouse gas emissions intensity reduction, (iii) asset portfolio optimization, (iv) leverage metrics and (v) corporate relative valuation. Other members of the executive leadership team were granted PSUs that vest with performance criteria related to: (i) on time and on budget completion of BR2 (30% of the grant), (ii) EBITDA margin expansion (40% of the grant) and (iii) greenhouse gas emissions intensity reduction (30% of the grant).

For the PSU awards, a payout is achievable at threshold (50% of target), target (100% of target) or maximum (200% of target) performance achievement. Payout amounts will be interpolated between the threshold, target and maximum amounts.

## **12. Income Taxes**

### **Tax provision**

For the six months ended June 30, 2023, and 2022, the Company recorded a tax provision of \$195 million and \$530 million, respectively. The tax provisions for the first six months of 2023 and 2022 were based on an estimated annual effective rate, which requires management to make its best estimate of annual pretax income or loss and discrete items recognized during the period, if applicable.

Throughout the year, management regularly updates forecasted annual pretax results for the various countries in which we operate based on changes in factors such as prices, shipments, product mix, plant operating performance and cost estimates. To the extent that actual 2023 pretax results for U.S. and foreign income or loss vary from estimates applied herein, the actual tax provision or benefit recognized in 2023 could be materially different from the forecasted amount used to estimate the tax provision for the six months ended June 30, 2023.

In March 2022, the Company and the Arkansas Economic Development Commission entered into the Recycling Tax Credit Incentive Agreement, whereby the Company may earn state income tax credits in an amount equal to 30 percent of the cost of waste reduction, reuse, or recycling equipment, subject to meeting the requirements of the Arkansas Code Ann. Section 26-51-506, for BR2 which is currently under construction near Osceola, Arkansas. Documentation supporting the Company's investment in qualifying equipment must be submitted as part of an application for certification expected to be completed on or before 2025. In March 2022, the Company received a lump-sum payment of approximately \$82 million as proceeds from the sale of a portion of expected future tax credits to be earned by the Company (see Note 21 for additional information). The Company estimates that it could earn tax credits in excess of \$700 million, exclusive of the amount sold in March 2022, which the Company will recognize in the year the assets are placed into service and meet the requirements of Arkansas Code Ann. Section 26-51-506. Any unused tax credit that cannot be claimed in a tax year may be carried forward indefinitely by the Company and applied to its future state tax liability.

On August 16, 2022, H.R. 5376 (commonly called the Inflation Reduction Act of 2022) was signed into law, which, among other things, implemented a corporate alternative minimum tax (CAMT) of 15 percent on net book income of certain large corporations adjusted for certain items prescribed by the legislation. The tax provision for the six months ended June 30, 2023 reflects the impact of CAMT, which is not material to the Condensed Consolidated Financial Statements.

## **13. Earnings and Dividends Per Common Share**

### **Earnings Per Share Attributable to United States Steel Corporation Stockholders**

The effect of dilutive securities on weighted average common shares outstanding included in the calculation of diluted earnings per common share for the three and six months ended June 30, 2023 and June 30, 2022 were as follows.

(Dollars in millions, except per share amounts)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Earnings attributable to United States Steel Corporation stockholders:				
Basic	\$ 477	\$ 978	\$ 676	\$ 1,860
Interest expense on Senior Convertible Notes, net of tax	3	3	7	7
Diluted	\$ 480	\$ 981	\$ 683	\$ 1,867
Weighted-average shares outstanding (in thousands):				
Basic	225,538	257,267	226,430	259,348
Effect of Senior Convertible Notes	26,194	26,194	26,194	26,194
Effect of stock options, restricted stock units and performance awards	2,423	3,219	3,133	3,704
Diluted	254,155	286,680	255,757	289,246
Earnings per share attributable to United States Steel Corporation stockholders:				
Basic	\$ 2.12	\$ 3.80	\$ 2.99	\$ 7.17
Diluted	\$ 1.89	\$ 3.42	\$ 2.67	\$ 6.45

Excluded from the computation of diluted earnings per common share due to their anti-dilutive effect were 2.5 million and 1.7 million outstanding securities granted under the Omnibus Plan for the three and six months ended June 30, 2023, respectively, and 0.6 million outstanding securities granted under the Omnibus Plan for both the three and six months ended June 30, 2022.

The dividend for each of the first and second quarters of 2023 and 2022 was five cents per common share.

#### 14. Derivative Instruments

U. S. Steel uses foreign exchange forward sales contracts (foreign exchange forwards) with maturities up to 17 months to manage our currency requirements and exposure to foreign currency exchange rate fluctuations. The USSE and Flat-Rolled segments use hedge accounting for their foreign exchange forwards. The Mini Mill segment has foreign exchange forwards for which hedge accounting has not been elected; therefore, the changes in the fair value of their foreign exchange forwards are recognized immediately in the Consolidated Statements of Operations (mark-to-market accounting).

U. S. Steel also uses financial swaps to protect from the commodity price risk associated with purchases of natural gas, zinc, tin, electricity and iron ore (commodity purchase swaps). We elected cash flow hedge accounting for commodity purchase swaps for natural gas, zinc and tin and iron ore and use mark-to-market accounting for electricity swaps. The commodity purchase swaps where hedge accounting was elected have maturities up to 18 months. The commodity purchase swaps where hedge accounting was not elected have maturities of up to 6 months.

U. S. Steel has entered into financial swaps that are used to partially manage the sales price risk of certain hot-rolled coil sales (sales swaps) and iron ore sales (zero cost collars and swaps). Both the sales swaps and the zero cost collars are accounted for using hedge accounting and have maturities of up to 9 months.

The table below shows the outstanding swap quantities used to hedge forecasted purchases and sales as of June 30, 2023 and June 30, 2022:

Hedge Contracts	Classification	June 30, 2023	June 30, 2022
Natural gas (in mmbtus)	Commodity purchase swaps	32,511,700	51,735,000
Tin (in metric tons)	Commodity purchase swaps	700	1,653
Zinc (in metric tons)	Commodity purchase swaps	25,267	14,476
Electricity (in megawatt hours)	Commodity purchase swaps	256,800	636,000
Iron ore (in metric tons)	Commodity purchase swaps	240,000	10,000
Iron ore (in metric tons)	Zero-cost collars	—	756,000
Iron ore (in metric tons)	Sales swaps	845,838	—
Hot-rolled coils (in tons)	Sales swaps	311,000	77,000
Foreign currency (in millions of euros)	Foreign exchange forwards	€ 446	€ 332
Foreign currency (in millions of dollars)	Foreign exchange forwards	\$ 68	\$ 147
Foreign currency (in millions of CAD)	Foreign exchange forwards	\$ —	\$ 8



The following summarizes the fair value amounts included in our Condensed Consolidated Balance Sheets as of June 30, 2023, and December 31, 2022:

Balance Sheet Location (in millions)	June 30, 2023	December 31, 2022
<b>Designated as Hedging Instruments</b>		
Accounts receivable	\$ 14	\$ 20
Accounts payable	79	68
Investments and long-term receivables	1	—
Other long-term liabilities	12	15
<b>Not Designated as Hedging Instruments</b>		
Accounts receivable	3	13
Investments and long-term receivables	—	1

The table below summarizes the effect of hedge accounting on Accumulated Other Comprehensive Income (AOCI) and amounts reclassified from AOCI into earnings for the three and six months ended June 30, 2023 and 2022:

(In millions)	Gain (Loss) on Derivatives in AOCI			Amount of Gain (Loss) Recognized in Income	
	Three Months Ended June 30, 2023	Three Months Ended June 30, 2022	Location of Reclassification from AOCI <sup>(a)</sup>	Three Months Ended June 30, 2023	Three Months Ended June 30, 2022
Sales swaps	\$ 31	\$ 82	Net sales	\$ (12)	\$ (12)
Commodity purchase swaps	9	(74)	Cost of sales <sup>(b)</sup>	(36)	21
Foreign exchange forwards	4	11	Cost of sales	(1)	12

<sup>(a)</sup> The earnings impact of our hedging instruments substantially offsets the earnings impact of the related hedged items resulting in immaterial ineffectiveness.

<sup>(b)</sup> Costs for commodity purchase swaps are recognized in cost of sales as products are sold.

(In millions)	Gain (Loss) on Derivatives in AOCI			Amount of Gain (Loss) Recognized in Income	
	Six Months Ended June 30, 2023	Six Months Ended June 30, 2022	Location of Reclassification from AOCI <sup>(a)</sup>	Six Months Ended June 30, 2023	Six Months Ended June 30, 2022
Sales swaps	\$ —	\$ 24	Net sales	\$ (9)	\$ (38)
Commodity purchase swaps	(9)	14	Cost of sales <sup>(b)</sup>	(45)	43
Foreign exchange forwards	(5)	9	Cost of sales	3	20

<sup>(a)</sup> The earnings impact of our hedging instruments substantially offsets the earnings impact of the related hedged items resulting in immaterial ineffectiveness.

<sup>(b)</sup> Costs for commodity purchase swaps are recognized in cost of sales as products are sold.

At current contract values, \$54 million currently in AOCI as of June 30, 2023, will be recognized as an increase in cost of sales over the next year and \$11 million currently in AOCI as of June 30, 2023, will be recognized as a decrease in net sales over the next year.

Foreign exchange forwards and financial swaps where hedge accounting was not elected generated a net gain of \$1 million and a net loss of \$10 million for the three and six months ended June 30, 2023, respectively. The loss recognized for foreign exchange forwards and financial sales swaps where hedge accounting was not elected was \$3 million and \$12 million for the three and six months ended June 30, 2022, respectively.

15. **Debt**

(In millions)	Issuer/Borrower	Interest Rates %	Maturity	June 30, 2023	December 31, 2022
2037 Senior Notes	U. S. Steel	6.650	2037	274	274
2026 Senior Convertible Notes	U. S. Steel	5.000	2026	350	350
2029 Senior Notes	U. S. Steel	6.875	2029	475	475
2029 Senior Secured Notes	Big River Steel	6.625	2029	720	720
Environmental Revenue Bonds	U. S. Steel	4.125 - 6.750	2024 - 2053	1,164	924
Environmental Revenue Bonds	Big River Steel	4.500 - 4.750	2049	752	752
Finance leases and all other obligations	U. S. Steel	Various	2023 - 2029	141	100
Finance leases and all other obligations	Big River Steel	Various	2023 - 2027	169	176
Export Credit Agreement	U. S. Steel	Variable	2031	138	136
Credit Facility Agreement	U. S. Steel	Variable	2027	—	—
Big River Steel ABL Facility	Big River Steel	Variable	2026	—	—
USSK Credit Agreement	U. S. Steel Kosice	Variable	2026	—	—
USSK Credit Facility	U. S. Steel Kosice	Variable	2024	—	—
Total Debt				<b>4,183</b>	3,907
Less unamortized discount, premium, and debt issuance costs				<b>(68)</b>	(70)
Less short-term debt, long-term debt due within one year, and short-term issuance costs				<b>98</b>	63
Long-term debt				<b>\$ 4,153</b>	\$ 3,914

**Arkansas Development Finance Authority Environmental Improvement Revenue Bonds, Series 2023**

On May 18, 2023, U. S. Steel closed on an aggregate principal amount of \$240 million unsecured Arkansas Development Finance Authority environmental improvement revenue bonds, which carry a green bond designation. The bonds, issued through Arkansas Development Finance Authority, have a coupon rate of 5.700% and carry a final maturity of 2053 (2053 ADFA Green Bonds). U. S. Steel received net proceeds of approximately \$238 million after fees of approximately \$2 million related to the underwriting and third-party expenses, and will pay semiannual interest. The net proceeds from the issuance of the 2053 ADFA Green Bonds were used to partially fund work related to BR2, currently under construction near Osceola, Arkansas.

On and after May 1, 2026, the Company may redeem the 2053 ADFA Green Bonds at its option, at any time in whole or from time to time in part at the redemption prices (expressed in percentages of principal amount) listed below, plus accrued and unpaid interest on the 2053 ADFA Green Bonds, if any, to, but excluding, the applicable redemption date, if redeemed during the twelve-month period beginning on May 1 of each of the years indicated below.

Year	Redemption Price
2026	105.000 %
2027	104.000 %
2028	103.000 %
2029	102.000 %
2030	101.000 %
2031 and thereafter	100.000 %

At any time prior to May 1, 2026, U. S. Steel may also redeem the 2053 ADFA Green Bonds, at our option, in whole or in part, or from time to time, at a price equal to the greater of 100 percent of the principal amount of the 2053 ADFA Green Bonds plus accrued and unpaid interest, if any, or the sum of the present value of the redemption price of the 2053 ADFA Green Bonds if they were redeemed on May 1, 2026, plus interest payments due through May 1, 2026, discounted to the date of redemption on a semi-annual basis at the applicable tax-exempt municipal bond rate, plus accrued and unpaid interest, if any.

## Arkansas Development Finance Authority Environmental Improvement Revenue Bonds, Series 2022

On September 6, 2022, U. S. Steel closed on an offering consisting of an aggregate principal amount of \$290 million unsecured Arkansas Development Finance Authority environmental improvement revenue bonds, which carry a green bond designation. The bonds, issued through Arkansas Development Finance Authority, have a coupon rate of 5.450% and carry a final maturity of 2052 (2052 ADFA Green Bonds). U. S. Steel received net proceeds of approximately \$287 million after fees of approximately \$3 million related to the underwriting and third-party expenses. The net proceeds from the issuance of the 2052 ADFA Green Bonds were used to partially fund work related to BR2, currently under construction near Osceola, Arkansas.

On and after September 1, 2025, the Company may redeem the 2052 ADFA Green Bonds at its option, at any time in whole or from time to time in part at the redemption prices (expressed in percentages of principal amount) listed below, plus accrued and unpaid interest on the 2052 ADFA Green Bonds, if any, to, but excluding, the applicable redemption date, if redeemed during the twelve-month period beginning on September 1 of each of the years indicated below.

Year	Redemption Price
2025	105.000 %
2026	104.000 %
2027	103.000 %
2028	102.000 %
2029	101.000 %
2030 and thereafter	100.000 %

At any time prior to September 1, 2025, U. S. Steel may also redeem the 2052 ADFA Green Bonds, at our option, in whole or in part, or from time to time, at a price equal to the greater of 100 percent of the principal amount of the 2052 ADFA Green Bonds plus accrued and unpaid interest, if any, or the sum of the present value of the redemption price of the 2052 ADFA Green Bonds if they were redeemed on September 1, 2025, plus interest payments due through September 1, 2025, discounted to the date of redemption on a semi-annual basis at the applicable tax-exempt municipal bond rate, plus accrued and unpaid interest, if any.

### 2026 Senior Convertible Notes

In October 2019, U. S. Steel issued \$350 million of 5.00% Senior Convertible Notes due November 1, 2026 (2026 Senior Convertible Notes). Interest on the 2026 Senior Convertible Notes is payable semi-annually on May 1 and November 1 of each year. The initial conversion rate for the 2026 Senior Convertible Notes is 74.8391 shares of U. S. Steel common stock per \$1,000 principal amount, equivalent to an initial conversion price of approximately \$13.36 per share of common stock, subject to adjustment pursuant to the 2026 Senior Convertible Notes indenture. Based on the initial conversion rate, the 2026 Senior Convertible Notes are convertible into 26,193,685 shares of U. S. Steel common stock and we reserved for the possible issuance of 33,396,930 shares, which is the maximum amount that could be issued upon conversion at maturity. Prior to August 1, 2026, holders of notes may convert all or a portion of their notes at their option only upon the satisfaction of specified conditions and during certain periods. On or after August 1, 2026, holders may convert all or a portion of their notes prior to the maturity date. Upon conversion, we will satisfy the obligation with cash, common stock, or a combination thereof, at our election. U. S. Steel may not redeem the 2026 Senior Convertible Notes prior to November 5, 2023. On or after November 5, 2023, and prior to August 1, 2026, if the price per share of U. S. Steel's common stock has been at least 130% of the conversion price for specified periods, U. S. Steel may redeem all or a portion of the 2026 Senior Convertible Notes at a cash redemption price of 100% of the principal amount, plus accrued and unpaid interest.

If U. S. Steel undergoes a fundamental change, as defined in the 2026 Senior Convertible Notes, holders may require us to repurchase the 2026 Senior Convertible Notes in whole or in part for cash at a price equal to 100% of the principal amount of the 2026 Senior Convertible Notes to be purchased plus any accrued and unpaid interest up to, but excluding the repurchase date.

### Big River Steel - Sustainability Linked ABL Facility

Big River Steel's amended senior secured asset-based revolving credit facility (Big River Steel ABL Facility) matures on July 23, 2026. The facility is secured by first-priority liens on accounts receivable and inventory and certain other assets and second priority liens on most tangible and intangible assets of Big River Steel in each case subject to permitted liens. Additionally, the amendment includes sustainability targets related to greenhouse gas emissions intensity reduction, safety performance and facility certification by ResponsibleSteel™.

The Big River Steel ABL Facility provides for borrowings for working capital and general corporate purposes in an amount equal up to the lesser of (a) \$350 million and (b) a borrowing base calculated based on specified percentages of eligible accounts receivables and inventory, subject to certain adjustments and reserves.

Big River Steel LLC must maintain a fixed charge coverage ratio of at least 1.00 to 1.00 for the most recent twelve consecutive months when availability under the Big River Steel ABL Facility is less than the greater of ten percent of the borrowing base availability and \$13 million. Based on the most recent four quarters as of June 30, 2023, Big River Steel would have met the fixed charge coverage ratio test. The facility includes affirmative and negative covenants and events of default that are customary for facilities of this type.

There were no amounts outstanding under the Big River Steel ABL Facility at June 30, 2023.

#### **U. S. Steel - Sustainability Linked Credit Facility Agreement**

On May 27, 2022, U. S. Steel entered into the Sixth Amended and Restated Credit Facility Agreement (Credit Facility Agreement) to replace the existing Fifth Amended and Restated Credit Facility Agreement (Fifth Credit Facility Agreement). The Credit Facility Agreement has substantially the same terms as the Fifth Credit Facility Agreement, except the Credit Facility Agreement references the Secured Overnight Financing Rate instead of the London Interbank Offered Rate, adjusts the individual lenders' commitments, and renews the five-year maturity to May 27, 2027. The Credit Facility Agreement also adjusts the threshold for the fixed charge coverage ratio. The total availability under the facility remained the same at \$1,750 million, and the financial impact from replacing the Fifth Credit Facility Agreement was immaterial. Consistent with the Fifth Credit Facility Agreement, the Credit Facility Agreement is secured by first-priority liens on certain accounts receivable and inventory and includes targets related to greenhouse gas emissions intensity reduction, safety performance and facility certification by ResponsibleSteel™.

The Credit Facility Agreement provides for borrowings for working capital and general corporate purchases in an amount equal to the lesser of (a) \$1,750 million or (b) a borrowing base calculated based on specified percentages of eligible accounts receivable and inventory, subject to certain adjustments and reserves. As of June 30, 2023, there were approximately \$4 million of letters of credit issued and no amounts drawn under the Credit Facility Agreement. U. S. Steel must maintain a fixed charge coverage ratio of at least 1.00 to 1.00 for the most recent four consecutive quarters when availability under the Credit Facility Agreement is less than the greater of ten percent of the maximum facility availability and \$140 million. Based on the most recent four quarters as of June 30, 2023, the Company would have met the fixed charge coverage ratio test.

#### **U. S. Steel Košice (USSK) Credit Facilities**

On September 29, 2021, USSK entered into a €300 million (approximately \$326 million) unsecured sustainability linked credit agreement (USSK Credit Agreement). The USSK Credit Agreement matures in 2026 and contains sustainability targets related to greenhouse gas emissions intensity reduction, safety performance and facility certification by ResponsibleSteel™.

Under the USSK Credit Agreement, USSK is required to maintain a net debt to EBITDA ratio of less than 3.50:1.00 (the "EBITDA Ratio Covenant"), as measured on a rolling twelve month basis on June 30th and December 31st of each year. In April 2023, after determining that USSK may not be able to comply with the EBITDA Ratio Covenant at June 30, 2023, based on forecasted EBITDA at the time, USSK requested a waiver of the EBITDA Ratio Covenant from its lenders for the period ending June 30, 2023. The waiver was approved unanimously by USSK's lender group. At June 30, 2023, the USSK Credit Agreement was undrawn and fully available.

During the first quarter of 2023, USSK increased the size of its €20 million credit facility to €30 million (approximately \$33 million) (the USSK Credit Facility). At June 30, 2023, USSK had no borrowings under the USSK Credit Facility, and the availability was approximately \$16 million due to approximately \$17 million of customs and other guarantees outstanding.

## **16. Fair Value of Financial Instruments**

The carrying value of cash and cash equivalents, current accounts and notes receivable, accounts payable and accrued interest included in the Condensed Consolidated Balance Sheet approximate fair value. See Note 14 for disclosure of U. S. Steel's derivative instruments, which are accounted for at fair value on a recurring basis.

#### **Stelco Option for Minntac Mine Interest**

On April 30, 2020 (Effective Date), the Company entered into an Option Agreement with Stelco, Inc. (Stelco), that grants Stelco the option to purchase a 25 percent interest (Option Interest) in a to-be-formed entity (Joint Venture) that will own the Company's current iron ore mine located in Mt. Iron, Minnesota (Minntac Mine). As consideration for the Option Interest, Stelco paid the Company an aggregate amount of \$100 million in five \$20 million installments during the year-ended December 31, 2020 which are recorded net of transaction costs in noncontrolling interests in the Condensed Consolidated Balance Sheet. The option can be exercised any time before January 31, 2027, and in the event Stelco exercises the option, Stelco will contribute an additional \$500 million to the Joint Venture, which amount shall be remitted solely to U. S. Steel in the form of a one-time special distribution, and the parties will engage in good faith negotiations to finalize the master agreement (pursuant to which Stelco will acquire the Option Interest) and the limited liability company agreement of the Joint Venture.

### Surplus VEBA assets

During the fourth quarter 2022, U. S. Steel and the United Steelworkers (USW) agreed to utilize the overfunded OPEB plans to support the benefits provided to active represented employees. Beginning January 1, 2023, this agreement allows the Company to use a certain amount of surplus VEBA assets (the surplus amount) to pay for legally permissible benefits under Section 501(c)(9) of the Internal Revenue Code for active employees and retirees of the USW. The surplus amount of \$595 million was determined as of December 31, 2022 and was the balance of VEBA assets in excess of 135% of the retiree obligation at that time. On January 1, 2023, a subaccount was created and consisted of a pro-rata share of the existing trust. On February 1, 2023, using January 31, 2023 asset values, a new investment strategy was implemented and comprised of existing investments from the VEBA trust and cash. On February 1, 2023, certain assets were transferred from the VEBA to the subaccount. The Company is permitted to withdraw a target of \$75 million annually, with a guaranteed annual minimum of \$50 million, on a quarterly pro rata basis, from the subaccount to cover the cost of the permissible benefits for active USW employees and USW retirees. The surplus VEBA assets subaccount portfolio consists of fixed income securities including corporate bonds, U.S. government bonds, and U.S. Treasury notes, in addition to alternatives including investments in private credit partnerships and real estate funds. A portion of the corporate bonds are classified as available-for-sale debt securities, with unrealized gains and losses reported in Accumulated other comprehensive loss. Upon sale, realized gains and losses are reported in earnings. All other investments in the subaccount are financial instruments measured at fair value or net asset value, with gains and losses recognized through net earnings and are reported as Net gain from investments related to active employee benefits on the Company's Condensed Consolidated Statements of Operations.

As of June 30, 2023, the fair value of the surplus VEBA assets subaccount portfolio was \$591 million, with \$75 million in Other current assets and \$516 million in Other noncurrent assets on the Condensed Consolidated Balance Sheet. As of June 30, 2023, the value of the investment in corporate bonds classified as available-for-sale debt securities was \$232 million.

During the three months ended June 30, 2023, pretax net gains of \$8 million and pretax net losses of \$1 million were recognized in Net gain from investments related to active employee benefits and in Accumulated other comprehensive loss, respectively. During the six months ended June 30, 2023 pretax net gains of \$30 million and \$3 million were recognized in Net gain from investments related to active employee benefits and in Accumulated other comprehensive loss, respectively.

The fair value of the subaccount portfolio by asset category as of June 30, 2023 were as follows (in millions):

Asset Category	June 30, 2023				Total
	Level 1	Level 2	Level 3	measured at NAV <sup>(a)</sup>	
<b>Fixed Income</b>					
Corporate bonds - U.S.	—	205	—	—	205
Corporate bonds - Non-U.S.	—	65	—	—	65
U.S. government bonds	—	96	—	—	96
Mortgage and asset-backed securities	—	13	—	—	13
Total fixed income	\$ —	\$ 379	\$ —	\$ —	\$ 379
<b>Alternatives</b>					
Private credit partnerships	—	—	59	59	118
Other alternatives	—	—	—	18	18
Total alternatives	\$ —	\$ —	\$ 59	\$ 77	\$ 136
Commingled Funds	—	—	—	69	69
Other <sup>(b)</sup>	7	—	—	—	7
Total assets at fair value	\$ 7	\$ 379	\$ 59	\$ 146	\$ 591

<sup>(a)</sup> In accordance with ASC Topic 820, certain investments that were measured at net asset value per share (or its equivalent) have not been classified in the fair value hierarchy.

<sup>(b)</sup> Includes cash, accrued income, and miscellaneous payables.

The following table summarizes U. S. Steel's financial liabilities that were not carried at fair value at June 30, 2023 and December 31, 2022. The fair value of long-term debt was determined using Level 2 inputs.

(In millions)	As of June 30, 2023		As of December 31, 2022	
	Fair Value	Carrying Amount	Fair Value	Carrying Amount
<b>Financial liabilities:</b>				
Long-term debt <sup>(a)</sup>	\$ 4,117	\$ 3,941	\$ 3,815	\$ 3,701

<sup>(a)</sup> Excludes finance lease obligations.

## 17. Statement of Changes in Stockholders' Equity

The following table reflects the first six months of 2023 and 2022 reconciliation of the carrying amount of total equity, equity attributable to U. S. Steel and equity attributable to noncontrolling interests:

Six Months Ended June 30, 2023 (In millions)	Total	Retained Earnings	Accumulated Other Comprehensive Loss	Common Stock	Treasury Stock	Paid-in Capital	Non- Controlling Interest
Balance at beginning of year	\$ 10,311	\$ 6,030	\$ (85)	\$ 283	\$ (1,204)	\$ 5,194	\$ 93
<b>Comprehensive income (loss):</b>							
Net earnings	199	199	—	—	—	—	—
<b>Other comprehensive income (loss), net of tax:</b>							
Pension and other benefit adjustments	(10)	—	(10)	—	—	—	—
Currency translation adjustment	32	—	32	—	—	—	—
Derivative financial instruments	(44)	—	(44)	—	—	—	—
Active employee benefit investments	3	—	3	—	—	—	—
Employee stock plans	(9)	—	—	2	(22)	11	—
Common stock repurchased	(75)	—	—	—	(75)	—	—
Dividends paid on common stock	(12)	(12)	—	—	—	—	—
Balance at March 31, 2023	\$ 10,395	\$ 6,217	\$ (104)	\$ 285	\$ (1,301)	\$ 5,205	\$ 93
<b>Comprehensive income (loss):</b>							
Net earnings	477	477	—	—	—	—	—
<b>Other comprehensive income (loss), net of tax:</b>							
Pension and other benefit adjustments	(12)	—	(12)	—	—	—	—
Currency translation adjustment	(1)	—	(1)	—	—	—	—
Derivative financial instruments	33	—	33	—	—	—	—
Active employee benefit investments	(1)	—	(1)	—	—	—	—
Employee stock plans	14	—	—	—	1	13	—
Common stock repurchased	(75)	—	—	—	(75)	—	—
Excise tax on common stock repurchased	(1)	—	—	—	(1)	—	—
Dividends paid on common stock	(11)	(11)	—	—	—	—	—
Balance at June 30, 2023	\$ 10,818	\$ 6,683	\$ (85)	\$ 285	\$ (1,376)	\$ 5,218	\$ 93

Six Months Ended June 30, 2022 (In millions)	Accumulated Other Comprehensive Income							Non- Controlling Interest
	Total	Retained Earnings	Common Stock	Treasury Stock	Paid-in Capital			
Balance at beginning of year	\$ 9,103	\$ 3,534	\$ 331	\$ 280	\$ (334)	\$ 5,199	\$ 93	
<b>Comprehensive income (loss):</b>								
Net earnings	882	882	—	—	—	—	—	
<b>Other comprehensive income (loss), net of tax:</b>								
Pension and other benefit adjustments	(3)	—	(3)	—	—	—	—	
Currency translation adjustment	(28)	—	(28)	—	—	—	—	
Derivative financial instruments	22	—	22	—	—	—	—	
Employee stock plans	7	—	—	2	(20)	25	—	
Common stock repurchased	(123)	—	—	—	(123)	—	—	
Dividends paid on common stock	(13)	(13)	—	—	—	—	—	
Cumulative effect upon adoption of Accounting Standards Update 2020-06	(56)	22	—	—	—	(78)	—	
Balance at March 31, 2022	\$ 9,791	\$ 4,425	\$ 322	\$ 282	\$ (477)	\$ 5,146	\$ 93	
<b>Comprehensive income (loss):</b>								
Net earnings	978	978	—	—	—	—	—	
<b>Other comprehensive income (loss), net of tax:</b>								
Pension and other benefit adjustments	1	—	1	—	—	—	—	
Currency translation adjustment	(100)	—	(100)	—	—	—	—	
Derivative financial instruments	14	—	14	—	—	—	—	
Employee stock plans	19	—	—	—	(1)	20	—	
Common stock repurchased	(399)	—	—	—	(399)	—	—	
Dividends paid on common stock	(13)	(13)	—	—	—	—	—	
Balance at June 30, 2022	\$10,291	\$ 5,390	\$ 237	\$ 282	\$ (877)	\$ 5,166	\$ 93	

18. **Reclassifications from Accumulated Other Comprehensive Income (AOCI)**

(In millions)	Pension and Other Benefit Items	Foreign Currency Items	Unrealized (Loss) Gain on Derivatives	Active Employee Benefit Investments	Total
Balance at December 31, 2022	\$ (322)	\$ 280	\$ (43)	\$ —	\$ (85)
Other comprehensive income (loss) before reclassifications	2	31	(66)	2	(31)
Amounts reclassified from AOCI <sup>(a)</sup>	(24)	—	55	—	31
Net current-period other comprehensive (loss) income	(22)	31	(11)	2	—
Balance at June 30, 2023	\$ (344)	\$ 311	\$ (54)	\$ 2	\$ (85)
Balance at December 31, 2021	\$ (25)	\$ 371	\$ (15)	\$ —	\$ 331
Other comprehensive (loss) income before reclassifications	(1)	(128)	65	—	(64)
Amounts reclassified from AOCI <sup>(a)</sup>	(1)	—	(29)	—	(30)
Net current-period other comprehensive (loss) income	(2)	(128)	36	—	(94)
Balance at June 30, 2022	\$ (27)	\$ 243	\$ 21	\$ —	\$ 237

<sup>(a)</sup> See table below for further details.



Details about AOCI components (in millions)	Amount reclassified from AOCI			
	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Amortization of pension and other benefit items <sup>(a)</sup>				
Prior service credits	\$ (2)	\$ (5)	\$ (3)	\$ (12)
Actuarial (gains) losses	(14)	5	(30)	11
Total pensions and other benefits items	(16)	—	(33)	(1)
Derivative reclassifications to Condensed Consolidated Statements of Operations	45	(47)	73	(37)
Total before tax	29	(47)	40	(38)
Tax (benefit) provision	(8)	11	(9)	8
Net of tax	\$ 21	\$ (36)	\$ 31	\$ (30)

<sup>(a)</sup> These AOCI components are included in the computation of net periodic benefit cost. See Note 10 for additional details.

## 19. Transactions with Related Parties

Related party sales and service transactions are primarily related to equity investees and were \$488 million and \$496 million for the three months ended June 30, 2023 and 2022, respectively and \$1,046 million and \$887 million for the six months ended June 30, 2023 and 2022, respectively.

Accounts payable to related parties include balances due to PRO-TEC Coating Company, LLC (PRO-TEC) of \$171 million and \$142 million at June 30, 2023 and December 31, 2022, respectively for invoicing and receivables collection services provided by U. S. Steel on PRO-TEC's behalf. U. S. Steel, as PRO-TEC's exclusive sales agent, is responsible for credit risk related to those receivables. U. S. Steel also provides PRO-TEC marketing, selling and customer service functions. Payables to other related parties totaled \$1 million for both periods ending June 30, 2023 and December 31, 2022, respectively.

Purchases from related parties for outside processing services provided by equity investees amounted to \$3 million and \$7 million for the three months ended June 30, 2023 and 2022, respectively and \$10 million and \$14 million for the six months ended June 30, 2023 and 2022, respectively. Purchases of iron ore pellets from related parties amounted to \$56 million and \$44 million for the three months ended June 30, 2023 and 2022, respectively and \$78 million and \$68 million for the six months ended June 30, 2023 and 2022, respectively.

## 20. Restructuring and Other Charges

During the three and six months ended June 30, 2023, the Company recorded restructuring and other charges of \$2 million and \$3 million, respectively, which relate to the planned disposition of a component within the Flat-Rolled segment. Cash payments related to previously accrued restructuring programs made during the six months ended June 30, 2023 were approximately \$47 million.

During the three and six months ended June 30, 2022, the Company recorded restructuring and other charges of \$17 million and \$34 million, respectively, which primarily relate to the planned sale of a component within the Flat-Rolled segment. Cash payments related to restructuring made during the six months ended June 30, 2022 were approximately \$28 million.

The activity in the accrued balances incurred in relation to restructuring during the six months ended June 30, 2023, was as follows:

(In millions)	Employee Related Costs	Exit Costs	Non-cash Charges	Total
Balance at December 31, 2022	\$ 132	\$ 50	\$ —	\$ 182
Additional charges	1	2	—	3
Release of prior accruals and other adjustments <sup>(a)</sup>	(2)	(1)	—	(3)
Cash payments	(24)	(23)	—	(47)
Balance at June 30, 2023	\$ 107	\$ 28	\$ —	\$ 135

<sup>(a)</sup> Includes releases of accruals to reflect the current estimate of costs to complete approved restructuring programs.

Accrued liabilities for restructuring programs are recorded primarily in payroll and benefits and accounts payable on the Condensed Consolidated Balance Sheet.



## 21. Contingencies and Commitments

U. S. Steel is the subject of, or party to, a number of pending or threatened legal actions, contingencies and commitments involving a variety of matters, including laws and regulations relating to the environment. Certain of these matters are discussed below. The ultimate resolution of these contingencies could, individually or in the aggregate, be material to the Condensed Consolidated Financial Statements. However, management believes that U. S. Steel will remain a viable and competitive enterprise even though it is possible that these contingencies could be resolved unfavorably.

U. S. Steel accrues for estimated costs related to existing lawsuits, claims and proceedings when it is probable that it will incur these costs in the future and the costs are reasonably estimable.

**Asbestos matters** – As of June 30, 2023, U. S. Steel was a defendant in approximately 915 active asbestos cases involving approximately 2,505 plaintiffs. The vast majority of these cases involve multiple defendants. About 1,545, or approximately 62 percent, of these plaintiff claims are currently pending in a jurisdiction which permits filings with massive numbers of plaintiffs. At December 31, 2022, U. S. Steel was a defendant in approximately 920 active asbestos cases involving approximately 2,510 plaintiffs. Based upon U. S. Steel's experience in such cases, it believes that the actual number of plaintiffs who ultimately assert claims against U. S. Steel will likely be a small fraction of the total number of plaintiffs.

The following table shows the number of asbestos claims in the current period and the prior three years:

Period ended	Opening Number of Claims	Claims Dismissed, Settled and Resolved	New Claims	Closing Number of Claims
December 31, 2020	2,390	240	295	2,445
December 31, 2021	2,445	200	260	2,505
December 31, 2022	2,505	230	235	2,510
June 30, 2023	2,510	105	100	2,505

The amount U. S. Steel accrues for pending asbestos claims is not material to U. S. Steel's financial condition. However, U. S. Steel is unable to estimate the ultimate outcome of asbestos-related claims due to a number of uncertainties, including: (1) the rates at which new claims are filed, (2) the number of and effect of bankruptcies of other companies traditionally defending asbestos claims, (3) uncertainties associated with the variations in the litigation process from jurisdiction to jurisdiction, (4) uncertainties regarding the facts, circumstances and disease process with each claim and (5) any new legislation enacted to address asbestos-related claims.

Further, U. S. Steel does not believe that an accrual for unasserted claims is required. At any given reporting date, it is probable that there are unasserted claims that will be filed against the Company in the future. The Company engages an outside valuation consultant to assist in assessing its ability to estimate an accrual for unasserted claims. This assessment is based on the Company's settlement experience, including recent claims trends. The analysis focuses on settlements made over the last several years as these claims are likely to best represent future claim characteristics. After review by the valuation consultant and U. S. Steel management, it was determined that the Company could not estimate an accrual for unasserted claims.

Despite these uncertainties, management believes that the ultimate resolution of these matters will not have a material adverse effect on U. S. Steel's financial condition.

**Environmental matters** – U. S. Steel is subject to federal, state, local and foreign laws and regulations relating to the environment. These laws generally provide for control of pollutants released into the environment and require responsible parties to undertake remediation of hazardous waste disposal sites. Penalties may be imposed for noncompliance. Changes in accrued liabilities for remediation activities where U. S. Steel is identified as a named party are summarized in the following table:

(In millions)	Six Months Ended June 30, 2023	
Beginning of period	\$	126
Accruals for environmental remediation deemed probable and reasonably estimable		2
Adjustments for changes in estimates		(11)
Obligations settled		(13)
End of period	\$	104

Accrued liabilities for remediation activities are included in the following Condensed Consolidated Balance Sheet lines:

(In millions)	As of June 30, 2023	As of December 31, 2022
Accounts payable	\$ 30	\$ 32
Deferred credits and other noncurrent liabilities	74	94
<b>Total</b>	<b>\$ 104</b>	<b>\$ 126</b>

Expenses related to remediation are recorded in cost of sales and were \$4 million for the six months ended June 30, 2023. Expenses for the six months ended June 30, 2022, were immaterial. It is not currently possible to estimate the ultimate amount of all remediation costs that might be incurred or the penalties that may be imposed. Due to uncertainties inherent in remediation projects and the associated liabilities, it is reasonably possible that total remediation costs for active matters may exceed the accrued liabilities by as much as 20 to 35 percent.

#### Remediation Projects

U. S. Steel is involved in environmental remediation projects at or adjacent to several current and former U. S. Steel facilities and other locations that are in various stages of completion ranging from initial characterization through post-closure monitoring. Based on the anticipated scope and degree of uncertainty of projects, the Company categorizes projects as follows:

- (1) *Projects with Ongoing Study and Scope Development* - For these projects, the extent of remediation that may be required is not yet known, the remediation methods and plans are not yet developed, and/or cost estimates cannot be determined. Therefore, significant costs, in addition to the accrued liabilities for these projects, are reasonably possible. There are three environmental remediation projects where additional costs for completion are not currently estimable but could be material. These projects are at Fairfield Works, UPI and the former steelmaking plant at Joliet, Illinois. As of June 30, 2023, accrued liabilities for these projects totaled \$1 million for the costs of studies, investigations, interim measures, design and/or remediation. It is reasonably possible that additional liabilities associated with future requirements regarding studies, investigations, design and remediation for these projects could be as much as \$19 million to \$32 million.
- (2) *Projects with Significant Accrued liabilities with a Defined Scope* - As of June 30, 2023, there are three significant projects with defined scope greater than or equal to \$5 million each, with a total accrued liability of \$60 million. These projects are Gary Resource Conservation and Recovery Act (accrued liability of \$25 million), Duluth Works (accrued liability of \$17 million) and the former Geneva facility (accrued liability of \$18 million).
- (3) *Other Projects with a Defined Scope* - These projects involve relatively small accrued liabilities for which we believe that, while additional costs are possible, they are not likely to be significant, and also include those projects for which we do not yet possess sufficient information to estimate potential costs to U. S. Steel. There are two other environmental remediation projects which each had an accrued liability of between \$1 million and \$5 million. The total accrued liability for these projects at June 30, 2023, was \$3 million. These projects have progressed through a significant portion of the design phase and material additional costs are not expected.

The remaining environmental remediation projects each have an accrued liability of less than \$1 million each. The total accrued liability for these projects at June 30, 2023, was approximately \$6 million. The Company does not foresee material additional liabilities for any of these sites.

*Post-Closure Costs* – Accrued liabilities for post-closure site monitoring and other costs at various closed landfills totaled \$23 million at June 30, 2023 and were based on known scopes of work.

*Administrative and Legal Costs* – As of June 30, 2023, U. S. Steel had an accrued liability of \$11 million for administrative and legal costs related to environmental remediation projects. These accrued liabilities were based on projected administrative and legal costs for the next three years and do not change significantly from year to year.

*Capital Expenditures* – For a number of years, U. S. Steel has made substantial capital expenditures to comply with various regulations, laws and other requirements relating to the environment. Such capital expenditures totaled \$37 million and \$13 million in the first six months of 2023 and 2022, respectively. U. S. Steel anticipates making additional such expenditures in the future, which may be material; however, the exact amounts and timing of such expenditures are uncertain because of the continuing evolution of specific regulatory requirements.

*European Union (the EU) Environmental Requirements* - Phase IV of the EU Emissions Trading System (the EU ETS) commenced on January 1, 2021 and will finish on December 31, 2030. The European Commission issued final approval of the updated 2021-2025 Slovak National Allocation table in February 2022. The Slovak Ministry of Environment has allocated 6.2 million metric tons of European Union Emission Allowances (EUA) at no charge (free allowances or free allocation) to USSE. As of June 30, 2023, we have pre-purchased approximately 1.40 million EUA totaling €117 million (approximately \$128 million) to cover the expected 2023 shortfall of emission allowances.

The EU's Industrial Emissions Directive requires implementation of EU-determined best available techniques (BAT) for Iron and Steel production to reduce environmental impacts as well as compliance with BAT associated emission levels. Total capital expenditures for projects to go beyond BAT requirements were €138 million (approximately \$150 million). These costs were partially offset by the EU funding received and may be mitigated over the next measurement periods if USSK complies with certain financial covenants, which are assessed annually. If we are unable to meet these covenants in the future, USSK might be required to provide additional collateral (e.g., bank guarantee) to secure 50 percent of the EU funding received. USSK complied with these covenants as of June 30, 2023, and no additional collateral will be required by the end of June 30, 2024. By this next assessment date, two projects of the total fifteen will pass the sustainability monitoring and will be excluded from further assessment to provide additional collateral if the covenants are not met. The last assessment of financial covenants will be performed as of June 30, 2026.

**Environmental indemnifications** – Throughout its history, U. S. Steel has sold numerous properties and businesses and many of these sales included indemnifications and cost sharing agreements related to the assets that were divested. The amount of potential environmental liability associated with these transactions and properties is not estimable due to the nature and extent of the unknown conditions related to the properties divested and deconsolidated. Aside from the environmental liabilities already recorded as a result of these transactions due to specific environmental remediation activities and cases (included in the \$104 million of accrued liabilities for remediation discussed above), there are no other known probable and estimable environmental liabilities related to these transactions.

**Guarantees** – The maximum guarantees of the indebtedness of unconsolidated entities of U. S. Steel totaled \$7 million at June 30, 2023.

**Other contingencies** – Under certain lease agreements covering various equipment, U. S. Steel has the option to renew the lease or to purchase the equipment at the end of the lease term. If U. S. Steel does not exercise the purchase option by the end of the lease term, U. S. Steel guarantees a residual value of the equipment as determined at the lease inception date (totaling approximately \$13 million at June 30, 2023). No liability has been recorded for these guarantees as the potential loss is not probable.

The Company's BR2 project near Osceola, Arkansas qualifies for financing and related economic incentives associated with the acquisition, development, construction, and operation of the facility. These incentives consist of advance lump-sum payments which are included in deferred credits and other noncurrent liabilities on the Condensed Consolidated Balance Sheet. In March 2022, the Company received a lump-sum payment of approximately \$82 million as proceeds from the sale of a portion of expected future tax credits to be earned by the Company under the State of Arkansas's Recycling Tax Credit program. These funds are to be used primarily for the acquisition of project related equipment, however they may also be used for the training and development of new employees hired for the project. The Company is contingently liable for certain repayment penalties if the Company fails to meet certain employment requirements in any given period. In April 2022, the Company received a \$3 million grant from Mississippi County, Arkansas, and in May 2022, the Company received a \$50 million grant from the State of Arkansas Quick Action Closing Fund. Both grants pertain to the reimbursement of qualifying project costs. Deferred liabilities were recognized for each of these grants and are included in deferred credits and other noncurrent liabilities on the Condensed Consolidated Balance Sheet. For each of these incentives and grants, the balance of deferred income will be recognized into other gains, net in the accompanying Condensed Consolidated Statements of Operations on a systematic basis over the periods in which the Company earns the granted funds by complying with the investment and employment requirements of the grant programs.

**Insurance** – U. S. Steel maintains insurance for certain property damage, equipment, business interruption and general liability exposures; however, insurance is applicable only after certain deductibles and retainages. U. S. Steel is self-insured for certain other exposures including workers' compensation (where permitted by law) and auto liability. Liabilities are recorded for workers' compensation and personal injury obligations. Other costs resulting from losses under deductible or retainage amounts or not otherwise covered by insurance are charged against income upon occurrence.

U. S. Steel uses surety bonds, trusts and letters of credit to provide whole or partial financial assurance for certain obligations such as workers' compensation. The total amount of active surety bonds, trusts and letters of credit being used for financial assurance purposes was approximately \$194 million as of June 30, 2023, which reflects U. S. Steel's maximum exposure under these financial guarantees, but not its total exposure for the underlying obligations. A significant portion of our trust arrangements and letters of credit are collateralized by the Credit Facility Agreement. The remaining trust arrangements and letters of credit are collateralized by restricted cash. Restricted cash, which is recorded in other current and noncurrent assets, totaled \$37 million and \$35 million at June 30, 2023, and December 31, 2022, respectively.

**Capital Commitments** – At June 30, 2023, U. S. Steel's contractual commitments to acquire property, plant and equipment totaled \$1.922 billion.

**Contractual Purchase Commitments** – U. S. Steel is obligated to make payments under contractual purchase commitments, including unconditional purchase obligations. Payments for contracts with remaining terms in excess of one year are summarized below (in millions):

Remainder of 2023	2024	2025	2026	2027	Later Years	Total
\$294	\$587	\$205	\$207	\$110	\$367	\$1,770

The majority of U. S. Steel's unconditional purchase obligations relates to the supply of industrial gases, and certain energy and utility services with terms ranging from 13 months to 13 years. Unconditional purchase obligations also include coke and steam purchase commitments related to a coke supply agreement with Gateway Energy & Coke Company LLC (Gateway) under which Gateway is obligated to supply a minimum volume of the expected targeted annual production of the heat recovery coke plant, and U. S. Steel is obligated to purchase the coke from Gateway at the contract price. As of June 30, 2023, if U. S. Steel were to terminate the agreement, it may be obligated to pay in excess of \$61 million.

Total payments relating to unconditional purchase obligations were \$148 million and \$203 million for the three months ended June 30, 2023 and 2022, respectively, and \$423 million and \$477 million for the six months ended June 30, 2023 and 2022, respectively.

## 22. **Common Stock Repurchased**

On October 25, 2021, the Board of Directors authorized a share repurchase program that allowed for the repurchase of up to \$300 million of its outstanding common stock from time to time in the open market or privately negotiated transactions. On January 24, 2022 the Board of Directors authorized an additional \$500 million under the share repurchase program.

On July 25, 2022, following the completion of the previously authorized \$800 million share repurchase programs, the Board of Directors authorized a new share repurchase program that allows for the repurchase of up to \$500 million of its outstanding common stock from time to time in the open market or privately negotiated transactions at the discretion of management. The Company's share repurchase program does not obligate it to acquire any specific number of shares.

U. S. Steel repurchased 6.1 million and 22.5 million shares of common stock for approximately \$150 million and \$522 million under these programs during the six months ended June 30, 2023 and 2022, respectively.

## Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Overview

For the three months ended June 30, 2023, the Company's North American Flat-Rolled segment results were favorable on a sequential basis to the first quarter 2023 due in part to the increased realization of higher steel prices and the absence of first quarter seasonal mining operation headwinds. In the third quarter, we expect increasingly lower steel prices in relation to the second quarter. In addition, we expect customer demand to be consistent with second quarter volumes due to a diverse customer order book. The Mini Mill segment benefited from higher spot prices on a sequential basis to the first quarter 2023. We expect lower steel prices and lower volumes to unfavorably impact the Mini Mill segment's results in the third quarter on a sequential basis to the second quarter 2023. The U. S. Steel Europe segment benefited from higher average selling prices, lower energy and iron ore costs, and higher volumes on a sequential basis to the first quarter 2023. For the third quarter, we expect results at USSE to be impacted by moderating market prices and demand. The Tubular segment results were unfavorable on a sequential basis to the first quarter 2023 as a result of lower average selling prices and lower volumes. These results were driven primarily by continued high levels of imports, higher inventory levels across the supply chain and lower rig counts which are putting pressure on domestic pipe producer demand and pricing. In the third quarter, we expect lower volumes and lower average selling prices in relation to the second quarter 2023 as supply chain pipe inventory continues to re-balance throughout the third quarter.

The Company continued to advance its Best for All<sup>®</sup> strategy on-time and on-budget throughout the second quarter. Construction of a 200 thousand ton, non-grain oriented (NGO) electrical steel line at Big River Steel is on track to start-up in the third quarter 2023. Construction of Big River 2 near Osceola, Arkansas continued during the quarter. This new mini mill is expected to have about 3 million tons per year of steelmaking capability and will combine two state-of-the-art EAFs with differentiated steelmaking and finishing technology, including endless casting and rolling equipment and a planned advanced high-strength steel (AHSS) finishing line. This project is on track to be completed in 2024. In addition, construction of a direct reduced (DR) grade pellet facility at the Company's Keetac ore operations continues, as well as construction of a 325 thousand ton galvanize/Galvalume<sup>®</sup> line at Big River Steel. Capital expenditures for strategic projects were \$1.04 billion during the six months ended June 30, 2023.

Fluctuations in the market price of raw materials and other inflationary impacts have affected the results of each of our reportable segments, and fluctuations going-forward are reasonably likely to have a material impact on future results. We could experience inflation related headwinds for certain raw materials and other costs.

In February 2022, Russia invaded Ukraine and active conflict continues in the country. The war in Ukraine has caused certain disruptions and instability in Russia and Ukraine, as well as in the markets in which we operate. The Company is constantly monitoring the situation for future impacts and risks to the business and has implemented risk mitigating strategies where possible. As a result of the invasion, governments around the world, including the European Union (EU) and the United States of America (U.S.), have enacted sanctions against Russia and Russian interests. We are complying with all applicable sanctions that impact our business.

Since the onset of the war, and before, USSE has been building its inventory of iron ore and coal and procuring them through alternate sources. With the EU prohibiting purchases of coal from suppliers in Russia, new purchases of coal originating from Russia have stopped. The Company has built up sufficient inventory on site or in-transit to meet current customer demand and alternate supply chains have been fully implemented.

Additionally, Russian supply of natural gas to Europe has decreased significantly in response to enacted sanctions. However, Slovakia has natural gas storage and access to additional supply from countries including Norway, the U.S. and Africa. Together, these sources are enough to support the country's expected consumption through the second half of 2023, which includes demand for natural gas for our USSE segment operations.

### RESULTS OF OPERATIONS

U. S. Steel's results in the three and six months ended June 30, 2023, compared to the same period in 2022, declined for the North American Flat-Rolled, Mini Mill and U. S. Steel Europe segments, primarily as a result of lower sales pricing. The Company's Tubular Products segment outperformed the prior year periods primarily due to higher sales pricing.

- **North American Flat-Rolled (Flat-Rolled):** Flat-Rolled results declined primarily due to lower sales price across most product categories.
- **Mini Mill:** Mini Mill results declined primarily due to lower sales price across all product categories.
- **USSE:** USSE results declined primarily due to lower sales price across most product categories.
- **Tubular:** Tubular results improved primarily due to higher sales prices.

Net sales by segment for the three months and six months ended June 30, 2023 and 2022 are set forth in the following table:

(Dollars in millions, excluding intersegment sales)	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Flat-Rolled	\$ 2,956	\$ 3,724	(21)%	\$ 5,526	\$ 6,678	(17)%
Mini Mill	619	838	(26)%	1,172	1,556	(25)%
USSE	1,032	1,342	(23)%	1,870	2,593	(28)%
Tubular	398	381	4%	903	690	31%
Total sales from reportable segments	5,005	6,285	(20)%	9,471	11,517	(18)%
Other	3	5	(40)%	7	7	—%
Net sales	\$ 5,008	\$ 6,290	(20)%	\$ 9,478	\$ 11,524	(18)%

Management's analysis of the **percentage change in net sales** for U. S. Steel's reportable business segments for the three months ended June 30, 2023 versus the three months ended June 30, 2022:

	Steel Products <sup>(a)</sup>				Other <sup>(c)</sup>	Net Change
	Volume	Price	Mix	FX <sup>(b)</sup>		
Flat-Rolled	(5)%	(15)%	(1)%	— %	— %	(21)%
Mini Mill	(4)%	(25)%	3 %	— %	— %	(26)%
USSE	(3)%	(21)%	(1)%	2 %	— %	(23)%
Tubular	(18)%	21 %	1 %	— %	— %	4 %

<sup>(a)</sup> Excludes intersegment sales.

<sup>(b)</sup> Foreign currency translation effects.

<sup>(c)</sup> Primarily sales of raw materials and coke making by-products.

Net sales for the three months ended June 30, 2023 compared to the same period in 2022 were \$5,008 million and \$6,290 million, respectively.

- For the Flat-Rolled segment, the decrease in sales primarily resulted from lower average realized prices (\$251 per ton) across most products and decreased shipments (130 thousand tons) across most products.
- For the Mini Mill segment, the decrease in sales primarily resulted from lower average realized prices (\$320 per ton) across all products and decreased shipments (28 thousand tons) from lower value products.
- For the USSE segment, the decrease in sales primarily resulted from lower average realized prices (\$252 per ton) across most products and decreased shipments (33 thousand tons) across most products.
- For the Tubular segment, the increase in sales primarily resulted from higher average realized prices (\$766 per ton), partially offset by decreased shipments (25 thousand tons).

Management's analysis of the **percentage change in net sales** for U. S. Steel's reportable business segments for the six months ended June 30, 2023 versus the six months ended June 30, 2022:

	Steel Products <sup>(a)</sup>				Other <sup>(c)</sup>	Net Change
	Volume	Price	Mix	FX <sup>(b)</sup>		
Flat-Rolled	4 %	(19)%	(2)%	— %	— %	(17)%
Mini Mill	11 %	(37)%	1 %	— %	— %	(25)%
USSE	(12)%	(16)%	(1)%	1 %	— %	(28)%
Tubular	(8)%	38 %	1 %	— %	— %	31 %

<sup>(a)</sup> Excludes intersegment sales.

<sup>(b)</sup> Foreign currency translation effects.

<sup>(c)</sup> Primarily sales of raw materials and coke making by-products.

Net sales for the six months ended June 30, 2023 compared to the same period in 2022 were \$9,478 million and \$11,524 million, respectively.

- For the Flat-Rolled segment, the decrease in sales primarily resulted from lower average realized prices (\$302 per ton) across most products, partially offset by increased shipments (201 thousand tons) from higher valued products.
- For the Mini Mill segment, the decrease in sales primarily resulted from lower average realized prices (\$452 per ton) across all products, partially offset by increased shipments (124 thousand tons) across all products.
- For the USSE segment, the decrease in sales primarily resulted from lower average realized prices (\$223 per ton) across most products and decreased shipments (260 thousand tons) across most products.
- For the Tubular segment, the increase in sales primarily resulted from higher average realized prices (\$1,093 per ton), partially offset by decreased shipments (22 thousand tons).

### **Selling, general and administrative expenses**

Selling, general and administrative expenses were \$103 million and \$202 million in the three months and six months ended June 30, 2023, respectively, compared to \$112 million and \$229 million in the three months and six months ended June 30, 2022, respectively. The change in period over period expenses was primarily driven by profit and variable based incentive costs.

### **Restructuring and other charges**

During the three months and six months ended June 30, 2023, the Company recognized restructuring and other charges of \$2 million and \$3 million, respectively, compared to charges of \$17 million and \$34 million recognized during the three months and six months ended June 30, 2022, respectively. The charges recognized in the current and the prior year period pertain to the planned disposition of certain assets related to a component of the Company's flat-rolled business. See Note 20 to the Condensed Consolidated Financial Statements for further details.

### **Operating configuration adjustments**

The Company adjusts its operating configuration in response to changes in market conditions, global overcapacity, unfair trade practices, and changes in customer demand. These operating configuration adjustments can include indefinitely and temporarily idling certain of its facilities as well as re-starting production at certain of its facilities. The Company will continue to adjust its operating configuration in order to ensure its order book and production footprint are balanced.

#### Idled Operations

The following operations were initially idled in 2020 and remained idle as of June 30, 2023. These facilities and their respective carrying values as of June 30, 2023 included:

- Blast furnace A at Granite City Works, \$55 million
- Lorain Tubular Operations, \$60 million
- Lone Star Tubular Operations, \$5 million
- Wheeling Machine Products coupling production facility at Hughes Springs, Texas, immaterial

In 2022, U. S. Steel indefinitely idled the majority of the tin mill operations at Gary Works. This included the Tin Line #5 and the Tin Line #6. As of June 30, 2023, the carrying value of the indefinitely idled tin mill operations assets at Gary Works is \$75 million.

In the first quarter of 2023, the Company completed the previously announced permanent shutdown of coke batteries numbers 1 through 3 at the Mon Valley Works.

Earnings (loss) before interest and income taxes by segment is set forth in the following table:

(Dollars in millions)	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Flat-Rolled	\$ 231	\$ 793	(71)%	\$ 224	\$ 1,322	(83)%
Mini Mill	132	270	(51)%	144	548	(74)%
USSE	72	280	(74)%	38	544	(93)%
Tubular	157	107	47 %	389	184	111 %
Total earnings from reportable segments	592	1,450	(59)%	795	2,598	(69)%
Other	(12)	(12)	— %	(9)	(5)	80 %
Segment earnings before interest and income taxes	580	1,438	(60)%	786	2,593	(70)%
Items not allocated to segments:						
Restructuring and other charges	(2)	(17)		(3)	(34)	
Stock-based compensation expense <sup>(a)</sup>	(12)	(16)		(23)	(32)	
Asset impairment charges	—	(151)		(4)	(157)	
Environmental remediation charges	(2)	—		(2)	—	
Other charges, net	—	—		(1)	2	
Total earnings before interest and income taxes	\$ 564	\$ 1,254	(55)%	\$ 753	\$ 2,372	(68)%

<sup>(a)</sup> The prior year was retroactively adjusted to reflect the reclassification of stock-based compensation expense.

#### Segment results for Flat-Rolled

	Three months ended June 30,			Six months ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Earnings before interest and taxes (\$ millions)	\$ 231	\$ 793	(71)%	\$ 224	\$ 1,322	(83)%
Gross margin	14 %	24 %	(10)%	11 %	23 %	(12)%
Raw steel production (mnt)	2,529	2,424	4 %	4,922	4,629	6 %
Capability utilization	77 %	74 %	3 %	75 %	71 %	4 %
Steel shipments (mnt)	2,235	2,365	(5)%	4,513	4,312	5 %
Average realized steel price per ton	\$ 1,088	\$ 1,339	(19)%	\$ 1,050	\$ 1,352	(22)%

The decrease in Flat-Rolled results for the three months ended June 30, 2023 compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$545 million)
- decreased shipments (approximately \$110 million)
- lower non-prime sales (approximately \$15 million)
- higher operating costs (approximately \$25 million)
- unfavorable equity investees income (approximately \$80 million),

these changes were partially offset by:

- higher other sales (approximately \$35 million)
- lower raw material costs (approximately \$85 million)
- lower energy costs (approximately \$55 million)
- lower other costs, primarily variable compensation (approximately \$40 million).

Gross margin for the three months ended June 30, 2023 compared to the same period in 2022 decreased primarily as a result of lower average realized prices and lower sales volume.

The decrease in Flat-Rolled results for the six months ended June 30, 2023 compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$1,325 million)
- lower non-prime sales (approximately \$25 million)
- unfavorable equity investees income (approximately \$120 million),



these changes were partially offset by:

- increased shipments, including volume efficiencies (approximately \$110 million)
- higher other sales (approximately \$35 million)
- lower raw material costs (approximately \$60 million)
- lower energy costs (approximately \$15 million)
- lower operating costs (approximately \$5 million)
- lower other costs, primarily variable compensation (approximately \$145 million).

Gross margin for the six months ended June 30, 2023 compared to the same period in 2022 decreased primarily as a result of lower average realized prices, partially offset by higher sales volume.

#### Segment results for Mini Mill

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Earnings before interest and taxes (\$ millions)	\$ 132	270	(51)%	\$ 144	548	(74)%
Gross margin	29 %	39 %	(10)%	20 %	42 %	(22)%
Raw steel production (mnt)	749	750	— %	1,508	1,351	12 %
Capability utilization	91 %	91 %	— %	92 %	83 %	9 %
Steel shipments (mnt)	587	615	(5)%	1,246	1,122	11 %
Average realized steel price per ton	\$ 1,011	\$ 1,331	(24)%	\$ 897	\$ 1,349	(34)%

The decrease in Mini Mill results for the three months ended June 30, 2023 compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$205 million),

these changes were partially offset by:

- lower raw material costs (approximately \$45 million)
- lower other costs, primarily variable compensation (approximately \$20 million).

Gross margin for the three months ended June 30, 2023 compared to the same period in 2022 decreased primarily as a result of lower average realized sales price and lower sales volume.

The decrease in Mini Mill results for the six months ended June 30, 2023 compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$625 million)
- lower other sales (approximately \$15 million)
- higher operating costs (approximately \$20 million),

these changes were partially offset by:

- increased shipments (approximately \$115 million)
- lower raw material costs (approximately \$105 million)
- lower other costs, primarily variable compensation (approximately \$35 million).

Gross margin for the six months ended June 30, 2023 compared to the same period in 2022 decreased primarily as a result of lower average realized sales price, partially offset by higher sales volume.

#### Segment results for USSE

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Earnings before interest and taxes (\$ millions)	\$ 72	\$ 280	(74)%	\$ 38	\$ 544	(93)%
Gross margin	11 %	23 %	(12)%	6 %	23 %	(17)%
Raw steel production (mnt)	1,213	1,216	— %	2,305	2,304	— %
Capability utilization	97 %	98 %	(1)%	93 %	93 %	— %
Steel shipments (mnt)	1,034	1,067	(3)%	1,917	2,177	(12)%
Average realized steel price per (\$/ton)	\$ 965	\$ 1,217	(21)%	\$ 939	\$ 1,162	(19)%
Average realized steel price per (€/ton)	€ 886	€ 1,142	(22)%	€ 868	€ 1,064	(18)%

The decrease in USSE results for the three months ended June 30, 2023 compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$270 million)
- decreased shipments (approximately \$10 million)
- lower other sales (approximately \$10 million)
- higher operating costs (approximately \$5 million)
- higher energy costs (approximately \$5 million),

these changes were partially offset by:

- lower raw material costs (approximately \$80 million)
- lower other costs (approximately \$10 million).

Gross margin for the three months ended June 30, 2023 compared to the same period in 2022 decreased primarily as a result of lower average realized prices and lower sales volume.

The decrease in USSE results for the six months ended June 30, 2023 compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$370 million)
- decreased shipments (approximately \$55 million)
- lower other sales (approximately \$5 million)
- higher raw material costs (approximately \$60 million)
- higher operating costs (approximately \$5 million)
- higher energy costs (approximately \$10 million)
- weakening of the Euro versus the U.S. dollar (approximately \$30 million),

these changes were partially offset by:

- lower other costs, primarily variable compensation (approximately \$30 million).

Gross margin for the six months ended June 30, 2023 compared to the same period in 2022 decreased primarily as a result of lower average realized prices and lower sales volume.

#### Segment results for Tubular

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Earnings before interest and taxes (\$ millions)	\$ 157	\$ 107	47 %	\$ 389	\$ 184	111 %
Gross margin	42 %	30 %	12 %	46 %	30 %	16 %
Raw steel production (mnt)	129	168	(23)%	300	324	(7)%
Capability utilization	57 %	75 %	(18)%	67 %	73 %	(6)%
Steel shipments (mnt)	111	136	(18)%	242	264	(8)%
Average realized steel price per ton	\$ 3,493	\$ 2,727	28 %	\$ 3,636	\$ 2,543	43 %

The increase in Tubular results for the three months ended June 30, 2023 compared to the same period in 2022 was primarily due to:

- higher average realized prices (approximately \$80 million)
- lower raw material costs (approximately \$5 million)
- lower other costs, primarily variable compensation (approximately \$20 million),

these changes were partially offset by:

- decreased shipments (approximately \$55 million).

Gross margin for the three months ended June 30, 2023 compared to the same period in 2022 increased primarily as a result of higher average realized prices and lower costs, partially offset by lower sales volume.

The increase in Tubular results for the six months ended June 30, 2023 compared to the same period in 2022 was primarily due to:

- higher average realized prices (approximately \$255 million)
- lower raw material costs (approximately \$10 million),

these changes were partially offset by:

- decreased shipments (approximately \$50 million)
- higher operating costs (approximately \$5 million)
- higher other costs (approximately \$5 million).

Gross margin for the six months ended June 30, 2023 compared to the same period in 2022 increased primarily as a result of higher average realized prices, partially offset by lower sales volume.

### Net interest and other financial benefits

(Dollars in millions)	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Interest expense	\$ 20	\$ 39	49 %	\$ 47	\$ 89	47 %
Interest income	(34)	(4)	750 %	(64)	(5)	1,180 %
Other financial costs	6	18	67 %	12	20	40 %
Net periodic benefit income	(41)	(61)	(33)%	(83)	(122)	(32)%
Net gain from investments related to active employee benefits	(8)	—	n/a	(30)	—	n/a
Total net interest and other financial benefits	\$ (57)	\$ (8)	613 %	\$ (118)	\$ (18)	556 %

Net interest and other financial benefits improved in the three months ended June 30, 2023, as compared to the same period in 2022 primarily due to increased interest income on cash deposits, lower interest expense as a result of increased capitalized interest, and gains on the investments in the surplus VEBA subaccount portfolio, partially offset by reduced net periodic benefit income due to 2022 plan asset performance, the transfer of \$595 million in surplus VEBA funds to the new subaccount and increased prior service cost.

Net interest and other financial benefits improved in the six months ended June 30, 2023, as compared to the same period in 2022 primarily due to increased interest income on cash deposits, lower interest expense as a result of increased capitalized interest, and gains on the investments in the surplus VEBA subaccount portfolio, partially offset by reduced net periodic benefit income due to 2022 plan asset performance, the transfer of the \$595 million in surplus VEBA funds to a new subaccount and increased prior service cost.

Income tax expense was \$144 million and \$195 million in the three months and six months ended June 30, 2023, respectively, compared to \$284 million and \$530 million in the three months and six months ended June 30, 2022, respectively. The changes from the prior year periods were primarily due to a decrease in earnings before taxes.

### Net earnings

Net earnings attributable to United States Steel Corporation were \$477 million and \$676 million in the three and six months ended June 30, 2023, respectively, compared to net earnings of \$978 million and \$1,860 million in the three and six months ended June 30, 2022, respectively. The changes primarily reflect the factors discussed above.

## LIQUIDITY AND CAPITAL RESOURCES

### Net Cash Provided by Operating Activities

Net cash provided by operating activities was \$894 million for the six months ended June 30, 2023 compared to net cash provided by operating activities of \$1,676 million in the same period in 2022. The period over period decrease in cash from operations from the prior year period was primarily due to lower net earnings partially offset by changes in working capital. Changes in working capital can vary significantly depending on factors such as the timing of inventory production and purchases, which is affected by the length of our business cycles as well as our captive raw materials position, customer payments of accounts receivable and payments to vendors in the regular course of business.

As shown below our cash conversion cycle for the second quarter of 2023 decreased by 6 days as compared to the fourth quarter of 2022.

Cash Conversion Cycle	Second Quarter of 2023		Fourth Quarter of 2022	
	\$ millions	Days	\$ millions	Days
Accounts receivable, net <sup>(a)</sup>	\$1,864	33	\$1,634	39
+ Inventories <sup>(b)</sup>	\$2,540	56	\$2,359	60
- Accounts Payable and Other Accrued Liabilities <sup>(c)</sup>	\$2,999	66	\$2,831	70
= Cash Conversion Cycle <sup>(d)</sup>		23		29

- (a) Calculated as Average Accounts Receivable, net divided by total Net Sales multiplied by the number of days in the period.
- (b) Calculated as Average Inventory divided by total Cost of Sales multiplied by the number of days in the period.
- (c) Calculated as Average Accounts Payable and Other Accrued Liabilities less bank checks outstanding and other current liabilities divided by total Cost of Sales multiplied by the number of days in the period.
- (d) Calculated as Accounts Receivable Days plus Inventory Days less Accounts Payable Days.

The cash conversion cycle is a non-generally accepted accounting principles (non-GAAP) financial measure. We believe the cash conversion cycle is a useful measure in providing investors with information regarding our cash management performance and is a widely accepted measure of working capital management efficiency. The cash conversion cycle should not be considered in isolation or as an alternative to other GAAP metrics as an indicator of performance.

The last-in, first-out (LIFO) inventory method is the predominant method of inventory costing for our Flat-Rolled and Tubular segments. Based on the Company's latest internal forecasts and its inventory requirements, management does not believe there will be significant permanent LIFO liquidations that would impact earnings for the remainder of 2023.

### **Net Cash Used in Investing Activities**

Net cash used in investing activities was \$1,350 million for the six months ended June 30, 2023 compared to net cash used in investing activities of \$602 million in the same period in 2022. The increase in net cash used in investing activities was primarily due to increased capital expenditures (discussed in more detail below).

Capital expenditures for the six months ended June 30, 2023, were \$1,353 million, compared with \$660 million in the same period in 2022. Mini Mill capital expenditures were \$1,051 million and included \$784 million for BR2, exclusive of the air separation unit, as well as spending for the CGL and the NGO being built at the existing Big River Steel facility. Flat-Rolled capital expenditures were \$243 million which includes spending for the construction of a DR grade pellet facility at Keetac and the Gary Pig Iron facility, as well as mining equipment, other infrastructure and environmental projects across the Flat-Rolled footprint. USSE capital expenditures were \$42 million and included spending for the blast furnace, enterprise resource planning (ERP) project, 5-stand control system upgrades and various other projects. Tubular capital expenditures were \$17 million and included spending to support steelmaking, infrastructure, and environmental projects within the Tubular footprint.

### **Net Cash Provided by, Used in Financing Activities**

Net cash provided by financing activities was \$26 million for the six months ended June 30, 2023, compared to net cash used in financing activities of \$548 million in the same period last year. The period over period change in financing activities was primarily due to decreased repurchases of common stock and net increase in long term debt, partially offset by the absence of proceeds from government incentive proceeds in the current period.

### **Financing**

Certain of our credit facilities, including the Credit Facility Agreement, the Big River Steel ABL Facility, the USSK Credit Agreement and the Export Credit Agreement, contain standard terms and conditions including customary material adverse change clauses. If a material adverse change was to occur, our ability to fund future operating and capital requirements could be negatively impacted. The €300 million USSK Credit Agreement contains certain USSK specific financial covenants. The USSK Credit Agreement requires USSK to maintain a net debt to earnings before interest, taxes, depreciation and amortization (EBITDA) ratio of less than 3.50:1 (the "EBITDA Ratio Covenant") as measured on a rolling twelve-month basis on June 30th and December 31st each year. In April 2023, after determining that USSK may not be able to comply with the EBITDA Ratio Covenant at June 30, 2023, based on forecasted EBITDA at the time, USSK requested a waiver of the EBITDA Ratio Covenant from its lenders for the period ending June 30, 2023. The waiver was approved unanimously by USSK's lender group. At June 30, 2023, USSK was in compliance with the EBITDA Ratio Covenant, and the USSK Credit Agreement was undrawn and fully available.

We use surety bonds, trusts and letters of credit to provide whole or partial financial assurance for certain transactions and business activities. The use of some forms of financial assurance and cash collateral have a negative impact on liquidity. U. S. Steel has committed approximately \$194 million of liquidity sources for financial assurance purposes as of June 30, 2023. Changes in certain of these commitments which use collateral are reflected within cash, cash equivalents and restricted cash on the Condensed Consolidated Statement of Cash Flows.

### **Share Repurchases**

On July 25, 2022, following the completion of the previously authorized \$800 million share repurchase programs, the Board of Directors authorized a new share repurchase program that allows for the repurchase of up to \$500 million of its outstanding common stock from time to time in the open market or privately negotiated transactions at the discretion of management. The Company's share repurchase program does not obligate it to acquire any specific number of shares. Common stock repurchased under our share repurchase programs totaled 6.1 million shares for approximately \$150 million in the six months ended June 30, 2023. See Note 22 to the Condensed Consolidated Financial Statements for further details.

## Capital Requirements

U. S. Steel's contractual commitments to acquire property, plant and equipment at June 30, 2023, totaled \$1.922 billion.

## Liquidity

The following table summarizes U. S. Steel's liquidity as of June 30, 2023:

(Dollars in millions)

Cash and cash equivalents	\$	3,080
Amount available under Credit Facility Agreement		1,746
Amount available under Big River Steel - Revolving Line of Credit		350
Amount available under USSK Credit Agreement and USSK Credit Facility		342
Total estimated liquidity	\$	5,518

We finished the second quarter of 2023 with \$3,080 million of cash and cash equivalents and \$5,518 million of total liquidity. Available cash is left on deposit with financial institutions or invested in highly liquid securities with parties we believe to be creditworthy. Substantially all of the liquidity attributable to our foreign subsidiaries can be accessed without the imposition of income taxes as a result of a prior election to liquidate for U.S. income tax purposes a foreign subsidiary that holds most of our international operations.

We expect that our estimated liquidity requirements will consist primarily of our 2023 planned strategic and sustaining capital expenditures, working capital requirements, interest expense, and operating costs and employee benefits for our operations after taking into account the footprint actions and cost reductions at our plants and headquarters. Our available liquidity at June 30, 2023 consists principally of our cash and cash equivalents and available borrowings under the Credit Facility Agreement, Big River Steel ABL Facility, USSK Credit Agreement and the USSK Credit Facility.

Management continues to evaluate market conditions in our industry and our global liquidity position and may consider additional actions to further strengthen our balance sheet and optimize liquidity, including but not limited to the repayment or refinancing of outstanding debt and the incurrence of additional debt to opportunistically finance strategic projects. The Company may also return excess liquidity to shareholders through share repurchases and dividends from time to time if deemed appropriate by management.

U. S. Steel management believes that our liquidity will be adequate to fund our requirements based on our current assumptions with respect to our results of operations and financial condition.

The Company has a supply chain finance (SCF) arrangement with a third-party administrator which allows participating suppliers, at their sole discretion, to make offers to sell payment obligations of the Company prior to their scheduled due dates at a discounted price to a participating financial institution. The third-party administrator entered into a separate agreement with the Export Import Bank of the United States to guarantee 90 percent of supplier obligations sold for up to \$200 million. No guarantees or collateral are provided by the Company or any of its subsidiaries under the SCF program.

The Company's goal is to capture overall supplier savings and improve working capital efficiency. The agreements facilitate the suppliers' ability to sell payment obligations, while providing them with greater working capital flexibility. The Company has no economic interest in the sale of the suppliers' receivables and no direct financial relationship with the financial institution concerning these services. The Company's obligations to its suppliers, including amounts due and scheduled payment dates, are not impacted by suppliers' decisions to sell amounts under the arrangements. The SCF program requires the Company to pay the third-party administrator the stated amount of the confirmed participating supplier invoices. The payment terms for confirmed invoices range from 75 to 90 days after the end of the month in which the invoice was issued.

The underlying costs from suppliers that elected to participate in the SCF program are generally recorded in cost of sales in the Company's Condensed Consolidated Statement of Operations. Amounts due to suppliers who participate in the SCF program are reflected in accounts payable and accrued expenses on the Company's Condensed Consolidated Balance Sheet and payments on the obligations by our suppliers are included in cash used in operating activities in the Condensed Consolidated Statement of Cash Flows. As of June 30, 2023, accounts payable and accrued expenses included \$106 million of outstanding payment obligations which suppliers elected to sell to participating financial institutions.

## Environmental Matters, Litigation and Contingencies

Some of U. S. Steel's facilities were in operation before 1900. Although the Company believes that its environmental practices have either led the industry or at least been consistent with prevailing industry practices, hazardous materials have been and may continue to be released at current or former operating sites or delivered to sites operated by third parties.

Our U.S. facilities are subject to environmental laws applicable in the U.S., including the Clean Air Act (the CAA), the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as well as state and local laws and regulations.

U. S. Steel has incurred and will continue to incur substantial capital, operating, and maintenance and remediation expenditures as a result of environmental laws and regulations, related to release of hazardous materials, which in recent years have been mainly for process changes to meet the CAA obligations and similar obligations in Europe.

#### EU Environmental Requirements and Slovak Operations

Phase IV of the EU Emissions Trading System (the EU ETS) commenced on January 1, 2021 and will finish on December 31, 2030. The European Commission issued final approval of the updated 2021-2025 Slovak National Allocation table in February 2022. The Slovak Ministry of Environment has allocated 6.2 million metric tons of European Union Emission Allowances (EUA) at no charge (free allowances or free allocation) to USSE. As of June 30, 2023, we have pre-purchased approximately 1.40 million EUA totaling €117 million (approximately \$128 million) to cover the expected 2023 shortfall of emission allowances.

The EU's Industrial Emissions Directive requires implementation of EU determined best available techniques (BAT) for Iron and Steel production to reduce environmental impacts as well as compliance with BAT associated emission levels. Total capital expenditures for projects to go beyond BAT requirements were €138 million (approximately \$150 million). These costs were partially offset by the EU funding received and may be mitigated over the next measurement periods if USSK complies with certain financial covenants, which are assessed annually. If we are unable to meet these covenants in the future, USSK might be required to provide additional collateral (e.g., bank guarantee) to secure 50 percent of the EU funding received. USSK complied with these covenants as of June 30, 2023, and no additional collateral will be required by the end of June 30, 2024. By this next assessment date, two projects of the total fifteen will pass the sustainability monitoring and will be excluded from further assessment to provide additional collateral if the covenants are not met. The last assessment of financial covenants will be performed as of June 30, 2026.

For further discussion of laws applicable in Slovakia and the EU and their impact on USSE, see Note 21 to the Condensed Consolidated Financial Statements, "Contingencies and Commitments - Environmental Matters, EU Environmental Requirements."

#### **New and Emerging Environmental Regulations**

##### United States and European Greenhouse Gas Emissions Regulations

The Phase IV EU ETS period spans 2021-2030 and began on January 1, 2021. The Phase IV period is divided into two sub periods (2021-2025 and 2026-2030), rules for the first subperiod are finalized, however we expect that rules for the second subperiod may be more stringent than those for the first one. Once approved, the rules may impact subperiod 2026-2030. Currently, the overall EU ETS target is a 40 percent reduction of 1990 emissions by 2030. Free allocation of CO<sub>2</sub> allowances is based on reduced benchmark values which have been published in the first quarter of 2021 and historical levels of production from 2014-2018. Allocations to individual installations may be adjusted annually to reflect relevant increases and decreases in production. The threshold for adjustments is set at 15 percent and will be assessed on the basis of a rolling average of two precedent years. Production data verified by an external auditor shows that USSE's rolling average for 2020-2021 returned to the base limit for hot metal production resulting in an increase to the free allocation for 2022 compared to 2021, however the 2022 free allocation was still slightly reduced due to missing the 15 percent threshold for sinter production. Additionally, lower production in 2019 through 2021 will have an impact on the future free allocation for 2026-2030, where the historical production average for years 2019-2023 will be assessed. Based on actual production data for 2022, we expect that the free allocation for hot metal will remain unchanged for 2023, however allocations for sinter will be lower.

In order to achieve the EU political goal of carbon emissions neutrality by 2050, on July 14, 2021, the European Commission released a package of legislative proposals called Fit for 55. The proposals contain significant changes to current EU ETS functions and requirements, including: a new carbon border adjustment mechanism to impose carbon fees on EU imports, further reduction of free CO<sub>2</sub> allowance allocation to heavy industry and measures to strengthen the supply of carbon allowances. The legislative process is being impacted by the ongoing Russia-Ukraine crisis. The proposals are subject to the EU legislative process, and we cannot predict their future impact.

##### United States - Air

The CAA imposes stringent limits on air emissions with a federally mandated operating permit program and civil and criminal enforcement sanctions. The CAA requires, among other things, the regulation of hazardous air pollutants through the development and promulgation of National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology (MACT) Standards. The U.S. EPA has developed various industry-specific MACT standards pursuant to this requirement. The CAA requires the U.S. EPA to promulgate regulations establishing emission standards for each category of Hazardous Air Pollutants. The U.S. EPA also must conduct risk assessments on each source category that is already subject to MACT standards and determine if additional standards are needed to reduce residual risks.

While our operations are subject to several different CAA rules and categories of NESHAP and MACT standards, the principal impact of these standards on U. S. Steel's operations includes those that are specific to coke making, iron making, steel making and iron ore processing. The U. S. EPA has several rules under consideration that will impact our operations, as described in the sections below. While these rules are not finalized and the impacts are not estimable at this time, the overall cumulative impact could be material.

On July 13, 2020, the U.S. EPA published a Residual Risk and Technology Review rule for the Integrated Iron and Steel MACT category in the Federal Register. Based on the results of the U.S. EPA's risk review, the agency determined that risks due to emissions of air toxics from the Integrated Iron and Steel category are acceptable and that the current regulations provided an ample margin of safety to protect public health. Under the technology review, the U.S. EPA determined that there are no developments in practices, processes or control technologies that necessitate revision of the standards. In September 2020, several petitions for review of the rule, including those filed by the Company, the American Iron and Steel Institute (the AISI), Clean Air Council and others, were filed with the United States Court of Appeals for the D.C. Circuit. The cases were consolidated and are being held in abeyance until the U.S. EPA reviews and responds to administrative petitions for review. The U.S. EPA is required by court order to issue a final rule by October 26, 2023. Because the U.S. EPA has yet to propose a revised iron and steel rule, any impacts are not estimable at this time.

For the Taconite Iron Ore Processing category, based on the results of the U.S. EPA's risk review, the agency promulgated a final rule on July 28, 2020, in which the U.S. EPA determined that risks from emissions of air toxics from this source category are acceptable and that the existing standards provide an ample margin of safety. Furthermore, under the technology review, the agency identified no cost-effective developments in controls, practices, or processes to achieve further emissions reductions. Petitions for review of the rule were filed in the United States Court of Appeals for the D.C. Circuit, in which the Company and the AISI intervened. The U.S. EPA is required by court order to issue a final rule by November 16, 2023. The U.S. EPA proposed the Taconite Rule on May 15, 2023 and comments were submitted on July 7, 2023. Since the revised taconite rule is not final, any impacts are not estimable at this time.

The U.S. EPA is in the process of conducting its statutorily obligated residual risk and technology review of coke oven standards. Because the U.S. EPA has not completed its review of the Coke MACT regulations, any impacts related to the U.S. EPA's review of the coke standards cannot be estimated at this time. The U.S. EPA is under a court-ordered deadline to complete the residual risk and technology rulemaking by May 23, 2024.

In response to Court orders that invalidated prior U.S. EPA determinations regarding ozone attainment interference, on April 6, 2022, the U.S. EPA proposed a Federal Implementation Plan (that would replace several pending or disapproved State Implementation Plans) for Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard. The proposed rule would affect electric generating units (EGUs) in 26 states and certain non-EQU industries, including, among several others, coke ovens, taconite production kilns, boilers, blast furnaces, basic oxygen furnaces, reheating furnaces, and annealing furnaces in 23 states, including those where U. S. Steel has operations. The impacts of the rule, if promulgated as proposed, could be material. U. S. Steel submitted comments on the proposed rule on June 21, 2022. The U.S. EPA announced the final rule on March 15, 2023. The final rule only included regulation of boilers and reheat furnaces for the iron and steel industry limiting the potential impacts. The final rule was published in the Federal Register on June 5, 2023. The deadline to file any challenge to the final rule is August 4, 2023. U. S. Steel is continuing to review the rule and evaluate any potential impacts and any need to file an administrative or judicial challenge.

The CAA also requires the U.S. EPA to develop and implement National Ambient Air Quality Standards (NAAQS) for criteria pollutants, which include, among others, particulate matter (PM) - consisting of PM10 and PM2.5, lead, carbon monoxide, nitrogen dioxide, sulfur dioxide (SO<sub>2</sub>) and ozone.

In October 2015, the U.S. EPA lowered the NAAQS for ozone from 75 parts per billion (ppb) to 70 ppb. On November 6, 2017, the U.S. EPA designated most areas in which we operate as attainment with the 2015 standard. In a separate ruling, on June 4, 2018, the U.S. EPA designated other areas in which we operate as "marginal nonattainment" with the 2015 ozone standard. On December 6, 2018, the U.S. EPA published a final rule regarding implementation of the 2015 ozone standard. Because no state regulatory or permitting actions to bring the ozone nonattainment areas into attainment have yet to be proposed or developed for U. S. Steel facilities, the operational and financial impact of the ozone NAAQS cannot be reasonably estimated at this time. On December 31, 2020, the U.S. EPA published a final rule pursuant to its statutorily required review of NAAQS that retains the ozone NAAQS at 70 ppb. In January 2021, New York, along with several states and non-governmental organizations filed petitions for judicial review of the action with the United States Court of Appeals for the D.C. Circuit. Several other states and industry trade groups intervened in support of the U. S. EPA's action. The case remains in abeyance before the court as the U.S. EPA voluntarily reconsiders the ozone NAAQS. U. S. EPA expects to propose a rulemaking for its voluntary reconsideration of the ozone standard in April 2024. Because the U.S. EPA has yet to complete its reconsideration to revise or retain the 2020 ozone NAAQS, any impacts are not estimable at this time.

On December 18, 2020, the U.S. EPA published a final rule pursuant to its statutorily required review of NAAQS that retains the existing PM<sub>2.5</sub> standards without revision. In early 2021, several states and non-governmental organizations filed petitions for judicial review of the action with the United States Court of Appeals for the D.C. Circuit. Several industry trade groups intervened in support of the U.S. EPA's action. The case remains in abeyance before the court as the U.S. EPA voluntarily reconsiders the PM<sub>2.5</sub> NAAQS. On January 6, 2023, the U.S. EPA proposed to lower the annual PM<sub>2.5</sub> NAAQS from the current 12 ug/m<sup>3</sup> standard to within the range of 9.0 to 10.0 ug/m<sup>3</sup>. U. S. EPA expects to finalize a rule on the reconsideration in October 2023. U.

S. Steel is currently reviewing the proposal and comments to determine the potential impacts. Because the U.S. EPA has proposed the rule without specificity, any impacts are inestimable at this time.

For calendar year 2022, all Allegheny County ambient air quality monitors met all U.S. EPA health based National Ambient Air Quality Standards for the second consecutive year. On March 16, 2022, the U.S. EPA published a final rule, a clean data determination, showing that Allegheny County has attained the 2012 annual PM<sub>2.5</sub> NAAQS based on the 2018 – 2020 ambient air quality data. Based on these and other data, ACHD submitted a Redesignation Request and Maintenance Plan to the U.S. EPA requesting that the U.S. EPA redesignate all of Allegheny County in attainment with the current PM<sub>2.5</sub> NAAQS.

#### United States - Water

The U.S. EPA issued the final rule redefining the Waters of the United States (WOTUS), and it became effective March 1, 2023. The definition of WOTUS has had many changes and legal challenges over the last several years and this rule is no different. Due to certain state challenges and requests for injunctions, the Rule has been enjoined and is not in effect in Idaho and Texas. The new WOTUS rule expands the definition of what all waters will be considered to be a WOTUS. However, in May 2023, the U. S. Supreme court issued a decision in Sackett v. EPA that significantly narrowed the definition of WOTUS and, specifically, as that definition relates to wetlands under the Clean Water Act. EPA has since stated that it will re-issue its WOTUS rule by September 1st, 2023 with changes incorporated from the Sackett decision. U. S. Steel will continue to review and follow the final WOTUS definition and associated litigation for its potential impact on the Company.

For further discussion of relevant environmental matters, including environmental remediation obligations, see "Item 1. Legal Proceedings - Environmental Proceedings."

#### **OFF-BALANCE SHEET ARRANGEMENTS**

U. S. Steel did not enter into any new material off-balance sheet arrangements during the second quarter of 2023.

#### **INTERNATIONAL TRADE**

U. S. Steel continues to face import competition, much of which is unfairly traded and fueled by massive global steel overcapacity, currently estimated to be over 632 million net tons per year—more than six times the entire U.S. steel market and over twenty times total U.S. steel imports. These imports and overcapacity negatively impact the Company's operational and financial performance. U. S. Steel continues to lead efforts to address these challenges that threaten the Company, our workers, our stockholders and our country's national and economic security.

As of the date of this filing, pursuant to a series of Presidential Proclamations issued in accordance with Section 232 of the Trade Expansion Act of 1962, U.S. imports of certain steel products are subject to a 25 percent tariff, except imports from: (1) Argentina, Brazil, and South Korea, which are subject to restrictive quotas; (2) the European Union (EU), Japan and the United Kingdom (UK) that are melted and poured in the EU/Japan/UK, within quarterly tariff-rate quota (TRQ) limits; (3) Canada and Mexico, which are not subject to tariffs or quotas, but tariffs could be re-imposed on surging product groups after consultations; (4) Ukraine and, if melted and poured in Ukraine, the EU, which are exempt from tariffs until June 1, 2024; and (5) Australia, which are not subject to tariffs, quotas or an anti-surge mechanism.

In April 2023, U.S. Customs and Border Protection (CBP) announced plans to require importers to report country of melt and pour for all steel imports in customs entry forms to align with 2020 updates to steel import licenses and to enforce EU, Japan, and UK Section 232 TRQs.

In May 2023, President Biden announced the extension of the Section 232 tariff exemption for steel imports from Ukraine for another year and expanded the exemption to U.S. steel imports from the EU that are melted and poured in Ukraine.

The U.S. Department of Commerce (DOC) is managing a process in which U.S. companies may request and/or oppose temporary product exclusions from the Section 232 tariffs and quotas. U. S. Steel opposes exclusion requests for imported products that are the same as, or substitutes for, products manufactured by U. S. Steel.

Multiple legal challenges to the Section 232 action continue before the U.S. Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit (CAFC), the latter which has consistently rejected constitutional and statutory challenges to the Section 232 action. Though several challenges to the Section 232 action and retaliation thereto continue at the World Trade Organization (WTO), in June 2023, India agreed to terminate its WTO challenge to Section 232 and remove its retaliation on U.S. agricultural exports and the United States agreed to terminate its WTO challenge to India's retaliation, with no changes to Section 232 tariffs on U.S. imports from India.

Since its implementation in March 2018, the Section 232 action has supported the U.S. steel industry's and U. S. Steel's investments in advanced steel production capabilities, technology, and skills, strengthening U.S. national and economic security. The Company continues to actively defend the Section 232 action.



In February 2019, the European Commission (EC) implemented a definitive safeguard on global steel imports in the form of TRQs that impose 25 percent tariffs on steel imports that exceed the TRQ limit. In June 2023, the EC concluded its fourth review of the safeguard, determining to maintain the TRQs until the safeguard expires in June 2024.

Antidumping duties (AD) and countervailing duties (CVD or antisubsidy duties) apply in addition to the Section 232 tariffs, quotas, TRQs and the EC's safeguard, and AD/CVD orders may continue beyond the Section 232 action and the EC's safeguard. U. S. Steel continues to actively defend and maintain the 61 U.S. AD/CVD orders and 14 EU AD/CVD orders covering U. S. Steel products in multiple proceedings before the DOC, U.S. International Trade Commission (ITC), CIT, CAFC, the EC and European courts, and the World Trade Organization (WTO).

In January 2023, Cleveland-Cliffs and the USW filed new AD/CVD petitions on U.S. imports of tin mill products from eight countries. In June 2023, DOC issued an affirmative preliminary CVD determination regarding tin mill products from China and DOC is expected to issue preliminary AD determinations on all eight countries in August 2023. The ITC final phase hearing will likely be held in the fourth quarter of 2023.

In February 2023, President Biden announced additional increases to normal tariffs of up to 70 percent on certain products from Russia, including pig iron, certain steel products and ferroalloys, effective April 1, 2023.

Additional tariffs of 7.5 to 25 percent continue to apply to certain U.S. imports from China, including certain raw materials used in steel production, semi-finished and finished steel products, and downstream steel-intensive products, pursuant to Section 301 of the Trade Act of 1974. The Office of the United States Trade Representative (USTR) is currently conducting a statutory review of the Section 301 tariffs.

The United States and EU are currently negotiating a global sustainable steel arrangement to restore market-oriented conditions and address carbon intensity that is targeted for completion by the end of 2023. In June 2023, to inform these ongoing discussions with the EU, USTR requested that the ITC conduct a Section 332 investigation to assess greenhouse gas emissions intensity of steel produced in the United States. The ITC initiated the Section 332 proceeding in July 2023, will collect information from domestic producers through mid-2024, and will issue a report in January 2025. U. S. Steel plans on actively participating in this Section 332 investigation.

U. S. Steel will continue to execute a broad, global strategy to maximize opportunities and navigate challenges presented by imports, global steel overcapacity, and international trade law and policy developments.

## **NEW ACCOUNTING STANDARDS**

See Notes 2 and 3 to the Condensed Consolidated Financial Statements in Part I Item 1 of this Quarterly Report on Form 10-Q.

### **Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

For quantitative and qualitative disclosures about market risk, see Item 7A "Quantitative and Qualitative Disclosures About Market Risk" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, there were no material changes in U. S. Steel's exposure to market risk from December 31, 2022.

### **Item 4. CONTROLS AND PROCEDURES**

#### **EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES**

U. S. Steel has evaluated the effectiveness of the design and operation of its disclosure controls and procedures as of June 30, 2023. These disclosure controls and procedures are the controls and other procedures that were designed to ensure that information required to be disclosed in reports that are filed with or submitted to the U.S. Securities and Exchange Commission are: (1) accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosures and (2) recorded, processed, summarized and reported within the time periods specified in applicable law and regulations. Based on this evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2023, U. S. Steel's disclosure controls and procedures were effective.

#### **CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING**

There have not been any changes in U. S. Steel's internal control over financial reporting that occurred during the fiscal quarter covered by this quarterly report, which have materially affected, or are reasonably likely to materially affect, U. S. Steel's internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. LEGAL PROCEEDINGS**

#### **GENERAL LITIGATION**

On June 8, 2021, JSW Steel (USA) Inc. and JSW Steel USA Ohio, Inc. (collectively, JSW), U.S. based subsidiaries of Indian steelmaker JSW Steel, filed suit in the United States District Court for the Southern District of Texas against Nucor, U. S. Steel, AK Steel Holding Group and Cleveland-Cliffs (collectively, the JSW Defendants) alleging that the Defendants operated as a cartel and formed a conspiracy to boycott JSW from obtaining semi-finished steel slabs. JSW alleges that the JSW Defendants acted in violation of Section 1 of the Sherman Act and the Clayton Act (federal antitrust), and violation of the Texas Free Enterprise and Antitrust Act. JSW also alleges that the JSW Defendants formed a civil conspiracy in violation of Texas common law, and that the JSW Defendants tortiously interfered with JSW's business relationships. The basis for JSW's allegations relate to the JSW Defendants participation in the DOC's Section 232 process, including the JSW Defendants' support of the enactment of the President's Section 232 proclamation, statements made by the JSW Defendants after the enactment of Section 232, and the JSW Defendants' participation in the Section 232 exclusion process. Plaintiffs seek monetary damages including \$45 million for payment of Section 232 tariffs and unspecified amounts for financial penalties, termination fees and lost profits as well as other damages. U. S. Steel, along with the other JSW Defendants, filed a Motion to Dismiss the case on August 17, 2021. On February 17, 2022, the Court issued an opinion dismissing JSW's antitrust complaint with prejudice. JSW filed a timely notice of appeal with the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit held oral argument on the appeal on February 6, 2023 and we are awaiting a ruling from the Court. The Company continues to vigorously defend the matter.

On December 24, 2018, U. S. Steel's Clairton Plant experienced a fire, affecting portions of the facility involved in desulfurization of the coke oven gas generated during the coking process. With the desulfurization process out of operation as a result of the fire, U. S. Steel was not able to certify compliance with Clairton Plant's Title V permit levels for sulfur emissions. U. S. Steel promptly notified ACHD, which has regulatory jurisdiction for the Title V permit, and updated the ACHD regularly on efforts to mitigate any potential environmental impacts until the desulfurization process was returned to normal operations. Of the approximately 2,400 hours between the date of the fire and April 4, 2019, when the Company resumed desulfurization, there were ten intermittent hours where average SO<sub>2</sub> emissions exceeded the hourly NAAQS for SO<sub>2</sub> at the Allegheny County regional air quality monitors located in Liberty and North Braddock boroughs, which are near U. S. Steel's Mon Valley Works facilities. On April 29, 2019, PennEnvironment and Clean Air Council, both environmental, non-governmental organizations filed a Complaint in Federal Court in the Western District of Pennsylvania. The ACHD was subsequently granted intervenor status. Collectively the parties seek injunctive relief and civil penalties regarding the alleged Permit violations following the fire. Discovery has concluded. The court denied the parties' respective Motions for Summary Judgment. A non-jury trial which was scheduled to take place in April and May of 2023 is being held in abeyance as the parties reached a tentative settlement agreement, signed a term sheet, and advised the Court accordingly. The parties are working to draft a Consent Decree to memorialize the settlement terms.

#### **ENVIRONMENTAL PROCEEDINGS**

The following is a summary of the proceedings of U. S. Steel that were pending or contemplated as of June 30, 2023, under federal and state environmental laws, and which U. S. Steel reasonably believes may result in monetary sanctions of at least \$1 million (the threshold chosen by U. S. Steel as permitted by Item 103 of Regulation S-K promulgated under the Securities Exchange Act of 1934, as amended). Information about specific sites where U. S. Steel is or has been engaged in significant clean up or remediation activities is also summarized below. Except as described herein, it is not possible to accurately predict the ultimate outcome of these matters.

##### ***CERCLA Remediation Sites***

Claims under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) have been raised with respect to the cleanup of various waste disposal and other sites. Under CERCLA, potentially responsible parties (each, a PRP) for a site include current owners and operators, past owners and operators at the time of disposal, persons who arranged for disposal of a hazardous substance at a site and persons who transported a hazardous substance to a site. CERCLA imposes strict and joint and several liabilities. Because of various factors, including the ambiguity of the regulations, the difficulty of identifying the responsible parties for any particular site, the complexity of determining the relative liability among them, the uncertainty as to the most desirable remediation techniques, and the amount of damages and cleanup costs and the time period during which such costs may be incurred, we are unable to reasonably estimate U. S. Steel's ultimate liabilities under CERCLA.

As of June 30, 2023, U. S. Steel has received information requests or been identified as a PRP at a total of four CERCLA sites, three of which have liabilities that have not been resolved. Based on currently available information, which is in many cases preliminary and incomplete, management believes that U. S. Steel's liability for CERCLA cleanup and remediation costs at the other site will be over \$5 million as described below.

## **Duluth Works**

The former U. S. Steel Duluth Works site was placed on the National Priorities List under CERCLA in 1983 and on the State of Minnesota's Superfund list in 1984. Liability for environmental remediation at the site is governed by a Response Order by Consent executed with the MPCA in 1985 and a Record of Decision signed by MPCA in 1989. U. S. Steel has partnered with the Great Lakes National Program Office (GLNPO) of the U.S. EPA Region 5 to address contaminated sediments in the St. Louis River Estuary and several other operable units that could impact the estuary if not addressed. An amendment to the Project Agreement between U. S. Steel and GLNPO was executed during the second quarter of 2018 to recognize the initial costs associated with implementing the first two phases of the proposed remedial plan at the site.

Remediation contracts were issued by both USS and GLNPO for the first phase of the remedial work at the site during the fourth quarter of 2020. USS and GLNPO have completed the second phase of work at the site which extended through early 2022. The final phase of the remedial design has been defined and another amendment to the Project Agreement between U.S. Steel and GLNPO was executed in December 2021. Execution of this final phase is in progress and is expected to extend through 2023. USS' portion of additional, design, oversight costs, and implementation of all three phases of the preferred remedial alternative on the upland property and Estuary are currently estimated as of June 30, 2023 at approximately \$17 million.

## ***Resource Conservation Recovery Act (RCRA) and Other Remediation Sites***

U. S. Steel may be liable for remediation costs under other environmental statutes, both federal and state, or where private parties are seeking to impose liability on U. S. Steel for remediation costs through discussions or litigation. There are seven such sites where remediation is being sought involving amounts in excess of \$1 million. Based on currently available information, which is in many cases preliminary and incomplete, management believes that liability for cleanup and remediation costs in connection with three sites may involve remediation costs between \$1 million and \$5 million per site and four sites are estimated to, or could have, costs for remediation, investigation, restoration or compensation in excess of \$5 million per site.

For more information on the status of remediation activities at U. S. Steel's significant sites, see the discussions below.

## **Gary Works**

On October 23, 1998, the U.S. EPA issued a final Administrative Order on Consent (Order) addressing Corrective Action for Solid Waste Management Units (SWMU) throughout Gary Works. This Order requires U. S. Steel to perform an RCRA Facility Investigation, a Corrective Measures Study and Corrective Measure Implementation. Evaluations are underway at six groundwater areas on the east side of the facility. A remedial groundwater treatment system has been operating at one of the six areas since 2021. An Interim Stabilization Measure work plan was recently approved by the U.S. EPA for a second area and a contractor is completing installation of the remedial system. Until the remaining Phase I work and Phase II field investigations are completed, it is not possible to assess what additional expenditures will be necessary for Corrective Action projects at Gary Works. In total, the accrued liability for Corrective Action projects is approximately \$25 million as of June 30, 2023, based on our current estimate of known remaining costs.

## **Geneva Works**

At U. S. Steel's former Geneva Works, liability for environmental remediation, including the closure of three hazardous waste impoundments and facility-wide corrective action, has been allocated between U. S. Steel and the current property owner pursuant to an agreement and a permit issued by the Utah Department of Environmental Quality (UDEQ). Having completed the investigation on a majority of the remaining areas identified in the permit, U. S. Steel had determined the most effective means to address the remaining impacted material was to manage those materials in a previously approved on-site Corrective Action Management Unit (CAMU). U. S. Steel awarded a contract for the implementation of the CAMU project during the fourth quarter of 2018. Construction, waste stabilization and placement, along with closure of the CAMU, were substantially completed in the fourth quarter of 2020. U. S. Steel has an accrued liability of approximately \$18 million as of June 30, 2023 for our estimated share of the remaining costs of remediation at the site.

## **USS-UPI LLC**

In February 2020, U. S. Steel purchased the remaining 50 percent interest in USS-POSCO Industries, a former joint venture that is located in Pittsburg, California between subsidiaries of U. S. Steel and POSCO, now known as USS-UPI, LLC. Prior to formation of the joint venture, UPI's facilities were previously owned and operated solely by U. S. Steel, which assumed responsibility for the existing environmental conditions. U. S. Steel continues to monitor the impacts of the remedial plan implemented in 2016 to address groundwater impacts from trichloroethylene at SWMU 4. Evaluations continue for the SWMUs, known as the Northern Boundary Group, and it is likely that corrective measures will be required, but it is not possible at this time to define a scope or estimate costs for what may be required by the California Department of Toxic Substances Control. As such, there has been no material change in the status of the project during the six months ended June 30, 2023. As of June 30, 2023, approximately \$229,000 has been accrued for ongoing environmental studies, investigations and remedy monitoring. Significant additional costs associated with this site are possible and are referenced in Note 21 to the Condensed Consolidated Financial Statements "Contingencies and Commitments - Environmental Matters - Remediation Projects - Projects with Ongoing Study and Scope Development."

## **Fairfield Works**

A consent decree was signed by U. S. Steel, the U.S. EPA and the U.S. Department of Justice and filed with the United States District Court for the Northern District of Alabama (United States of America v. USX Corporation) in December 1997. In accordance with the consent decree, U. S. Steel initiated an RCRA corrective action program at the Fairfield Works facility. The Alabama Department of Environmental Management, with the approval of the U.S. EPA, assumed primary responsibility for regulation and oversight of the RCRA corrective action program at Fairfield Works. While work continues on different aspects of the program, there has been no material change in the status of the project during the six months ended June 30, 2023. In total, the accrued liability for remaining work under the Corrective Action Program, was approximately \$361,000 as of June 30, 2023. Significant additional costs associated with this site are possible and are referenced in Note 21 to the Condensed Consolidated Financial Statements "Contingencies and Commitments - Environmental Matters - Remediation Projects - Projects with Ongoing Study and Scope Development."

## **Air Related Matters**

### **Granite City Works**

In October 2015, Granite City Works received a Violation Notice from the Illinois Environmental Protection Agency (IEPA) in which the IEPA alleges that U. S. Steel violated the emission limits for nitrogen oxides (NOx) and volatile organic compounds from the Basic Oxygen Furnace Electrostatic Precipitator Stack. In addition, the IEPA alleges that U. S. Steel exceeded its natural gas usage limit at its CoGeneration Boiler. U. S. Steel responded to the notice and is currently discussing resolution of the matter with the IEPA.

Although discussions with IEPA regarding the foregoing alleged violations are ongoing and the resolution of these matters is uncertain at this time, it is not anticipated that the result of those discussions will be material to U. S. Steel.

### **Minnesota Ore Operations**

On February 6, 2013, the U.S. EPA published a FIP that applies to taconite facilities in Minnesota. The FIP establishes and requires emission limits and the use of low NOx reduction technology on indurating furnaces as Best Available Retrofit Technology (BART). While U. S. Steel installed low NOx burners on three furnaces at Minntac and is currently obligated to install low NOx burners on the two other furnaces at Minntac pursuant to existing agreements and permits, the rule would require the installation of a low NOx burner on the one furnace at Keetac for which U. S. Steel did not have an otherwise existing obligation. U. S. Steel estimates expenditures associated with the installation of low NOx burners of as much as \$25 million to \$30 million. In 2013, U. S. Steel filed a petition for administrative reconsideration to the U.S. EPA and a petition for judicial review of the 2013 FIP and denial of the Minnesota SIP to the Eighth Circuit. In April 2016, the U.S. EPA promulgated a revised FIP with the same substantive requirements for U. S. Steel. In June 2016, U. S. Steel filed a petition for administrative reconsideration of the 2016 FIP to the U.S. EPA and a petition for judicial review of the 2016 FIP before the Eighth Circuit Court of Appeals. While the proceedings regarding the petition for judicial review of the 2013 FIP remained stayed, oral arguments regarding the petition for judicial review of the 2016 FIP were heard by the Eighth Circuit Court of Appeals on November 15, 2017. Thus, both petitions for judicial review remain with the Eighth Circuit. On December 4, 2017, the U.S. EPA published a notification in the Federal Register in which the U.S. EPA denied U. S. Steel's administrative petitions for reconsideration and stay of the 2013 FIP and 2016 FIP. On February 1, 2018, U. S. Steel filed a petition for judicial review of the U.S. EPA's denial of the administrative petitions for reconsideration to the Eighth Circuit Court of Appeals. The U.S. EPA and U. S. Steel reached a settlement regarding the five indurating lines at Minntac. After proposing a revised FIP and responding to public comments, on March 2, 2021, the U.S. EPA promulgated a final revised FIP incorporating the conditions and limits for Minntac to which the parties agreed. U. S. Steel and the U.S. EPA continue to negotiate resolution for Keetac.

### **Mon Valley Works**

On March 2, 2022, the Company received a stipulated penalty demand for \$0.9 million from the Allegheny County Health Department (ACHD) pursuant to the June 2019 Settlement Agreement and Order (SAO) between the Company and ACHD. In the demand notice, ACHD alleges that based upon daily visible emission observation inspections occurring April 1, 2021 through December 31, 2021, the Company's Clairton plant violated applicable opacity standards from coke battery fugitive emission sources. The Company disagrees with the bases for the demand. The Company has initiated dispute resolution in accordance with the SAO and is attempting to reach a negotiated resolution of the matter.

On March 7, 2022, the Company received an enforcement order from the ACHD that includes a civil penalty demand for \$1.8 million. In the Order, the ACHD alleges that the Company's Clairton plant is solely and entirely culpable for 153 alleged exceedances of the Pennsylvania hydrogen sulfide ambient air standard that are reported to have occurred during January 1, 2020 through March 1, 2022. The Company disagrees with the bases for the demand. On April 5, 2022, the Company appealed the Order and is vigorously defending the matter. The ACHD Hearing Officer has scheduled a hearing on the appeal for January 23, 2024.

On March 24, 2022, the Company received an enforcement order from the ACHD that includes a civil penalty demand for \$4.6 million for alleged air permit violations occurring between January 1, 2020 through March 15, 2022 regarding the Company's

Clairton plant's coke oven pushing emission control systems. The Company disagrees with the bases for the demand and has appealed the Order. The ACHD Hearing Officer has issued a hearing on the appeal for January 30, 2024.

## ASBESTOS LITIGATION

See Note 21 to our Condensed Consolidated Financial Statements, Contingencies and Commitments for a description of our asbestos litigation.

### Item 1A. RISK FACTORS

There have been no material changes or updates to the risk factors previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

### Item 2. PURCHASES OF EQUITY SECURITIES BY ISSUER AND AFFILIATED PURCHASERS

Share repurchase activity under the Company's share repurchase program during the three months ended June 30, 2023 was as follows:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs in effect at June 30, 2023 <sup>(a)</sup>
April 1 - 30, 2023	885,500	\$ 25.36	885,500	\$ 203,544,000
May 1 - 31, 2023	1,328,000	\$ 21.77	1,328,000	\$ 174,628,600
June 1 - 30, 2023	1,044,841	\$ 22.61	1,044,841	\$ 151,000,800
<b>Quarter ended June 30, 2023</b>	<b>3,258,341</b>	<b>\$ 23.02</b>	<b>3,258,341</b>	<b>\$ 151,000,800</b>

<sup>(a)</sup> On July 25, 2022, the Board of Directors authorized a share repurchase program that allows for the repurchase of up to \$500 million of its outstanding common stock. The Company's share repurchase program does not obligate it to acquire any specific number of shares. Under this program, the shares may be purchased from time to time at prevailing market prices, through open market or privately negotiated transactions, at the discretion of management.

### Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

### Item 4. MINE SAFETY DISCLOSURES

The information concerning mine safety violations and other regulatory matters required by Section 150 of the Dodd-Frank Wall Street Reform Act and Item 104 of Regulation S-K is included in Exhibit 95 to this Form 10-Q.

### Item 5. OTHER INFORMATION

#### Insider Trading Arrangements and Policies

On May 10, 2023, James E. Bruno, Senior Vice President - European Solutions and President USSK, entered into a written trading arrangement intended to satisfy the affirmative defense of Rule 10b5-1(c) under the Securities Exchange Act of 1934, as amended. Mr. Bruno's trading arrangement covers the sale of up to 50,542 shares of U. S. Steel common stock and the exercise and sale of up to 8,270 non-qualified stock options from August 11, 2023 until February 29, 2024.

On June 6, 2023, David B. Burrirt, President & Chief Executive Officer, entered into a written trading arrangement intended to satisfy the affirmative defense of Rule 10b5-1(c) under the Securities Exchange Act of 1934, as amended. Mr. Burrirt's trading arrangement covers the sale of up to 252,458 shares of U. S. Steel common stock from September 8, 2023 until May 31, 2024, provided that the sale price is at least \$49.87 per share.

**Item 6. EXHIBITS**

- 3.1 [Amended and Restated Certificate of Incorporation of United States Steel Corporation, dated April 25, 2017. \(Incorporated by reference to Exhibit 3.1 to United States Steel Corporation's Form 8-K filed on April 28, 2017, Commission File Number 1-16811.\)](#)
- 3.2 [Amended and Restated By-Laws of United States Steel Corporation, as of January 31, 2023. \(Incorporated by reference to Exhibit 3.1 to United States Steel Corporation's Form 8-K filed on February 2, 2023, Commission File Number 1-16811.\)](#)
- [10.1](#) Fourth Amendment to ABL Credit Agreement by and among BRS Intermediate Holdings LLC, Big River Steel LLC, BRS Finance Corp. and Goldman Sachs Bank USA and each lender party thereto, dated as of June 16, 2023.
- [31.1](#) Certification of Chief Executive Officer required by Rules 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as promulgated by the Securities and Exchange Commission pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- [31.2](#) Certification of Chief Financial Officer required by Rules 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as promulgated by the Securities and Exchange Commission pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- [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.
- [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.
- [95](#) Mine Safety Disclosure required under Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- 101 The following financial information from United States Steel Corporation's Quarterly Report on Form 10-Q for the quarter ended June 30, 2023 formatted in Inline XBRL (Extensible Business Reporting Language) includes: (i) the Condensed Consolidated Statement of Operations, (ii) the Condensed Consolidated Statement of Comprehensive Income, (iii) the Condensed Consolidated Balance Sheet, (iv) the Condensed Consolidated Statement of Cash Flows, and (v) Notes to the Condensed Consolidated Financial Statements.
- 104 Cover Page Interactive Data File - (formatted as Inline XBRL and contained in Exhibit 101).

**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 chief accounting officer thereunto duly authorized.

UNITED STATES STEEL CORPORATION

By /s/ Manpreet S. Grewal  
Manpreet S. Grewal  
Vice President, Controller & Chief Accounting Officer

July 28, 2023

**WEB SITE POSTING**

This Form 10-Q will be posted on the U. S. Steel web site, [www.ussteel.com](http://www.ussteel.com), within a few days of its filing.

## FOURTH AMENDMENT TO ABL CREDIT AGREEMENT

**THIS FOURTH AMENDMENT TO ABL CREDIT AGREEMENT** (this “Amendment”), dated as of June 16, 2023, which amends the ABL Credit Agreement (as defined below), is entered into by and among BRS Intermediate Holdings, LLC, a Delaware limited liability company (“Holdings”), Big River Steel LLC, a Delaware limited liability company (the “Company”), BRS Finance Corp., a Delaware corporation (the “Co-Issuer”), and Goldman Sachs Bank USA, as administrative agent (in such capacity, the “Administrative Agent”) and collateral agent (in such capacity, the “Collateral Agent”) under the Loan Documents, and each Lender party hereto. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the ABL Credit Agreement (as amended by this Amendment).

### WITNESSETH:

**WHEREAS**, Holdings, the Company, the Administrative Agent, the Collateral Agent and the Lenders party thereto are parties to that certain ABL Credit Agreement dated as of August 23, 2017 (as amended by that certain First Amendment to ABL Credit Agreement dated as of September 10, 2020, that certain Second Amendment to ABL Credit Agreement dated as of July 23, 2021 and that certain Third Amendment to ABL Credit Agreement, dated as of December 19, 2022 (the “Existing ABL Credit Agreement”); and as further amended, restated, amended and restated, supplemented or modified by this Amendment, and as may be further amended, restated, supplemented or modified from time to time) (the “ABL Credit Agreement”); and

**WHEREAS**, the parties desire to amend the ABL Credit Agreement as set forth herein;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### **Section 1. Amendments to the ABL Credit Agreement.**

(a) The Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Annex A attached hereto (as set forth in such Annex A, the “Amended Credit Agreement”).

(b) Notwithstanding the Amended Credit Agreement, all “Eurodollar Rate Loans” (as defined in the Existing ABL Credit Agreement) outstanding as of the date hereof shall remain Eurodollar Rate Loans (as defined in the Existing ABL Credit Agreement) outstanding under the Amended Credit Agreement until the end of the current Interest Period (as defined in the Existing ABL Credit Agreement) applicable thereto and, upon the expiration of the current Interest Period, shall be converted to Term Benchmark Loans with an Interest Period of three (3) months (the “SOFR Conversion”). Subject to the SOFR Conversion, all other terms and conditions set forth in the Amended Credit Agreement with respect to Term Benchmark Loans shall apply to such “Eurodollar Rate Loans” , *mutatis mutandis*.



(c) Exhibits A-1 (Funding Notice) and A-2 (Conversion/Continuation Notice) to the Existing ABL Credit Agreement are hereby amended by replacing each term “Eurodollar Rate Loan” with the term “Term Benchmark Loan”.

**Section 2. Representations and Warranties.** Each of the Loan Parties represents and warrants to the Administrative Agent and the Lenders as of the Amendment Effective Date that:

(a) Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents is true and correct in all material respects (except where such representations and warranties are already qualified by materiality, in which case such representation and warranty shall be accurate in all respects) on and as of such date as if made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they are true and correct in all material respects (except where such representations and warranties are already qualified by materiality, in which case such representation and warranty shall be accurate in all respects) as of such earlier date;

(b) No Default or Event of Default exists or has occurred and is continuing on and as of the Amendment Effective Date immediately before (in the case of the Existing ABL Credit Agreement) and immediately after (in the case of the Amended Credit Agreement) giving effect to this Amendment. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform this Amendment and each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of this Amendment;

(c) This Amendment has been duly executed and delivered on behalf of each applicable Loan Party. This Amendment and the Amended Credit Agreement constitute legal, valid and binding obligations of each Loan Party, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing;

(e) None of the execution, delivery and performance by each Loan Party of this Amendment and the Amended Credit Agreement will: (i) contravene the terms of any of such Person’s Organizational Documents; (ii) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as permitted by Section 7.01 of the Amended Credit Agreement) under (A) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (iii) violate any applicable Law; except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (ii) and (iii), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and

(f) No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Amendment or any other Loan Document executed in connection with this Amendment.

**Section 3. Conditions to Effectiveness.**

The effectiveness of this Amendment shall be subject to the satisfaction of the following conditions precedent (the date upon which all such conditions are satisfied being the “Amendment Effective Date”):

The Administrative Agent shall have received counterparts of this Amendment that, when taken together, bear the signatures of (A) Holdings, (B) the Borrower, (C) each other Loan Party and (D) each of the Lenders.

**Section 4. Expenses.** The Borrower agree to pay or reimburse Administrative Agent for all fees and expenses in connection with the transaction described in this Amendment including the reasonable out-of-pocket expenses incurred by Administrative Agent in connection with this Amendment pursuant to Section 10.04 of the Amended Credit Agreement.

**Section 5. Counterparts.** This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Amendment or any document or instrument delivered in connection herewith by facsimile transmission or electronic PDF shall be effective as delivery of a manually executed counterpart of this Amendment or such other document or instrument, as applicable.

**Section 6. Applicable Law.** THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

**Section 7. Headings.** The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

**Section 8. Effect of Amendment.** Except as expressly set forth herein, this Amendment shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Existing ABL Credit Agreement or any other provision of the Existing ABL Credit Agreement or any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. As of the Amendment Effective Date, each reference in the Existing Credit Agreement to “*this Agreement*,” “*hereunder*,” “*hereof*,” “*herein*,” or words of like import, and each reference in the other Loan Documents to the Existing ABL Credit Agreement (including, without limitation, by means of words like “*thereunder*,” “*thereof*” and words of like import), shall mean and be a reference to the Amended Credit Agreement, and this Amendment and the Existing ABL Credit Agreement shall be read together and construed as a single instrument. This Amendment shall constitute a Loan Document.

**Section 9. Acknowledgement and Affirmation.** Each Loan Party hereto hereby expressly acknowledges that (i) all of its obligations under the Guaranty, the Collateral Documents and the other Loan Documents to which it is a party are hereby reaffirmed and remain

in full force and effect on a continuous basis, (ii) its grant of security interests pursuant to the Collateral Documents is hereby reaffirmed and remains in full force and effect after giving effect to this Amendment, and (iii) except as expressly set forth herein, the execution of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or Lenders, constitute a waiver of any provision of any of the Loan Documents or serve to effect a novation of the Obligations.

*[Remainder of page intentionally blank; next page is signature page]*

**IN WITNESS WHEREOF**, the parties have caused this Fourth Amendment to ABL Credit Agreement to be duly executed by their respective officers thereunto duly authorized, as of the date first above written.

**BRS Intermediate Holdings LLC, as a Loan Party and Grantor**

By: /s/ Arne Jahn  
Name: Arne Jahn  
Title: Treasurer

**Big River Steel LLC, as a Loan Party and Grantor**

By: /s/ Arne Jahn  
Name: Arne Jahn  
Title: Treasurer

**BRS Finance Corp., as a Loan Party and Grantor**

By: /s/ Arne Jahn  
Name: Arne Jahn  
Title: Treasurer

**Goldman Sachs Bank USA, as Administrative  
Agent and Collateral Agent**

By: /s/ Douglas Tansey  
Name: Douglas Tansey  
Title: Authorized Signatory

Bank of America, N.A. as a Lender,

By: /s/ Matthew Bourgeois  
Name: Matthew Bourgeois  
Title: Senior Vice President

BMO HARRIS BANK N.A.,  
as a Lender

By: /s/ Nicholas Bigham  
Name: Nicholas Bigham  
Title: Authorized Signatory

FIRST NATIONAL BANK, as a Lender

By: /s/ Alan G. Lilienthal  
Name: Alan G. Lilienthal  
Title: Vice President



First Security Bank,  
as a Lender

By: /s/ Brad Edwards  
Name: Brad Edwards  
Title: President

Goldman Sachs Bank USA,  
as a Lender

By: /s/ Keshia Leday  
Name: Keshia Leday  
Title: Authorized Signatory

ING CAPITAL LLC,  
as a Lender

By: /s/ Jean Grasso  
Name: Jean Grasso  
Title: Managing Director

By: /s/ Jeff Chu  
Name: Jeff Chu  
Title: Director

Truist Bank,  
as a Lender

By: /s/ Kelly M. Thomas  
Name: Kelly M. Thomas  
Title: Vice President

Wells Fargo Bank, N.A.  
as a Lender

By: /s/ William H. Talbot  
Name: William H. Talbot  
Title: Director

**ANNEX A**

**Amended Credit Agreement**

\$350,000,000  
ABL CREDIT AGREEMENT

Dated as of August 23, 2017, as amended by Amendment No. 1 dated September 10, 2020,  
Amendment No. 2 dated July 23, 2021 ~~and~~, Amendment No. 3 dated December 19, 2022 and  
Amendment No. 4 dated June 16, 2023

among

BIG RIVER STEEL LLC,  
as the Borrower,

BRS INTERMEDIATE HOLDINGS LLC,  
as Holdings,

GOLDMAN SACHS BANK USA,  
as Administrative Agent and Collateral Agent,

and

THE OTHER LENDERS PARTY HERETO

\_\_\_\_\_  
GOLDMAN SACHS BANK USA, BMO HARRIS BANK, N.A.,  
WELLS FARGO BANK, N.A. and BANK OF AMERICA, N.A., as Joint Lead Arrangers and  
Joint Bookrunners

and

GOLDMAN SACHS BANK USA,  
as Sole Syndication Agent

GOLDMAN SACHS BANK USA and ING CAPITAL LLC  
as Joint Sustainability Structuring Agents

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## EXHIBITS

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C	Compliance Certificate
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## ABL CREDIT AGREEMENT

This ABL CREDIT AGREEMENT (this “**Agreement**”) is entered into as of August 23, 2017 by and among BIG RIVER STEEL LLC, a Delaware limited liability company (the “**Borrower**”), BRS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings, GOLDMAN SACHS BANK USA (“**Goldman Sachs**”), as administrative agent (in such capacity, including any successor thereto, the “**Administrative Agent**”) and collateral agent (in such capacity, including any successor thereto, the “**Collateral Agent**”), under the Loan Documents, and each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”).

### PRELIMINARY STATEMENTS

The Borrower has requested that the Lenders extend certain credit facilities and commit to issue certain letters of credit to the Borrower in an aggregate principal amount of the Revolving Commitments.

On the Closing Date, the Borrower will enter into (a) the Senior Secured Notes Indenture pursuant to which the Borrower will issue the Senior Secured Notes in an aggregate principal amount of \$600.0 million and (b) the Term Credit Agreement pursuant to which the Term Lenders will extend credit to the Borrower in an aggregate principal amount of \$400.0 million.

The proceeds of the Loans made on the Closing Date, if any, together with the proceeds of the Senior Secured Notes, the Term Facility and cash on hand, will be used on the Closing Date (i) to repay the Closing Date Refinanced Indebtedness, (ii) to pay the Transaction Expenses and for (iii) amounts required for working capital and other general corporate purposes of the Loan Parties.

The Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### **Article I**

#### Definitions and Accounting Terms

SECTION 1.01 Defined Terms. As used in this Agreement (including the introductory paragraph hereof and the preliminary statements hereto), the following terms have the meanings set forth below:

“**ABL Intercreditor Agreement**” shall mean that certain Intercreditor Agreement, dated as of the Closing Date between the Pari Collateral Agent, the Collateral Agent, the Equipment Lessor, the Commercial Building Lender, and acknowledged by the Loan Parties,

which agreement is substantially in the form of Exhibit G-1, as the same may be amended, restated, supplemented, otherwise modified or otherwise replaced from time to time.

“**ABL Priority Collateral**” has the meaning assigned to “ABL Priority Collateral” in the ABL Intercreditor Agreement (including any amendment, restatement or other replacement thereof).

“**Account**” as defined in Article 9 of the UCC as in effect from time to time in the State of New York.

“**Account Debtor**” means any Person obligated on an Account.

“**Act 9 Bond Documents**” means (a) the Act 9 Trust Indenture, (b) the Act 9 Lease Agreement, and (c) that certain Payment in Lieu of Taxes Agreement dated as of April 30, 2015, between Osceola and the Borrower and all other documents executed in connection therewith, as the same may be amended, restated, supplemented or otherwise modified from time to time (provided that any amendment, restatement, supplement or other modification that is materially adverse to the Lenders shall require the written consent of the Administrative Agent, it being agreed that any amendment that has the effect of adding property will not be deemed materially adverse).

“**Act 9 Bonds**” means the bonds issued to Top Parent and assigned to Holdings under the Act 9 Trust Indenture pursuant to Amendment 65 to the Constitution of State of Arkansas and Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, codified as Ark. Code Ann. Sections 14,164-201 *et seq.* as amended.

“**Act 9 Lease Agreement**” means that certain Lease Agreement dated as of April 30, 2015, between Osceola and the Borrower, as the same may be amended, restated, supplemented or otherwise modified from time to time (provided that any amendment, restatement, supplement or other modification that is materially adverse to the Lenders shall require the written consent of the Administrative Agent, it being agreed that any amendment that has the effect of adding property will not be deemed materially adverse).

“**Act 9 Trust Indenture**” means that certain Trust Indenture dated as of April 30, 2015, between Osceola, as issuer, and Regions Bank, as trustee for Holdings as the owner of the Act 9 Bonds issued thereunder, as the same may be amended, restated, supplemented or otherwise modified from time to time (provided that any amendment, restatement, supplement or other modification that is materially adverse to the Lenders shall require the written consent of the Administrative Agent, it being agreed that any amendment that has the effect of adding property will not be deemed materially adverse).

“**Adjusted Term SOER Rate**” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOER Rate for such Interest Period, *plus* (b) 0.10%; provided that if the Adjusted Term SOER Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“**Administrative Agent**” has the meaning specified in the introductory paragraph to this Agreement.

“**Administrative Agent Account**” means any deposit account designated by the Administrative Agent as the “Administrative Agent Account” by written notice to the Borrower.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “*control*” (including, with correlative meanings, the terms “*controlling*,” “*controlled by*” and “*under common control with*”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“**Agent**” means each of (a) Administrative Agent, (b) Syndication Agent, (c) Collateral Agent, (d) each Arranger, (e) the Supplemental Administrative Agents, if any, (f) the Sustainability Structuring Agents and (g) any other Person appointed under the Loan Documents to serve in an agent or similar capacity and “**Agents**” means each Agent collectively.

“**Agent Parties**” has the meaning specified in Section 10.02(4).

“**Agent-Related Persons**” means the Agents together with their respective Affiliates, and the officers, directors, employees, agents, attorneys-in-fact, partners, trustees and advisors of such Persons and of such Persons’ Affiliates.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Credit Agreement, as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof.

“**Annual Financial Statements**” means the audited consolidated balance sheets and related audited consolidated statements of income, changes in members’ deficit and cash flows of the Borrower and its Subsidiaries for the fiscal years ended December 31, 2015 and December 31, 2016.

“**Anti-Corruption Laws**” means all laws, rules and regulations of any jurisdiction applicable to Holdings, the Borrower or any of their respective Subsidiaries from time to time concerning or relating to bribery or corruption.

“**Applicable Account Debtor**” has the meaning specified in Section 6.02(7).



“**Applicable Commitment Fee Rate**” means, on any day, with respect to the commitment fees payable hereunder at any time, the Applicable Commitment Fee Rate per annum set forth below, based upon the Quarterly Average Facility Utilization for the fiscal quarter most recently ended prior to such day:

Category	Quarterly Average Facility Utilization	Applicable Commitment Fee Rate
Category 1	33 1/3%	0.25%
Category 2	< 33 1/3%	0.30%

The Applicable Commitment Fee Rate (a) shall be the Applicable Commitment Fee Rate per annum set forth in Category 2 above through and including the last day of the first full fiscal quarter commencing after the Closing Date and (b) thereafter, shall be determined at the commencement of each subsequent fiscal quarter on the basis of the Quarterly Average Facility Utilization for the immediately preceding fiscal quarter, with any changes to the Applicable Commitment Fee Rate resulting from a change in Quarterly Average Facility Utilization becoming effective on the first day of each such fiscal quarter.

Notwithstanding the foregoing, effective as of August 1 of each fiscal year (commencing August 1, 2022), each rate per annum specified in the table above shall be (x) decreased by 0.005% per annum per each ESG KPI Requirement that is satisfied with respect to the immediately preceding fiscal year and/or (y) increased by 0.005% per annum per each ESG KPI Requirement that is not satisfied with respect to the immediately preceding fiscal year (the “**ESG KPI Commitment Fee Adjustment**”), in each case, as confirmed in the applicable written confirmation delivered pursuant to Section 6.02(10) for such fiscal year (and, if no such confirmation is delivered with respect to such fiscal year, the maximum increase then applicable under the ESG KPI Requirements shall apply) (*provided*, for the avoidance of doubt, that any adjustment to the Applicable Commitment Fee Rate by reason of meeting one or several ESG KPI Requirements in any fiscal year shall not be cumulative year-over-year, and each applicable ESG KPI Commitment Fee Adjustment shall only apply until the date on which the next ESG KPI Commitment Fee Adjustment is scheduled to occur).

“**Applicable Margin**” means, on any day, with respect to any Base Rate Loan or **Eurodollar RateTerm Benchmark** Loan, the Applicable Margin per annum set forth below under the caption “Applicable Margin for Base Rate Loans” or “Applicable Margin for **Eurodollar RateTerm Benchmark** Loans,” as the case may be, based upon the Quarterly Average Excess Availability for the fiscal quarter most recently ended prior to such day:

Category	Quarterly Average Excess Availability	Applicable Margin for Base Rate Loans	Applicable Margin for <b>Eurodollar RateTerm Benchmark</b> Loans
Category 1	30%	0.25%	1.25%
Category 2	< 30%	0.50%	1.50%



The Applicable Margin (a) shall be the Applicable Margin per annum set forth in Category 2 above through and including the last day of the first full fiscal quarter commencing after the Closing Date and (b) thereafter, shall be determined at the commencement of each subsequent fiscal quarter on the basis of the Quarterly Average Excess Availability for the immediately preceding fiscal quarter, with any changes to the Applicable Margin resulting from a change in Quarterly Average Excess Availability becoming effective on the first day of each such fiscal quarter; provided that the Applicable Margin shall be deemed to be the Applicable Margin per annum set forth in Category 2 above (i) if the Borrower shall have failed to deliver any Borrowing Base Certificate required to have been delivered by it hereunder prior to the commencement of such fiscal quarter with respect to the calculation of the Borrowing Base as in effect from time to time during the immediately preceding fiscal quarter, until the earlier of (A) the first Business Day after the delivery thereof permitting calculation of the Quarterly Average Excess Availability for the immediately preceding fiscal quarter and (B) the last day of such fiscal quarter (and thereafter the Applicable Margin shall be determined in accordance with the other provisions hereof) and (ii) if the Borrower shall have failed to deliver any Borrowing Base Certificate when required, at the request of the Administrative Agent or the Required Lenders and until the earlier of (A) the delivery thereof and (B) the last day of such fiscal quarter (and thereafter the Applicable Margin shall be determined in accordance with the other provisions hereof). If any Borrowing Base Certificate shall prove to have been inaccurate, and such inaccuracy shall have resulted in the payment of interest hereunder at rates lower than those that were in fact applicable for any period had there been no such inaccuracy, then (x) the Borrower shall promptly deliver to the Administrative Agent a corrected Borrowing Base Certificate for the applicable period and (y) the Borrower shall promptly pay to the Administrative Agent, for distribution to the Lenders at such time, the accrued interest and letter of credit fees that should have been paid but was not paid as a result of such inaccuracy, and, if such payment is made, any Default that shall have occurred solely on account of the failure of Borrower to pay interest when due as a result of such inaccuracy shall be automatically waived without any further action by the Administrative Agent and the Lenders. Nothing in this paragraph shall limit the rights of the Administrative Agent or any Lender under Section 8.

Notwithstanding the foregoing, effective as of August 1 of each fiscal year (commencing August 1, 2022), each rate per annum specified in the table above shall be (x) decreased by 0.025% per annum per each ESG KPI Requirement that is satisfied with respect to the immediately preceding fiscal year and/or (y) increased by 0.025% per annum per each ESG KPI Requirement that is not satisfied with respect to the immediately preceding fiscal year (the “**ESG KPI Pricing Adjustment**”), in each case, as confirmed in the applicable written confirmation delivered pursuant to Section 6.02(10) for such fiscal year (and, if no such confirmation is delivered with respect to such fiscal year, the maximum increase then applicable under the ESG KPI Requirements shall apply). For the avoidance of doubt, any adjustment to the rates per annum specified above by reason of meeting one or several ESG KPI Requirements in any fiscal year shall not be cumulative year-over-year, and each applicable ESG KPI Pricing Adjustment shall only apply until the date on which the next ESG KPI Pricing Adjustment is scheduled to occur.

“**Appropriate Lender**” means, at any time, with respect to Loans of any Class, the Lenders of such Class.

“**Approved Fund**” means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“**Arrangers**” means each of (i) Goldman Sachs Bank USA, in its capacities as joint lead arranger and joint bookrunner under this Agreement, (ii) BMO Harris Bank, N.A., in its capacities as joint lead arranger and joint bookrunner under this Agreement, (iii) Wells Fargo Bank, N.A., in its capacities as joint lead arranger and joint bookrunner under this Agreement, and (iv) Bank of America, N.A., in its capacities as joint lead arranger and joint bookrunner under this Agreement.

“**Asset Sale**” means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions of property or assets (including by way of a Sale-Leaseback Transaction, other than a Specified Sale-Leaseback Transaction) of the Borrower or any Restricted Subsidiary (each referred to in this definition as a “**disposition**”); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock) of any Restricted Subsidiary (other than to the Borrower or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of:

(i) Cash Equivalents or Investment Grade Securities,

(ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course,

(iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Borrower),

(iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and

(v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Borrower and its

Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(b) the disposition of all or substantially all of the assets of the Borrower in a manner permitted pursuant to Section 7.03;

(c) any disposition in connection with the making of (i)(A) any dividend, payment or distribution on account of the Borrower's or any Restricted Subsidiary's Equity Interests, (B) any purchase, redemption, defeasance, acquisition, retirement for value or, in the case of the succeeding clause (II), payment (I) of any Equity Interests of the Borrower or any Parent Company or (II) on or of any Subordinated Indebtedness prior to any scheduled repayment, sinking fund payment or final maturity with respect thereto or (ii) any Investment or any acquisition;

(d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market value for any individual transaction or series of related transactions of less than \$5.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Borrower or by the Borrower or a Restricted Subsidiary to a Restricted Subsidiary (and in the event such disposition of property or assets or issuance of securities was made by a Loan Party, such disposition of property or assets or issuance of securities is made to a Loan Party);

(f) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(g) (i) the lease or sublease, assignment, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice, (ii) the lease or sub-lease, assignment, license or sublicense of, or co-location arrangement relating to, any real or other property of the Borrower and its Restricted Subsidiaries for the purpose of facilitating the use by other Persons of such real or other property in connection with the conduct by such other Persons (or their affiliates) of a Similar Business and, in connection with which, the Borrower or a Restricted Subsidiary or a Parent Company enters into a contract or arrangement with such other Person for the sale or acquisition of products or services, and (iii) the exercise of termination rights with respect to any lease, sub-lease, assignment, license or sublicense or other agreement or arrangement;

(h) any issuance, disposition or sale of Equity Interests in, or Indebtedness, assets or other securities of, an Unrestricted Subsidiary;

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets or the granting of Liens not prohibited by this Agreement;

(j) to the extent that following have been excluded from the Borrowing Base, the disposition of an account receivable in connection with the collection or compromise

thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings;

(k) any financing transaction with respect to property built or acquired by the Borrower or any Restricted Subsidiary after the Closing Date,

(l) to the extent the following are not then included in the Borrowing Base, the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof;

(m) the licensing or sublicensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practice;

(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;

(p) sales, transfers and other dispositions of Investments in joint ventures;

(q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice;

(r) the granting of a Permitted Lien;

(s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law;

(t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted hereunder, which assets are not used or useful in the principal business of the Borrower and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder;

(u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of the same or similar replacement property;

(v) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction; and

(w) dispositions of property in connection with any Specified Sale-Leaseback Transaction.

**“Assignee Group”** means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

**“Assignment and Assumption”** means an Assignment and Assumption substantially in the form of Exhibit D-1 or any other form approved by the Administrative Agent.

**“Assignment Effective Date”** as defined in Section 10.07(2).

**“Attorney Costs”** means all reasonable fees, expenses and disbursements of any law firm or other external legal counsel, to the extent documented in reasonable detail and invoiced.

**“Attributable Indebtedness”** means, on any date, in respect of any Capitalized Lease Obligation or Sale-Leaseback Transaction of any Person, (i) in the case of a Capitalized Lease Obligation or a Sale-Leaseback Transaction that constitutes a Capitalized Lease Obligation, the amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP, or (ii) in the case of a Sale-Leaseback Transaction that does not constitute a Capitalized Lease Obligation, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale-Leaseback Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended determined in accordance with GAAP.

**“Available Tenor”** means, as of any date of determination and with respect to the then-current Benchmark, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 3.03.

**“Bail-In Action”** means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

**“Bail-In Legislation”** means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” has the meaning specified in Section 8.02.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate *plus* 1/2 of 1%, (b) the ~~rate of interest~~ Prime Rate in effect for such day ~~as announced from time to time by the Administrative Agent as its “prime rate”~~ and (c) the ~~Eurodollar~~ sum of 1% plus the Adjusted Term SOFR Rate ~~on such day for an one-month Interest Period of one (1) month plus 1.00% as published two U.S. Government Securities Business Days prior to such day~~ (or, if such day is not a Business Day, the immediately preceding Business Day). ~~The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in such rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the announcement of such change.; provided that for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or the Adjusted Term SOFR Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 3.03), then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.~~

“Base Rate Borrowing” means a Borrowing of Base Rate Loans.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Basket” means any amount, threshold or other value permitted or prescribed with respect to any Lien, transaction value, judgment or other amount under any provision in Articles V, VI, VII or VIII and the definitions related thereto.

“Benchmark” means, initially, ~~with respect to any Eurodollar Rate Loan, the Eurodollar~~ the Term SOFR Rate; *provided* that if a Benchmark Transition Event, ~~a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its~~ and the related Benchmark Replacement Date have occurred with respect to the ~~Eurodollar~~ Term SOFR Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) ~~or clause (e)~~ of Section 3.03.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; ~~provided that, in the case of an Other Benchmark~~



**Rate Election, “Benchmark Replacement” shall mean the alternative set forth in clause (3) below:**

(1) the sum of: (a) ~~Term~~Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment; or

~~(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;~~

~~(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities ~~denominated~~ at such time in the United States and (b) the related Benchmark Replacement Adjustment;~~

~~provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided further that, in the case of clause (3), when such clause is used to determine the Benchmark Replacement in connection with the occurrence of an Other Benchmark Rate Election, the alternate benchmark rate selected by the Administrative Agent and the Borrower shall be the term benchmark rate that is used in lieu of a Eurodollar Rate-based rate in the relevant other Dollar-denominated syndicated credit facilities; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).~~

If the Benchmark Replacement as determined pursuant to clause (1); or (2) ~~or (3)~~ above would be less than ~~zero~~the Floor, the Benchmark Replacement will be deemed to be ~~zero~~the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

, the spread adjustment, or method for calculating or determining such spread adjustment ~~(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement”, the first alternative set forth in the order below that can be determined by the Administrative Agent;~~

~~(a) the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;~~

~~(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and~~

~~(2) for purposes of clause (3) of the definition of “Benchmark Replacement”, the spread adjustment, or method for calculating or determining such spread adjustment,~~ (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities ~~denominated in Dollars~~ at such time;

~~provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.~~

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day<sup>22</sup>,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period<sup>22</sup>,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark **Replacement** and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark **Replacement** exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).



“**Benchmark Replacement Date**” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event<sup>22</sup>,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event<sup>22</sup>,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date<sup>23</sup>;

~~(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to Section 3.03; or~~

~~(4) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Required Lenders.~~

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such

statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, [the CME Term SOFR Administrator](#), an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

**“Bi-Lateral Letter of Credit”** means any letter of credit issued by a Bi-Lateral Letter of Credit Lender for the account of any Loan Party which shall be deemed issued under this Agreement for purposes of the ABL Intercreditor Agreement.

**“Bi-Lateral Letter of Credit Lender”** means any Person that is a Lender or an Affiliate of a Lender as of both (i) the date of issuance (or amendment, renewal or extension) of the applicable Bi-Lateral Letter of Credit and (ii) the date of designation of the applicable Bi-Lateral Letter of Credit Obligation as a “Secured Bi-Lateral Letter of Credit Obligation”.

**“Bi-Lateral Letter of Credit Obligation”** means any reimbursement obligation or other payment obligation of the Loan Parties owing to any Bi-Lateral Letter of Credit Lender in connection with any Bi-Lateral Letter of Credit issued by such Bi-Lateral Letter of Credit Lender.

**“Board of Directors”** means, for any Person, the board of directors, board of managers, or other governing body of such Person or, if such Person does not have such a board of directors, board of managers or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, “Board of Directors” means the Board of Directors of Top Parent.

**“Borrower”** has the meaning specified in the introductory paragraph to this Agreement. Upon the consummation of any transaction permitted by Section 7.03, “Borrower” shall mean any successor of Big River Steel LLC who assumes the due and punctual payment and performance of the Obligations of Big River Steel LLC under the Loan Documents in accordance with Section 7.03.

**“Borrower Materials”** has the meaning specified in Section 6.02.

**“Borrower Parties”** means the collective reference to the Borrower and each Subsidiary Guarantor and **“Borrower Party”** means any of them.

**“Borrowing”** means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of ~~Eurodollar Rate~~ Term Benchmark Loans, having the same Interest Period.

**“Borrowing Base”** means, at any time, an amount equal to the sum of the following amounts:

(i) the sum of (a) 85% of Eligible Accounts (other than Eligible Investment Grade Accounts) of the Borrower Parties plus (b) 90% of Eligible Investment Grade Accounts of the Borrower Parties (in each case, it being understood that Eligible Accounts and Eligible Investment Grade Accounts shall not include any Accounts that have been transferred pursuant to, or secure, a Permitted Supply Chain Financing); plus

(ii) with respect to the Eligible Inventory of the Borrower Parties consisting of raw materials, an amount equal to the lesser of (x) the product of (A) 85% multiplied by (B) the applicable Net Recovery Percentage with respect to Inventory consisting of raw materials

multiplied by (C) the Inventory Value of such Eligible Inventory consisting of raw materials at such time and (y) the product of (A) 75% multiplied by (B) the Inventory Value of the Eligible Inventory of the Borrower consisting of raw materials at such time; plus

(iii) with respect to the Eligible Inventory of the Borrower Parties consisting of work-in-process or semi-finished goods, an amount equal to the lesser of (x) the product of (A) 85% multiplied by (B) the applicable Net Recovery Percentage with respect to Inventory consisting of work-in-process multiplied by (C) the Inventory Value of such Eligible Inventory consisting of work-in-process at such time and (y) the product of (A) 75% multiplied by (B) the Inventory Value of the Eligible Inventory of the Borrower consisting of work-in-process at such time; plus

(iv) with respect to the Eligible Inventory of the Borrower Parties consisting of finished goods, an amount equal to the lesser of (x) the product of (A) 85% multiplied by (B) the applicable Net Recovery Percentage with respect to Inventory consisting of finished goods multiplied by (C) the Inventory Value of such Eligible Inventory consisting of finished goods at such time and (y) the product of (A) 80% multiplied by (B) the Inventory Value of the Eligible Inventory of the Borrower consisting of finished goods at such time; minus

(v) the face amount of all Bi-Lateral Letters of Credit; minus;

(vi) all Reserves, if any, then in effect.

The Administrative Agent will have the right to establish and modify Reserves, in its Permitted Discretion, in accordance with Section 2.17. Subject to the immediately preceding sentence and the other provisions hereof expressly permitting the Administrative Agent to adjust the Borrowing Base or any component thereof, the Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.01(6) (or, prior to the first such delivery, the Borrowing Base Certificate referred to in Section 4.01(1)(h)).

“**Borrowing Base Certificate**” means a borrowing base certificate reflecting the Borrowing Base for the Borrowing Base Reporting Date most recently ended in form reasonably satisfactory to the Administrative Agent (with such changes thereto as may be reasonably required by the Administrative Agent from time to time to reflect the components of, and Reserves against, the Borrowing Base as provided for hereunder), together with all attachments and supporting documentation contemplated thereby, signed and certified as accurate and complete by a Financial Officer of the Borrower.

“**Borrowing Base Reporting Date**” means (a) the end of each calendar month or (b) during any Weekly Reporting Period, the last day of each week.

“**Broker-Dealer Regulated Subsidiary**” means any Subsidiary of the Borrower that is registered as a broker-dealer under the Exchange Act or any other applicable Laws requiring such registration.

“**Business Day**” means any day that is not a Legal Holiday ~~and, with respect to any interest rate settings as to a Eurodollar Rate Loan, any fundings, disbursements,~~

~~settlements and payments in respect of any such Eurodollar Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, any day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.~~

“**Canadian Dollars**” means the lawful currency of Canada.

“**CapEx Equity**” means Capital Stock of the Borrower issued to Holdings, the Net Proceeds from the issuance of which, and other cash equity capital contributions by Holdings to the Borrower, the Net Proceeds of which, are used for purposes of Expansion Capital Expenditures.

“**Capital Expenditures**” means all expenditures made by the Borrower, a Subsidiary Guarantor or a Restricted Subsidiary, as applicable, for the acquisition, leasing (pursuant to a capital lease of fixed or capital assets), construction, development or improvement of assets or additions to equipment (including replacement, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries.

“**Capital Stock**” means:

- (1) in the case of a corporation, corporate stock or shares in the capital of such corporation;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person,

but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock;

“**Capitalized Lease Obligation**” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP; provided that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the “**ASU**”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are

required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 6.01.

**“Capitalized Software Expenditures”** means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

**“Captive Insurance Subsidiary”** means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

**“Cash”** means money, currency or a credit balance in any demand or Deposit Account.

**“Cash Collateralize”** means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) Cash collateral in Dollars (or, if Administrative Agent and Issuing Bank agree in their sole discretion, other credit support), at a location and pursuant to documentation in form and substance satisfactory to Administrative Agent and Issuing Bank (and **“Cash Collateralization”** has a corresponding meaning). **“Cash Collateral”** shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash collateral and other credit support.

**“Cash Dominion Period”** means each period (a) commencing on the fifth consecutive Business Day when Excess Availability shall be less than the greater of (i) 10.0% of the Line Cap and (ii) \$13,000,000 or (b) commencing on any day when a Specified Event of Default shall have occurred and be continuing and (c) ending on (i) if a Cash Dominion Period has commenced pursuant to clause (a) above, the day on which the Excess Availability shall be greater than the greater of (A) 10.0% of the Line Cap and (B) \$13,000,000 for at least 20 consecutive days (measured from, with respect to the Borrowing Base, the first Borrowing Base Reporting Date with respect to which Excess Availability exceeded the greater of 10.0% of the Line Cap and \$13,000,000) and (ii) if a Cash Dominion Period has commenced pursuant to clause (b) above, the day on which no Specified Events of Default exist for at least 20 consecutive days; provided, however, if a Cash Dominion Period is the fourth such period in any 12 month period or the seventh such period since the Closing Date, then, notwithstanding anything herein to the contrary, such Cash Dominion Period shall be deemed to exist and continue at all times thereafter.

**“Cash Equivalents”** means:

- (1) Dollars;
- (2) (a) Euros, Yen, Canadian Dollars, Sterling or any national currency of any participating member state of the EMU;



(b) in the case of any Foreign Subsidiary or any jurisdiction in which the Borrower or any Restricted Subsidiary conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;

(3) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than \$500.0 million in the case of U.S. banks and \$100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) and in each case maturing within 36 months after the date of acquisition thereof;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition thereof;

(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor

S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above; and

(13) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable Law.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts, except amounts used to pay non-Dollar denominated obligations of the Borrower or any Restricted Subsidiary in the ordinary course of business, are converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

**“Cash Management Agreement”** means any agreement entered into from time to time by the Borrower or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

**“Cash Management Services”** means (a) commercial credit cards, employee credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft protections, automatic clearing house arrangements and fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services, (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements and (e) any other related services or activities.



**“Cash Management Services Provider”** means any Person that (a) is, or was on the Closing Date, an Agent, the Arrangers or any Affiliate of any of the foregoing, whether or not such Person shall have been an Agent, the Arrangers or any Affiliate of any of the foregoing at the time the applicable agreement in respect of Cash Management Services was entered into, (b) is a counterparty to an agreement in respect of Cash Management Services in effect on the Closing Date and is a Lender or an Affiliate of a Lender as of the Closing Date or (c) becomes a counterparty after the Closing Date to an agreement in respect of Cash Management Services at a time when such Person is a Lender or an Affiliate of a Lender.

**“Casualty Event”** means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

**“CFC”** means a “controlled foreign corporation” within the meaning of Section 957(a) of the Code.

**“CFC Holdco”** means a Domestic Subsidiary substantially all of whose assets consists (directly or indirectly through disregarded entities) of the Capital Stock or indebtedness (in the case of indebtedness, to the extent such indebtedness is treated as equity for U.S. federal income tax purposes) of one or more Subsidiaries that are CFCs.

**“Change”** has the meaning specified in Section 2.17.

**“Change in Law”** means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Closing Date of a law, rule, regulation or treaty adopted prior to the Closing Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to the Closing Date.

**“Change of Control”** means the occurrence of any of the following after the Closing Date:

(1) the sale, lease, transfer, conveyance or other disposition in one or a series of related transactions (other than by merger, consolidation, amalgamation or business combination) of all or substantially all of the assets of Holdings or the Borrower and its Subsidiaries, in each case, taken as a whole, to any Person;

(2) at any time prior to the consummation of the first public offering of the common equity of any Parent Company after the Closing Date, the Permitted Holders

ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower;

(3) at any time following the consummation of the first public offering of the common equity of any Parent Company after the Closing Date, (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a “group” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of Equity Interests of the Borrower representing more than thirty-five percent (35%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder, Equity Interests held by any Permitted Holder will be excluded);

(4) any “Change of Control” (or any comparable term) in any document pertaining to the Senior Secured Notes, the Term Loan or any Refinancing Indebtedness thereof, in each case with an aggregate outstanding principal amount in excess of the Threshold Amount; or

(5) the Borrower ceases to be directly or indirectly wholly owned by Holdings;

unless, in the case of clause (2) or (3) above, the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of the Borrower.

“**Class**” means (a) with respect to Lenders, each of the Lenders having Revolving Exposure (including Swing Line Lender) and (b) with respect to Loans, Revolving Loans (including Swing Line Loans and Protective Advances).

“**Closing A/R Field Examination**” means the initial field examination report of the Accounts owned by the Borrower (in final form and prepared by a third party appraisal firm selected by the Administrative Agent). The Closing A/R Field Examination shall be conducted at the sole cost and expense of the Borrower and shall be in addition to any other field examinations and appraisals permitted under this Agreement.

“**Closing Inventory Appraisal**” means the initial inventory report of the Borrower’s Inventory (in final form and prepared by a third party appraisal firm selected by the Administrative Agent). The Closing Inventory Appraisal shall be conducted at the sole cost and expense of the Borrower and shall be in addition to any other appraisals permitted under this Agreement.

“**Closing Date**” means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“**Closing Date Refinancing**” means the repayment of all outstanding Indebtedness under all of the Indebtedness described on Schedule 1.01(1) (such Indebtedness, the “**Closing Date Refinanced Indebtedness**”) (it being understood that letters of credit may remain outstanding to the extent collateralized or backstopped pursuant to this Agreement on the Closing Date).

“**Closing Date Refinanced Indebtedness**” has the meaning assigned to such term in the definition of “Closing Date Refinancing”.

“**Closing Date Loans**” means the Loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01.

“**Closing Date Term Loans**” means the Term Loans made by the Term Lenders on the Closing Date to the Borrower pursuant to Term Credit Agreement.

[“CME Term SOER Administrator” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate \(SOER\) \(or a successor administrator\).](#)

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended, and any successor federal Tax statute (unless otherwise specified in this Agreement).

“**Co-Issuer**” means BRS Finance Corp., a Delaware corporation.

“**Collateral**” means all the “Collateral” (or equivalent term) as defined in any Collateral Document.

“**Collateral Access Agreement**” means any landlord waiver, warehouseman’s letter, consignee agreement, bailee letter or other agreement, in form and substance reasonably satisfactory to the Collateral Agent (including with respect to waivers or subordinations of certain rights by such Persons), between the Collateral Agent and any landlord where any Inventory is located or any third party warehouse, consignee, bailee or other similar Person having the possession of any Inventory.

“**Collateral and Guarantee Requirement**” means, at any time, the requirement that:

(1) the Collateral Agent shall have received each Collateral Document required to be delivered (a) on the Closing Date pursuant to Section 4.01(2)(a) or (b) pursuant to the Security Agreement or Section 6.11 or 6.13 at such time required by the Security Agreement or by such Sections to be delivered, in each case, duly executed by each Loan Party that is party thereto;

(2) all Obligations shall have been unconditionally guaranteed by (a) Holdings (or any successor thereto), (b) each Restricted Subsidiary of the Borrower that the

Borrower elects to cause to become a Subsidiary Guarantor (which shall include any Subsidiary that guarantees the Senior Secured Notes or that is otherwise required to guarantee the Obligations under the ABL Intercreditor Agreement), in each case, until such time as such Restricted Subsidiary ceases to be a Subsidiary Guarantor pursuant to the terms of the Loan Documents (the Persons in the preceding clauses (a) and (b) collectively, the “**Guarantors**”);

(3) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest, subject only to Permitted Liens, in

(a) (i) all the Equity Interests of the Borrower and (ii) all the common Equity Interests of Holdings,

(b) all Equity Interests of each direct, wholly owned Domestic Subsidiary (other than any CFC Holdco) that is directly owned by any Loan Party, and

(c) 65% of the issued and outstanding Equity Interests of each class of each (i) wholly owned Domestic Subsidiary that is (a) a CFC Holdco and (b) directly owned by a Loan Party and (ii) wholly owned Foreign Subsidiary that is directly owned by a Loan Party;

(4) Subject to clause (c) below and except to the extent otherwise provided hereunder or under any Collateral Document, including subject to Permitted Liens, and in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents, the Obligations and the Guaranty shall have been secured by a security interest in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including accounts), inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, and proceeds of the foregoing (in each case, other than Excluded Assets), in each case;

(a) that has been perfected (to the extent such security interest may be perfected) by

(i) delivering certificated securities and instruments, in which a security interest can be perfected by physical control, in each case to the Collateral Agent (or the Pari Collateral Agent as bailee for the Collateral Agent pursuant to the ABL Intercreditor Agreement, if applicable) to the extent required hereunder or the Security Agreement;

(ii) filing financing statements under the Uniform Commercial Code of any applicable jurisdiction, or

(iii) making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office, or

(b) with the priority required by the Collateral Documents; *provided* that any such security interests in the Collateral shall be subject to the terms of the ABL Intercreditor Agreement, and

(c) notwithstanding the forgoing, upon termination of the ABL Intercreditor Agreement, the Collateral Trust Agreement and the Grant Clawback Agreement, the Borrower may elect to limit the Collateral to that described in the definition of ABL Priority Collateral; provided, that the Secured Parties receive collateral access rights consistent with those set forth in Section 3.3 of the ABL Intercreditor Agreement.

No actions required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any assets or to perfect or make enforceable such security interests in any assets (including any intellectual property registered or applied for in any non-U.S. jurisdiction) (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). There shall be no (x) Guaranties governed under the laws of any non-U.S. jurisdiction or (y) requirement to perfect a security interest in any letter of credit rights, other than by the filing of a UCC financing statement.

**“Collateral Documents”** means, collectively, the Security Agreement, the Top Parent Pledge Agreement, the Intellectual Property Security Agreements, the Control Agreements, each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(2), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

**“Collateral Trust Agreement”** means that certain Collateral Trust Agreement dated as of the Closing Date, among the Pari Collateral Agent, the Term Agent, the Trustee, Commercial Building Lender, the Equipment Lessor, each other Debt Representative with respect to Pari Passu Lien Obligations from time to time party thereto and the Loan Parties, which agreement is substantially in the form of Exhibit G-2, as the same may be amended, restated, supplemented or otherwise modified from time to time.

**“Collection Deposit Accounts”** as defined in Section 6.18(1).

**“Collection Lockboxes”** as defined in Section 6.18(1).

**“Commercial Building Lender”** means First Security Bank, an Arkansas banking corporation, together with its permitted successors and assigns in such capacity.

**“Commitment”** means any Revolving Commitment.

**“Commodity Exchange Act”** means the Commodity Exchange Act (7 U.S.C. §1 et. seq.), as amended from time to time and any successor statute.

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower:

(1) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1)), and

(2) setting forth detailed calculations of the Fixed Charge Coverage Ratio as would be calculated under each alternative in the definition thereof; provided, that such calculation of the Fixed Charge Coverage Ratio for purposes of demonstrating compliance with Section 7.12 shall not be required except during a Covenant Period or pursuant to Section 4.02(6).

“**Consolidated Depreciation and Amortization Expense**” means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and the amortization of Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“**Consolidated EBITDA**” means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h), (l) and (n)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees, letter of guarantee and bankers’ acceptance fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of “Consolidated Interest Expense” pursuant to the definition thereof; *plus*

(b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise and similar taxes, and foreign withholding taxes paid or accrued during such period (including any other levies that replace or are intended to be in lieu of such taxes, and any penalties and interest related to taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to the definition of “Consolidated Net Income,” and any payments to a Parent Company in respect of such taxes permitted to be made hereunder; *plus*



(c) Consolidated Depreciation and Amortization Expense for such period; *plus*

(d) any other non-cash charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Borrower may determine not to add back such non-cash charge in the current period and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof, with the exception of any cash payments related to the settlement of deferred compensation balances awarded prior to the Closing Date, in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation*; *plus*

(f) (i) the amount of board of director fees and any management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreements and (ii) the amount of payments made to optionholders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Companies, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted hereunder; *plus*

(g) [reserved]; *plus*

(h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any prior period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such Person (other than Disqualified Stock); *plus*

(j) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of *FASB Accounting Standards Codification Topic 715—Compensation—Retirement Benefits*, and any other items of a similar nature, *plus*

(k) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve (12) months after the end of such period; *plus*

(l) the amount of “run-rate” cost savings, synergies and operating expense reductions related to restructurings, cost savings initiatives or other initiatives that are projected by the Borrower in good faith to result from actions either taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within 24 months after the end of such period (which cost savings, synergies or operating expense reductions shall be calculated on a *pro forma* basis as though such cost savings, synergies or operating expense reductions had been realized on the first day of such period), net of the amount of actual benefits realized from such actions during such period (it is understood and agreed that “run-rate” means the full recurring benefit that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken, whether prior to or following the Closing Date) (which adjustments may be incremental to (but not duplicative of) pro forma cost savings, synergies or operating expense reduction adjustments made pursuant to Section 1.07); provided that such cost savings, synergies and operating expenses are reasonably identifiable and factually supportable; *plus*

(m) [reserved]; *plus*

(n) any payments in the nature of compensation or expense reimbursement made to independent board members; *plus*

(o) internal software development costs that are expensed during the period but could have been capitalized in accordance with GAAP; *plus*

(p) any loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of); *plus*

(q) pre-startup expenses; and



(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition),

(b) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary added to (and not deducted from) Consolidated Net Income in such period, and

(c) any income from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of).

For the avoidance of doubt, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.07.

“**Consolidated Interest Expense**” means, with respect to any Person for any period, without duplication, the sum of:

(a) cash interest expense (including that attributable to Capitalized Lease Obligations), net of interest income of such Person and its Restricted Subsidiaries for such period, other than Non-Recourse Indebtedness, including commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof); *plus*

(b) non-cash interest expense resulting solely from (a) the amortization of original issue discount from the issuance of Indebtedness of such Person and its Restricted Subsidiaries at less than par (excluding the Senior Secured Notes, the Closing Date Term Loans and any Indebtedness borrowed under the Facility in connection with the Transactions and any Non-Recourse Indebtedness), *plus* (b) pay-in-kind interest expense of such Person and its Restricted Subsidiaries payable pursuant to the terms of the agreements governing Indebtedness for borrowed money;

excluding, in each case:

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clauses (a) and (b) above (including as a result of the effects of acquisition method accounting or pushdown accounting),

- (ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedging Obligations or other derivative instruments, including pursuant to FASB Accounting Standards Codification Topic 815, *Derivatives and Hedging*,
- (iii) costs associated with incurring or terminating Hedging Obligations and cash costs associated with breakage in respect of hedging agreements for interest rates,
- (iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any Non-Recourse Indebtedness,
- (v) “additional interest” owing pursuant to a registration rights agreement with respect to any securities,
- (vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,
- (vii) penalties and interest relating to taxes,
- (viii) accretion or accrual of discounted liabilities not constituting Indebtedness,
- (ix) interest expense attributable to a Parent Company resulting from push-down accounting,
- (x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting,
- (xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto in connection with any acquisition or Investment, and
- (xii) annual agency fees paid to any administrative agents and collateral agents with respect to any secured or unsecured loans, debt facilities, debentures, bonds, commercial paper facilities or other forms of Indebtedness (including any security or collateral trust arrangements related thereto), including the Facility, the Term Facility and the Senior Secured Notes.

For purposes of this definition, interest on a Capitalized Lease Obligation will be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“**Consolidated Net Income**” means, with respect to any Person for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; Public Company Costs; costs and expenses related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and intellectual property development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost-savings initiatives; curtailments and modifications to pension and post-employment employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary and the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; provided that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period);

(6) [reserved];

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property

and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, *Compensation—Stock Compensation* or Accounting Standards Codification Topic 505-50, *Equity-Based Payments to Non-Employees*, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the offering and issuance of the Senior Secured Notes and the syndication and incurrence of any Facilities (as defined in the Term Credit Agreement) or other Pari Passu Lien Obligations), issuance of Equity Interests (including by any direct or indirect parent of the Borrower), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Senior Secured Notes and other securities and any Facilities (as defined in the Term Credit Agreement) or other Pari Passu Lien Obligations) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, *Business Combinations*);

(12) accruals and reserves that are established or adjusted in connection with an Investment or an acquisition that are required to be established or adjusted as a result of such Investment or such acquisition, in each case in accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging* or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—*Financial Instruments*;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, *Guarantees*, or any comparable regulation;

(17) any non-cash rent expense;

(18) [reserved];

(19) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(20) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder.

**“Consolidated Net Tangible Assets”** means, as of the time of determination, the aggregate amount of assets of the Borrower and its consolidated Restricted Subsidiaries after deducting (i) all goodwill, trade names, trademarks, service marks, patents, unamortized debt discount and expense and other intangible assets and (ii) all current liabilities, as reflected on the most recent consolidated balance sheet of the Borrower delivered pursuant to Section 6.01(1) or (2) prior to the time as of which “Consolidated Net Tangible Assets” is being determined.

**“Consolidated Secured Debt”** means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each

case secured by a lien; provided that Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (2) to advance or supply funds:
  - (a) for the purchase or payment of any such primary obligation or
  - (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Control Agreement**” means, with respect to any lockbox, deposit account or securities account maintained by any Loan Party, an irrevocable lockbox agreement or other control agreement in form and substance reasonably satisfactory to the Collateral Agent, duly executed and delivered by such Loan Party and the depositary bank that maintains such lockbox or the depositary bank or the securities intermediary with which such account is maintained, as applicable.

“**Controlled Investment Affiliate**” means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower and/or other companies.



“**Conversion/Continuation Date**” means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

“**Conversion/Continuation Notice**” means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

“**Convertible Indebtedness**” means Indebtedness of the Borrower (which may be guaranteed by the Guarantors) permitted to be incurred hereunder that is either (a) convertible into common equity of the Borrower (and cash in lieu of fractional shares) or cash (in an amount determined by reference to the price of such common equity) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common equity of the Borrower or cash (in an amount determined by reference to the price of such common equity).

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Covenant Period**” has the meaning specified in Section 7.12.

“**Covered Party**” has the meaning assigned to such term in Section 10.27.

“**Credit Date**” means the date of a Credit Extension.

“**Credit Extension**” means the making of a Loan or the issuing of a Letter of Credit (or the amending of a Letter of Credit at the Borrower’s request to extend the term or increase the amount of such Letter of Credit).

“**Cure Amount**” has the meaning specified in Section 8.04(1).

“**Cure Expiration Date**” has the meaning specified in Section 8.04(1)(a).

“**Daily Simple SOFR**” means, for any day, ~~(a “SOFR, with the conventions for this rate (which may include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion. Rate Day”), a rate per annum equal to SOFR for the day that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the~~

**Borrower. If Daily Simple SOFR shall be less than the Floor, Daily Simple SOFR shall be deemed to be the Floor for purposes of this Agreement.**

“**Debt Fund Affiliate**” means any Affiliate of an Investor that is a bona fide diversified debt fund that is not (a) a natural person or (b) Top Parent, any Parent Company, Holdings, the Borrower or any Subsidiary of the Borrower.

“**Debt Representative**” means, with respect to any series of Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Default**” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“**Default Right**” has the meaning assigned to such term in Section 10.27.

“**Defaulting Lender**” means, subject to Section 2.16(2) any Lender that (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans, within one Business Day of the date required to be funded by it hereunder, (b) has failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, (c) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (d) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, or (e) has, or has a direct or indirect parent company that has, either (i) admitted in writing that it is insolvent or (ii) become subject to a Lender-Related Distress Event. Any determination by the Administrative Agent as to whether a Lender is a Defaulting Lender shall be conclusive absent manifest error.

“**Deposit Account**” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“**Deposit Agreement**” means a Security Deposit Agreement substantially in the form attached as Exhibit E to the Collateral Trust Agreement, to be entered into among the Loan Parties, the Pari Collateral Agent, the Collateral Agent and the Depositary Agent (as defined



therein), as the same may be amended, restated, supplemented or otherwise modified from time to time.

**“Designated Cash Management Services Agreement”** means any agreement relating to Cash Management Services that is entered into between any Loan Party and a Cash Management Services Provider and that is designated as a “Designated Cash Management Services Agreement” in a writing from such Loan Party and such Cash Management Services Provider to the Administrative Agent in form and detail reasonably satisfactory to the Administrative Agent. Any such designation in writing from a Loan Party and the applicable Cash Management Services Provider (or any subsequent writing from a Loan Party and such Cash Management Services Provider to the Administrative Agent) may further designate any Designated Cash Management Services Agreement as being a “Designated Pari Cash Management Services Agreement” as defined under this Agreement; provided that in the event of any such further designation, such writing specifies the Designated Pari Amount with respect thereto.

**“Designated Cash Management Services Obligations”** means all obligations of every nature of the Loan Parties (whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) arising in respect of Cash Management Services provided under any Designated Cash Management Services Agreement.

**“Designated Hedge Agreement”** means (a) any Hedge Agreement relating to commodity prices that is entered into between a Loan Party and a Lender Counterparty that is designated as a “Designated Hedge Agreement” in a writing from the Borrower and the applicable Lender Counterparty to the Administrative Agent in form and detail reasonably satisfactory to the Administrative Agent. Any such designation in writing from the Borrower and the applicable Lender Counterparty (or any subsequent writing from the Borrower and such Lender Counterparty to the Administrative Agent) may further designate any Designated Hedge Agreement as being a “Designated Pari Hedge Agreement” as defined under this Agreement; provided that in the event of any such further designation, such writing (x) specifies the Designated Pari Amount with respect thereto and (y) certifies that such Hedge Agreement does not constitute a “Designated Pari Hedge Agreement” pursuant to the terms of the Term Credit Agreement. Any such designation may be rescinded or terminated only by a writing executed by both the Borrower and the applicable Lender Counterparty.

**“Designated Hedge Obligations”** means all obligations of every nature of the Loan Parties under each Designated Hedge Agreement (whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)), including obligations for interest (including interest that would continue to accrue pursuant to such Designated Hedge Agreement on any such obligation after the commencement of any proceeding under the Debtor Relief Laws with respect to any Loan Party, whether or not such interest is allowed or allowable against such Loan Party in any such proceeding), payments for early termination of such Hedge Agreement, fees, expenses and indemnification.

**“Designated Non-Cash Consideration”** means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with an Asset Sale.

**“Designated Pari Amount”** means, with respect to any Designated Cash Management Services Agreement or any Designated Hedge Agreement, an amount (up to the maximum possible amount of obligations of the Loan Parties thereunder) specified in a writing from the Borrower and the applicable Cash Management Services Provider or the applicable Lender Counterparty, as the case may be, to the Administrative Agent, which amount may be increased or decreased by further such written notice to the Administrative Agent from time to time.

**“Designated Pari Cash Management Services Agreement”** means each Designated Cash Management Services Agreement in respect of which the notice delivered to the Administrative Agent by the Borrower and the applicable Cash Management Services Provider confirms that such Designated Cash Management Services Agreement constitutes a “Designated Pari Cash Management Services Agreement” for all purposes hereof, including Section 2.13(2), so long as, on the date of such designation (or, in the event the Designated Pari Amount with respect thereto shall increase as contemplated by the definition of such term, on the date of effectiveness of such increase), the establishment of a Designated Pari Cash Management Services Reserve in the amount of the Designated Pari Amount with respect thereto would not result in the Total Utilization of Revolving Commitments exceeding the Borrowing Base then in effect (but after giving pro forma effect to the establishment of such Designated Pari Cash Management Services Reserve).

**“Designated Pari Cash Management Services Obligations”** means all obligations of every nature of the Loan Parties (whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) arising in respect of Cash Management Services provided under any Designated Pari Cash Management Services Agreement.

**“Designated Pari Cash Management Services Reserve”** means, with respect to any Designated Pari Cash Management Services Agreement, the reserve that the Administrative Agent from time to time establishes in its Permitted Discretion as being reasonably appropriate to reflect the aggregate amount of Obligations in respect of such Designated Pari Cash Management Services Agreement. Without limiting the Administrative Agent’s Permitted Discretion, a Designated Pari Cash Management Services Reserve at any time may be established by reference to the amount of such Obligations set forth in most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.01(6) (or, prior to the first such delivery, the Borrowing Base Certificate referred to in Section 4.01(1)(h)).

**“Designated Pari Hedge Agreement”** means each Designated Hedge Agreement in respect of which the notice delivered to the Administrative Agent by the Borrower and the applicable Lender Counterparty confirms that such Designated Hedge Agreement constitutes a “Designated Pari Hedge Agreement” for all purposes hereof so long as, on the date of such designation (or, in the event the Designated Pari Amount with respect thereto shall increase as contemplated by the definition of such term, on the date of effectiveness of such increase), the

establishment of a Designated Pari Hedge Reserve in the amount of the Designated Pari Amount with respect thereto would not result in the Total Utilization of Revolving Commitments exceeding the Borrowing Base then in effect (but after giving pro forma effect to the establishment of such Designated Pari Hedge Reserve); provided that only Hedge Agreements related to commodity prices may constitute Designated Pari Hedge Agreements.

**“Designated Pari Hedge Obligations”** means all obligations of every nature of the Loan Parties under each Designated Pari Hedge Agreement (whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)), including obligations for interest (including interest that would continue to accrue pursuant to such Designated Pari Hedge Agreement on any such obligation after the commencement of any proceeding under the Debtor Relief Laws with respect to any Loan Party, whether or not such interest is allowed or allowable against such Loan Party in any such proceeding), payments for early termination of such Designated Pari Hedge Agreement, fees, expenses and indemnification.

**“Designated Pari Hedge Reserves”** means, with respect to any Designated Pari Hedge Agreement, the reserves that the Administrative Agent from time to time establishes in its Permitted Discretion as being reasonably appropriate to reflect the aggregate amount of Obligations in respect of such Designated Pari Hedge Agreement. Without limiting the Administrative Agent’s Permitted Discretion, a Designated Pari Hedge Reserve at any time may be established by reference to the amount of such Obligations set forth in most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.01(6) (or, prior to the first such delivery, the Borrowing Base Certificate referred to in Section 4.01(1)(h)); provided that at any time the Designated Pari Hedge Reserves shall not be less than the aggregate of the Designated Pari Amounts then in effect.

**“Designated Revolving Commitments”** means any commitments to make loans or extend credit on a revolving basis to the Borrower or any Restricted Subsidiary by any Person other than the Borrower or any Restricted Subsidiary that have been designated in an Officer’s Certificate delivered to the Administrative Agent as “Designated Revolving Commitments” until such time as the Borrower subsequently delivers an Officer’s Certificate to the Administrative Agent to the effect that such commitments will no longer constitute “Designated Revolving Commitments”; provided that, during such time, except for purposes of determining actual compliance with the Financial Covenant, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the Fixed Charge Coverage Ratio, Senior Secured Net Leverage Ratio and the availability of any Baskets hereunder.

**“Development”** means the ownership, occupation, design, development, construction, system establishment, testing, start-up, commissioning, implementation, optimization, repair, operation, maintenance and use of the Phase II Project through final completion of the Phase II Project as determined by the Board of Directors.

**“Dilution Factors”** means, without duplication, with respect to any period, the aggregate amount of all deductions, credit memos, returns, adjustments, allowances, bad debt write-offs and other non-cash credits (including all volume discounts, trade discounts and

rebates) that are recorded to reduce Accounts of the Borrower in a manner consistent with current and historical accounting practices of the Borrower.

**“Dilution Ratio”** means, at any time, the amount (expressed as a percentage) equal to (a) the aggregate amount of the applicable Dilution Factors in respect of the Accounts of the Borrower for the 12 most recently ended fiscal months divided by (b) total gross invoices of the Borrower for such 12 most recently ended fiscal months.

**“Dilution Reserve”** means, at any time, the product of (a) the excess of (i) the applicable Dilution Ratio at such time over (ii) 5%, multiplied by (b) the aggregate amount of Eligible Accounts at such time.

**“disposition”** has the meaning set forth in the definition of “Asset Sale.”

**“Disqualified Institution”** means (a) those particular banks, financial institutions and other institutional lenders identified in writing by the Borrower to the Arrangers on or prior to July 18, 2017 and (b) any competitor of the Borrower or its Subsidiaries and any Affiliate of such competitor, in each case under this clause (b), identified in writing by or on behalf of the Borrower to the Arrangers on or prior to July 31, 2017 or, solely with respect to competitors that are operating companies, identified in writing by or on behalf of the Borrower to (i) the Arrangers on or prior to the Closing Dates or (ii) the Administrative Agent from time to time after the Closing Date; provided that any Person that is a Lender and subsequently becomes a Disqualified Institution (but was not a Disqualified Institution at the time it became a Lender) shall be deemed to not be a Disqualified Institution hereunder. The identity of Disqualified Institutions may be communicated by the Administrative Agent to a Lender upon request, but will not be otherwise posted or distributed to any Person.

**“Disqualified Stock”** means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the Maturity Date or the date the Loans are no longer outstanding; provided that if such Capital Stock is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s, consultant’s or independent contractor’s termination, death or disability; provided further any

Capital Stock held by any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries, any Parent Company, or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an “affiliate” by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders’ agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s, officer’s, management member’s, consultant’s or independent contractor’s termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the “maximum fixed repurchase price” of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which an aggregate principal amount of Indebtedness would be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Borrower.

“**Distressed Person**” shall have the meaning provided in the definition of the term Lender-Related Distress Event.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” means any direct or indirect Subsidiary of the Borrower that is organized or existing under the Laws of the United States, any state thereof or the District of Columbia.

“**Early Buyout Option Date**” means the first day on which the Borrower may exercise its option to terminate an Equipment Sub-sublease (and the associated Sublease (as defined in the Equipment Lease) as specified in and pursuant to Section 13 of such Equipment Sub-sublease.

“**Early Maturity Date**” means, with respect to any Material Indebtedness, the date that is 45 days prior to the stated maturity date for such Material Indebtedness.

~~“**Early Opt-in Election**” means, if the then current Benchmark with respect to Dollars is the Eurodollar Rate, the occurrence of:~~

~~(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such~~



~~syndicated credit facilities are identified in such notice and are publicly available for review), and~~

~~(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from the Eurodollar Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.~~

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Eligible Accounts**” means, at any time, the Accounts owned by the Borrower Parties at such time, other than any Account to which any of the exclusionary criteria set forth below applies. Eligible Accounts shall not include any Account of any Borrower Party:

(a) that (i) is not subject to a valid and perfected first priority Lien in favor of the Collateral Agent created under the Collateral Documents or (ii) is not owned by such Borrower Party free and clear of all Liens and of all rights of any other Person, except (A) Liens in favor of the Collateral Agent created under the Collateral Documents, and (B) Permitted Liens to the extent consisting of non-consensual statutory Liens or junior Liens subject to an intercreditor agreement on terms satisfactory to Administrative Agent (but without limiting the right of the Administrative Agent to establish any Reserves with respect to Permitted Liens);

(b) that does not arise from the sale of goods or the performance of services by such Borrower Party in the ordinary course of its business that have been accepted by the Account Debtor;

(c) that (i) is not evidenced by an invoice or other documentation reasonably satisfactory to the Administrative Agent (with the Administrative Agent agreeing that it will reasonably consider any form otherwise proposed by an Account Debtor) that has been sent to the Account Debtor or (ii) has been invoiced more than once (including where any Account that was partially paid and such Borrower Party created a new receivable for the unpaid portion of such Account);

(d) (i) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Borrower Party, (ii) upon which the Borrower Party’s right to receive payment is contingent upon the fulfillment of any further obligation on the part of such Borrower

Party or (iii) if such Account represents a progress billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account Debtor's obligation to pay that invoice is subject to such Borrower Party's completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer;

(e) that arises with respect to goods that are delivered on a bill-and-hold, sale on approval, sale-and-return, consignment or cash-on-delivery basis or placed on guaranteed sale or other terms by reason of which the payment by the Account Debtor is or may be conditional;

(f) that is payable in any currency other than (i) Dollars, (ii) Canadian Dollars or (iii) any other foreign currency approved by the Administrative Agent in its Permitted Discretion;

(g) as to which such Borrower Party is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial or administrative process;

(h) that are subject to a Permitted Supply Chain Financing or are otherwise owed by an Account Debtor that is party to a Permitted Supply Chain Financing;

(i) that is the obligation of any Loan Party or any Affiliate of a Loan Party or any director, officer, other employee or equity holder of any Loan Party or any such Affiliate, or by any Person that has any common officer or director with any Loan Party (other than any Person that would not be an Affiliate but for a common officer or director);

(j) that is the obligation of an Account Debtor that is a Governmental Authority, unless, in the case of any Governmental Authority of the United States of America, any State thereof or the District of Columbia, the Administrative Agent, in its Permitted Discretion, has agreed to the contrary in writing and such Borrower Party, if necessary or desirable, has complied with respect to such obligation with the Federal Assignment of Claims Act of 1940, or any applicable State, county or municipal law restricting assignment thereof or perfection of Lien thereon;

(k) that is the obligation of an Account Debtor that (i) is organized under the laws of, or the chief executive officer of which is located in, any jurisdiction other than the United States of America, any State thereof or the District of Columbia or Canada or any Province thereof, or (ii) is governed by the laws of any jurisdiction other than the United States of America, any State thereof, or the District of Columbia or Canada or any Province thereof, unless in either case (A) payment of such Account is assured by a letter of credit assigned and delivered to, and drawable by, the Administrative Agent, satisfactory to the Administrative Agent in its Permitted Discretion as to form, amount and issuer, (B) such Account is covered by credit insurance in form, substance and amount, and by an insurer, satisfactory to the Administrative Agent in its Permitted Discretion, or (C) such Account Debtor is a Qualified Foreign Account Debtor in an aggregate amount for all such Accounts not to exceed \$7,500,000;

(l) that is the obligation of an Account Debtor that is a Sanctioned Person;

(m) to the extent that any defense, counterclaim, setoff or dispute has been asserted as to such Account (but any portion of such Account net of the amount of such defense,

counterclaim, setoff or dispute shall not be excluded as an Eligible Account pursuant to this clause);

(n) to the extent that (i) such Borrower Party is liable for goods sold or services rendered by the Account Debtor or to such Borrower Party or is otherwise indebted thereto, but only to the extent of the potential defense, counterclaim or setoff, or (ii) such Account is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of the Account Debtor, in each case, only to the extent thereof;

(o) to the extent such Account is evidenced by a judgment, or any promissory note, instrument or chattel paper;

(p) that is in default; provided, that, without limiting the generality of the foregoing, an Account shall be deemed in default upon the occurrence of any of the following:

(i) such Account is not paid within the earlier of 60 days following its due date or 120 days following its original invoice date;

(ii) any Account Debtor obligated on such Account suspends business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due;

(iii) a petition is filed by or against any Account Debtor obligated on such Account under any Debtor Relief Law; or

(iv) any check or other instrument of payment with respect to such Account has been returned uncollected for any reason;

(q) that is the obligation of an Account Debtor if 50% or more of all Accounts owing by such Account Debtor and its Affiliates are ineligible pursuant to clause (p) above;

(r) to the extent that such Account, together with all other Accounts owing by such Account Debtor and its Affiliates, as of any date of determination exceed 25% of all Eligible Accounts (but in each case only to the extent of such excess);

(s) to the extent such Account exceeds any credit limit established by the Administrative Agent, in its Permitted Discretion, following such Borrower Party's receipt from the Administrative Agent of prior written notice (which such notice may be made by electronic transmission) of such limit; or

(t) as to which any of the representations or warranties in the Loan Documents with respect to such Account are untrue in any material respect.

Any Account acquired in an acquisition permitted under this Agreement that has not been subject to a field examination shall nevertheless constitute an Eligible Account for the period of 60 days following the consummation of such acquisition to the extent that such Account would otherwise qualify as an Eligible Account (all such Accounts, collectively, the "**Eligible Acquired Account**"); provided, however, that the aggregate value of the Eligible Acquired



Accounts (taking into account, for purposes of valuation, the immediately following paragraph) shall not exceed 10% of the lesser of (x) the Borrowing Base and (y) the aggregate unused amount of the Revolving Commitments then in effect. To the extent field exams on such Eligible Acquired Accounts have not been completed within such 60 day period, they shall no longer constitute Eligible Accounts.

In determining the amount of an Eligible Account, the face amount of an Account may, in the Permitted Discretion of the Administrative Agent, be reduced by, without duplication (whether of the exclusionary criteria set forth in the definition of Eligible Accounts or of any Reserve, or otherwise), to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, warranty and other claims, returns, credits or credits pending, promotional program allowances, price adjustments, finance charges, service charges or other allowances (including any amount that such Borrower Party may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)), (ii) the amount of all sales Taxes and excise Taxes and (iii) the aggregate amount of all Cash and Cash Equivalents received in respect of such Account but not yet applied by such Borrower Party to reduce the amount of such Account.

**“Eligible Assignee”** means any Person other than a natural person (or a holding company, investment vehicle or trust fund, or owned and operated for the primary benefit of, a natural person) that is (a) a Lender, an affiliate of any Lender or an Approved Fund (any two or more Approved Funds being treated as a single Eligible Assignee for all purposes hereof), or (b) a commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business; provided, (i) no Defaulting Lender, Loan Party or Affiliate of a Loan Party shall be an Eligible Assignee and (ii) no Disqualified Institutions may be an Eligible Assignee.

**“Eligible Inventory”** means, at any time, the Inventory owned by the Borrower Parties at such time, other than any Inventory to which any of the exclusionary criteria set forth below applies. Eligible Inventory shall not include any Inventory of any Borrower Party that:

(a) (i) is not subject to a valid and perfected first priority Lien in favor of the Collateral Agent created under the Collateral Documents or (ii) is not owned by such Borrower Party free and clear of all Liens and of all rights of any other Person (including the rights of a customer that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower Party’s performance with respect to such Inventory), except (A) Liens in favor of the Collateral Agent created under the Collateral Documents, (B) Permitted Liens to the extent consisting of non-consensual statutory Liens or junior Liens subject to an intercreditor agreement on terms satisfactory to Administrative Agent (but without limiting the right of the Administrative Agent to establish any Reserves with respect to Permitted Liens), and (C) in the case of Inventory referred to in clause (d) or (f)(i) below, the Lien thereon of the landlord, third party warehouse or bailee, as the case may be, if a Rent Reserve or another Reserve has been established with respect to such Lien on such Inventory;

(b) is not located in the United States of America (other than Inventory in an aggregate amount not to exceed \$3,500,000 at any time located in Mexico or Canada and as to

which arrangements reasonably satisfactory to the Collateral Agent have been made to ensure the perfection of the Lenders' security interest in such Inventory) at a facility owned or leased by a Borrower Party;

(c) [reserved];

(d) is located on or is in transit to real property leased by such Borrower Party where the aggregate value of the Inventory exceeds \$2,000,000, unless (i) the applicable landlord has executed and delivered to the Administrative Agent a Collateral Access Agreement with respect to such location or (ii) the Administrative Agent has established a Rent Reserve;

(e) is located on or is in transit to real property owned by such Borrower Party subject to a mortgage (or a similar Lien) in favor of a Person other than the Collateral Agent where the aggregate value of the Inventory exceeds \$2,000,000, unless (i) a mortgagee waiver (or other intercreditor arrangement) has been delivered to the Administrative Agent in form and substance reasonably satisfactory to it or (ii) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion;

(f) is located at or is in transit to a third party warehouse or outside processor or is in the possession of a consignee or bailee where the aggregate value of the Inventory exceeds \$250,000, unless (A) (i) such warehouse, outside processor, consignee or bailee has executed and delivered to the Administrative Agent a Collateral Access Agreement with respect to such Inventory or (ii) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion or (B) to the extent such Inventory does not satisfy the conditions described in clause (A), the aggregate value of such Inventory does not exceed \$3,500,000;

(g) is covered by a negotiable bill of lading or other document of title, unless such bill of lading or other document of title has been delivered to Administrative Agent with all necessary endorsements, free and clear of all Liens except those permitted by clause (a) above;

(h) is not of a type held for sale in the ordinary course of business of such Borrower Party;

(i) is obsolete, discontinued, contaminated, defective, slow moving, unsaleable, damaged or unfit for sale; provided that, in each case, the scrap value of such Inventory shall be included in the calculation of "Eligible Inventory";

(j) consists of supplies used or consumed in such Borrower Party's business or spare parts, maintenance parts, accessories, display items, prototypes, packaging or shipping materials, display items or sample inventory, customer supplied parts or replacement parts;

(k) consists of goods that have been returned or rejected by any customer unless such returned items are of good and merchantable quality and held for resale by such Borrower Party in the ordinary course of business;

(l) consists of (i) Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available to the Administrative Agent or (ii) goods

that are restricted or controlled or are regulated items or do not conform in all material respects to all standards imposed by any applicable Governmental Authority;

(m) consists of goods that are bill and hold goods;

(n) contains or bears any intellectual property rights licensed to such Borrower Party unless the Administrative Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any Contractual Obligation with such licensor or (iii) incurring any obligation or liability with respect to payment of royalties;

(o) is not covered by casualty insurance as required by the provisions of this Agreement; or

(p) as to which any of the representations or warranties in the Loan Documents with respect to such Inventory are untrue in any material respect.

Inventory acquired in an acquisition permitted under this Agreement that has not been subject to an appraisal or field examination shall nevertheless constitute Eligible Inventory for the period of 60 days following the consummation of such acquisition to the extent that such Inventory would otherwise qualify as Eligible Inventory (all such Inventory, collectively, the “**Eligible Acquired Inventory**”); provided, however, that the aggregate value of the Eligible Acquired Inventory (valued at cost (determined on a first-in first-out basis) (net of Reserves with respect to Inventory)) shall not exceed (1) 10% of the lesser of (x) the Borrowing Base and (y) the aggregate unused amount of Revolving Commitments then in effect minus (2) the aggregate value of the Eligible Acquired Accounts included in the Borrowing Base as calculated in accordance with the proviso to the second to last paragraph of the definition of “Eligible Accounts.” To the extent field exams on such Eligible Acquired Inventory have not been completed within such 60 day period, they shall no longer constitute Eligible Inventory.

Notwithstanding the foregoing, the amount of Inventory shall be adjusted to reflect general ledger adjustments that have the effect of reducing Inventory Value to its appropriate GAAP value. In the event that Inventory which was previously Eligible Inventory ceases to be Eligible Inventory hereunder, the applicable Borrower Party shall notify the Administrative Agent thereof on and at the time of submission to the Administrative Agent of the next Borrowing Base Certificate.

“**Eligible Investment Grade Accounts**” means, at any time, any Eligible Accounts in respect of which the Account Debtor has an Investment Grade Rating.

“**Employee Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code, or (c) any Person whose assets include (for purposes of the Plan Asset Regulations) the assets of any such “employee benefit plan” or “plan”.

“**EMU**” means the economic and monetary union as contemplated in the Treaty on European Union.

**“Engagement Letter”** means that certain Engagement Letter, dated July 31, 2017, by and among Goldman Sachs Bank USA, the Borrower, TPG Capital BD, LLC and for purposes of Sections 6 and 7 thereof, Top Parent.

**“Environment”** means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and sub-surface strata, and natural resources such as wetlands, flora and fauna.

**“Environmental Claim”** means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by any Loan Party or any of its Subsidiaries or reports prepared in connection with potential acquisitions or financings) or proceedings with respect to any Environmental Liability or Environmental Law (hereinafter **“Claims”**), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

**“Environmental Laws”** means any and all Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, human health.

**“Environmental Liability”** means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract or other written agreement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Environmental Permit”** means any permit, approval, identification number, license or other authorization required under any Environmental Law.

**“Equipment Lease”** has the meaning specified in the Collateral Trust Agreement.

**“Equipment Lease Advance”** has the meaning specified in the Collateral Trust Agreement.

**“Equipment Lessor”** means Stonebriar Commercial Finance LLC, a Delaware limited liability company, as sub-lessor under the Equipment Lease, together with its permitted successors and assigns in such capacity.

**“Equipment Sub-sublease”** means each “Sub-sublease” as defined in the Equipment Lease, as set forth on Equipment Schedule No. 1 and Equipment Schedule 2 to the Equipment Lease.

**“Equipment Term Expiration Date”** means each “Term Expiration Date” as defined in the Equipment Lease.

**“Equity Interests”** means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

**“Equity Offering”** means any public or private sale of common equity or Preferred Stock of the Borrower or any Parent Company (excluding Disqualified Stock), other than:

- (1) public offerings with respect to the Borrower’s or any Parent Company’s common equity registered on Form S-4 or Form S-8;
- (2) issuances to any Restricted Subsidiary of the Borrower; and
- (3) any such public or private sale that constitutes CapEx Equity.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

**“ERISA Event”** means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of withdrawal liability or written notification that a Multiemployer Plan is “insolvent” (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition

of a lien under Section 303(k) of ERISA or Section 430(k) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.

“**Escrowed Proceeds**” means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term “Escrowed Proceeds” shall include any interest earned on the amounts held in escrow.

“**ESG KPI Annual Report**” means an annual report prepared by the Borrower or any Parent Company that sets forth the calculations with respect to the ESG KPI Requirements during the period covered by the report, which shall include (1) findings as to whether the Borrower or any Parent Company met each of the ESG KPI Requirements, (2) the basis for such findings (which basis may, for the avoidance of doubt, be the findings of the ESG KPI Requirements Assurance Provider) and (3) the applicable ESG KPI Commitment Fee Adjustment and ESG KPI Pricing Adjustment for the period commencing August 1 of the fiscal year following the fiscal year covered by such ESG KPI Annual Report.

“**ESG KPI Requirements**” means each of the requirements set forth on Schedule 1.01(3).

“**ESG KPI Requirements Assurance Provider**” means any assurance provider (or replacement thereof) as designated from time to time by the Borrower or any Parent Company by written notice to the Administrative Agent; provided that any such assurance provider (or replacement thereof) shall be (i) of recognized national standing or (ii) otherwise reasonably acceptable to the Administrative Agent.

“**ESG KPI Commitment Fee Adjustment**” has the meaning set forth in the definition of “Applicable Commitment Fee Rate”.

“**ESG KPI Pricing Adjustment**” has the meaning set forth in the definition of “Applicable Margin”.

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Euro**” or “**euro**” means the single currency of participating member states of the EMU.



**“Eurodollar Rate” means:**

(a) ~~for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations as may be designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and~~

(b) ~~for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m., London time, two (2) Business Days prior to such date for Dollar deposits with a term of one (1) month commencing that day;~~

~~provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further, that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Borrower; provided, further, that in no event shall the Eurodollar Rate be less than 0.0%.~~

~~“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”~~

“Event of Default” has the meaning specified in Section 8.01.

“Excess Availability” means, at any time, an amount equal to (a) the lesser of (i) the Maximum Credit and (ii) the Borrowing Base then in effect minus (b) the Total Utilization of Revolving Commitments.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Excluded Account” means any deposit or securities account now or hereafter owned by any Loan Party that is used solely by such Loan Party (a) as a payroll account so long as such payroll account is a zero balance account, (b) as a petty cash account so long as the aggregate amount on deposit in all petty cash accounts of all Loan Parties does not exceed \$50,000 at any one time for all such deposit accounts combined, (c) to hold amounts required to be paid in connection with workers compensation claims, unemployment insurance, social security benefits and other similar forms of governmental insurance benefits, (d) to hold amounts which are required to be pledged or otherwise provided as security as required by law or pension requirement, (e) to hold cash and cash equivalents pledged to the Equipment Lessor to secure the Equipment Lease Obligations (as defined in the Collateral Trust Agreement) so long as the aggregate amount of cash and cash equivalents so pledged and on deposit in or credited to all

such accounts does not exceed \$6,672,335 at any one time or (f) as a withholding tax or fiduciary account.

“**Excluded Assets**” means the collective reference to:

(1) any lease, license, contract or agreement to which any Loan Party is a party, and any of its rights or interest thereunder, if and to the extent that a security interest is prohibited by or in violation of (i) any law, rule or regulation applicable to such Loan Party, or (ii) a term, provision or condition of any such lease, license, contract or agreement (unless such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); provided however that the Excluded Assets shall not include (and security interest under the Collateral Documents shall attach) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in subclauses (i) or (ii) above; provided further that the exclusions referred to in this clause (1) of this definition shall not include any Proceeds (as defined in the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction) of any such lease, license, contract or agreement;

(2) any portion of Capital Stock that is voting Capital Stock of any Foreign Subsidiary or CFC Holdco to the extent such portion of Capital Stock represents voting power in excess of 65% of the total combined voting power of all classes of voting stock (within the meaning of Treasury Regulations section 1.956-2(c)(2)) of such Foreign Subsidiary or CFC Holdco;

(3) any “intent-to-use” application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law;

(4) any equity interests in, and the assets and properties of, an Excluded Subsidiary;

(5) Excluded Accounts; and

(6) any interest (fee, leasehold or otherwise) of any Loan Party in any real property.

“**Excluded Capital Expenditures**” means any Capital Expenditure (whether or not required) made solely for maintenance, replacement or environmental, human health or



safety or other regulatory purposes and not in connection with the incurrence of Expansion Capital Expenditures.

“**Excluded Subsidiaries**” means all of the following and “**Excluded Subsidiary**” means any of them:

- (1) any Subsidiary that is not a wholly-owned Subsidiary of the Borrower or a Subsidiary Guarantor,
- (2) any Foreign Subsidiary,
- (3) any CFC Holdco,
- (4) any Domestic Subsidiary that is a direct or indirect Subsidiary of any CFC,
- (5) any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law or by Contractual Obligation (including in respect of assumed Indebtedness permitted hereunder) existing on the Closing Date (or, with respect to any Subsidiary acquired by the Borrower or a Restricted Subsidiary after the Closing Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guaranty (including any Broker-Dealer Regulated Subsidiary) or if such Guaranty would require governmental (including regulatory) or third party (other than any Loan Party or their respective Subsidiaries) consent, approval, license or authorization,
- (6) any special purpose vehicle (or similar entity),
- (7) any Captive Insurance Subsidiary or not-for-profit Subsidiary,
- (8) any Subsidiary that is not a Material Subsidiary,
- (9) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the burden or cost (including any material adverse tax consequences) of providing the Guaranty will outweigh the benefits to be obtained by the Lenders therefrom, and
- (10) any Unrestricted Subsidiary;

*provided* that any such Subsidiary that is an Excluded Subsidiary pursuant to any clause above will cease to be an Excluded Subsidiary at any time such Subsidiary guarantees Indebtedness under the Term Facility or the Senior Secured Notes.

“**Excluded Swap Obligation**” means, with respect to any Loan Party, (a) any obligation to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act (each such obligation, a “**Swap Obligation**”), if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap

Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (i) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.02 of the Guaranty and any other "keepwell, support or other agreement" for the benefit of such Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act) at the time the guarantee of such Loan Party, or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation, or (ii) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Party is a "financial entity," as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Loan Party becomes or would become effective with respect to such Swap Obligation, or (b) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Loan Party as specified in any agreement between the relevant Loan Parties and hedge counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest becomes excluded in accordance with the first sentence of this definition.

**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to a recipient or required to be withheld or deducted from a payment to a recipient:

(1) any tax imposed on (or measured by) such recipient's net income or profits (or franchise or net worth tax in lieu of such tax on net income or profits) imposed by a jurisdiction (or any political subdivision thereof) as a result of such recipient being organized under the laws of or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such recipient and the jurisdiction (including as a result of such recipient carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction), other than a connection arising solely from such recipient having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or sold or assigned an interest in, any Loan or Loan Document,

(2) any branch profits tax under Section 884(a) of the Code, or any similar tax, imposed by any jurisdiction described in clause (1),

(3) other than with respect to and to the extent that any Lender becomes a party hereto pursuant to the Borrower's request under Section 3.07, any U.S. federal tax that is withheld or required to be withheld on amounts payable to or for the account of a Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires the applicable interest in such Loan, or (ii) designates a new Lending Office except, in the case of a Lender that designates a new Lending Office

or is an assignee, to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to such U.S. federal tax pursuant to Section 3.01,

(4) any withholding tax attributable to such Lender's failure to comply with Section 3.01(3),

(5) any withholding tax imposed under FATCA,

(6) any U.S. federal backup withholding under Section 3406 of the Code, and

(7) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (6) of this definition.

**"Expansion Capital Expenditures"** means (i) any Capital Expenditures carried out for the purpose of increasing the earnings capacity of the Borrower or a Subsidiary Guarantor or (ii) any Investment in a Restricted Subsidiary; provided that Expansion Capital Expenditures shall include any Phase II Project Costs whether or not such Phase II Project Costs are considered capital expenditures in accordance with GAAP. Excluded Capital Expenditures shall be deemed not to be Expansion Capital Expenditures.

**"Facility"** means the Commitments and Loans evidenced by this Agreement.

**"fair market value"** means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

**"FATCA"** means Sections 1471 through 1474 of the Code as in effect on the Closing Date or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any current or future regulations promulgated thereunder or official interpretations thereof), any applicable intergovernmental agreement, treaty or convention among Governmental Authorities entered into in respect thereof, and any provision of law or administrative guidance implementing or interpreting such provisions, including any agreements entered into pursuant to any such intergovernmental agreement or Section 1471(b)(1) of the Code as of the Closing Date (or any amended or successor version described above).

**"Federal Funds Rate"** means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; *provided*, that if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

**"Fee Letter"** means that certain Fee Letter, dated as of the Closing Date, by and among the Borrower and the Arrangers as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“**Financial Covenant**” means the covenant specified in Section 7.12.

“**Financial Officer**” means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of such Person, as appropriate.

“**Fitch**” means Fitch, Inc.

“**Fixed Charge Coverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA of the Borrower for such Test Period less Capital Expenditures paid in cash by the Borrower and the Restricted Subsidiaries for such Test Period (except (x) Capital Expenditures to the extent financed with long term Indebtedness or equity, excluding any such Capital Expenditures financed with Revolving Loans and (y) Capital Expenditures not to exceed \$50,000,000 in any twelve month period to the extent such Capital Expenditures are used to expand the Loan Parties’ existing operations) to (b) the sum of (i) Fixed Charges of the Borrower and the Restricted Subsidiaries for such Test Period, (ii) income Taxes payable by the Borrower and the Restricted Subsidiaries for such Test Period and (iii) scheduled principal payments on Indebtedness (including under Capitalized Lease Obligations) payable by the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

“**Fixed Charges**” means, with respect to any Person for any period, the sum of, without duplication:

- (1) Consolidated Interest Expense of such Person for such period;
- (2) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and
- (3) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

~~“**floor**” means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.~~

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate. For the avoidance of doubt, the initial Floor for the Adjusted Term SOFR Rate shall be 0.00%.

“**Foreign Lender**” means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

“**Foreign Plan**” means any employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

**“Foreign Subsidiary”** means any direct or indirect Restricted Subsidiary of the Borrower that is not a Domestic Subsidiary.

**“Fronting Exposure”** means, at any time there is a Defaulting Lender, (a) with respect to Issuing Bank, such Defaulting Lender’s Pro Rata Share of the outstanding Obligations with respect to Letters of Credit issued by Issuing Bank other than such Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, (b) with respect to the Swing Line Lender, such Defaulting Lender’s Pro Rata Share of the aggregate principal amount of the Swing Line Loans outstanding at such time, other than any portion of such Pro Rata Share that has been reallocated to other Lenders in accordance with the terms hereof, and (c) with respect to the Administrative Agent, such Defaulting Lender’s Pro Rata Share of the aggregate principal amount of the Protective Advances outstanding at such time, other than any portion of such Pro Rata Share that has been reallocated to other Lenders in accordance with the terms hereof.

**“Fund”** means any Person (other than a natural person) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**“Funded Debt”** means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

- (1) in respect of borrowed money or advances; or
- (2) evidenced by indentures, bonds, notes, debentures, loan agreements or similar instruments.

For the avoidance of doubt, “Funded Debt” shall not include Hedging Obligations.

**“Funding Notice”** means a notice substantially in the form of Exhibit A-1.

**“GAAP”** means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time. Notwithstanding any other provision contained herein, (i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of Capitalized Lease Obligations and Attributable Indebtedness, respectively and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower, the Co-Issuer or any of the Borrower’s Subsidiaries at “fair value,” as defined therein.

Notwithstanding the foregoing, if at any time any change occurs after the Closing Date in GAAP (or IFRS) or in the application thereof on the computation of any financial ratio or

financial requirement, or compliance with any covenant, set forth in any Loan Document, and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend (subject to the approval of the Required Lenders) such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (or IFRS); provided further that until so amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) prior to such change therein and (b) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP (or IFRS).

“**Goods**” as defined in Article 9 of the UCC as in effect from time to time in the State of New York.

“**Governmental Acts**” means any act or omission, whether rightful or wrongful, of any present or future Governmental Authority.

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Governmental Authorizations**” means all permits, Licenses, authorizations, certificates, waivers, concessions, exemptions, orders and other and approvals issued by or obtained from a Governmental Authority by Holdings, the Borrower or any of the Restricted Subsidiaries, and in effect as of the Closing Date.

“**Grant Clawback Agreement**” means that certain letter agreement, dated as of the Closing Date, by and among the Borrower, the Administrative Agent and Collateral Agent, the Pari Collateral Agent, Arkansas Economic Development Commission, Mississippi County, Arkansas, Osceola and the Arkansas Development Finance Authority, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**guarantee**” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary



obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with the Transaction or any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guarantor**” has the meaning specified in clause (2) of the definition of “Collateral and Guarantee Requirement.” For avoidance of doubt, the Borrower may, in its sole discretion, cause any Parent Company or Restricted Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Parent Company or Restricted Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Parent Company or Restricted Subsidiary shall be a Guarantor hereunder for all purposes; provided that (i) in the case of any Parent Company or Restricted Subsidiary organized in a foreign jurisdiction, the Administrative Agent shall be reasonably satisfied with the jurisdiction of organization of such Parent Company or Restricted Subsidiary and (ii) the Administrative Agent shall have received at least two (2) Business Days prior to the effectiveness of such joinder all documentation and other information in respect of such Guarantor required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

“**Guaranty**” means (a) the Guaranty substantially in the form of Exhibit E made by Holdings and each Subsidiary Guarantor, (b) each other guaranty and guaranty supplement delivered pursuant to Section 6.11 and (c) each other guaranty and guaranty supplement delivered by any Parent Company or Restricted Subsidiary pursuant to the second sentence of the definition of “Guarantor.”

“**Hazardous Materials**” means all explosive or radioactive substances or wastes, and all other substances, wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes, to the extent any of the

foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

**“Hedge Agreement”** means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement.

**“Hedging Obligations”** means, with respect to any Person, the obligations of such Person under any Hedge Agreement. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

**“Holdings”** means BRS Intermediate Holdings LLC, a Delaware limited liability company. “Holdings” shall also include any “Successor Holdings.”

**“IFRS”** means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

**“Immediate Family Members”** means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

**“Increased Amount Date”** as defined in Section 2.15.

**“Incremental Amounts”** has the meaning specified in clause (1) of the definition of Refinancing Indebtedness.



“**Indebtedness**” means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations and Sale-Leaseback Transactions, other than Specified Sale-Leaseback Transactions) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice and (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable;

(d) representing the net obligations under any Hedging Obligations; or

(e) Attributable Indebtedness;

if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; provided that Indebtedness of any Parent Company appearing upon the balance sheet of the Borrower solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of this definition of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of this definition of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; provided that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person; provided that notwithstanding the foregoing, Indebtedness will be deemed not to include:

- (i) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice (including any Contingent Obligations issued in connection with operating licenses and permits),
- (ii) reimbursement obligations under commercial letters of credit (*provided* that unreimbursed amounts under commercial letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),
- (iii) [reserved],
- (iv) accruals for payroll and other liabilities accrued in the ordinary course of business and those accrued in connection with the Management Services Agreements,
- (v) deferred or prepaid revenues,
- (vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care), and
- (vii) obligations in connection with a Specified Sale-Leaseback Transaction;

*provided, further*, that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

“**Indemnified Liabilities**” has the meaning specified in Section 10.05.

“**Indemnified Taxes**” has the meaning specified in Section 3.01(6).

“**Indemnitees**” has the meaning specified in Section 10.05.

“**Independent Assets or Operations**” means, with respect to any Parent Company, that Parent Company’s total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company’s corresponding consolidated amount.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that, in the good faith judgment of the Borrower, is qualified to perform the task for which it has been engaged.

“**Industrial Revenue Bond Obligations**” means an obligation to a state or local government unit that secures the payment of bonds issued by a state or local government unit or any Indebtedness incurred to refinance, in whole or in part, such obligations.

“**Information**” has the meaning specified in Section 10.09.

“**Intellectual Property Security Agreements**” has the meaning specified in the Security Agreement.

“**Intercompany Note**” means the Intercompany Note, dated as of the Closing Date, substantially in the form of Exhibit K executed by the Borrower and each Restricted Subsidiary of the Borrower party thereto.

“**Intercreditor Agreement**” means each of the Collateral Trust Agreement, the ABL Intercreditor Agreement and the Grant Clawback Agreement.

“**Interest Payment Date**” means (a) with respect to (i) any Loan that is a Base Rate Loan (other than a Swing Line Loan or Protective Advance), the last Business Day of each March, June, September and December of each year, commencing on the first such date to occur after the Closing Date and the final maturity date of such Loan, and (ii) any Loan that is a ~~Eurodollar Rate~~ Term Benchmark Loan, the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three months “Interest Payment Date” shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period; (b) with respect to any Swing Line Loan, the date that such Loan is required to be repaid; and (c) with respect to any Protective Advance, the date that such Protective Advance is required to be repaid.

“**Interest Period**” means, in connection with a ~~Eurodollar Rate~~ Term Benchmark Loan, an interest period of one, three or six months ~~or, subject to the consent of all applicable Lenders, such other period that is 12 months~~ (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as selected by Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (a) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) of this definition, end on the last Business Day of a calendar month; (iii) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Commitment Termination Date; and (iv) no tenor that has been removed from this definition pursuant to Section 3.03(~~f~~) shall be available for specification in such Funding Notice or Conversion/Continuation Notice.

“**Interest Rate Determination Date**” means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

“**Inventory**” as defined in Article 9 of the UCC as in effect from time to time in the State of New York.

“**Inventory Value**” means, with respect to any Eligible Inventory, the lower of (a) cost on a first-in-first-out basis, with cost determined in conformity with GAAP (but without regard to intercompany profit and increases for currency exchange rates) and computed in good faith in the manner consistent with the most recent Inventory appraisal received by the Administrative Agent in accordance with this Agreement, or (b) market value.

“**Investment Grade Rating**” means a rating from any two of the following equal to or higher than Baa3 (or the equivalent) by Moody’s, BBB- (or the equivalent) by S&P or BBB- (or the equivalent) by Fitch, or an equivalent rating by any other Rating Agency selected by the Borrower.

“**Investment Grade Securities**” means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

“**Investments**” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice), purchases or sales or other dispositions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definition of “Unrestricted Subsidiary”,

(1) “Investments” will include the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided* that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower will be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Borrower's "Investment" in such Subsidiary at the time of such redesignation; *minus*

(b) the portion (proportionate to the Borrower's Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

**"Investor"** means any of Koch Industries, Inc., TPG Capital, L.P., Arkansas Teacher Retirement System, Global Principal Partners LLC, United States Steel Corporation, directly or indirectly through its Subsidiaries, and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

**"IP Rights"** means all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how, database rights and other intellectual property rights that to the knowledge of the Borrower are reasonably necessary for the operation of the business of the Borrower and its Restricted Subsidiaries as currently conducted.

**"IRS"** means Internal Revenue Service of the United States, or any successor federal agency.

**"ISDA Definitions"** means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

**"ISP"** means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

**"Issuance Notice"** means an Issuance Notice substantially in the form of Exhibit A-3.

**"Issuing Bank"** means each Lender that shall have become an Issuing Bank as provided herein, other than any such Person that shall have ceased to be an Issuing Bank as provided herein, each in its capacity as an issuer of Letters of Credit hereunder. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank other than Disqualified Institutions, in which case the term "Issuing Bank"

shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.03 with respect to such Letters of Credit). As of the Closing Date, each Lender shall be an Issuing Bank with respect to its Issuing Bank Sublimit. With respect to any Letter of Credit issued or requested to be issued, references to Issuing Bank shall mean the applicable Issuing Bank that issued or has been requested by Borrower to issue such Letter of Credit.

**“Issuing Bank Sublimit”** means, as to each Issuing Bank on the Closing Date, an amount equal to its Pro Rata Share (as in effect on the Closing Date) of the Letter of Credit Sublimit, as such amounts may be reallocated subject to the consent of the affected Issuing Bank and the Administrative Agent.

**“Joinder Agreement”** means an agreement substantially in the form of Exhibit J.

**“Laws”** means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

**“Legal Holiday”** means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

**“Lender”** means each financial listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment and Assumption or a Joinder Agreement. Unless the context otherwise requires, the term “Lender” includes the Swing Line Lender and, with respect to the Protective Advances, the Administrative Agent.

**“Lender Counterparty”** means each Lender, each Agent and each of their respective Affiliates counterparty to a Hedge Agreement or an agreement in respect of Cash Management Services (including any Person who is an Agent or a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into a Hedge Agreement, ceases to be an Agent or a Lender, as the case may be); provided, at the time of entering into a Hedge Agreement or an agreement in respect of Cash Management Services, no Lender Counterparty shall be a Defaulting Lender. A Lender Counterparty may include any other counterparty to a Designated Hedge Agreement that is reasonably acceptable to the Administrative Agent.

**“Lender-Related Distress Event”** means, with respect to any Lender or any direct or indirect parent company of such Lender (each, a **“Distressed Person”**), (a) that such Distressed Person is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, (c) such Distressed Person is subject to a forced liquidation, makes a general assignment for the benefit of creditors



or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or (d) that such Distressed Person becomes the subject of a Bail-in Action; *provided* that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any direct or indirect parent company of a Lender by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

**“Lending Office”** means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

**“Letter of Credit”** means a commercial or standby letter of credit issued or to be issued by Issuing Bank pursuant to this Agreement (and excluding, for the avoidance of doubt, any Bi-Lateral Letters of Credit).

**“Letter of Credit Sublimit”** means the lesser of (a) \$25.0 million and (b) the aggregate unused amount of the Revolving Commitments then in effect.

**“Letter of Credit Usage”** means, as at any date of determination, the sum of (a) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding, and (b) the aggregate amount of all drawings under Letters of Credit honored by Issuing Bank and not theretofore reimbursed by or on behalf of the Borrower. For purposes of this definition, if any drawing has been made under a Letter of Credit and such drawing has not been honored or refused by the applicable Issuing Bank, such Letter of Credit shall be deemed to be “outstanding” in the amount equal to the sum (without duplication) of any such pending drawing plus any undrawn amount of such Letter of Credit. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.13 or 3.14 of the ISP or Article 26 of the UCP or the express terms of the Letter of Credit, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the available amount of such Letter of Credit in effect at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum available amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum available amount is in effect at such time.

**“License”** means any license, authorization, registration, accreditation, approval, qualification, provider number, right, privilege, consent or other permit issued by any Governmental Authority, together with any amendments, supplements and other modifications thereto.

“**Lien**” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event will an operating lease be deemed to constitute a Lien.

“**Limited Condition Transactions**” means any (1) Permitted Acquisition or other investment permitted hereunder by the Borrower or one or more of its Restricted Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third-party financing and (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

“**Line Cap**” means, at any given time, the lesser of the Maximum Credit and the Borrowing Base then in effect.

“**Liquidity**” means the sum of (i) the domestic cash and cash equivalents (excluding any disbursement deposit account the funds in which are used solely for the payment of salaries and wages, employee benefits, workers’ compensation and similar expenses) of the Loan Parties and (ii) Excess Availability.

“**Liquidity Condition**” means that, on any date of determination, the Borrower has Liquidity of not less than the sum of (x) \$50,000,000 and (y) the aggregate outstanding principal amount of all Maturing Material Indebtedness on such date of determination, at least \$30,000,000 of which Liquidity is comprised of Excess Availability.

“**Loan**” means a Revolving Loan (including any Overadvances), a Swing Line Loan or a Protective Advance.

“**Loan Documents**” means collectively, any of this Agreement, the Notes, if any, the Engagement Letter, the Collateral Documents, the Guaranty, the Intercreditor Agreements, the Deposit Agreement, any documents or certificates executed by Borrower in favor of Issuing Bank relating to Letters of Credit.

“**Loan Parties**” means, collectively, (a) Holdings, (b) the Borrower and (c) each Subsidiary Guarantor.

“**Management Services Agreement**” means any management services agreement, bonus agreement or similar agreements among one or more of the Investors or Management Stockholders or certain of their respective management companies or Affiliates thereof associated with it or their advisors, if applicable, and the Borrower (or any Parent Company) or any amendment thereto or renewal or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders when taken as a whole, as compared to the Management



Services Agreements as in effect on the Closing Date or as described in the confidential information memorandum with respect to the Closing Date Term Loans.

**“Management Stockholders”** means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date.

**“Margin Stock”** has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

**“Material Adverse Effect”** means any event, development or circumstance that has had a material adverse effect on (a) the business, operations, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole or (b) validity or enforceability of any of the Loan Documents or the rights or remedies of the Administrative Agent, Collateral Agent and the Lenders thereunder.

**“Material Indebtedness”** means any Indebtedness for borrowed money incurred by the Borrower or its Restricted Subsidiaries with an aggregate outstanding principal amount equal to or greater than the Threshold Amount.

**“Material Indebtedness Event”** means, with respect to any series of Material Indebtedness, any of the following: (a) the redemption, repayment, defeasance or other discharge, in full, of such series of Material Indebtedness (including, in each case, all accrued but unpaid interest, fees and other amounts in respect thereof) in accordance with the terms of the applicable documents for such Material Indebtedness (other than with the proceeds of Indebtedness); (b) the amendment to or other modification of such series of Material Indebtedness and the applicable documents for such Material Indebtedness causing the stated maturity date of such series of Material Indebtedness to be extended to a date that is at least 91 days after the scheduled Maturity Date of the Loans; and/or (c) the refinancing of such series of Material Indebtedness with Indebtedness having a maturity date that is at least 91 days after the scheduled Maturity Date of the Loans; provided that, in the case of clauses (b) and (c) of this definition, such series of Material Indebtedness as so amended, or any refinancing indebtedness in respect thereof, do not require (i) any amortization prior to the date that is 91 days after the scheduled Maturity Date of the Loans or (ii) any mandatory prepayment or redemption at the option of the holders thereof (except for redemptions in respect of assets sales and changes in control) prior to the date that is 91 days after the scheduled Maturity Date of the Loans.

**“Material Subsidiary”** means, as of the Closing Date and thereafter at any date of determination, each Restricted Subsidiary of the Borrower (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.0% of Total Assets of the Borrower and the Restricted Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiary for such Test Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if at any time and

from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) when combined with Foreign Subsidiaries and CFC Holdcos the equity interests of which are Excluded Assets solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiaries at the last day of the most recent Test Period) 7.5% of Total Assets of the Borrower and the Restricted Subsidiaries as of the last day of the most recent Test Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiaries for such Test Period) 7.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than sixty (60) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more Restricted Subsidiaries as “Material Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Subsidiaries (to the extent applicable).

“**Maturing Material Indebtedness**” has the meaning set forth in the definition of “Maturity Date”.

“**Maturity Date**” means the fifth anniversary of the Second Amendment Effective Date; *provided, however*, that if, as of the Early Maturity Date with respect to any series of Material Indebtedness, a Material Indebtedness Event with respect to such series of Material Indebtedness has not occurred (such series, “**Maturing Material Indebtedness**”), then the Maturity Date shall be the Early Maturity Date with respect to such Maturing Material Indebtedness (the occurrence of the event described in this proviso, an “**Early Maturity Event**”); *provided further, however*, that if a Material Indebtedness Event with respect to such Maturing Material Indebtedness has not occurred prior to the Early Maturity Date with respect to such Maturing Material Indebtedness, but as of the Early Maturity Date with respect to such Maturing Material Indebtedness the Liquidity Condition is satisfied, then (a) an Early Maturity Event shall not occur and (b) the Maturity Date shall continue to be the fifth anniversary of the Second Amendment Effective Date unless, as of any time (the date on which such time occurs, the “**Accelerated Maturity Date**”) on or after the Early Maturity Date with respect to such Maturing Material Indebtedness when a Material Indebtedness Event with respect to such Maturing Material Indebtedness has not occurred, the Liquidity Condition is not satisfied, in which event the Maturity Date shall be the Accelerated Maturity Date. In addition, with respect to any series of Material Indebtedness, if (A) the related documents for such Material Indebtedness have been amended in order to cause a Material Indebtedness Event set forth in clause (b) of the definition thereof to occur, or if any of the Material Indebtedness have been refinanced with Indebtedness in order to cause a Material Indebtedness Event set forth in clause (c) of the definition thereof to occur and (B) the documents relating to such Material Indebtedness (or the operative documents in respect of any such refinancing Indebtedness) are subsequently amended or modified such that the conditions set forth in clause (b) or (c), as the case may be, of the definition of “Material Indebtedness Event” are no longer satisfied, then, unless at the applicable time the Liquidity Condition is satisfied, the Maturity Date shall be the date of such amendment or modification (or, if such amendment or modification occurs before

the Early Maturity Date with respect to such series of Material Indebtedness, shall be the Early Maturity Date with respect to such series of Material Indebtedness).

“**Maximum Credit**” means, at any time, the sum of the Revolving Commitments of all the Lenders in effect at such time. The Maximum Credit as of the Second Amendment Effective Date is \$350,000,000.

“**Minimum Collateral Amount**” means, at any time, (a) with respect to Cash Collateral consisting of Cash or Deposit Account balances, an amount equal to 102% of the amount of the Obligation with respect to which such Cash Collateral will be or has been provided and pledged and (b) otherwise, an amount determined by Administrative Agent and Issuing Bank in their sole discretion.

“**Maximum Rate**” has the meaning specified in Section 10.11.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“**Multiemployer Plan**” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Net Income**” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“**Net Proceeds**” means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate cash and Cash Equivalents received by the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event, including any cash and Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale or Casualty Event and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable Law, brokerage and sales commissions, title insurance premiums, related search and recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale or Casualty Event by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or

deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, stipulated loss value, premium, if any, and interest on Indebtedness (other than the Obligations and Indebtedness secured by Liens that are expressly subordinated to the Liens securing the Obligations, but in any event including the Equipment Lease Obligations (as defined in the Collateral Trust Agreement)) secured by a Lien on such assets and required to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; *provided* that no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed the greater of \$15.0 million and 10.0% of Consolidated EBITDA; and

(2) (a) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, any Permitted Equity Issuance by the Borrower or any Parent Company or any contribution to the common equity capital of the Borrower, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys' fees, accountants' fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance and (b) with respect to any Permitted Equity Issuance by any Parent Company, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

**“Net Recovery Percentage”** means, with respect to any category of Eligible Inventory, the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the expected recovery on the aggregate amount of the applicable category of Eligible Inventory at such time on a “going out of business” basis, net of operating expenses, liquidation expenses and commissions reasonably anticipated in the disposition of such assets, all as set forth in the most recent Inventory appraisal received by the Administrative Agent in accordance with this Agreement, and (b) the denominator of which is the original cost of the aggregate amount of the applicable category of Eligible Inventory subject to such appraisal (it being understood that different categories of Eligible Inventory may have different Net Recovery Percentages). The Net Recovery Percentage with respect to any category of Eligible Inventory shall be the percentage calculated using the expected recovery identified with respect to such category of Eligible Inventory in the most recent Inventory appraisal report received by the Administrative Agent in accordance with this Agreement.

**“New Revolving Loan Commitments”** as defined in Section 2.15.

**“New Revolving Loan Lender”** as defined in Section 2.15

“**New Revolving Loans**” as defined in Section 2.15.

“**Non-Consenting Lender**” has the meaning specified in Section 3.07.

“**Non-Defaulting Lender**” means, at any time, a Lender that is not a Defaulting Lender.

“**Non-Excluded Taxes**” means all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

“**Non-Recourse Indebtedness**” means Indebtedness that is non-recourse to the Borrower and the Restricted Subsidiaries.

“**Note**” means a Revolving Loan Note or a Swing Line Note.

“**Notice**” means a Funding Notice, an Issuance Notice, or a Conversion/Continuation Notice. Any Notice shall be executed by a Responsible Officer of Borrower in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the close of business on the date that the telephonic notice is given. In the event of a discrepancy between the telephone notice and the written Notice, the written Notice shall govern. In the case of any Notice that is irrevocable once given, if Borrower provides telephonic notice in lieu thereof, such telephone notice shall also be irrevocable once given. Neither Administrative Agent nor any Lender shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly Responsible Officer or other person authorized on behalf of the Borrower or for otherwise acting in good faith.

“**Notice of Intent to Cure**” has the meaning specified in Section 8.04.

“**NYFRB**” means the Federal Reserve Bank of New York.

“**NYFRB’s Website**” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“**Obligations**” means all obligations of every nature of each Loan Party arising under any Loan Document or otherwise with respect to the Facility, including obligations from time to time owed to Agents (including former Agents), Issuing Bank, Swing Line Lender, Lenders or any of them and Lender Counterparties, under any Loan Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, all Designated Hedge Obligations, all Designated Cash Management Services Obligations, all Secured Bi-Lateral Letter of Credit

Obligations, fees, expenses, indemnification or otherwise, excluding, with respect to any Guarantor, Excluded Swap Obligations with respect to such Guarantor.

Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document. For the avoidance of doubt, with respect to the Intercreditor Agreements, the Obligations shall not include obligations owing to the Term Agent, the Specified Pari Passu Lien Debt Representative, the Trustee (as defined in the Collateral Trust Agreement in effect on the Closing Date) or any Debt Representative in respect of Additional Pari Passu Lien Debt (as defined in the Collateral Trust Agreement in effect on the Closing Date).

Notwithstanding the foregoing, (a) unless otherwise agreed to by the Borrower and any applicable Lender Counterparty (and subject to the Termination Conditions, if applicable), the obligations of Holdings, the Borrower or any Subsidiary under any Designated Hedge Agreement or Designated Cash Management Services Agreement shall be secured and guaranteed pursuant to the Collateral Documents and the Guaranty only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement and any other Loan Document shall not require the consent of the holders of Designated Hedge Obligations or Designated Cash Management Services Obligations.

“**OFAC**” means the Office of Foreign Assets Control of the U.S. Treasury Department.

“**Officer**” means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Borrower or any other Person, as the case may be.

“**Officer’s Certificate**” means a certificate signed on behalf of a Person by an Officer of such Person.

“**OID**” means original issue discount.

“**Opinion of Counsel**” means a written opinion reasonably acceptable to the Administrative Agent from legal counsel. Counsel may be an employee of or counsel to the Borrower or the Administrative Agent.

“**ordinary course of business**” means activity conducted in the ordinary course of business of the Borrower and any Restricted Subsidiary.



**“Organizational Documents”** means

- (1) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);
- (2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and
- (3) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

**“Osceola”** means the City of Osceola, Arkansas.

~~**“Other Benchmark Rate Election” means, if the then-current Benchmark is the Eurodollar Rate, the occurrence of:**~~

~~**(a) a request by the Borrower to the Administrative Agent to notify each of the other parties hereto that, at the determination of the Borrower, Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a Eurodollar Rate -based rate, a term benchmark rate as a benchmark rate, and**~~

~~**(b) the Administrative Agent, in its sole discretion, and the Borrower jointly elect to trigger a fallback from the Eurodollar Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.**~~

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes described in paragraph (1) of the definition of “Excluded Taxes” that are imposed with respect to an assignment (other than an assignment made pursuant to Section 10.07).

**“Outstanding Amount”** means the outstanding principal amount of Loans after giving effect to any borrowings or repayments of Loans occurring on such date.

**“Overadvances”** has the meaning specified in Section 2.10.

**“Overnight Rate”** means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

**“Parent Company”** means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership) of Holdings and/or the Borrower (for the avoidance of doubt (x) in the case of the Borrower, including Holdings and (y) in the case of Holdings, including Top Parent), as applicable.

**“Pari Collateral Agent”** means U.S. Bank National Association, in its capacity as “Collateral Agent” under the Collateral Trust Agreement, together with its permitted successors and assigns in such capacity.

**“Pari Passu Lien Obligations”** has the meaning assigned to “Fixed Asset Pari Passu Lien Obligations” in the ABL Intercreditor Agreement.

**“Pari Passu Secured Debt Cap”** means, as of any date of determination, an amount equal to (a) \$400.0 million, *plus* (b) the product of (i) the CapEx Equity proceeds received since the Closing Date through and including such date of determination multiplied by (ii) two.

**“Participant Register”** has the meaning specified in Section 10.07(7).

**“Payment”** has the meaning specified in Section 9.19(a).

**“Payment Notice”** has the meaning specified in Section 9.19(b).

**“PBGC”** means the Pension Benefit Guaranty Corporation.

**“Pension Plan”** means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the preceding five plan years.

**“Perfection Certificate”** has the meaning specified in the Security Agreement.

**“Permitted Acquisition”** means any Investment by the Borrower or any Restricted Subsidiary in any Person that is engaged (directly or through entities that will be Restricted Subsidiaries) in a Similar Business, or in a business unit, line of business or division of such Person, if as a result of such Investment (i) such Person becomes a Restricted Subsidiary or (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets or assets constituting such business unit, line of business or division in which such Investment was made, as applicable, to, or is liquidated into, the Borrower or a Restricted Subsidiary.

**“Permitted Bond Hedge Transaction”** means any call or capped call option (or substantially equivalent derivative transaction) on the Borrower’s common equity purchased by the Borrower in connection with the issuance of any Convertible Indebtedness; *provided* that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net



proceeds received by the Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

**“Permitted Convertible Indebtedness Call Transaction”** means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

**“Permitted Discretion”** means a determination made by the Administrative Agent in the exercise of its reasonable credit judgment (from the perspective of a secured asset-based lender) and in accordance with customary business practices for comparable secured asset-based lending transactions.

**“Permitted Equity Issuance”** means any sale or issuance of any Qualified Equity Interests of the Borrower or any Parent Company.

**“Permitted Holder”** means (1) any of the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of any such group and without giving effect to the existence of such group or any other group, such Investors and Management Stockholders, collectively, have, directly or indirectly, beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Parent Company.

**“Permitted Liens”** means, with respect to any Person:

- (1) Liens created pursuant to any Loan Document;
- (2) Liens, pledges or deposits made in connection with:
  - (a) workers’ compensation laws, unemployment insurance, health, disability or employee benefits or other social security laws or similar legislation or regulations,
  - (b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or
  - (c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers’ acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or

deposits of cash, Cash Equivalents or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(3) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction, mechanics' or other similar Liens, or landlord Liens specifically created by contract (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than thirty (30) days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate proceedings;

(5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds, instruments or obligations or with respect to regulatory requirements or letters of credit or bankers' acceptance issued, and completion guarantees provided, in each case, pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice or industry practice;

(6) survey exceptions, encumbrances, covenants, conditions, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially interfere with the ordinary conduct of the business of such Person;

(7) Liens (a) on fixed or capital assets acquired, constructed or improved by the Borrower or any Restricted Subsidiary; *provided* that (i) such Liens and the Indebtedness secured thereby are incurred before or within 180 days after such acquisition or the completion of such construction or improvement, (ii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iii) such Liens will not apply to any other property of the Borrower or any Restricted Subsidiary other than any additions and accessions thereto and (b) securing other obligations in respect of Indebtedness so long as, after giving pro forma effect to such Indebtedness secured by such Lien and the application of the net proceeds therefrom, the Senior Secured Net Leverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, would (i) be no greater than the Senior Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Indebtedness secured by such Lien or (ii) not exceed 3.00 to 1.00; *provided* any such Liens on ABL Priority Collateral are subordinated to the Liens on ABL Priority Collateral securing Obligations and subject to the terms of the ABL Intercreditor Agreement;

(8) Liens existing, or provided for under binding contracts existing, on the Closing Date (*provided* that any such Lien securing Indebtedness or other obligations arising outside the ordinary course of business in an aggregate amount on the Closing Date in excess of \$5.0 million shall be set forth on Schedule 7.01);

(9) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary (*provided* that such Liens are not initially created in connection with, or in contemplation of, such other Person becoming such a Subsidiary) and any replacement, extension or renewal of any such Lien; *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(10) Liens on property or other assets at the time the Borrower or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Restricted Subsidiary (*provided* that such Liens are not initially created in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) and any replacement, extension or renewal of any such Lien; *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing obligations in respect of Indebtedness or other obligations owing to the Borrower or another Restricted Subsidiary;

(12) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services which Liens shall be on non-ABL Priority Collateral unless securing Designated Hedge Obligations or Designated Cash Management Services Obligations;

(13) Liens on specific items of inventory excluded from the Borrowing Base or other goods and proceeds of any Person securing such Person's accounts payable or similar obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies or services) that do not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(15) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(18) Liens securing (a) Indebtedness arising out of, and sales of accounts receivable as part of, a Permitted Supply Chain Financing and/or (b) Industrial Revenue Bond Obligations issued for the benefit of the Borrower or any Restricted Subsidiary; provided, that any such Liens are not on ABL Priority Collateral that is not subject to the sale under a Permitted Supply Chain Financing;

(19) Liens to secure any modification, refinancing, refunding, extension, renewal, replacement or defeasance (or successive modification, refinancing, refunding, extensions, renewals, replacements or defeasances) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (7), (8), (9), (10), (11), (39), (47) or this clause (19) of this definition; *provided* that: (a) such new Lien will be limited to all or part of the same property that secured the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and (b) the Indebtedness, Disqualified Stock or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness, Disqualified Stock or Preferred Stock described under such clauses (7), (8), (9), (10), (11), (39), (47) or this clause (19) at the time the original Lien became a Permitted Lien hereunder, *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so modified, refinanced, extended, replaced, refunded, renewed or defeased, *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents

governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the modification, extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock; *provided, further* that that in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clause (7) or (39), the principal amount of any Indebtedness incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clause (7) or (39) and not this clause (19) for purposes of determining the principal amount of Indebtedness outstanding under clause (7) or (39); *provided further* that any such Liens on ABL Priority Collateral must be subordinated to the Liens on ABL Priority Collateral securing Obligations and must be subject to the terms of the ABL Intercreditor Agreement;

(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) other Liens; *provided* that (x) the aggregate principal amount of Indebtedness and other obligations secured thereby shall not exceed 17.5% of Consolidated Net Tangible Assets (determined at the time of incurrence), (y) the holders of any Indebtedness secured thereby (or the representative thereof) shall have entered into (i) a customary collateral cooperation agreement with the Collateral Agent, reasonably satisfactory to the Collateral Agent, providing for customary access rights in connection with an enforcement of the Liens on the Collateral granted pursuant to the Loan Documents and (ii) the Collateral Trust Agreement and the ABL Intercreditor Agreement and (z) any such Liens on ABL Priority Collateral are subordinated to the Liens on ABL Priority Collateral securing the Obligations pursuant to the ABL Intercreditor Agreement or other similar intercreditor or subordination agreement;

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(24) Liens securing judgments not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to

commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements; *provided* that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction hereunder;

(31) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located; *provided* such ground leases, subleases, licenses or sublicenses, do not materially impair the use of the remainder of the real property;

(32) Liens in connection with the Specified Sale-Leaseback Transaction and any leasehold mortgage or similar Lien on the associated lease;

(33) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(34) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;



(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(36) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Cash Equivalents used or to be used to satisfy or discharge Indebtedness;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof and Liens on property or assets under construction arising from progress or partial payments by a third party relating to such property or assets;

(39) Liens on all or any portion of the Collateral (but no other assets) to secure the Pari Passu Lien Obligations in an amount not to exceed the Pari Passu Secured Debt Cap solely to the extent such Liens are subject to the Collateral Trust Agreement and the ABL Intercreditor Agreement;

(40) agreements to subordinate any interest of the Borrower or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by the title insurance reports or policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(43) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;



(44) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with;

(45) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(46) zoning, building and other similar land use restrictions, including site plan agreements, development agreements and contract zoning agreements; *provided* that such restrictions and agreements are complied with;

(47) (a) Liens on the Collateral in favor of the Pari Collateral Agent securing Pari Passu Lien Obligations in respect of the Senior Secured Notes and Guarantees thereof, solely to the extent such Liens are subject to the Collateral Trust Agreement and the ABL Intercreditor Agreement;

(48) Liens on the assets of Restricted Subsidiaries that are not Loan Parties securing Indebtedness or other obligations of such Restricted Subsidiaries or any other Restricted Subsidiaries that are not Loan Parties that are not prohibited by this Agreement;

(49) Liens on assets of Restricted Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable Law;

(50) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, trustee, escrow agent or Arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose; and

(51) any Lien securing Indebtedness owing to the Borrower or any Restricted Subsidiary by any Restricted Subsidiary that is not a wholly-owned Subsidiary, the net proceeds of which are used by such Restricted Subsidiary to make any Capital Expenditure for the purpose of increasing the earnings capacity in such Restricted Subsidiary, in a Similar Business; *provided* that such Indebtedness is secured by a first priority Lien on all of the assets and property of such Restricted Subsidiary that would constitute ABL Priority Collateral if such Restricted Subsidiary were a Guarantor (prior to all Liens on such assets and property that would constitute ABL Priority Collateral if such property or assets were Collateral) and (ii) the assets and property of such Restricted Subsidiary (other than assets and property that would constitute Term Priority Collateral if such assets and property were Collateral) are not otherwise subject to any Lien other than Permitted Liens (excluding Liens described in clauses (1), (8), (33), (39), (41) or (48) through (50) of the definition of “Permitted Liens”).

If any Liens are incurred to secure obligations incurred to refinance obligations initially incurred in reliance on a Basket measured by reference to a percentage of Consolidated

Net Tangible Assets, and such refinancing would cause the percentage of Consolidated Net Tangible Assets to be exceeded if calculated based on the Consolidated Net Tangible Assets on the date of such refinancing, such percentage of Consolidated Net Tangible Assets will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Lien does not exceed the principal amount of such obligations secured by such Liens being refinanced, *plus* any accrued and unpaid interest on the Indebtedness (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness), any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock.

For purposes of this definition, the term “Indebtedness” will be deemed to include interest and other obligations payable on and with respect to such Indebtedness.

“**Permitted Supply Chain Financing**” means any supply chain financing or other factoring transaction whereby the Accounts payable by a particular customer of a Borrower Party are sold or pledged as collateral by such Borrower Party to a third-party financing source on a basis that is non-recourse to such Borrower Party. Unless otherwise agreed by the Administrative Agent in its sole discretion, in no event shall Permitted Supply Chain Financings applicable to more than ten Applicable Account Debtors be in effect at any time (it being understood that Applicable Account Debtors that are Affiliates of each other shall count as a single Applicable Account Debtor for purposes of the limitation set forth in this definition).

“**Permitted Warrant Transaction**” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Borrower’s or a Parent Company’s common equity sold by the Borrower or a Parent Company substantially concurrently with a related Permitted Bond Hedge Transaction.

“**Person**” means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“**Phase II Project**” means any capacity addition, line extension or addition of value-added product facilities, in a Similar Business, at the steel mini-mill located in Mississippi County, Arkansas.

“**Phase II Project Costs**” means all costs and expenses to be incurred by Holdings, the Borrower or any Restricted Subsidiary in connection with the Development of the Phase II Project, and incurred after the Closing Date, including, without limitation, the purchase

of equipment and related services, the training of personnel relating to the Phase II Project, the financing of the Phase II Project, including interest expense incurred during Development, and activities reasonably related thereto.

“**Plan**” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

“**Plan Asset Regulations**” means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

“**Platform**” has the meaning specified in Section 6.02.

“**Pledged Collateral**” has the meaning specified in the Security Agreement.

“**Preferred Stock**” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

“**Prime Rate**” means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation’s thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“**Principal Office**” means, for each of Administrative Agent, Swing Line Lender and Issuing Bank, such Person’s “Principal Office” as set forth on Schedule 10.02, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to Borrower, Administrative Agent and each Lender.

“**Prior Claims**” means all Liens created by applicable law (in contrast with Liens voluntarily granted) (excluding pursuant to the Act 9 Bond Documents) that rank or are capable of ranking prior or pari passu with the Liens of the Collateral Agent created under the Collateral Documents (or similar Liens under applicable law), against all or part of the assets of any Loan Party, including for amounts owing for wages, vacation pay, severance pay, employee source deductions and contributions, goods and services taxes, sales taxes, harmonized sales taxes, municipal taxes, income taxes, VAT, workers’ compensation, unemployment insurance, pension plan or fund obligations (including pension plan deficits) or other statutory deemed trusts or overdue rents.

“**Private-Side Information**” means any information with respect to Holdings and its Subsidiaries that is not Public-Side Information.

“**Pro Rata Share**” means with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender or any Letters of Credit issued or participations purchased therein by any Lender or any participations in any

Swing Line Loans purchased by any Lender, the percentage obtained by dividing (a) the Revolving Exposure of that Lender by (b) the aggregate Revolving Exposure of all Lenders.

**“Protective Advance”** as defined in Section 2.10(1).

**“PTE”** means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

**“Public Company Costs”** means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Borrower’s or its Restricted Subsidiaries’ initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

**“Public Lender”** has the meaning specified in Section 6.02.

**“Public-Side Information”** means (i) at any time prior to Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that is (a) of a type that would be required by applicable Law to be publicly disclosed in connection with an issuance by Holdings or any of its Subsidiaries of its debt or equity securities pursuant to a registered public offering made at such time or (b) not material to make an investment decision with respect to securities of Holdings or any of its Subsidiaries (for purposes of United States federal and state securities laws), and (ii) at any time on and after Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that does not constitute material non-public information (within the meaning of United States federal and state securities laws) with respect to Holdings or any of its Subsidiaries or any of their respective securities.

**“Purchase Money Obligations”** means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

**“QFC”** has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**“QFC Credit Support”** has the meaning assigned to such term in Section 10.27.

**“Qualified Capital Contribution”** means cash equity capital contributions to, or cash proceeds from the issuance of Capital Stock in, Top Parent, which Top Parent, upon receipt, contributes to Holdings, which in turn, upon receipt, contributes to the Borrower as a cash common equity capital contribution to, or common Capital Stock in, the Borrower.

**“Qualified ECP Guarantor”** means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10.0 million at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to

qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“**Qualified Equity Interests**” means any Equity Interests that are not Disqualified Stock.

“**Qualified Foreign Account Debtor**” means an Account Debtor that is a Subsidiary of a Qualified Parent.

“**Qualified Parent**” means any Person that after the Second Amendment Effective Date, is identified by the Borrower and acceptable to the Administrative Agent in its Permitted Discretion following the completion of customary field exam diligence.

“**Qualified Proceeds**” means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

“**Qualifying IPO**” means the issuance by the Borrower or any Parent Company of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

“**Quarterly Average Excess Availability**” means, for any fiscal quarter, the average for such fiscal quarter of the daily amounts determined as of 5:00 p.m. (New York City time) for each day during such fiscal quarter expressed as a percentage equivalent to a fraction (a) the numerator of which is the Excess Availability at such time and (b) the denominator of which is the Maximum Credit in effect at such time.

“**Quarterly Average Facility Utilization**” means, for any fiscal quarter, the average for such fiscal quarter of the daily amounts determined as of 5:00 p.m. (New York City time) for each day during such fiscal quarter expressed as a percentage equivalent to a fraction (a) the numerator of which is the sum of (i) the aggregate principal amount of all Revolving Loans outstanding at such time and (ii) the Letter of Credit Usage at such time and (b) the denominator of which is the Maximum Credit in effect at such time.

“**Quarterly Financial Statements**” means the unaudited consolidated balance sheets and related unaudited consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the fiscal quarters ended March 31, 2017 and June 30, 2017.

“**Rating Agencies**” means Fitch, Moody’s and S&P, or if Fitch, Moody’s or S&P (or any of the foregoing) does not make a rating on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Fitch, Moody’s or S&P (or any of the foregoing), as the case may be.

“**Reference Time**” with respect to any setting of the then-current Benchmark means (a) if such Benchmark is the **Eurodollar**Term SOER Rate, **11:005:00** a.m. (**London**Chicago time) on the day that is two **London banking days**Business Days preceding

the date of such setting or (b) if such Benchmark is not the **EurodollarTerm SOER** Rate, the time determined by the Administrative Agent in its reasonable discretion.

“**Refinance**” has the meaning assigned in the definition of “Refinancing Indebtedness” and “**Refinancing**” and “**Refinanced**” have meanings correlative to the foregoing.

“**Refinanced Debt**” has the meaning assigned to such term in the definition of “Refinancing Indebtedness.”

“**Refinancing Indebtedness**” means (x) Indebtedness incurred by the Borrower or any Restricted Subsidiary, (y) Disqualified Stock issued by the Borrower or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease (“**Refinance**”) any Indebtedness, Disqualified Stock or Preferred Stock.

“**Refunded Swing Line Loans**” has the meaning specified in Section 2.02(2)(iv).

“**Register**” has the meaning specified in Section 2.12.

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Reimbursement Date**” has the meaning specified in Section 2.03(4).

“**Related Business Assets**” means assets (other than Cash Equivalents) used or useful in a Similar Business; *provided* that any assets received by the Borrower or a Restricted Subsidiary in exchange for assets transferred by the Borrower or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person is or would become a Restricted Subsidiary.

“**Related Indemnified Person**” of an Indemnitee means (1) any controlling Person or controlled Affiliate of such Indemnitee, (2) the respective directors, officers, partners, employees, advisors or successors of such Indemnitee or any of its controlling Persons or controlled Affiliates and (3) the respective agents, trustees and other representatives of such Indemnitee or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnitee, controlling Person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation of this Agreement or the syndication of the Facility. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“**Related Person**” means, with respect to any Person, (a) any Affiliate of such Person, (b) the respective directors, officers, partners, employees, advisors, agents, trustees and



other representatives of such Person or any of its Affiliates and (c) the successors and permitted assigns of such Person or any of its Affiliates.

“**Relevant Governmental Body**” means the Federal Reserve Board, and/or the NYFRB, the CME Term SOER Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“**Release**” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into or migration through the Environment.

“**Rent Reserve**” means, with respect to any real property leased by a Loan Party on which any Inventory is located (other than any such leased real property in respect of which the Administrative Agent shall have received a Collateral Access Agreement executed by the applicable landlord), an amount equal to up to three months’ rental expense for such leased real property less any security deposit or other payment security delivered to the applicable landlord (evidence of which has been provided to Administrative Agent) or such lesser amount approved by the Administrative Agent.

“**Reportable Event**” means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

“**Required Lenders**” means, at any time, Lenders having or holding Revolving Exposure representing more than 50% of the sum of the Revolving Exposure of all the Lenders at such time; provided, that if two (2) or more unaffiliated Lenders exist, then the requirement shall be at least two (2) unaffiliated Lenders having or holding Revolving Exposure representing more than 50% of the sum of the Revolving Exposure of all Lenders at such time; provided, further, that the amount of Revolving Exposure shall be determined with respect to any Defaulting Lender by disregarding the Revolving Exposure of such Defaulting Lender.

“**Reserves**” means, collectively, (a) the Rent Reserve, (b) the Designated Pari Cash Management Services Reserves, (c) the Designated Pari Hedge Reserves, (d) the Dilution Reserve, (e) the Royalty Reserve and (f) without duplication (including with respect to any items that are otherwise addressed through eligibility criteria), any and all other reserves that the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including reserves for accrued and unpaid interest on the Obligations, contingent liabilities of any Loan Party, reserves for uninsured losses of any Loan Party, reserves to cover any Prior Claims, reserves for political risks or other risks (including risks of natural disasters) in respect of jurisdictions of customer locations, reserves for warehousemen’s, consignee’s and other bailee’s charges (except, in the case of any warehouseman or other bailees having possession of any Inventory, if such warehouseman or other bailee shall have delivered to the Administrative Agent an executed Collateral Access Agreement pursuant to which, among other things, it shall have waived or subordinated, in a manner reasonably satisfactory to the Administrative Agent, any rights and claims it has to such Inventory for any service charges or other amounts payable to it), reserves for freight charges, reserves for changes in the determination of the saleability or



realization values of Inventory, reserves for uninsured, underinsured, unindemnified or underindemnified liabilities or potential liabilities with respect to any litigation, reserves for export or import restrictions, and reserves for Taxes, fees, assessments and other governmental charges) with respect to any Collateral, any Account Debtor or any Loan Party.

“**Resolution Authority**” means any EEA Resolution Authority or UK Resolution Authority.

“**Responsible Officer**” means, with respect to a Person, the chief executive officer, chief operating officer, president, executive vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. With respect to any document delivered by a Loan Party on the Closing Date, Responsible Officer includes any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“**Restricted Subsidiary**” means, at any time, any direct or indirect Subsidiary of the Borrower (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided further* that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of “Restricted Subsidiary.” Wherever the term “Restricted Subsidiary” is used herein with respect to any Subsidiary of a referenced Person that is not the Borrower, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Borrower on a *pro forma* basis following consummation of one or a series of related transactions involving such referenced Person and the Borrower (unless such transaction would include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a *pro forma* basis in accordance with this Agreement).

“**Revolving Commitment**” means the commitment of a Lender to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit, Swing Line Loans and Protective Advances hereunder, and “**Revolving Commitments**” means such commitments of all Lenders in the aggregate. The amount of each Lender’s Revolving Commitment, if any, is set forth on Schedule 2.01 or in the applicable Assignment and Assumption or Joinder Agreement, as applicable, subject to any increase pursuant to Section 2.15 or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the Second Amendment Effective Date is \$350,000,000.

“**Revolving Commitment Period**” means the period from the Closing Date to but excluding the Revolving Commitment Termination Date.

**“Revolving Commitment Termination Date”** means the earlier to occur of (a) the Maturity Date and (b) the date on which all the Revolving Commitments are terminated or permanently reduced to zero pursuant hereto.

**“Revolving Exposure”** means, with respect to any Lender, Swing Line Lender or Issuing Bank, as applicable, and as of any date of determination, (a) prior to the termination of the Revolving Commitments, that Lender’s Revolving Commitment; and (b) after the termination of the Revolving Commitments (or which respect to determining each Lender’s exposure under the Revolving Commitments), the sum of (i) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (ii) in the case of Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (net of any participations by Lenders in such Letters of Credit), (iii) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (iv) in the case of Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any participations therein by other Lenders), (v) the aggregate amount of all participations therein by that Lender in any outstanding Swing Line Loans, and (vi) the aggregate amount of all participations therein by that Lender in any outstanding Protective Advances.

**“Revolving Lender”** means a Lender having a Revolving Commitment.

**“Revolving Loan”** means a Loan made by a Lender to Borrower pursuant to Section 2.01 and/or Section 2.15.

**“Revolving Loan Note”** means a promissory note in the form of Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“Royalty Reserve”** means, at any time, a reserve equal to the sum of (a) accrued but unpaid royalties due to third parties for the sale of any Inventory subject to any license of intellectual property plus (b) unpaid royalties due to third parties for finished goods Inventory on hand subject to any license of intellectual property.

**“S&P”** means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

**“Sale-Leaseback Transaction”** means any arrangement providing for the leasing by the Borrower or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a third Person in contemplation of such leasing. The net proceeds of any Sale-Leaseback Transaction will be determined giving effect to transaction expenses and the tax effect of such transactions (including taxes paid or payable and tax attributes used as a result of such transactions).

**“Same Day Funds”** means disbursements and payments in immediately available funds.

**“Sanctioned Country”** means, at any time, a country or territory that is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, Her Majesty’s Treasury of the United Kingdom, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned (individually or in the aggregate, directly or indirectly) or controlled by any such Person or Persons described in the foregoing clauses (a) or (b) or (d) any Person otherwise the subject of any Sanctions.

**“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, (b) the United Nations Security Council, (c) the European Union, (d) any European Union member state or (e) Her Majesty’s Treasury of the United Kingdom.

**“SEC”** means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

**“Second Amendment Effective Date”** means July 23, 2021.

**“Secured Indebtedness”** means any Indebtedness of the Borrower or any Restricted Subsidiary secured by a Lien.

**“Secured Bi-Lateral Letter of Credit Obligations”** means the Bi-Lateral Letter of Credit Obligations that are designated by the Borrower to the Administrative Agent as “Secured Bi-Lateral Letter of Credit Obligations”. For purposes of such designation, written notice shall be delivered to the Administrative Agent by the Borrower and the applicable Bi-Lateral Letter of Credit Lender confirming that such Bi-Lateral Letter of Credit constitutes a “Secured Bi-Lateral Letter of Credit Obligation” and providing the face amount thereof any other details required by Administrative Agent. No Bi-Lateral Letter of Credit Obligation shall be designated as a Secured Bi-Lateral Letter of Credit Obligation hereunder unless (and the Borrower shall certify in the written notice required above that) as of the date of such designation (and after giving effect to its designation as a Secured Bi-Lateral Letter of Credit Obligation), (a) the aggregate undrawn face amount of all Bi-Lateral Letters of Credit the reimbursement and other payment obligations of which constitute Secured Bi-Lateral Letter of Credit Obligations shall not exceed \$30,000,000 and (b) so long as ABL Intercreditor Agreement is in effect, the sum of (i) the Total Utilization of Revolving Credit Commitments plus (ii) the face amount of all Bi-Lateral Letters of Credit outstanding and other payment obligations of which constitute Secured Bi-Lateral Letter of Credit Obligations shall not exceed the “ABL Cap Amount” (as defined in the ABL Intercreditor Agreement).

**“Secured Parties”** means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the Lender Counterparties, the Bi-Lateral Letter of Credit Lenders, each

Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.07.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Security Agreement**” means, collectively, the Pledge and Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

“**Senior Secured Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt outstanding as of the last day of such Test Period, *minus*, the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries on such date that (x) would not appear as “restricted” on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries or (y) are restricted in favor of the Facility or the Pari Passu Lien Obligations to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

“**Senior Secured Notes**” means the \$600.0 million 7.250% senior secured notes of the Borrower due 2025.

“**Senior Secured Notes Indenture**” means the Indenture for the Senior Secured Notes, dated as of the Closing Date, between the Borrower, the Co-Issuer, U.S. Bank National Association, as trustee (the “**Trustee**”), and the Pari Collateral Agent, as the same may be amended, modified, supplemented, replaced or refinanced to the extent not prohibited by this Agreement.

“**Significant Subsidiary**” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date.

“**Similar Business**” means (1) any business conducted or proposed to be conducted by the Borrower or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Acquisition or other Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Restricted Subsidiaries conduct or propose to conduct on the Closing Date. The Mid-River Terminal, as described on Schedule 1.01(4), is considered to be complementary to the business of the Borrower for purposes of this definition.

“**SOFR**” means, ~~with respect to any Business Day,~~ a rate ~~per annum~~ equal to the secured overnight financing rate ~~for such Business Day published as administered~~ by the SOFR Administrator ~~on the SOFR Administrator’s Website on the immediately succeeding Business Day.~~

“**SOFR Administrator**” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**SOFR Rate Day**” has the meaning specified in the definition of “**Daily Simple SOFR**”.

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date:

- (1) the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise,
- (2) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured,
- (3) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and
- (4) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital.

The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**Specified Event of Default**” means (a) any Event of Default arising under Section 8.01(1) or 8.01(6), (b) any Event of Default arising under Section 8.01(2) from the failure to deliver a Borrowing Base Certificate by the time required hereunder, (c) any Event of Default arising under Section 8.01(4) from any material inaccuracy in any Borrowing Base Certificate, (d) any Event of Default arising from a breach of Section 6.18 and (e) any Event of Default arising under Section 8.01(2) arising from a breach of Section 7.12.

“**Specified Pari Passu Lien Debt**” means the Indebtedness incurred pursuant to the Specified Pari Passu Lien Debt Documents.

“**Specified Pari Passu Lien Debt Documents**” means (a) any indenture, credit agreement or other agreement described in the Collateral Trust Joinder delivered by the Specified Pari Passu Lien Debt Representative governing Funded Debt that constitutes Pari Passu Lien Debt and (b) any other indenture, credit agreement or other agreement entered into subsequent to the delivery of the Collateral Trust Joinder described in clause (a) above governing another Series of Pari Passu Lien Debt (as defined in the Collateral Trust Agreement) for which the Specified Pari Passu Lien Debt Representative maintains the transfer register and is appointed as a representative of the Pari Passu Lien Debt (as defined in the Collateral Trust

Agreement) (for purposes related to the administration of the Pari Passu Lien Security Documents (as defined in the Collateral Trust Agreement)) pursuant to such indenture, credit agreement or other agreement and which governs Funded Debt that constitutes Pari Passu Lien Debt.

**“Specified Pari Passu Lien Debt Representative”** means KfW IPEX-Bank GmbH, whether acting in its own capacity or as agent to the lenders under any Specified Pari Passu Lien Debt Document or any of its Affiliates, or any other such representative that has been designated as “Specified Pari Passu Lien Debt Representative” by the Borrower in accordance with the Collateral Trust Agreement, that delivers a Collateral Trust Joinder in the form of Exhibit B to the Collateral Trust Agreement.

**“Specified Sale-Leaseback Transaction”** means any arrangement providing for the leasing by the Borrower or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a Governmental Authority in contemplation of such leasing, and which is in connection with the purchase by the Borrower or an Affiliate of industrial development revenue bonds, or similar instruments, of a Governmental Authority and pursuant to which payments of principal, premiums and interest thereon are payable solely from income derived by such Governmental Authority from such leasing arrangement. The Specified Sale-Leaseback Transactions in effect as of the Closing Date are as provided in the Act 9 Bond Documents.

**“Specified Transaction”** means:

- (1) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Borrower, in each case, in connection with an acquisition or Investment,
- (2) any designation of operations or assets of the Borrower or a Restricted Subsidiary as discontinued operations (as defined under GAAP),
- (3) any Investment that results in a Person becoming a Restricted Subsidiary,
- (4) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with this Agreement,
- (5) any purchase or other acquisition of a business of any Person, or assets constituting a business unit, line of business or division of any Person,
- (6) any Asset Sale (without regard to any de minimis thresholds set forth therein) (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower or (b) of a business, business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise,
- (7) any operational changes identified by the Borrower that have been made by the Borrower or any Restricted Subsidiary during the Test Period,



(8) any borrowing of New Revolving Loans (or establishment of New Revolving Loan Commitments), or

(9) any other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a *pro forma* basis.

“**Sterling**” means the lawful currency of the United Kingdom.

“**Subordinated Indebtedness**” means any Indebtedness of any Loan Party that by its terms is subordinated in right of payment to the Obligations of such Loan Party arising under this Agreement or the Guaranty.

“**Subsidiary**” means, with respect to any Person:

(1) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means any Guarantor other than Holdings.

“**Successor Borrower**” has the meaning specified in Section 7.03(4).

“**Successor Holdings**” has the meaning specified in Section 7.03(5).

“**Supermajority Lenders**” means, at any time, Lenders having or holding Revolving Exposure representing more than 66-2/3% of the sum of the Revolving Exposure of all the Lenders at such time; provided, that if two (2) or more unaffiliated Lenders exist, then the requirement shall be at least two (2) unaffiliated Lenders having or holding Revolving Exposure



representing more than 66-2/3% of the sum of the Revolving Exposure of all the Lenders at such time; provided, further that the amount of Revolving Exposure shall be determined with respect to any Defaulting Lender by disregarding the Revolving Exposure of such Defaulting Lender.

“**Supplemental Administrative Agent**” and “**Supplemental Administrative Agents**” have the meanings specified in Section 9.15(1).

“**Supported QFC**” has the meaning assigned to such term in Section 10.27.

“**Sustainability Structuring Agents**” means each of Goldman Sachs Bank USA and ING Capital LLC, in its capacity as a sustainability structuring agent with respect to the credit facility provided under this Agreement.

“**Swap Obligation**” has the meaning specified in the definition of “Excluded Swap Obligation.”

“**Swing Line Lender**” means Goldman Sachs in its capacity as Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

“**Swing Line Loan**” means a Loan made by Swing Line Lender to Borrower pursuant to Section 2.02.

“**Swing Line Note**” means a promissory note in the form of Exhibit B-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Swing Line Sublimit**” means the lesser of (a) \$22,500,000, and (b) the aggregate unused amount of Revolving Commitments then in effect.

“**Syndication Agent**” means Goldman Sachs Bank USA, in its capacity as syndication agent under this Agreement.

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

“**Tax Indemnitee**” as defined in Section 3.01(5).

“**Term Agent**” means Goldman Sachs Bank USA, in its capacity as the administrative agent under the Term Credit Agreement, and any successor administrative agent permitted pursuant to the terms thereof, hereof and in the ABL Intercreditor Agreement and Collateral Trust Agreement, or any similar agent under any replacement or refinancing of the Term Credit Agreement.

“**Term Benchmark**” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

[“Term Benchmark Borrowing” means a Borrowing of Term Benchmark Loans.](#)

[“Term Benchmark Loan” means a Loan that bears interest at the Adjusted Term SOFR Rate.](#)

“Term Credit Agreement” means the Credit Agreement, dated as of the Closing Date, by and among Borrower, Holdings, certain Subsidiaries of Borrower, as guarantors, the lenders party thereto from time to time, Term Agent, and the other parties thereto, as may be amended, modified, supplemented, refinanced, restated, or replaced in accordance with the terms of the ABL Intercreditor Agreement.

“Term Documents” means the Term Credit Agreement and each other instrument or agreement executed in connection with the Term Credit Agreement (including all security agreements, collateral assignments, mortgages, control agreements or other grants or transfers for security in favor of the Pari Collateral Agent, for the benefit of the holders of the Pari Passu Lien Obligations) and any instrument or agreement executed in connection with any refinancings and replacements thereof, as each such instrument or agreement may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Term Facility” means any facility provided by the lenders pursuant to the Term Credit Agreement.

“Term Lender” means any “Lender” under (and as defined in) the Term Credit Agreement.

“Term Loan” has the meaning given such term in the Term Credit Agreement.

“Term Obligations” means the “Obligations” (as defined in the Term Credit Agreement).

“Term Priority Collateral” has the meaning assigned to the term “Fixed Asset Priority Collateral” in the ABL Intercreditor Agreement.

~~“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.~~

~~“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.~~  
[Determination Day” has the meaning assigned to it under the definition of Term SOFR Reference Rate.](#)

~~“Term SOFR Transition Event” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable (and, for the avoidance of doubt, not in the case of an Other~~

**Benchmark Rate Election), has previously occurred resulting in a Benchmark Replacement in accordance with Section 3.03 that is not Term SOFR Rate” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.**

**“Term SOFR Reference Rate” means, for any day and time (such day, the “Term SOFR Determination Day”), with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.**

**“Termination Conditions”** has the meaning assigned to such term in Section 9.12(4).

**“Test Period”** in effect at any time means the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which, subject to Section 1.07(1), financial statements for each quarter or fiscal year in such period have been or are required to be delivered pursuant to Section 6.01(1) or (2), as applicable; *provided* that, notwithstanding the foregoing, (a) prior to the first date that financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2), the Test Period in effect shall be the period of four consecutive full fiscal quarters of the Borrower ended prior to the Closing Date for which financial statements would have been required to be delivered hereunder had the Closing Date occurred prior to the end of such period, (b) solely for purposes of Section 7.12, for the period ending December 31, 2017, the Test Period shall be the period of two consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period), and (c) solely for purposes of Section 7.12, for the period ending March 31, 2018, the Test Period shall be the period of three consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period).

**“Threshold Amount”** means \$50.0 million.

**“Top Parent”** means Big River Steel Holdings LLC, a Delaware limited liability company.

“**Top Parent Pledge Agreement**” means that certain ABL Pledge Agreement dated as of the Closing Date by Top Parent in favor of the Collateral Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Total Assets**” means, at any time, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Borrower or such other Person as may be available (as determined in good faith by the Borrower) (and, in the case of any determination relating to any Specified Transaction, on a *pro forma* basis including any property or assets being acquired in connection therewith).

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans.

“**Total Utilization of Revolving Commitments**” means, as at any date of determination, the sum of (a) the aggregate principal amount of all outstanding Revolving Loans, (b) the aggregate principal amount of all outstanding Swing Line Loans and Protective Advances, and (c) the Letter of Credit Usage.

“**Traded Securities**” means any debt or equity securities issued pursuant to a public offering or Rule 144A offering.

“**Transaction Expenses**” means any fees, expenses, costs or charges incurred or paid by the Investors, any Parent Company, Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions, including any expenses in connection with hedging transactions, if any, and the repayment or refinancing of the Closing Date Refinanced Indebtedness.

“**Transactions**” means, collectively, the funding of the Closing Date Loans, the issuance of Letters of Credit (if any) hereunder on the Closing Date, the closing of the Term Facility and the funding of the Closing Date Term Loans, the issuance of the Senior Secured Notes on the Closing Date, the entry into the related security documents, the consummation of the Closing Date Refinancing and the payment of the Transaction Expenses.

“**Trustee**” has the meaning assigned to such term in the definition of Senior Secured Notes Indenture.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a **Eurodollar Rate Term Benchmark** Loan.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to the perfection or priority of any Lien on or otherwise with regard to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**United States Tax Compliance Certificate**” has the meaning specified in Section 3.01(4)(b)(iii).

“**Unrestricted Subsidiary**” means:

- (1) any Subsidiary of the Borrower which at the time of determination is an Unrestricted Subsidiary (as designated by the Borrower, as provided below); and
- (2) any Subsidiary of an Unrestricted Subsidiary.

The Borrower may designate:

(a) any Subsidiary of the Borrower (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Borrower or any Subsidiary (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that:

(i) each of (i) the Subsidiary to be so designated and (ii) its Subsidiaries has not, at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Borrower or any Restricted Subsidiary (other than Equity Interests in an Unrestricted Subsidiary); and

(ii) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and

(b) any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to such designation, no Event of Default will have occurred and be continuing.

Any such designation by the Borrower will be notified by the Borrower to the Administrative Agent by promptly filing with the Administrative Agent an Officer’s Certificate

certifying that such designation complied with the foregoing provisions. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Liens of such Subsidiary existing at such time.

**“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.**

“U.S. Lender” means any Lender that is not a Foreign Lender.

“U.S. Special Resolution Regime” has the meaning assigned to such term in Section 10.27.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“Weekly Reporting Period” means each period (a) commencing on any fifth consecutive Business Day when Excess Availability is less than the greater of 12.5% of the Line Cap and \$20,000,000 and continuing until the first day thereafter on which Excess Availability shall have been greater than the greater of 12.5% of the Line Cap and \$20,000,000 for at least 20 consecutive days (measured from, with respect to the Borrowing Base, the first Borrowing Base Reporting Date with respect to which Excess Availability exceeded the greater of 12.5% of the Line Cap and \$20,000,000), (b) commencing on any day when a Specified Event of Default shall have occurred and continuing until the first day thereafter on which no Specified Event of Default shall have existed for at least 20 consecutive days or (c) commencing on any day elected by the Borrower until such later day elected by the Borrower which shall be no earlier than four consecutive weekly periods ending after the commencement of such period.

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“wholly owned” or “wholly-owned” means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors’ qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

“Withdrawal Liability” means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b)

with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

“**Yen**” means the lawful currency of Japan.

SECTION 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (1) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (2) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.
- (3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.
- (4) The term “including” is by way of example and not limitation.
- (5) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (6) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”
- (7) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (8) The word “or” is not intended to be exclusive unless expressly indicated otherwise.



(9) With respect to any Default or Event of Default, the words “exists,” “is continuing” or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived.

(10) For purposes of determining compliance with the incurrence of any Refinancing Indebtedness that restricts the amount of such Indebtedness relative to the amount of Refinanced Debt, the Borrower and Restricted Subsidiaries may incur an incremental principal amount of Refinancing Indebtedness in such refinancing to the extent that the excess portion of the Refinancing Indebtedness would otherwise be permitted to be incurred in accordance with this Agreement. For purposes of determining compliance with the incurrence of any Indebtedness under Designated Revolving Commitments in reliance on compliance with any ratio, if on the date such Designated Revolving Commitments are established, the applicable ratio is satisfied after giving *pro forma* effect to the incurrence of the entire committed amount of then proposed Indebtedness thereunder, then such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with any ratio.

(11) For purposes hereof, unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

SECTION 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Unless the context indicates otherwise, any reference to a “fiscal year” or a “fiscal quarter” shall refer to a fiscal year ending December 31 or fiscal quarter ending March 31, June 30, September 30 or December 31 of the Borrower. Any reference to a “fiscal month” shall refer to a calendar month. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings, the Borrower or any of its Subsidiaries at “fair value,” as defined therein.

SECTION 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto,

but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

SECTION 1.06 Times of Day and Timing of Payment and Performance.

Unless otherwise specified, (1) all references herein to times of day shall be references to New York time (daylight or standard, as applicable) and (2) when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day.

SECTION 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Senior Secured Net Leverage Ratio and the Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this Section 1.07; *provided* that notwithstanding anything to the contrary in clauses (2), (3), (4) or (5) of this Section 1.07, when calculating the Fixed Charge Coverage Ratio for purposes of the Financial Covenant (other than for the purpose of determining *pro forma* compliance with the Financial Covenant), the events described in this Section 1.07 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) (it being understood that for purposes of determining actual compliance (and not *pro forma* compliance) with the Financial Covenant, the reference to "Test Period" shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2)).

(2) For purposes of calculating any financial ratio or test (or Consolidated EBITDA or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Restricted Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then such financial ratio or test (or Consolidated EBITDA or Total Assets) shall be calculated to give *pro forma* effect for such Test

Period as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period.

(3) Whenever *pro forma* effect is to be given to any Specified Transaction, the *pro forma* calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from or relating to any Specified Transaction which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target’s compliance costs with public company requirements), whether prior to or following the Closing Date, net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (a) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (b) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than twenty-four (24) months after the date of such Specified Transaction (or actions undertaken or implemented prior to the consummation of such Specified Transaction), and (c) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period.

(4) In the event that (a) the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced), (b) the Borrower or any Restricted Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Restricted Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Restricted Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Fixed Charge Coverage Ratio (or similar ratio), in which case such incurrence, issuance,

repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period.

(5) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Fixed Charge Coverage Ratio is made had been the Applicable Margin for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower may designate.

(6) Notwithstanding anything to the contrary in this Section 1.07 or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the disposition thereof has been entered into, no *pro forma* effect shall be given to any discontinued operations (and the Consolidated EBITDA attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such disposition shall have been consummated.

(7) Any determination of Total Assets shall be made by reference to the last day of the Test Period most recently ended for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) on or prior to the relevant date of determination.

(8) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when (a) calculating any applicable ratio, Consolidated Net Income or Consolidated EBITDA in connection with the incurrence of Indebtedness, the issuance of Disqualified Stock or Preferred Stock, the creation of Liens or the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, (b) determining compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom, (c) determining compliance with any provision of this Agreement which requires compliance with any representations and warranties set forth herein or (d) determining the satisfaction of all other conditions precedent to the incurrence of Indebtedness, the issuance of Disqualified Stock or Preferred Stock, the creation of Liens or the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, in each case in connection with a Limited Condition Transaction, the date of determination of such ratio or other provisions, determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom, determination of compliance with any representations or warranties or the satisfaction of any other conditions shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT

**Election,**” which LCT Election may be in respect of one or more of clauses (a), (b), (c) and (d) above), be deemed to be the date the definitive agreements (or other relevant definitive documentation) for such Limited Condition Transaction are entered into (the “**LCT Test Date**”; provided, that any test requiring a specified level of Excess Availability shall be made on the date such Limited Condition Transaction is consummated). If on a *pro forma* basis after giving effect to such Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock, and the use of proceeds thereof), with such ratios and other provisions calculated as if such Limited Condition Transaction or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date for which internal financial statements are available, the Borrower could have taken such action on the relevant LCT Test Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with, unless an Event of Default pursuant to Section 8.01(1), or, solely with respect to the Borrower, Section 8.01(6) shall be continuing on the date such Limited Condition Transaction is consummated. For the avoidance of doubt, (i) if, following the LCT Test Date, any of such ratios or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA or other components of such ratio) or other provisions at or prior to the consummation of the relevant Limited Condition Transactions, such ratios and other provisions will not be deemed to have been exceeded or failed to have been satisfied as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (ii) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions, unless, other than if an Event of Default pursuant to Section 8.01(1), or, solely with respect to the Borrower, Section 8.01(6), shall be continuing on such date, the Borrower elects, in its sole discretion, to test such ratios and compliance with such conditions on the date such Limited Condition Transaction or related Specified Transactions is consummated. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio, Basket availability or compliance with any other provision hereunder (other than actual compliance with the Financial Covenant) on or following the relevant LCT Test Date and prior to the earliest of the date on which such Limited Condition Transaction is consummated, the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction or the date the Borrower makes an election pursuant to clause (y) of the immediately preceding sentence, any such ratio, Basket or compliance with any other provision hereunder shall be calculated on a *pro forma basis* assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock, and the use of proceeds thereof) had been consummated on the LCT Test Date; *provided* that for purposes of any such calculation of the Fixed Charge Coverage Ratio, Consolidated Interest Expense will be calculated using an assumed interest rate for the Indebtedness to be incurred in connection with such Limited Condition Transaction based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Borrower in good faith.

SECTION 1.08 Interest Rates; **LIBOR**Term Benchmark Loan  
Notification. The interest rate on a Loan may be derived from an interest rate benchmark that



may be discontinued or is, or may in the future become, the subject of regulatory reform. ~~Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable laws and regulations, may be permanently discontinued, and/or the basis on which they are calculated may change. The Eurodollar Rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, the U.K. Financial Conduct Authority (“FCA”) publicly announced that: (a) immediately after December 31, 2021, publication of the 1-week and 2-month U.S. Dollar Eurodollar Rate settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar Eurodollar Rate settings will permanently cease; and immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar Eurodollar Rate settings will cease to be provided or, subject to the FCA’s consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of the Eurodollar Rate and/or regulators will not take further action that could impact the availability, composition, or characteristics of the Eurodollar Rate or the currencies and/or tenors for which the Eurodollar Rate is published. Each party to this agreement should consult its own advisors to stay informed of any such developments. Public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the Eurodollar Rate.~~ Upon the occurrence of a Benchmark Transition Event, ~~a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election~~, Section 3.03 provides a mechanism for determining an alternative rate of interest. ~~The Administrative Agent will promptly notify the Borrower, pursuant to Section 3.03, of any change to the reference rate upon which the interest rate on Term Benchmark Loans is based. However, the~~ Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to ~~the Daily Simple SOFR, the Eurodollar Rate~~any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof ~~(including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 3.03, whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 3.03, 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 Eurodollar Rate~~existing interest rate being replaced or have the same volume or liquidity as did ~~the Eurodollar Rate~~any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any ~~Term Benchmark Rate~~interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in

each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.09 Guaranties of Hedging Obligations. Notwithstanding anything else to the contrary in any Loan Document, no non-Qualified ECP Guarantor shall be required to guarantee or provide security for Excluded Swap Obligations, and any reference in any Loan Document with respect to such non-Qualified ECP Guarantor guaranteeing or providing security for the Obligations shall be deemed to be all Obligations other than the Excluded Swap Obligations.

SECTION 1.10 Currency Generally.

(1) The Borrower shall determine in good faith the Dollar equivalent amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder). Except with respect to any ratio calculated under any Basket, any subsequent change in rates of currency exchange with respect to any prior utilization or other measurement of a Basket previously made in reliance on such Basket (as the same may have been reallocated in accordance with this Agreement) shall be disregarded for purposes of determining any unutilized portion under such Basket.

(2) For purposes of determining the Senior Secured Net Leverage Ratio, the amount of Indebtedness and cash and Cash Equivalents shall reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

SECTION 1.11 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.



## Article II

### The Commitments and Borrowings

#### SECTION 2.01 Revolving Loans.

(1) Revolving Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender agrees to make Revolving Loans to the Borrower in Dollars in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding its Revolving Commitment or (ii) the Total Utilization of Revolving Commitments exceeding the lesser of (A) the Maximum Credit and (B) the Borrowing Base then in effect, in each case subject to the limitation in Section 2.01(2)(v). Amounts borrowed pursuant to this Section 2.01(1) that are repaid or prepaid may, subject to the terms and conditions hereof, be reborrowed during the Revolving Commitment Period. Each Lender's Revolving Commitment shall terminate on the Revolving Commitment Termination Date.

#### (2) Borrowing Mechanics for Revolving Loans.

(i) Except pursuant to Section 2.03(4), Revolving Loans that are Base Rate Loans shall be made in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount, and Revolving Loans that are ~~Eurodollar RateTerm~~ Benchmark Loans shall be in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount; provided that such Revolving Loans may be in an aggregate amount that is equal to the entire unused balance of the Maximum Credit or that is required to finance the reimbursement of a drawing under a Letter of Credit as contemplated by Section 2.03(4).

(ii) Subject to Section 4.02, whenever Borrower desires that Lenders make Revolving Loans, Borrower shall deliver to Administrative Agent a fully executed and delivered Funding Notice no later than 11:00 a.m. (New York City time) at least three Business Days in advance of the proposed Credit Date in the case of a ~~Eurodollar RateTerm~~ Benchmark Loan, and no later than 12:00 p.m. (New York City time) at least one Business Day in advance of the proposed Credit Date in the case of a Revolving Loan that is a Base Rate Loan; provided that, if such Credit Date is the Closing Date, such Funding Notice may be delivered on the Closing Date with respect to Base Rate Loans and such period shorter than three Business Days as may be agreed by all Lenders with respect to ~~Eurodollar RateTerm~~ Benchmark Loans. Except as otherwise provided herein, a Funding Notice for a Revolving Loan that is a ~~Eurodollar RateTerm~~ Benchmark Loan shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Funding Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by Administrative Agent to each applicable Lender with reasonable promptness, but (provided Administrative Agent shall have received such notice by 11:00 a.m. (New York City time) in the case of a ~~Eurodollar~~ Term Benchmark Rate Loan

and by 12:00 p.m. (New York City time) in the case of a Base Rate Loan) not later than 3:00 p.m. (New York City time) on the same day as Administrative Agent's receipt of such Notice from Borrower.

(iv) Each Lender shall make the amount of its Revolving Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Principal Office of Administrative Agent. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Revolving Loans available to Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by Administrative Agent from Lenders to be credited to the account of Borrower at the Principal Office designated by Administrative Agent or such other account as may be designated in writing to Administrative Agent by Borrower.

(v) Notwithstanding anything in this Agreement to the contrary, so long as the ABL Intercreditor Agreement is in effect, in no event shall the sum of (a) the Total Utilization of Revolving Credit Commitments plus (b) the face amount of all Bi-Lateral Letters of Credit outstanding and other payment obligations of which constitute Secured Bi-Lateral Letter of Credit Obligations exceed the "ABL Cap Amount" (as defined in the ABL Intercreditor Agreement).

## SECTION 2.02 Swing Line Loans.

(1) General. During the Revolving Commitment Period, subject to the terms and conditions hereof, the Swing Line Lender agrees to make Swing Line Loans to the Borrower in Dollars in an aggregate principal amount at any time outstanding not to exceed the Swing Line Sublimit; provided that no Swing Line Loan shall be made if immediately after giving effect thereto the Total Utilization of Revolving Commitments would exceed the lesser of (i) the Maximum Credit and (ii) the Borrowing Base then in effect, subject to the limitation in Section 2.01(2)(v). Amounts borrowed pursuant to this Section 2.02 that are repaid or prepaid may, subject to the terms and conditions hereof, be reborrowed during the Revolving Commitment Period.

### (2) Borrowing Mechanics for Swing Line Loans.

(i) Swing Line Loans shall be made in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount.

(ii) Subject to Section 4.02, whenever Borrower desire that Swing Line Lender make a Swing Line Loan, Borrower shall deliver to Administrative Agent a Funding Notice no later than 11:00 a.m. (New York City time) on the proposed Credit Date.

(iii) Swing Line Lender shall make the amount of its Swing Line Loan available to Administrative Agent not later than 2:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at Administrative Agent's

Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Swing Line Loans available to Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by Administrative Agent from Swing Line Lender to be credited to the account of Borrower at Administrative Agent's Principal Office, or to such other account as may be designated in writing to Administrative Agent by Borrower.

(iv) With respect to any Swing Line Loans which have not been voluntarily prepaid by Borrower pursuant to Section 2.05(1), Swing Line Lender shall, on a weekly or a more frequently than weekly basis when any Swing Line Loan is outstanding, deliver to Administrative Agent (with a copy to Borrower), no later than 1:00 p.m. (New York City time) at least one Business Day in advance of the proposed Credit Date, a notice (which shall be deemed to be a Funding Notice given by Borrower) requesting that each Lender holding a Revolving Commitment make Revolving Loans that are Base Rate Loans to Borrower on such Credit Date in an amount equal to the amount of such Swing Line Loans (the "Refunded Swing Line Loans") outstanding on the date such notice is given which Swing Line Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than Swing Line Lender shall be immediately delivered by Administrative Agent to Swing Line Lender (and not to Borrower) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, Swing Line Lender's Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by Swing Line Lender to Borrower, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note of Swing Line Lender but shall instead constitute part of Swing Line Lender's outstanding Revolving Loans to Borrower and shall be due under the Revolving Loan Note issued by Borrower to Swing Line Lender. Borrower hereby authorizes Administrative Agent and Swing Line Lender to charge Borrower's accounts with Administrative Agent and Swing Line Lender (up to the amount available in each such account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by Lenders, including the Revolving Loans deemed to be made by Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to Swing Line Lender should be recovered by or on behalf of Borrower from Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by Section 2.14.

(v) If for any reason Revolving Loans are not made pursuant to Section 2.02(2)(iv) in an amount sufficient to repay any amounts owed to Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by Swing Line Lender, each Lender holding a Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans, and in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one Business Day's notice from Swing Line Lender, each Lender holding a Revolving Commitment shall deliver to Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal

Office of Swing Line Lender. In order to evidence such participation each Lender holding a Revolving Commitment agrees to enter into a participation agreement at the request of Swing Line Lender in form and substance reasonably satisfactory to Swing Line Lender. In the event any Lender holding a Revolving Commitment fails to make available to Swing Line Lender the amount of such Lender's participation as provided in this paragraph, Swing Line Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by Swing Line Lender for the correction of errors among banks and thereafter at the Base Rate, as applicable.

(vi) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to the second preceding paragraph and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against Swing Line Lender, any Loan Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Loan Party; (D) any breach of this Agreement or any other Loan Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that Swing Line Lender had not received prior notice from Borrower or the Required Lenders that any of the conditions under Section 4.02 to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans, were not satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made; and (2) Swing Line Lender shall not be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default, (B) it does not in good faith believe that all conditions under Section 4.02 to the making of such Swing Line Loan have been satisfied or waived by the Required Lenders or (C) at a time when any Lender is a Defaulting Lender unless Swing Line Lender has entered into arrangements satisfactory to it and Borrower to eliminate Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Line Loan, including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swing Line Loans in an amount not less than the Minimum Collateral Amount.

(3) Resignation and Removal of Swing Line Lender. Swing Line Lender may resign as Swing Line Lender upon 30 days prior written notice to Administrative Agent, Lenders and Borrower. Swing Line Lender may be replaced at any time by written agreement among Borrower, Administrative Agent, the replaced Swing Line Lender (provided that no consent will be required if the replaced Swing Line Lender has no Swing Line Loans outstanding) and the successor Swing Line Lender. Administrative Agent shall notify the Lenders of any such replacement of Swing Line Lender. At the time any such replacement or resignation shall become effective, (i) Borrower shall prepay any outstanding Swing Line Loans made by the resigning or removed Swing Line Lender, (ii) upon such prepayment, the resigning or removed Swing Line Lender shall surrender any Swing Line Note held by it to Borrower for cancellation, and (iii) Borrower shall issue, if so requested by the successor Swing Line Lender, a new Swing Line Note to the successor Swing Line Lender, in the principal amount of the Swing Line Sublimit then in effect and with other appropriate insertions. From and after the effective date of

any such replacement or resignation, (x) any successor Swing Line Lender shall have all the rights and obligations of a Swing Line Lender under this Agreement with respect to Swing Line Loans made thereafter and (y) references herein to the term "Swing Line Lender" shall be deemed to refer to such successor or to any previous Swing Line Lender, or to such successor and all previous Swing Line Lenders, as the context shall require.

SECTION 2.03      Issuance of Letters of Credit and Purchase of Participations  
Therein.

(1) Letters of Credit. During the Revolving Commitment Period, subject to the terms and conditions hereof, Issuing Bank agrees to issue Letters of Credit at the request and for the account of Borrower in the aggregate amount up to but not exceeding the Letter of Credit Sublimit; provided, (i) each Letter of Credit shall be denominated in Dollars; (ii) [reserved]; (iii) immediately after giving effect to such issuance the Total Utilization of Revolving Commitments shall not exceed the lesser of (A) the Maximum Credit and (B) the Borrowing Base then in effect, subject to the limitation in Section 2.01(2)(v); (iv) after giving effect to such issuance, in no event shall the Letter of Credit Usage exceed the Letter of Credit Sublimit then in effect; (v) in no event shall any standby Letter of Credit have an expiration date later than the earlier of (1) 5 Business Days prior to the Maturity Date; provided, that a Letter of Credit may have an expiry date later than that otherwise permitted by this clause so long as the maximum available amount of such Letter of Credit is Cash Collateralized at 102% not later than the fifth Business Day prior to the Maturity Date in the manner specified in Section 2.03(8) and (2) the date which is one year from the date of issuance of such standby Letter of Credit or, in the case of any renewal or extension thereof, one year after such renewal or extension subject to clause (v)(1) above); (vi) in no event shall any commercial Letter of Credit have an expiration date later than the earlier of (1) 10 Business Days prior to the Maturity Date and (2) the date which is 180 days from the date of issuance of such commercial Letter of Credit; (vii) in no event shall a commercial Letter of Credit be issued unless Issuing Bank has agreed in writing to issue commercial Letters of Credit pursuant to this Section 2.03 and such commercial Letter of Credit is otherwise acceptable to Issuing Bank, in each case in its sole discretion; (viii) in no event shall any Letter of Credit be issued if the issuance thereof would violate one or more provisions of any applicable law, rule, or regulation or one or more policies of Issuing Bank applicable to letters of credit; (ix) after giving effect to such issuance, in no event shall the Letter of Credit Usage for all Letters of Credit issued by any Issuing Bank exceed the Issuing Bank Sublimit for such Issuing Bank; and (x) each Letter of Credit shall be in form and substance reasonably satisfactory to Issuing Bank and issued in accordance with Issuing Bank's standard operating procedures. Subject to the foregoing, Issuing Bank may agree that a standby Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each, unless Issuing Bank elects not to extend for any such additional period; provided, Issuing Bank shall not extend any such Letter of Credit if it has received written notice from Administrative Agent, or any Lender that any condition set forth in Section 4.02 is not satisfied; provided further, if any Lender is a Defaulting Lender, Issuing Bank shall not be required to issue any Letter of Credit or extend the expiry date or increase the amount of any outstanding Letter of Credit unless Issuing Bank has entered into arrangements satisfactory to it and Borrower to eliminate Issuing Bank's risk with respect to the participation in Letters of Credit of the Defaulting Lender, including by Cash Collateralizing



such Defaulting Lender's Pro Rata Share of the Letter of Credit Usage in an amount not less than the Minimum Collateral Amount.

(2) Notice of Issuance. Subject to Section 4.02, whenever the Borrower desires the issuance of a Letter of Credit, it shall deliver to Administrative Agent and a designated Issuing Bank an Issuance Notice no later than 12:00 p.m. (New York City time) at least three Business Days (in the case of standby Letters of Credit) or five Business Days (in the case of commercial Letters of Credit), or in each case such shorter period as may be agreed to by Issuing Bank in any particular instance, in advance of the proposed date of issuance. At the request of Issuing Bank, the Borrower shall also complete and submit to Issuing Bank the standard letter of credit application of Issuing Bank. Upon satisfaction or waiver of the conditions set forth in Section 4.02, Issuing Bank shall issue the requested Letter of Credit only in accordance with Issuing Bank's standard operating procedures. Upon the issuance of any Letter of Credit or amendment to a Letter of Credit, Issuing Bank shall promptly notify the Administrative Agent thereof and Administrative Agent shall notify each Lender with a Revolving Commitment of such issuance or amendment which notice shall be accompanied by a copy of such Letter of Credit or amendment.

(3) Responsibility of Issuing Bank With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, Issuing Bank shall be responsible only to examine the documents delivered under such Letter of Credit so as to ascertain whether they appear on their face to be substantially in accordance with the terms and conditions of such Letter of Credit. As between the Borrower and Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by Issuing Bank or any proceeds thereof, by the respective beneficiaries, transferees and assignees of letter of credit proceeds of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuing Bank shall not be responsible to any Loan Party, any Agent, any Lender or any other party hereto for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance (or amendment) of any Letter of Credit, any drawing under any Letter of Credit or any consent to the amendment or cancellation of any Letter of Credit, even if such document should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer any Letter of Credit or assign the proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary, transferee or assignee of letter of credit proceeds of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; (viii) any consequences arising from causes beyond the control of Issuing Bank, including any Governmental Acts; or (ix) errors in translation. Nothing in the previous sentence shall affect or impair, or prevent the vesting of, any of Issuing Bank's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by Issuing Bank under or in connection with any Letter of Credit or any documents and

certificates delivered thereunder, if taken or omitted in good faith (i.e., honesty in fact), shall not give rise to any liability on the part of Issuing Bank to any Loan Party, any Agent, any Lender or any other party hereto. Notwithstanding anything to the contrary contained in this Section 2.03(3), Borrower shall retain any and all rights it may have against Issuing Bank for any liability for direct damages (as opposed to punitive, exemplary, consequential or punitive damages) arising solely out of the gross negligence or willful misconduct of Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(4) Reimbursement by Borrower of Amounts Drawn or Paid Under Letters of Credit. In the event Issuing Bank has determined to honor a drawing under a Letter of Credit, it shall promptly notify Borrower and Administrative Agent, and Borrower shall reimburse Issuing Bank on or before the Business Day immediately following the date on which such drawing is honored (the “Reimbursement Date”) in an amount in Dollars and in same day funds equal to the amount of such honored drawing; provided, anything contained herein to the contrary notwithstanding, (i) unless Borrower shall have notified Administrative Agent and Issuing Bank prior to 2:00 p.m. (New York City time) on the date such drawing is honored that Borrower intends to reimburse Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, Borrower shall be deemed to have given a timely Funding Notice to Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Lenders with Revolving Commitments shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such honored drawing, the proceeds of which shall be applied directly by Administrative Agent to reimburse Issuing Bank for the amount of such honored drawing; and provided further, if for any reason proceeds of Revolving Loans are not received by Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, Borrower shall reimburse Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, the proceeds of which are so received, together with interest calculated as per Section 2.08(6). Nothing in this Section 2.03(4) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.03(4).

(5) Lenders’ Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Lender having a Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender’s Pro Rata Share (with respect to the Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that Borrower shall fail for any reason to reimburse Issuing Bank as provided in Section 2.03(4), Issuing Bank shall promptly notify each Lender with a Revolving Commitment of the unreimbursed amount of such honored drawing and of such Lender’s respective participation therein based on such Lender’s Pro Rata Share of the Revolving Commitments. Each Lender with a Revolving Commitment shall make available to Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of Issuing Bank specified



in such notice, not later than 12:00 p.m. (New York City time) on the first business day (under the laws of the jurisdiction in which such office of Issuing Bank is located) after the date on which it is so notified by Issuing Bank. In the event that any Lender with a Revolving Commitment fails to make available to Issuing Bank on such business day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.03(5), Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for the first three Business Days at the rate customarily used by Issuing Bank for the correction of errors among banks and thereafter at the Base Rate. Nothing in this Section 2.03(5) shall be deemed to prejudice the right of any Lender with a Revolving Commitment to recover from Issuing Bank any amounts made available by such Lender to Issuing Bank pursuant to this Section 2.03(5) in the event that it is determined by a final, non-appealable judgment of a court of competent jurisdiction that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct on the part of Issuing Bank. In the event Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.03(5) for all or any portion of any drawing honored by Issuing Bank under a Letter of Credit, such Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this Section 2.03(5) with respect to such honored drawing such Lender's Pro Rata Share of all payments subsequently received by Issuing Bank from Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on Schedule 10.02 or at such other address as such Lender may request.

(6) Obligations Absolute. The obligation of Borrower to reimburse Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by Lenders pursuant to Section 2.03(4) and the obligations of Lenders under Section 2.4(e) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Issuing Bank, Lender or any other Person or, in the case of a Lender, against Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Holdings or any of its Subsidiaries; (vi) any breach hereof or any other Loan Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing; provided, in each case, that payment by Issuing Bank under the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of Issuing Bank under the circumstances in question as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(7) Indemnification. Without duplication of any obligation of Borrower under Section 10.04 or 10.05, in addition to amounts payable as provided herein, Borrower hereby agrees to protect, indemnify, pay and save harmless Issuing Bank from and against any and all claims, demands, liabilities, damages and losses, and all reasonable and documented costs, charges and out-of-pocket expenses (including reasonable and documented fees, out-of-pocket expenses and disbursements of outside counsel (limited to one outside counsel per applicable jurisdiction and, in the case of a conflict of interest where the Person affected by such conflict informs Borrower of such conflict and thereafter retains its own counsel, of another outside counsel per applicable jurisdiction for such affected person)) which Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit by Issuing Bank, other than as a result of the gross negligence, bad faith or willful misconduct of Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction (including in connection with the wrongful dishonor by Issuing Bank of a proper demand for payment made under any Letter of Credit issued by it), or (ii) the failure of Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(8) Cash Collateralization. If any Event of Default shall occur and be continuing, on the day that the Borrower receives notice from the Administrative Agent referred to in Section 8.02, the Borrower shall deposit in a deposit account in the name of the Administrative Agent, for the benefit of the Issuing Banks and the Lenders, Cash Collateral in an amount equal to 102% of the Letter of Credit Usage as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default specified in Section 8.01(6). The Borrower also shall deposit Cash Collateral in accordance with this Section 2.03(8) as and to the extent required by Sections 2.05(3) and 2.16. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such deposit account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Funds in such account shall, notwithstanding anything to the contrary in the Collateral Documents, be applied by the Administrative Agent to reimburse the Issuing Banks for honored drawings under Letters of Credit for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Letter of Credit Usage at such time or, if the maturity of the Loans has been accelerated (but subject to in the case of any such application at a time when any Lender is a Defaulting Lender (but only if, after giving effect thereto, the remaining Cash Collateral shall be less than the aggregate Fronting Exposure), the consent of each Issuing Bank), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide Cash Collateral as a result of the occurrence of an Event of Default, such Cash Collateral (to the extent not applied as aforesaid) shall be returned to the Borrower promptly after all Events of Default have been cured or waived and the Administrative Agent shall have received a certificate from an Responsible Officer of the Borrower to that effect. If the Borrower is required to provide Cash Collateral pursuant to Section 2.05(3), such Cash Collateral (to the extent not applied as aforesaid) shall be returned to the Borrower to the

extent that, after giving effect to such return, the Total Utilization of Revolving Commitments would not exceed the lesser of (i) the Maximum Credit and (ii) the Borrowing Base then in effect and no Default or Event of Default shall have occurred and be continuing. If the Borrower is required to provide Cash Collateral pursuant to Section 2.16, such Cash Collateral (to the extent not applied as aforesaid) shall be returned to the Borrower to the extent that, after giving effect to such return, no Issuing Bank shall have any Fronting Exposure and no Default or Event of Default shall have occurred and be continuing.

(9) Resignation and Removal of Issuing Bank. An Issuing Bank may resign as Issuing Bank upon 60 days prior written notice to Administrative Agent, Lenders and Borrower. An Issuing Bank may be replaced at any time by written agreement among Borrower, Administrative Agent, the replaced Issuing Bank (provided that the replaced Issuing Bank shall not be required to execute or deliver any written agreement if the replaced Issuing Bank has no Letters of Credit or reimbursement obligations with respect thereto outstanding; provided, further, that Borrower shall promptly notify Issuing Bank upon the execution and delivery of any such written agreement by the parties thereto) and the successor Issuing Bank. Administrative Agent shall notify the Lenders of any such replacement of such Issuing Bank. At the time any such replacement or resignation shall become effective, Borrower shall (A) pay all unpaid fees and other amounts accrued for the account of the replaced Issuing Bank and (B) Cash Collateralize or replace any existing Letters of Credit or cause a bank or other financial institution acceptable to the replaced Issuing Bank to issue backstop letters of credit (naming the replaced Issuing Bank as the beneficiary thereof and otherwise in form and substance satisfactory to the replaced Issuing Bank) in respect of existing Letters of Credit, in each case on terms satisfactory to the replaced Issuing Bank. From and after the effective date of any such replacement or resignation, (i) any successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement or resignation of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto to the extent that Letters of Credit issued by it remain outstanding and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement or resignation, but shall not be required to issue additional Letters of Credit.

#### SECTION 2.04 Pro Rata Shares; Availability of Funds.

(1) Pro Rata Shares. All Loans shall be made, and all participations in Letters of Credit, Swing Line Loans and Protective Advances shall be purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender’s obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender’s obligation to make a Loan requested hereunder or purchase a participation required hereby. Any request for a Letter of Credit shall be issued by the Issuing Bank designated by the Borrower subject to its Issuing Bank Sublimit and the conditions set forth in Sections 2.03 and 4.02, it being understood that no Issuing Bank shall be

responsible for any default by any other Issuing Bank in its obligation to issue a Letter of Credit requested hereunder.

(2) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the Overnight Rate for three Business Days and thereafter at the Base Rate. In the event that (i) Administrative Agent declines to make a requested amount available to Borrower until such time as all applicable Lenders have made payment to Administrative Agent, (ii) a Lender fails to fund to Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement and (iii) such Lender's failure results in Administrative Agent failing to make a corresponding amount available to Borrower on the Credit Date, at Administrative Agent's option, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by Borrower through and including the time of Borrower's receipt of the requested amount. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.04(2) shall be deemed to relieve any Lender from its obligation to fulfill its Revolving Commitments hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

SECTION 2.05 Prepayments.

(1) Optional Prepayments.

(i) Any time and from time to time:

(a) with respect to Base Rate Loans (other than any Swing Line Loan or Protective Advance), Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount;

(b) with respect to **Eurodollar Rate** Term Benchmark Loans, Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess of that amount; and

(c) with respect to Swing Line Loans or Protective Advances, Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of \$500,000, and in integral multiples of \$100,000 in excess of that amount.

(ii) All such prepayments shall be made:

(a) upon not less than one Business Day's prior written or telephonic notice in the case of Base Rate Loans;

(b) upon not less than three Business Days' prior written or telephonic notice in the case of ~~Eurodollar Rate~~ Term Benchmark Loans; and

(c) upon written or telephonic notice on the date of prepayment, in the case of Swing Line Loans or Protective Advances;

in each case given to Administrative Agent or Swing Line Lender, as the case may be, by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed by delivery of written notice thereof to Administrative Agent (and Administrative Agent will promptly transmit such original notice for Revolving Loans to each Lender) or Swing Line Lender, as the case may be. Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.13.

(2) Optional Commitment Reductions.

(i) Borrower may, upon not less than three Business Days' prior written or telephonic notice promptly confirmed by delivery of written notice thereof to Administrative Agent (which original written notice Administrative Agent will promptly transmit to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Commitments in an amount up to the amount by which the Maximum Credit exceeds the Total Utilization of Revolving Commitments at the time of such proposed termination or reduction; provided, any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) Borrower's notice to Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in Borrower's notice and shall reduce the Revolving Commitment of each Lender proportionately to its Pro Rata Share thereof.

(3) Mandatory.

(a) Reductions of Revolving Exposure. In the event and on each occasion that either (x) the Total Utilization of Revolving Commitments at such time exceeds the lesser of (A) the Maximum Credit and (B) the Borrowing Base then in effect or (y) the sum of the Total Utilization of Revolving Credit Commitments plus the face amount of all Bi-Lateral Letters of



Credit outstanding and other payment obligations of which constitute Secured Bi-Lateral Letter of Credit Obligations exceed \$350,000,000, the Borrower shall, subject to Section 2.10, prepay Swing Line Loans and Revolving Loans (or, if no such Loans or Borrowings are outstanding, deposit Cash Collateral in accordance with Section 2.03(8)) in an aggregate amount equal to such excess.

(b) Cash Dominion Period. Upon the commencement and during the continuance of a Cash Dominion Period, (i) the Administrative Agent shall instruct each depository bank of any Loan Party that is party to a Control Agreement to transfer on each Business Day (or with such other frequency as shall be specified by the Administrative Agent) to an Administrative Agent Account all funds then on deposit in the deposit accounts subject to such Control Agreement; and (ii) on each Business Day immediately following the day of receipt by the Administrative Agent of any funds pursuant to a transfer referred to in clause (i) above or pursuant to a prepayment pursuant to clause (a) above, the Administrative Agent shall apply all funds so received *first*, to prepay any outstanding Protective Advances and Overadvances; *second*, to prepay any outstanding Swing Line Loans; *third*, to prepay any outstanding Revolving Loans (without a corresponding reduction in Revolving Commitments); *fourth*, to Cash Collateralize any outstanding Letter of Credit Usage in accordance with Section 2.03(8) and, following such application thereof, shall remit the remaining funds so received, if any, to the Borrower; provided that upon the occurrence and during the continuance of an Event of Default, all funds so received shall be applied in accordance with Section 8.03 (and, pending such application, may be held as Cash Collateral). The Loan Parties hereby direct the Administrative Agent to apply the funds as so specified and authorize the Administrative Agent to determine the order of application of such funds as among the individual Loans and items of Letter of Credit Usage. For the avoidance of doubt, funds used to reduce outstanding amounts may be reborrowed, subject to satisfaction of the conditions set forth in Section 4.02 and the other terms hereof.

(c) Notice and Certificate. Prior to or concurrently with any mandatory prepayment pursuant to Section 2.05(3)(a), the Borrower (i) shall notify the Administrative Agent (and, in the case of a prepayment of a Swing Line Loan, the Swing Line Lender) of such prepayment and (ii) shall deliver to the Administrative Agent a certificate of an Responsible Officer of the Borrower setting forth the calculation of the amount of the applicable prepayment or reduction. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid and may be given by telephone or in writing (and, if given by telephone, shall promptly be confirmed in writing). Promptly following receipt of any such notice (other than a notice relating solely to the Swing Line Loans), the Administrative Agent shall advise the Lenders of the details thereof. Each mandatory prepayment of any Loan shall be allocated among the Lenders holding Loans comprising such Loan in accordance with their Pro Rata Shares.

(d) Change of Control. If a Change of Control shall occur, the Borrower will, within one Business Day after the occurrence thereof, give the Administrative Agent notice thereof, and the Administrative Agent shall promptly notify each Lender (including the Swing Line Lender) thereof. Such notice shall describe in reasonable detail the facts and circumstances giving rise thereto and the date of such Change of Control and each Lender may, by notice to the Borrower and the Administrative Agent given not later than ten days after such Change of

Control, terminate its Revolving Commitment (which shall be terminated) and declare any Loans held by it (together with accrued interest thereon) and any other amounts payable hereunder for its account to be (and such Loans and such other amounts shall become) due and payable, in each case on the day following delivery of such notice (or if such day is not a Business Day, the next succeeding Business Day), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. If the Commitment of any Lender is terminated pursuant to this clause (d) at a time when any Letter of Credit is outstanding, then the Borrower shall pay to the Issuing Banks an amount in immediately available funds (which funds shall be held as collateral pursuant to arrangements satisfactory to such Issuing Banks) equal to such Lender's Pro Rata Share of the aggregate amount available for drawing under all Letters of Credit outstanding at such time.

(e) All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a ~~Eurodollar RateTerm Benchmark~~ Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such ~~Eurodollar RateTerm Benchmark~~ Loan pursuant to Section 3.05.

#### SECTION 2.06 Conversion/Continuation.

(1) Subject to Article III hereof, and so long as no Default or Event of Default shall have occurred and then be continuing, Borrower shall have the option:

(i) to convert at any time all or any part of any Revolving Loan equal to \$2,000,000 and integral multiples of \$500,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a ~~Eurodollar RateTerm Benchmark~~ Loan may only be converted on the expiration of the Interest Period applicable to such ~~Eurodollar RateTerm Benchmark~~ Loan unless Borrower shall pay all amounts due under Section 3.04 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any ~~Eurodollar RateTerm Benchmark~~ Loan, to continue all or any portion of such Loan equal to \$2,000,000 and integral multiples of \$500,000 in excess of that amount as a ~~Eurodollar RateTerm Benchmark~~ Loan.

In the event any Loan shall have been converted or continued in accordance with this Section 2.06 in part, such conversion or continuation shall be allocated ratably, in accordance with their Pro Rata Shares, among the Lenders holding the Loans comprising such Loan, and the Loans comprising each part of such Loan resulting from such conversion or continuation shall be considered a separate Loan. This Section 2.06 shall not apply to Swing Line Loans or Protective Advances, which may not be converted or continued.

(2) Borrower shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a ~~Eurodollar RateTerm Benchmark~~ Loan). Except as



otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any ~~Eurodollar Rate~~Term Benchmark Loans shall be irrevocable on and after the related Interest Rate Determination Date, and Borrower shall be bound to effect a conversion or continuation in accordance therewith. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

SECTION 2.07 Repayment of Loans. The Borrower shall repay (a) to the Administrative Agent, for the account of the Lenders, the then unpaid principal amount of each Revolving Loan on the Maturity Date; (b) to the Swing Line Lender the then unpaid principal amount of each Swing Line Loan on the earlier of (i) the Maturity Date and (ii) demand for payment thereof made to the Borrower by the Swing Line Lender; and (c) to the Administrative Agent the then unpaid principal amount of each Protective Advance on the earlier of (i) the Maturity Date and (ii) demand for payment thereof made to the Borrower by the Administrative Agent; provided that on each date that a Revolving Loan is made, the Borrower shall repay all Protective Advances that were outstanding on the date such Revolving Loan was requested.

SECTION 2.08 Interest.

(1) Except as otherwise set forth herein, each Class of Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) in the case of Revolving Loans:

(a) if a Base Rate Loan (including each Swing Line Loan and each Protective Advance), at the Base Rate plus the Applicable Margin; or

(b) if a ~~Eurodollar—Rate~~Term Benchmark Loan, at the ~~Eurodollar~~Adjusted Term SOFR Rate plus the Applicable Margin; and

(ii) in the case of Swing Line Loans and any Protective Advances, at the Base Rate plus the Applicable Margin.

(2) The basis for determining the rate of interest with respect to any Loan (except a Swing Line Loan and any Protective Advances which can be made and maintained as Base Rate Loans only), and the Interest Period with respect to any ~~Eurodollar—Rate~~Term Benchmark Loan, shall be selected by Borrower and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be.

(3) In connection with ~~Eurodollar—Rate~~Term Benchmark Loans there shall be no more than ten Interest Periods outstanding at any time. In the event Borrower fails to specify between a Base Rate Loan or a ~~Eurodollar—Rate~~Term Benchmark Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a ~~Eurodollar—Rate~~Term Benchmark Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base

Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Borrower fails to specify an Interest Period for any ~~Eurodollar Rate~~Term Benchmark Loan in the applicable Funding Notice or Conversion/Continuation Notice, Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable after 11:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the ~~Eurodollar Rate~~Term Benchmark Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof to Borrower and each Lender.

(4) Interest payable pursuant to Section 2.08(1) shall be computed (i) in the case of Base Rate Loans on the basis of a 360-day year (or, in the case of Base Rate Loans determined by reference to the “Prime Rate;”, a 365-day or 366-day year, as applicable), as the case may be, and (ii) in the case of ~~Eurodollar Rate~~Term Benchmark Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a ~~Eurodollar Rate~~Term Benchmark Loan, the date of conversion of such ~~Eurodollar Rate~~Term Benchmark Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a ~~Eurodollar~~Term Benchmark Rate Loan, the date of conversion of such Base Rate Loan to such ~~Eurodollar Rate~~Term Benchmark Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day’s interest shall be paid on that Loan.

(5) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such payment date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; provided, however, with respect to any voluntary prepayment of a Base Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date; (iii) in the case of any Protective Advance or any interest accrued in accordance with Section 2.10, on demand; and (iv) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans.

(6) Borrower agrees to pay to Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2.00% *per annum* in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans.

(7) Interest payable pursuant to Section 2.08(6) shall be computed on the basis of a 365/366-day year for the actual number of days elapsed in the period during which it

accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by Issuing Bank of any payment of interest pursuant to Section 2.08(6), Issuing Bank shall distribute to each Lender, out of the interest received by Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event Issuing Bank shall have been reimbursed by Lenders for all or any portion of such honored drawing, Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under Section 2.03(5) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by Issuing Bank in respect of that portion of such honored drawing so reimbursed by Lenders for the period from the date on which Issuing Bank was so reimbursed by Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by Borrower.

(8) Default Interest. Upon the occurrence and during the continuance of a Specified Event of Default, the principal amount of all past due Loans outstanding and, to the extent permitted by applicable law, any interest payments on the past due Loans or any fees or other past due amounts owed in respect of the Obligations, shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is 2.00% *per annum* in excess of the interest rate otherwise payable hereunder with respect to the applicable past due Loans (or, in the case of any such fees and other past due amounts, at a rate which is 2% *per annum* in excess of the interest rate otherwise payable hereunder for Base Rate Loans that are Revolving Loans); provided, in the case of **Eurodollar RateTerm Benchmark** Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such **Eurodollar RateTerm Benchmark** Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% *per annum* in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.08(8) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent, Issuing Bank, Swing Line Lender or any Lender.

(9) Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

#### SECTION 2.09 Fees.

(1) Borrower agrees to pay to Lenders having Revolving Exposure:

(i) commitment fees equal to such Lender's Pro Rata Share of (A) the excess, determined as of the close of business on such day, of (1) the Maximum Credit over (2) the aggregate principal amount of all outstanding Revolving Loans and the Letter of Credit Usage, multiplied by (B) the Applicable Commitment Fee Rate on such day; and

(ii) letter of credit fees equal to (1) the Applicable Margin for Revolving Loans that are ~~Eurodollar Rate~~ Term Benchmark Loans, multiplied by (2) the average aggregate daily maximum amount available to be drawn under all such Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination).

All fees referred to in this Section 2.09(1) shall be paid to Administrative Agent at its Principal Office and upon receipt, Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereof.

(2) Borrower agrees to pay directly to Issuing Bank, for its own account, the following fees:

(i) a fronting fee equal to 0.125%, *per annum*, times the average aggregate daily maximum amount available to be drawn under all Letters of Credit (determined as of the close of business on any date of determination); and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with Issuing Bank's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

(3) All fees referred to in Section 2.09(1) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable quarterly in arrears on the last Business Day of each March, June, September and December of each year during the Revolving Commitment Period, commencing on the first such date to occur after the Closing Date, and on the Maturity Date.

(4) Borrower agrees to pay to the Administrative Agent, for its own account, fees in the amounts and at the times specified in the Engagement Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(5) In addition to any of the foregoing fees, Borrower agrees to pay to Agents such other fees in the amounts and at the times separately agreed upon.

#### SECTION 2.10 Protective Advances and Overadvances.

(1) General. Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrower and the Lenders, from time to time during the Revolving Commitment Period, in the Administrative Agent's sole discretion (but without any obligation to) (i) after the occurrence of a Default or an Event of Default or (ii) at any time that any of the other conditions precedent set forth in Section 4.02 would not be satisfied, to make loans to the Borrower in Dollars on behalf of the Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations or (C) to pay any other amount chargeable to or required to be paid by the Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees and expenses as described in Section 10.04) and other sums payable under

the Loan Documents (any such loans are herein referred to as “**Protective Advances**”); provided that no Protective Advance shall be made if immediately after giving effect thereto (x) the aggregate principal amount of the outstanding Protective Advances, together with any outstanding Overadvances, would exceed an amount equal to 10% of the Borrowing Base in effect at the time of the making of such Protective Advance or (y) the Total Utilization of Revolving Commitments would exceed the Maximum Credit, in each case subject to the limitation in Section 2.01(2)(v). Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall constitute Obligations for all purposes hereof and the other Loan Documents and shall be Guaranteed and secured as provided in the Loan Documents. All Protective Advances shall be Base Rate Loans. The Administrative Agent’s authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent’s receipt thereof. The Administrative Agent may at any time (i) request, on behalf of the Borrower, the Lenders to make, subject to satisfaction of the conditions precedent set forth in Section 4.02, Base Rate Revolving Loans to repay any Protective Advance or (ii) require the Lenders to acquire participations in any Protective Advance as provided in Section 2.10(2). The Administrative Agent shall endeavor to notify the Borrower promptly after the making of any Protective Advance.

(2) Lenders’ Participations in Protective Advances. The Administrative Agent may by written notice given to each Lender not later than 1:00 p.m. (New York City time) on any Business Day require the Lenders to purchase, in accordance with their Pro Rata Shares, participations in all or a portion of the Protective Advances outstanding, together with accrued interest thereon. Such notice shall specify the aggregate amount of the Protective Advance or Protective Advances in which Lenders will be required to participate and such Lender’s Pro Rata Share of such Protective Advance or Protective Advances and the accrued interest thereon. Each Lender shall make available an amount equal to such Lender’s Pro Rata Share of such Protective Advance or Protective Advances, and the accrued interest thereon, not later than 12:00 p.m. (New York City time) on the first Business Day following the date of receipt of such notice, by wire transfer of same day funds in Dollars to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. In the event that any Lender fails to make available for the account of the Administrative Agent any payment referred to in the preceding sentence, the Administrative Agent shall be entitled to recover such amount on demand from such Lender, together with interest thereon for three Business Days at the rate customarily used by the Administrative Agent for the correction of errors among banks and thereafter at the Base Rate. In order to evidence the purchase of participations under this Section 2.10(2), each Lender agrees to enter at the request of the Administrative Agent into a participation agreement in form and substance reasonably satisfactory to the Administrative Agent. In the event the Lenders shall have purchased participations in any Protective Advance pursuant to this Section 2.10(2), the Administrative Agent shall promptly distribute to each Lender that has paid all amounts payable by it under this Section 2.10(2) with respect to such Protective Advance such Lender’s Pro Rata Share of all payments subsequently received by the Administrative Agent from or on behalf of the Borrower in respect of such Protective Advance; provided that any such payment so distributed shall be repaid to the Administrative Agent if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Protective Advance pursuant to this Section 2.10(2) shall not



constitute a Loan and shall not relieve the Borrower of its obligation to repay such Protective Advance.

(3) Obligations Absolute. The obligations of the Lenders under Section 2.10(2) shall be unconditional and irrevocable and shall be paid and performed strictly in accordance with the terms hereof under all circumstances, notwithstanding (i) the existence of any claim, set off, defense or other right that the Borrower or any Lender may have at any time against the Administrative Agent or any other Person or, in the case of any Lender, against the Borrower, whether in connection herewith, with the transactions contemplated herein or with any unrelated transaction, (ii) any adverse change in the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower or any Subsidiary, (iii) any breach hereof or of any other Loan Document by any party thereto, (iv) any Default or Event of Default and (v) any other event or condition whatsoever, whether or not similar to any of the foregoing.

(4) Overadvances. If at any time the outstanding Revolving Loans cause the Total Utilization of Revolving Commitments to exceed the Borrowing Base then in effect (an “Overadvance”), the excess amount shall, subject to this Section 2.10, be immediately due and payable by the Borrower on demand by the Administrative Agent. The Administrative Agent in its sole discretion may require the Lenders to honor requests for Overadvances and to forbear from requiring the Borrower to cure an Overadvance, (i) when an Event of Default is continuing as long as (A) the Overadvance does not continue for more than thirty (30) consecutive days and after an Overadvance has been repaid, no additional Overadvance shall exist until thirty (30) days after such repayment, (B) the Overadvance, together with any outstanding Protective Advances, would not exceed an amount equal to 10% of the Borrowing Base in effect at the time of the making of such Overadvance and (C) the Total Utilization of Revolving Commitments would not exceed the Maximum Credit, in each case subject to the limitation in Section 2.01(2)(v). In no event shall Overadvances be required that would cause the Total Utilization of Revolving Commitments to exceed the Maximum Credit, subject to the limitation in Section 2.01(2)(v). The Administrative Agent’s authorization to require the Lenders to honor requests for Overadvances and to forbear from requiring the Borrowers to cure an Overadvance may be revoked at any time by the Required Lenders by written notice to the Administrative Agent. All Overadvances shall constitute Obligations secured by the Collateral and shall be entitled to all benefits of the Loan Documents. No Overadvance shall result in an Event of Default due to a Borrower’s failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. The Administrative Agent agrees to use its commercially reasonable best efforts to promptly notify the Lenders of the issuance of an Overadvance Loan; provided, that the Administrative Agent shall have no liability for any failure to provide any such notice.

#### SECTION 2.11 Evidence of Indebtedness.

(1) Lenders’ Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Subject to Section 2.12, any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender’s Revolving Commitments or Borrower’s

Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

SECTION 2.12      Register. Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The Register shall be available for inspection by Borrower or any Lender (with respect to (i) any entry relating to such Lender's Loans and (ii) the identity of the other Lenders, but not any information with respect to such other Lenders' Loans)) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Revolving Commitments and the Loans in accordance with the provisions of Section 10.07, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or Borrower's Obligations in respect of any Loan. The Borrower hereby designates Administrative Agent to serve as Borrower's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.12, and Borrower hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(2)      Notes. If so requested by any Lender by written notice to Borrower (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.07) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Revolving Loan or Swing Line Loan, as the case may be.

SECTION 2.13      Payments Generally.

(1)      Subject to Section 3.01, all payments to be made by the Borrower hereunder shall be made in Dollars without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Principal Office for payment and in Same Day Funds not later than 2:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. Any payments under this Agreement that are made later than 2:00 p.m., New York time, shall be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).



(2) Borrower hereby authorizes Administrative Agent to charge any of the Borrower's accounts with Administrative Agent in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder or under any other Loan Document (subject to sufficient funds being available in its accounts for that purpose).

(3) Except as otherwise expressly provided herein, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(4) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 12:00 p.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender hereunder or, in the case of the Lenders, for the account of the Borrower hereunder), that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(a) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A

notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13 shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Section 4.02 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan or fund any participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(e) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the Outstanding Amount of all Loans outstanding at such time in repayment or prepayment of such of the outstanding Loans then owing to such Lender.

SECTION 2.14 Sharing of Payments. Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as Cash Collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and amounts payable in respect of participations in Swing Line Loans, Protective Advances or Letters of Credit, fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased

from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.14 shall not be construed to apply to (a) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

SECTION 2.15 Incremental Facilities. Borrower may by written notice to Administrative Agent elect to request, prior to the Revolving Commitment Termination Date, an increase to the existing Revolving Commitments in an aggregate amount not to exceed \$100,000,000 following the Second Amendment Effective Date (any such increase, the “**New Revolving Loan Commitments**”); provided, that the aggregate amount of New Revolving Loan Commitments shall not result in the aggregate Commitments exceeding the “ABL Cap Amount” under (and as defined in) the ABL Intercreditor Agreement or cause any similar limit under any other intercreditor agreement to be exceeded. Each such notice shall specify (A) the date (each, an “**Increased Amount Date**”) on which Borrower proposes that the New Revolving Loan Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to Administrative Agent or such shorter period of time as consented to by Administrative Agent (B) the amount of the New Revolving Loan Commitments (which amount shall be at least \$5,000,000) and (C) the identity of each Lender or other Person that is an Eligible Assignee (each, a “**New Revolving Loan Lender**”) to whom Borrower proposes any portion of such New Revolving Loan Commitments be allocated and the amounts of such allocations; provided that Administrative Agent may elect or decline to arrange such New Revolving Loan Commitments in its sole discretion and any Lender approached to provide all or a portion of the New Revolving Loan Commitments may elect or decline, in its sole discretion, to provide a New Revolving Loan Commitment; provided, further, that, if the consent of the Administrative Agent, each Issuing Bank and each Swing Line Lender would be required pursuant to the terms of Section 10.07, each Lender and other Person that the Borrower proposes to become a New Revolving Loan Lender must be reasonably acceptable to Administrative Agent, each Issuing Bank and each Swing Line Lender (the consent of each of the Administrative Agent, each Issuing Bank and each Swing Line Lender not to be unreasonably withheld, conditioned or delayed). Such New Revolving Loan Commitments shall become effective, as of such Increased Amount Date; provided that (1) no Specified Event of Default shall exist at the time of, or result after giving effect to, such Increased Amount Date by giving effect to such New Revolving Loan Commitments; (2) the New Revolving Loan Commitments shall be effected pursuant to one or more Joinder Agreements executed and delivered by

Borrower, the New Revolving Loan Lender, and Administrative Agent, and each of which shall be recorded in the Register and each New Revolving Loan Lender shall be subject to the requirements set forth in Section 3.01(3); (3) Borrower shall make any payments required pursuant to Section 3.04 in connection with the New Revolving Loan Commitments; and (4) Borrower shall deliver or cause to be delivered any legal opinions, mortgage amendments (including updated and increased title insurance amount), notes or other documents reasonably requested by Administrative Agent in connection with any such transaction.

On any Increased Amount Date on which New Revolving Loan Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (a) each of the Revolving Loan Lenders shall assign to each of the New Revolving Loan Lenders, and each of the New Revolving Loan Lenders shall purchase from each of the Revolving Loan Lenders, at the principal amount thereof (together with accrued interest), such interests in the Revolving Loans outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Revolving Loan Lenders and New Revolving Loan Lenders ratably in accordance with their Revolving Commitments after giving effect to the addition of such New Revolving Loan Commitments to the Revolving Commitments, (b) each New Revolving Loan Commitment shall be deemed for all purposes a Revolving Commitment and each Loan made thereunder (a “**New Revolving Loan**”) shall be deemed, for all purposes, a Revolving Loan and (c) each New Revolving Loan Lender shall become a Lender with respect to the New Revolving Loan Commitment and all matters relating thereto.

Administrative Agent shall notify Lenders promptly upon receipt of Borrower’s notice of each Increased Amount Date and in respect thereof (y) the New Revolving Loan Commitments and the New Revolving Loan Lenders, and (z) in the case of each notice to any Revolving Loan Lender, the respective interests in such Revolving Loan Lender’s Revolving Loans, in each case subject to the assignments contemplated by this Section 2.15.

The terms and provisions of the New Revolving Loans shall be identical to the Revolving Loans; provided that if the Borrower determines to increase the Applicable Margin or fees payable in respect of the New Revolving Loan Commitments, such increase shall be permitted if the Applicable Margin or fees payable in respect of all Revolving Commitments and Revolving Loans shall be increased to equal such Applicable Margin or fees payable in respect of the New Revolving Loan Commitments; provided further that the Borrower at its election may pay arrangement, upfront or closing fees with respect to any New Revolving Loan Commitments without paying such fees with respect to the existing Revolving Commitments.

New Revolving Loan Commitments shall become Commitments under this Agreement pursuant to an amendment to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each New Revolving Loan Lender providing such New Revolving Loan Commitments and the Administrative Agent. Such amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15. In connection with any such amendment, Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to

the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such New Revolving Loan Commitments are provided with the benefit of the applicable Loan Documents.

SECTION 2.16 Defaulting Lenders.

(1) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 10.10 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent (including, for the avoidance of doubt, amounts owing in respect of any Protective Advance) hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to Issuing Bank or Swing Line Lender hereunder; *third*, to Cash Collateralize Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16(2)(b); *fourth*, as Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a Deposit Account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.16(2)(b); *sixth*, to the payment of any amounts owing to the Lenders, Issuing Bank or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, Issuing Bank or Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or reimbursement obligations with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its Pro Rata Share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, or such Loans are Protective Advances, such payment shall be applied solely to pay the Loans of, and reimbursement obligations with respect to Letters of Credit, Swing Line Loans and Protective Advances owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or reimbursement or participation obligations with respect to Letters of Credit, Swing Line Loans and Protective Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans are held by the Lenders pro rata in accordance with



the applicable Commitments without giving effect to Section 2.16(1)(b)(iii). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(1)(a) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.09 for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender); provided such Defaulting Lender shall be entitled to receive fees pursuant to Section 2.09 for any period during which that Lender is a Defaulting Lender only to extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16(2)(b).

(ii) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (i) above, Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit, Swing Line Loans or Protective Advances that has been reallocated to such Non-Defaulting Lender pursuant to clause (iii) below, (y) pay to Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iii) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letters of Credit, Swing Line Loans and Protective Advances shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) in the case of any Protective Advance, such Protective Advance is made in compliance with Section 2.10(1), (y) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless Borrower shall have otherwise notified Administrative Agent at such time, Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (z) such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 10.25, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(iv) Repayment of Swing Line Loans and Protective Advances; Cash Collateral. If the reallocation described in Section 2.16(1)(b)(iii) cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (A) first, prepay Protective Advances in an amount equal to the Administrative Agent's Fronting Exposure in respect of Protective Advances, (B) second, prepay Swing Line Loans in an amount equal to the Swing Line Lender's Fronting Exposure

and (C) Cash Collateralize the Issuing Banks' Fronting Exposures in accordance with Section 2.16(2)(b).

(2) Defaulting Lender Cure. If Borrower, Administrative Agent and each Swing Line Lender and Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances to be held pro rata by the Lenders in accordance with the applicable Commitments (without giving effect to Section 2.16(1)(b)(iii)), and if Cash Collateral has been posted with respect to such Defaulting Lender, the Administrative Agent will promptly return or release such Cash Collateral to Borrower, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(a) New Swing Line Loans/Protective Advances/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Line Loans unless it is satisfied that the participations therein will be fully allocated among Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and the Defaulting Lender shall not participate therein, (ii) no Issuing Bank shall be required to issue, extend or increase any Letter of Credit unless it is satisfied that the participations in any existing Letters of Credit as well as the new, extended or increased Letter of Credit has been or will be fully allocated among the Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and such Defaulting Lender shall not participate therein except to the extent such Defaulting Lender's participation has been or will be fully Cash Collateralized in accordance with Section 2.16(2)(b), and (iii) each Protective Advance will be fully allocated among Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and the Defaulting Lender shall not participate therein.

(b) Cash Collateral. At any time that there shall exist a Defaulting Lender, promptly following the written request of Administrative Agent or Issuing Bank (with a copy to Administrative Agent) Borrower shall Cash Collateralize Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.16(1)(b)(iii) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) Grant of Security Interest. Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to Administrative Agent, for the benefit of Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in



respect of Letters of Credit, to be applied pursuant to clause (ii) below. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and Issuing Bank as herein provided (other than any Permitted Liens), or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(ii) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.16 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.16 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (ii) the determination by Administrative Agent and Issuing Bank that there exists excess Cash Collateral; provided that, (x) subject to the other provisions of this Section 2.16, the Person providing Cash Collateral and Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations, and (y) Cash Collateral shall not be released during the continuance of a Default or Event of Default; provided further that to the extent that such Cash Collateral was provided by Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

(c) Lender Counterparties. So long as any Lender is a Defaulting Lender, such Lender shall cease to be a Lender Counterparty with respect to any Hedge Agreement entered into while such Lender was a Defaulting Lender.

**SECTION 2.17** Reserves. (a) Notwithstanding anything in this Agreement to the contrary, the Administrative Agent may at any time and from time to time in the exercise of its Permitted Discretion establish and increase or decrease any Reserves (such change in Reserves, a "Change") (including Reserves with respect to Hedging Agreements and Designated Cash Management Services Agreements); provided that (i) the Administrative Agent shall have provided the Borrower at least three Business Days' prior written notice of any such establishment or material increase of any Reserves (which notice shall include a reasonably detailed description of such Reserve being established or increased); provided that no such prior notice shall be required for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized; and (ii) the circumstances, conditions, events or contingencies existing or arising prior to the Closing Date and disclosed or known to the Administrative Agent shall not be the basis for any establishment or modification of any Reserves after the Closing Date, unless (x)

such Reserves relate to Taxes or (y) such circumstances, conditions, events or contingencies shall have changed in any material adverse respect since the Closing Date; provided, further, that the Administrative Agent may not implement reserves with respect to matters which are already specifically reflected in the eligibility standards for Eligible Accounts and Eligible Inventory.

(b) The amount of the Reserve established by the Administrative Agent shall have a reasonable relationship to the event, condition or other matter that is the basis for the Reserve and shall be based upon its consideration as to any factor, event, condition or other circumstance which the Administrative Agent reasonably determines: (i) will or could reasonably be expected to adversely affect the quantity, quality, mix or value of any ABL Priority Collateral, the enforceability or priority of the Collateral Agent's Liens thereon or the amount which the Secured Parties would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation thereof, (ii) will or could reasonably be expected to result in a Default or an Event of Default or (iii) could arise as a result of any collateral report or financial information delivered to the Administrative Agent by the Borrower or any Person on behalf of thereof being incomplete, inaccurate or misleading in any material respect. In exercising such judgment, the Administrative Agent may consider, without duplication, factors already included in or tested by the definition of Eligible Accounts and Eligible Inventory, and any other criteria including: (A) changes after the Closing Date in any concentration of risk with respect to Eligible Accounts or Eligible Inventory from the concentration of risk set forth in the field examinations and collateral audits conducted prior to the Closing Date and (B) any other factors arising after the Closing Date that affect or that could reasonably be expected to affect the credit risk of lending to the Borrower on the security of the ABL Priority Collateral.

(c) Upon the notification of any Change, the Administrative Agent shall be available to discuss such Change, and the Borrower and its Restricted Subsidiaries may take such action as may be required so that the event, condition, circumstance or new fact that is the basis for such Change no longer exists. In no event shall such notice and opportunity limit the right of the Administrative Agent to make a Change, unless the Administrative Agent shall have determined in its Permitted Discretion that the event, condition, other circumstance or new fact that is the basis for such Change no longer exists or has otherwise been adequately addressed by the Borrower or its Restricted Subsidiaries.

(d) Notwithstanding anything herein to the contrary, Reserves shall not duplicate eligibility criteria contained in the definition of "Eligible Accounts" or "Eligible Inventory" and vice versa, or reserves or criteria deducted in computing the cost or fair market value or book value of any Eligible Accounts or any Eligible Inventory and vice versa.

### **Article III**

#### **Taxes, Increased Costs Protection and Illegality**

##### **SECTION 3.01 Taxes.**

(1) **Defined Terms.** For purposes of this Section 3.01, the term “applicable Law” includes FATCA.

(2) Except as required by applicable Law, all payments by or on account of any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made without deduction or withholding for any Taxes.

(3) If any Loan Party or any other applicable withholding agent is required (as determined in the good faith discretion of an applicable withholding agent) by applicable Law to make any deduction or withholding on account of any Taxes from any sum paid or payable by or on account of any Loan Party to or for the account of any Lender or Agent under any of the Loan Documents:

(a) the applicable Loan Party shall use commercially reasonable efforts to notify the Administrative Agent of any such requirement or any change in any such requirement as soon as practicable after such Loan Party becomes aware of it; *provided* that any failure to provide such notification shall not affect the applicable payee’s indemnification rights hereunder;

(b) the applicable Loan Party or other applicable withholding agent shall make such deduction or withholding and pay to the relevant Governmental Authority any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for such Loan Party’s account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable to such Lender or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), such Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after the due date of payment of any Tax which it is required by clause (b) above to pay (or as soon as reasonably practicable thereafter), the applicable Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(4) **Status of Lender.** Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with such properly completed and executed documentation as is prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document, in each case as

will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (4)(a), (b)(i) through (iv) and (c) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Each such Lender shall, whenever any such documentation (including any specific documentation required below in this Section 3.01(4)) it previously delivered becomes obsolete, expired or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent in writing of its legal ineligibility to do so.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower and the Administrative Agent) two properly completed and duly executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(b) Each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming eligibility for the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, properly completed and duly executed copies of IRS Form W-8BEN (or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments un-der any Loan Document, properly completed and duly executed copies of IRS Form W-8BEN-E (or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty, and, in each case, such other documentation as required under the Code,

(ii) properly completed and duly executed copies of IRS Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) properly completed and duly executed certificates substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) or Section 881(c)(3)(B) of the Code, as applicable, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code, and, as applicable, that the portfolio interest is not contingent interest within the meaning of Section 871(h)(4) of the Code (any such certificate, a “**United States Tax Compliance Certificate**”) and (B) properly completed and duly executed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms),

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where such Foreign Lender is a partnership or a participating Lender), properly completed and duly executed copies of IRS Form W-8IMY (or any successor forms) of such Foreign Lender, accompanied by an IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, United States Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9 and any other required information or certification documents (or any successor forms) from each beneficial owner, as applicable (*provided* that, if a Lender is a partnership (and not a participating Lender) and if one or more beneficial owners are claiming the portfolio interest exemption, a United States Tax Compliance Certificate substantially in the form of Exhibit H-4 may be provided by such Foreign Lender on behalf of each such beneficial owner), or

(v) properly completed and duly executed copies of any other documentation prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(c) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this paragraph (c), the term “FATCA” shall include any amendments made to FATCA after the Closing Date.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender’s regarded owner and, as applicable, such Lender.



Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(4).

(5) Without duplication of other amounts payable by the Borrower pursuant to Section 3.01(3), the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(6) The Loan Parties shall, jointly and severally, indemnify a Lender or the Administrative Agent (each a “**Tax Indemnitee**”), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee on or attributable to any payment under or with respect to any Loan Document, and any Other Taxes payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01) (other than any penalties determined by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Tax Indemnitee), whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority (the Taxes described in this paragraph (6), the “**Indemnified Taxes**”); *provided* that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, such Tax Indemnitee will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes (which shall be repaid to the Borrower in accordance with Section 3.01(8)) so long as such efforts would not, in the sole determination of such Tax Indemnitee, result in any additional out-of-pocket costs or expenses not reimbursed by such Loan Party or be otherwise materially disadvantageous to such Tax Indemnitee. A certificate as to the amount of such payment or liability delivered by the Tax Indemnitee (with a copy to the Administrative Agent) or by the Administrative Agent on its own behalf or on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(7) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.07(7) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (7).

(8) If and to the extent that any party determines, in its sole discretion (exercised in good faith), determines that it has received a refund (whether received in cash or applied as a credit against any other cash Taxes payable) of any Taxes in respect of which it has

received indemnification payments or additional amounts under this Section 3.01, then such indemnified party shall pay to the relevant indemnifying party the amount of such refund, net of all out-of-pocket expenses of the indemnified party (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the indemnifying party, upon the request of the indemnified party, agrees to repay the amount paid over by the indemnified party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the indemnified party to the extent the indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(8), in no event will the indemnified party be required to pay any amount to an indemnified party pursuant to this Section 3.01(8) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require an indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any indemnifying party or any other Person.

(9) The agreements in this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement, and the payment, satisfaction or discharge of the Loans and all other amounts payable hereunder.

SECTION 3.02 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Term SOER Rate, or to determine or charge interest rates based upon the ~~Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market~~ Term SOER Rate, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue Eurodollar Rate Term Benchmark Loans or to convert Base Rate Loans to Eurodollar Rate Term Benchmark Loans shall be suspended, and (2) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Term SOER Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent without reference to the Eurodollar Term SOER Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Term Benchmark Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Term Benchmark Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Term SOER Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such



~~Eurodollar Rate Term Benchmark~~ Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such ~~Eurodollar Rate Term Benchmark~~ Loans and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the ~~Eurodollar Term SOER~~ Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the ~~Eurodollar Term SOER~~ Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the ~~Eurodollar Term SOER~~ Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 3.03      Inability to Determine Rates.

~~SECTION 3.03-~~ (a) Subject to clauses (b), (c), (d), (e) and (f) ~~and (g) below~~ of this Section 3.03, if ~~the Administrative Agent (in the case of clause (1) or (2) below) or the Required Lenders (in the case of clause (3) below) reasonably determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that:~~

~~(1) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan,~~

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ~~determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or~~ ascertaining the Adjusted Term SOER Rate or the Term SOER Rate (including because the Term SOER Reference Rate is not available or published on a current basis), for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOER Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or electronic mail as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Funding Notice in accordance with the terms of Section 2.01 or a new Conversion/Continuation Notice in accordance with the terms of Section 2.06, (1) any such notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any such notice that requests a Term

Benchmark Borrowing shall instead be deemed to be a Funding Notice or Conversion/Continuation Notice, as applicable, for a Base Rate Borrowing. Furthermore, if any Term Benchmark Loan is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 3.03(a) with respect to the Term SOFR Rate applicable to such Term Benchmark Loan, then until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Conversion/Continuation Notice in accordance with the terms of Section 2.06 or a new Funding Notice in accordance with the terms of Section 2.01, any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute a Base Rate Loan.

~~(3) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan;~~

~~the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.~~

~~(a) [reserved]~~

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event, ~~an Early Opt-in Election or an Other Benchmark Rate Election, as applicable,~~ and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then ~~(x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date,~~ such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written

notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

~~(e) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (e) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. the Administrative Agent shall not be required to deliver a Term SOFR Notice after the occurrence of a Term SOFR Transition Event and may do so in its sole discretion.~~

~~(c)~~ ~~(d)~~ In connection with the implementation of a Benchmark Replacement, Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

~~(d)~~ ~~(e)~~ The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, ~~an Early Opt-in Election or an Other Benchmark Rate Election, as applicable,~~ (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.03, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.03.

~~(e)~~ ~~(f)~~ Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR ~~or the Eurodollar~~ Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time

to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (C) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (D) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

~~(g)~~ (f) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Term Benchmark Borrowing ~~of~~, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, ~~either~~ the Borrower will be deemed to have converted any request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to a Base Rate ~~Loans~~Borrowing. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate. Furthermore, if any Term Benchmark Loan is outstanding on the date of the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to ~~a~~ ~~Relevant~~the Term SOER Rate applicable to such Term Benchmark Loan, then until such time as a Benchmark Replacement ~~for Dollars~~ is implemented pursuant to this Section 3.03, ~~then any~~ Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), ~~such Loan shall~~ be converted by the Administrative Agent to, and shall constitute, a Base Rate Loan ~~on such day~~.

SECTION 3.04 Increased Cost and Reduced Return; ~~and~~ Capital Adequacy; ~~Reserves on Eurodollar Rate Loans~~.

(1) Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (which term shall include Issuing Banks for purposes of this Section 3.04);

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any ~~Eurodollar Rate~~Term Benchmark Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes); or

(c) impose on any Lender or the ~~London~~applicable offshore interbank market any other condition, cost or expense affecting this Agreement or ~~Eurodollar Rate~~Term Benchmark Loans made by such Lender that is not otherwise accounted for in the definition of “~~Eurodollar~~Term SOER Rate” or this clause (1);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the **Eurodollar Term SOER** Rate (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(1) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it to a level below that which such Lender or such Lender's holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

SECTION 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(1) any continuation, conversion, payment or prepayment of any **Eurodollar Rate Term Benchmark** Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(2) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any ~~Eurodollar Rate~~Term Benchmark Loan on the date or in the amount notified by the Borrower; or

(3) any assignment of a ~~Eurodollar Rate~~Term Benchmark Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such ~~Eurodollar Rate~~Term Benchmark Loan or from fees payable to terminate the deposits from which such funds were obtained.

SECTION 3.06 Matters Applicable to All Requests for Compensation.

(1) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue ~~Eurodollar Rate~~Term Benchmark Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into ~~Eurodollar Rate~~Term Benchmark Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of ~~Eurodollar Rate~~Term Benchmark Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's ~~Eurodollar Rate~~Term Benchmark Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when ~~Eurodollar Rate~~Term Benchmark Loans made by other Lenders, as applicable, are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding ~~Eurodollar Rate~~Term Benchmark Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding ~~Eurodollar Rate~~Term Benchmark Loans and by such Lender are held pro rata (as to



principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

(4) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.07 Mitigation Obligations; Replacement of Lenders under Certain Circumstances.

(1) If (a) any Lender requests compensation under Section 3.04 or (b) a Loan Party is required to pay any Non-Excluded Taxes or Other Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, then such Lender shall (at the request of the applicable Loan Party) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 3.04, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Loan Parties hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If (a) any Lender requests compensation under Section 3.04 or ceases to make ~~Eurodollar Rate~~ Term Benchmark Loans as a result of any condition described in Section 3.02 or Section 3.04, (b) the Borrower is required to pay any Non-Excluded Taxes or Other Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (c) any Lender is a Non-Consenting Lender or (d) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent,

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (2)(c) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:



(i) Borrower may not make such election with respect to any Lender that is also an Issuing Bank unless, prior to the effectiveness of such election, Borrower shall have caused each outstanding Letter of Credit issued thereby to be cancelled or secured with Cash Collateral in the Minimum Collateral Amount;

(ii) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(4);

(iii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iv) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender's Commitment and outstanding Loans and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(v) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

(vi) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vii) such assignment does not conflict with applicable Laws; and

(viii) the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date; *provided* that in the case of any such termination of the Commitment of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable consent, waiver or amendment of the Loan Documents and such termination shall, with respect to clause (3) above, be in respect of all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender.**”

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 3.08 Survival. All of the Borrower’s obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

#### **Article IV**

##### **Conditions Precedent**

SECTION 4.01 Conditions on Closing Date. The obligation of each Lender to make Loans hereunder is subject to satisfaction (or waiver) of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(1) The Administrative Agent’s receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party (other than in the case clause (1)(e) below):

- (a) a Funding Notice, if applicable;
- (b) executed counterparts of this Agreement and the Guaranty;
- (c) a Note for each Lender which requests a Note at least three (3) Business Days prior to the Closing Date;
- (d) certificates of good standing from the secretary of state of the state of organization of each Loan Party and Top Parent, customary certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party and Top Parent certifying true and complete copies of the Organizational Documents attached thereto and evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and/or the other Loan Documents to which such Loan Party or Top Parent is a party or is to be a party on the Closing Date;

(e) a customary legal opinion from (i) Baker & Hostetler LLP, counsel to the Loan Parties, and (ii) each local counsel to the Loan Parties listed on Schedule 4.01(1)(e) in the jurisdictions indicated on such schedule;

(f) a certificate of a Responsible Officer certifying that the conditions set forth in Sections 4.01(6), 4.01(7), 4.01(8) and 4.01(13) have been satisfied;

(g) a solvency certificate from a Financial Officer of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit I;

(h) a Borrowing Base Certificate which reflects the results of the Closing A/R Field Examination and the Closing Inventory Appraisal;

(i) a letter of direction from the Borrower addressed to the Administrative Agent, on behalf of itself and the Lenders, directing the disbursement on the Closing Date of the proceeds of the Loans made on such date, if applicable;

(2) The Collateral Agent's receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party:

(a) each Collateral Document set forth on Schedule 4.01(2)(a) required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party that is party thereto, together with (subject to Section 6.13(2)):

(i) certificates, if any, representing the Pledged Collateral that is certificated common equity of Holdings, the Borrower and the Loan Parties' Subsidiaries (other than Excluded Subsidiaries) accompanied by undated transfer powers executed in blank; provided that this condition shall be deemed satisfied upon delivery to the Pari Collateral Agent as bailee for the Collateral Agent pursuant to the ABL Intercreditor Agreement, if applicable; and

(ii) evidence that all UCC-1 financing statements in the appropriate jurisdiction or jurisdictions for each Loan Party and Top Parent that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been provided for, and arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent shall have been made;

(3) The Arrangers shall have received the Annual Financial Statements and the Quarterly Financial Statements.

(4) [reserved].

(5) The Administrative Agent shall have received at least two (2) Business Days prior to the Closing Date all documentation and other information in respect of the Borrower and the Guarantors required under applicable "know your customer" and anti-money

laundrying rules and regulations, including the USA PATRIOT Act, that has been reasonably requested in writing by it at least ten (10) Business Days prior to the Closing Date.

(6) The representations and warranties set forth in the Loan Documents shall be true and correct in all material respects on and as of the Closing Date; *provided* that to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(7) No Default shall exist or would result from the proposed Borrowing on the Closing Date or from the application of the proceeds therefrom.

(8) Since December 31, 2016, no change, event or circumstance shall have occurred that has had or would reasonably be expected to have a Material Adverse Effect.

(9) On or prior to the Closing Date, the Borrower shall have obtained (a) public corporate credit ratings from each of Moody’s and S&P and (b) public credit ratings for the Term Loans and Senior Secured Notes from each of Moody’s and S&P.

(10) Each of the Collateral Trust Agreement, the ABL Intercreditor Agreement and the Grant Clawback Agreement shall have been fully executed by each of the parties thereto.

(11) All fees and expenses (in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower)) required to be paid hereunder on the Closing Date shall have been paid, or shall be paid substantially concurrently with any initial Borrowing on the Closing Date.

(12) (a) The Borrower shall have issued the Senior Secured Notes and funded the Term Loan under the Term Facility and (b) the Closing Date Refinancing shall have been consummated and (c)(x) Holdings shall have received at least \$62.7 million from the issuance Preferred Stock (on terms reasonably acceptable to the Administrative Agent) to an Investor and (y) Holdings shall have contributed such proceeds to the Borrower as cash common Equity Interests.

(13) After giving effect to the Transactions, the Borrower shall have Excess Availability in excess of \$90.0 million.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.02      Conditions to Borrowings after Closing Date.      The

obligation of each Lender to make any Loan, or Issuing Bank to issue any Letter of Credit (or, at Borrower's request, to amend any Letter of Credit to extend its term or increase its amount), on any Credit Date after the Closing Date is subject to the following conditions precedent:

(1) The representations and warranties of the Borrower contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowing; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(2) No Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds therefrom.

(3) After making the Credit Extensions requested on such Credit Date, the Total Utilization of Revolving Commitments shall not exceed the Line Cap then in effect, subject to the limitation in Section 2.01(2)(v);

(4) Either (a) the Administrative Agent shall have received a Funding Notice in accordance with the requirements hereof or (b) on or before the date of issuance of any Letter of Credit, Administrative Agent and Issuing Bank shall have received all other information required by the applicable Issuance Notice, and such other documents or information as Issuing Bank may reasonably require in connection with the issuance of such Letter of Credit.

(5) Each Funding Notice submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(1), (2) and (3) have been satisfied on and as of the date of the applicable Borrowing.

(6) If any proposed Credit Extension would trigger a Covenant Period that did not then exist or otherwise be made during a Covenant Period, the Administrative Agent shall have received within one (1) Business Day prior to such request a Compliance Certificate demonstrating (with detailed calculations) that the Fixed Charge Coverage Ratio (calculated for purposes of demonstrating compliance with Section 7.12) is no less than 1.00:1.00 based on the most recent financial statements delivered pursuant to Section 6.01.

In addition, solely to the extent the Borrower has delivered to the Administrative Agent a Notice of Intent to Cure pursuant to Section 8.04, no request for a Credit Extension shall be honored after delivery of such notice until the applicable Cure Amount specified in such notice is actually received by the Borrower. For the avoidance of doubt, the preceding sentence shall have no effect on the continuation or conversion of any Loans outstanding.

## **Article V**

### **Representations and Warranties**

The Borrower and, in respect of Sections 5.01, 5.02, 5.04, 5.06, 5.13 and 5.17 only, Holdings, represent and warrant to the Administrative Agent and the Lenders, at the time of

each Credit Extension (solely to the extent required to be true and correct for such Credit Extension pursuant to Article IV):

SECTION 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Restricted Subsidiaries:

(1) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification,

(4) [reserved]; and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (1), (2)(a), (3) or (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.02 Authorization; No Contravention.

(1) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person's Organizational Documents;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of the Borrower (other than as permitted by Section 7.01) under (i) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order of any Governmental Authority to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation or creation of Liens referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation or creation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.03 Governmental Authorization No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement), and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether considered in a proceeding in equity or at law) and principles of good faith and fair dealing.

SECTION 5.05 Financial Statements; No Material Adverse Effect.

(1) The Annual Financial Statements and the Quarterly Financial Statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date(s) thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (i) except as otherwise expressly noted therein and (ii) subject, in the case of the Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(2) Since December 31, 2020, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

SECTION 5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of the Restricted Subsidiaries that would reasonably be expected to have a



Material Adverse Effect.

SECTION 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower or the Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters. Any Inventory produced by the Loan Parties has or will have been produced in compliance with the applicable requirements of the Fair Labor Standards Act, as amended.

SECTION 5.08 Ownership of Properties. The Borrower and its Restricted Subsidiaries has good and marketable title to all its Collateral (subject to exceptions that are, in the aggregate, not material), free and clear of any Lien other than Permitted Liens.

SECTION 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, to the knowledge of any Loan Party or any Restricted Subsidiary, there are no occurrences, facts, circumstances or conditions which could reasonably be expected to give rise to an Environmental Claim.

SECTION 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Restricted Subsidiaries has timely filed all material Tax returns and reports required to be filed, and have timely paid all Taxes due and payable by it (whether or not shown in a Tax return), except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP.

SECTION 5.11 ERISA Compliance. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other ERISA Events for which liability is reasonably expected to occur, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 5.12 Permitted Supply Chain Financings. Borrower has supplied to the Administrative Agent a complete list of all Permitted Supply Chain Financings in effect as of the Second Amendment Effective Date.

SECTION 5.13 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No Loan Party is required to be registered as an “investment company” under the Investment Company Act of 1940.

SECTION 5.14 Disclosure. As of the Closing Date, none of the written

information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections (with respect to which the Borrower represents only that such information was prepared in good faith based on assumptions believed to be reasonable at the time), *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature. All of the reports, financial statements, certificates (including Borrowing Base Certificates) and other written information (other than projected financial information) that have been made available by or on behalf of the Borrower to any Secured Parties delivered hereunder are complete and correct in all material respects and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based on assumptions believed to be reasonable at the time.

As of the Second Amendment Effective Date, to the best knowledge of the Borrower, the information included in any Beneficial Ownership Certification provided on or prior to the Second Amendment Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 5.15      EEA Financial Institutions. No Credit Party is an EEA Financial Institution.

SECTION 5.16      Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and the Subsidiaries, on a consolidated basis, are Solvent.

SECTION 5.17      Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by Holdings, the Borrower, their respective Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. Holdings, the Borrower, their respective Subsidiaries and their respective officers and, to the knowledge of the Borrower, its directors, employees and agents are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) Holdings, (b) the Borrower, (c) any of their respective Subsidiaries or (d) to the knowledge of the Borrower, any of their respective directors, officers, or employees, or (d) to the knowledge of the Borrower, any of their respective agents that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws

or Sanctions applicable to Holdings, the Borrower and their respective Subsidiaries.

SECTION 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to Collateral Agent (or the Pari Collateral Agent as bailee for the Collateral Agent pursuant to the ABL Intercreditor Agreement, if applicable) of any Pledged Collateral required to be delivered pursuant hereto or the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, perfected and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral purported to be covered thereby.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement, (C) on the Closing Date and until required pursuant to Section 6.13 or 4.01, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01 or (D) any Excluded Assets.

SECTION 5.19 Processing of Receivables. In the ordinary course of its business, each Loan Party processes its accounts receivable in a manner such that (i) each payment received by such Loan Party in respect of accounts receivables is allocated to a specifically identified invoice or invoices, which invoice or invoices corresponds to a particular account receivable owing to such Loan Party and (ii) if, at any time any accounts receivable to such Loan Party are included in a Permitted Supply Chain Financing, payments received in respect of those accounts receivable included in a Permitted Supply Chain Financing would be identifiable and separable from payments received in respect of accounts receivable not so included in a Permitted Supply Chain Financings.

## **Article VI**

### **Affirmative Covenants**

So long as the Termination Conditions have not been satisfied, the Borrower shall (and, with respect to Sections 6.05(1) and 6.11 only, Holdings shall), and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

SECTION 6.01 Financial Statements and Borrowing Base Certificate. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent

to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in Section 6.02) each of the following:

(1) subject to the immediately succeeding proviso, within ninety (90) days after the end of each fiscal year of the Borrower (or, in the case of the fiscal year ending December 31, 2017, within one hundred twenty (120) days after the end of such fiscal year), commencing with the fiscal year ending December 31, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income and cash flows for such fiscal year, together with related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year, in reasonable detail and all prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a “going concern” or like qualification that is due to (i) the impending maturity of the Facility, the Term Facility, the Senior Secured Notes, the Specified Pari Passu Lien Debt or any permitted refinancings thereof, (ii) any anticipated inability to satisfy the Financial Covenant or (iii) an actual Default of the Financial Covenant);

(2) within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter and the related (a) consolidated statement of income for such fiscal quarter and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding fiscal quarter, as applicable, of the previous fiscal year and the corresponding portion of the previous fiscal year, accompanied by an Officer’s Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes (it being understood that footnotes and immaterial departures from GAAP consistent with past practice are acceptable to the Lenders);

(3) within ninety days (90) days after the end of each fiscal year of the Borrower (or, in the case of the fiscal year ending December 31, 2017, within one hundred twenty (120) days after the end of such fiscal year), commencing with respect to the fiscal year ending December 31, 2017, a consolidated budget for the following fiscal year on a quarterly basis as customarily prepared by management of the Borrower for its internal use (including any projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year and the related consolidated statements of projected income, in each case, to the extent prepared by management of the Borrower and included in such consolidated budget), which projected financial statements shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such projected financial statements (it being understood that any such projections are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of

the Loan Parties and that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material);

(4) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(1) and 6.01(2), the related unaudited (it being understood that such information may be audited at the option of the Borrower) consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements;

(5) promptly following each delivery of the information required pursuant to Section 6.01(1) and 6.01(2) above (but no more frequently than quarterly), commencing with the delivery of information with respect to the fiscal quarter ending September 30, 2017, to use commercially reasonable efforts to participate in a conference call for Lenders to discuss the financial position and results of operations of the Borrower and its Subsidiaries for the most recently ended fiscal period for which financial statements have been delivered; *provided*, that if the Borrower or any Parent Company is holding a conference call open to the public to discuss the financial condition and results of operations of the Borrower and its Subsidiaries or such Parent Company and its Subsidiaries for the most recently ended fiscal period for which financial statements have been delivered pursuant to Sections 6.01(1) or 6.01(2) above, the Borrower will not be required to hold a second, separate call for the Lenders so long as the Lenders are provided access to such initial conference call; and

(6) as soon as available, but in any event within 20 days (or if such 20<sup>th</sup> day is not a Business Day, the next succeeding Business Day) (or, during any Weekly Reporting Period, within three Business Days) after each Borrowing Base Reporting Date, a completed Borrowing Base Certificate calculating and certifying the Borrowing Base and the Excess Availability as of such Borrowing Base Reporting Date, in each case signed by a Financial Officer of the Borrower and accompanied by the supporting documentation required in connection therewith as set forth on Schedule 6.01.

(7) Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01); *provided* that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may be audited at the option of the Borrower), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with



generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a “going concern” or like qualification that is due to (i) the impending maturity of the Facility, the Senior Secured Notes or any permitted refinancings thereof, (ii) any anticipated inability to satisfy the Financial Covenant or (iii) an actual Default of the Financial Covenant). In addition to the foregoing, the Borrower shall deliver to the Administrative Agent (for prompt further distribution by the Administrative Agent to each Lender), within sixty (60) days after the end of each fiscal quarter of the Borrower, a consolidated balance sheet of the “mini mill” segment of United States Steel Corporation and its Subsidiaries (as adjusted to eliminate the accounts of any entities other than U.S. Steel Holdco LLC and its Subsidiaries) as at the end of such fiscal quarter and the related consolidated statements of income and cash flows for such fiscal quarter, which such quarterly financial statements shall be unaudited financial statements prepared internally on a stand-alone basis used for purposes of consolidation into financial statements of United States Steel Corporation, and independent of any Parent Company of the Borrower (it being understood that the example financial statements for the fiscal quarter ended March 31, 2021 provided to the Administrative Agent prior to the Second Amendment Effective Date are in a form that satisfies the requirements of this sentence).

Any financial statements required to be delivered pursuant to Sections 6.01(1) or 6.01(2) shall not be required to contain all purchase accounting adjustments relating to transaction(s) permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements.

**SECTION 6.02**      Certificates; Other Information.      Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02):

(1)      no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower commencing with such delivery for the fiscal month ending August 31, 2017;

(2)      promptly after the same are publicly available, copies of all special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(3)      promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the terms of the Senior Secured Notes Indenture so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount (in each case, other than in connection with any

board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(4) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), (a) a report setting forth the information required by Section 1 of the Perfection Certificate (or confirming that there has been no change in such information since the later of the Closing Date or the last report delivered pursuant to this clause (a)) and (b) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such list or a confirmation that there is no change in such information since the later of the Closing Date and the last such list;

(5) promptly following any request therefor, but subject to the limitations set forth in Section 6.10 and Section 10.09, such additional information regarding the operations, business affairs and financial condition of any Loan Party or Restricted Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender may reasonably request in writing from time to time, including information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the US PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws;

(6) promptly upon the effectiveness of any material amendment or modification of, or any waiver of the rights of the Borrower or any Restricted Subsidiary under, any document evidencing any Permitted Supply Chain Financing, written notice of such amendment, modification or waiver describing in reasonable detail the purpose and substance thereof;

(7) if any Loan Party proposes to enter into a Permitted Supply Chain Financing, the Borrower will provide the Administrative Agent and the Collateral Agent written notice of such proposed entry (a “**Permitted Supply Chain Notice**”) at least five Business Days prior to entering into such Permitted Supply Chain Financing. Each Permitted Supply Chain Notice will (i) identify the Account Debtor whose accounts payable are subject to such Permitted Supply Chain Financing (the “**Applicable Account Debtor**”), (ii) attach the purchase agreement or other documentation relating to such Permitted Supply Chain Financing and (iii) attach an updated Borrowing Base Certificate treating all Accounts of the Applicable Account Debtor as non-Eligible Accounts hereunder, and, thereafter (until delivery of the next Borrowing Base Certificate pursuant to Section 6.01(d)), the Borrowing Base shall each be determined based upon such updated Borrowing Base Certificate unless the Borrower notifies the Administrative Agent that the applicable Permitted Supply Chain Financing will not be consummated or that the applicable Permitted Supply Chain Financing has been terminated;

(8) if any Loan Party sells, transfers or otherwise disposes of any Collateral, (i) such Collateral shall thereafter be excluded from the Borrowing Base and (ii) if the Collateral so sold, transferred or otherwise disposed of constitutes more than 10% of the Borrowing Base at



such time, the Borrower shall deliver to the Administrative Agent an updated Borrowing Base Certificate giving effect to such transaction;

(9) If any of the Material Indebtedness are outstanding after the date that is 45 days prior to the stated maturity date of such Material Indebtedness, the Borrower shall furnish to the Administrative Agent (i) on a bi-weekly basis, reports in form and scope reasonably satisfactory to the Administrative Agent detailing the current Liquidity and (ii) on each Business Day, an email setting forth Liquidity as of such Business Day; and

(10) Within 10 business days after July 31 of each fiscal year (commencing with July 31, 2022), a Responsible Officer of the Borrower shall deliver to the Administrative Agent a certificate attaching (a) a copy of the ESG KPI Annual Report for the most recently-ended fiscal year at such time and (b) a review report of the ESG KPI Requirements Assurance Provider confirming that the ESG KPI Requirements Assurance Provider is not aware of any modifications that should be made to such computations in order for them to be presented in all material respects in conformity with the applicable reporting criteria. The Borrower's compliance with the ESG KPI Requirements shall be determined based on the findings of the ESG KPI Annual Report as confirmed by such review report.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's (or any Parent Company's) website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent and including, for the avoidance of doubt, the SEC's website); *provided* that (i) upon written request by the Administrative Agent, the Borrower will deliver paper copies of such documents to the Administrative Agent for further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02) until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents or link and, upon the Administrative Agent's request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on IntraLinks, SyndTrak, ClearPar or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to Holdings, their Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with

respect to such Person's securities (each, a "Public Lender"). The Borrower hereby agrees that (i) at the Administrative Agent's request, all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" will appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower will be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided, however, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09*); (iii) all Borrower Materials marked "PUBLIC" and, except to the extent the Borrower notifies the Administrative Agent to the contrary, any Borrower Materials provided pursuant to Section 6.01(1), 6.01(2) or 6.02(1) are permitted to be made available through a portion of the Platform designated as "Public Side Information"; and (iv) the Administrative Agent and the Arrangers shall be entitled to treat Borrower Materials that are not specifically identified as "PUBLIC" as being suitable only for posting on a portion of the Platform not designated as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Anything to the contrary notwithstanding, nothing in this Agreement will require Holdings, the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product; *provided that in the event that the Borrower does not provide information that otherwise would be required to be provided hereunder in reliance on the exclusions in this paragraph relating to violation of any obligation of confidentiality, the Borrower shall use commercially reasonable efforts to provide notice to the Administrative Agent promptly upon obtaining knowledge that such information is being withheld (but solely if providing such notice would not violate such obligation of confidentiality).*

SECTION 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent of:

(1) the occurrence of any Default (which notice shall be provided to all Lenders);

(2) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Subsidiary that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;

(3) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect;

(4) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect; and

(5) any change in the information provided in the Beneficial Ownership Certification delivered to a Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1), (2), (3), (4) or (5) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.04 [Reserved].

SECTION 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clause (1) or (2) to the extent (other than with respect to the preservation of the existence of the Borrower) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or pursuant to any merger, consolidation, liquidation, dissolution or disposition permitted by Article VII.

SECTION 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted and any repairs and replacements that are the obligation of the owner or landlord of any property leased by the Borrower or any of the Restricted Subsidiaries excepted.

SECTION 6.07 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to the Borrower's and the Restricted Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the

Administrative Agent, information presented in reasonable detail as to the insurance so carried; *provided* that notwithstanding the foregoing, in no event will the Borrower or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. Subject to Section 6.13(2), each such policy of insurance will, as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder.

SECTION 6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and comply, as applicable, with the USA PATRIOT Act, and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except if (a) the validity or applicability of which the Borrower or any Subsidiary thereof is contesting in good faith by appropriate proceedings or (b) the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

SECTION 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower and subject, in all events, to the conditions of any applicable lease or sublease and the Borrower's and its Restricted Subsidiaries' rules regarding safety and security; *provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower's expense; *provided further* that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions

with the Borrower's independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02.

SECTION 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations and requirements in any Collateral Document, the ABL Intercreditor Agreement and/or the Collateral Trust Agreement, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(1) (x) upon the acquisition of any material assets by the Borrower or any Subsidiary Guarantor or (y) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets constituting ABL Priority Collateral held by such Subsidiary (in each case, other than assets constituting ABL Priority Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien)):

(a) cause each Domestic Subsidiary that the Borrower elects to designate a Subsidiary Guarantor to satisfy the Collateral and Guarantee Requirement and to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and

(A) [reserved];

(B) [reserved];

(C) within sixty (60) days after such designation, take and cause the applicable Domestic Subsidiary that the Borrower elects to designate a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to take customary action(s) (including the filing of Uniform Commercial Code financing statements) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected (subject to Permitted Liens) Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within sixty (60) days after the reasonable request therefor by the Administrative Agent (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request.

(2) Reserved.

SECTION 6.12 [Reserved].

SECTION 6.13 Further Assurances and Post-Closing Covenant.

(1) Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonable request from time to time in order to carry out more effectively the purposes of the Collateral Documents and to satisfy the Collateral and Guarantee Requirement.

(2) As promptly as practicable, and in any event no later than ninety (90) days after the Closing Date or such later date as the Administrative Agent reasonably agrees to in writing, including to reasonably accommodate circumstances unforeseen on the Closing Date, deliver the documents or take the actions specified in Schedule 6.13(2), in each case except to the extent otherwise agreed by the Administrative Agent pursuant to its authority as set forth in the definition of the term “Collateral and Guarantee Requirement.”

SECTION 6.14 Use of Proceeds. The proceeds of the Loans, together with the proceeds of the Senior Secured Notes, the Term Loans and cash on hand, will be used (i) to repay Indebtedness incurred under the Closing Date Refinanced Indebtedness, in each case together with any premium and accrued and unpaid interest thereon and any fees and expenses with respect thereto, (ii) to pay the Transaction Expenses (including in connection with the issuance of the Senior Secured Notes), and (iii) for working capital and general corporate purposes and for any other purpose not prohibited by the Loan Documents. No part of the proceeds of any Loan will be used, directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Federal Reserve Board, including Regulations T, U, and X. Letters of Credit will be requested and used only to finance the general corporate purposes (including working capital needs) of the Borrower, and will not be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Federal Reserve Board, including regulations T, U and X. No part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, by the Borrower (i) in violation of the U.S. Foreign Corrupt Practices Act or any other applicable Anti-Corruption Laws, (ii) for the purpose of funding or financing any activities or business of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent it would be permissible for a Lender to finance such activities or business, or (iii) in any manner that would result in the violation of any Sanctions by any party hereto.

SECTION 6.15 [Intentionally Omitted].

SECTION 6.16 Master Equipment Lease. Within 30 days after the applicable Early Buyout Option Date of each Equipment Sub-sublease, Borrower shall exercise



its option to terminate the applicable Equipment Sub-sublease and the associated Sublease (as defined in the Equipment Lease) pursuant to Section 13 of such Equipment Sub-sublease.

**SECTION 6.17**      Field Examinations and Inventory Appraisals. The Loan Parties will permit the Administrative Agent and any Persons designated by the Administrative Agent (including any consultants, accountants, appraisers and attorneys designated by the Administrative Agent) to conduct (a) field examinations of the books and records of the Borrower and the other Loan Parties relating to the Borrower's computation of the Borrowing Base or any component thereof and the related practices and reporting and control systems and (b) appraisals of the Inventory included in the Borrowing Base, all upon reasonable notice and at reasonable times during normal business hours and as often as may reasonably be requested by the Administrative Agent; provided that, notwithstanding anything to the contrary in Section 10.04, only one such field examination and only one such Inventory appraisal in any period of 12 consecutive months shall be at the expense of the Loan Parties (other than the first 12 consecutive months after the Closing Date, in which three Inventory appraisals shall be at the expense of the Loan Parties) unless (i) an Event of Default shall have occurred and be continuing, in which case any field examination and appraisals commenced during the continuance of such Event of Default shall be at the expense of the Loan Parties, or (ii) Excess Availability shall be less than the greater of (x) 15.0% of the Line Cap and (y) \$25,000,000 on any day, in which case one additional field examination and one additional appraisal may be conducted at the expense of the Loan Parties during the period of 12 consecutive months commencing on such day; provided further that, notwithstanding the foregoing, in the event that the Borrower shall have consummated any Permitted Acquisition or similar Investment, the Borrower may request that the Administrative Agent conduct a field examination and an appraisal with respect to the Accounts and Inventory acquired by the Loan Parties as a result thereof, and any such field examinations and appraisals shall be at the expense of the Loan Parties; and provided further that, at the request of the Borrower, the Administrative Agent may, in its Permitted Discretion, agree that only one such field examination and only one such Inventory appraisal shall be conducted in any period of 24 consecutive months (so long as during any such 24 consecutive month period, no Borrowings are outstanding) (however, if a Borrowing occurs when the most recent Inventory appraisal and/or field exam was conducted more than 12 months prior to that Borrowing, the Administrative Agent shall within 60 days cause an inventory appraisal and/or field exam to be conducted as of the last day of the calendar month most recently ended prior to the date of such Borrowing). For purposes of this Section 6.17, it is understood and agreed that a single field examination and a single appraisal may be conducted at multiple relevant sites and involve one or more Loan Parties and their assets. All field examinations and appraisals shall be conducted by professionals (including appraisers) reasonably satisfactory to the Administrative Agent and conducted and prepared on a basis reasonably satisfactory to the Administrative Agent. The Loan Parties acknowledge that the Administrative Agent, after exercising its rights under this Section 6.17, may prepare and distribute to the Lenders certain reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders.

**SECTION 6.18**      Cash Management Systems.

(1)      The Loan Parties shall, as promptly as practicable after the Closing Date (and in any event within 120 days after the Closing Date, or such longer period as the



Administrative Agent may agree to) and at all times thereafter, (i) use commercially reasonable efforts to cause all the Account Debtors on any and all Accounts of the Loan Parties to make all payments and remittances with respect to such Accounts into one or more deposit accounts located with a depository bank in the United States of America (or into one or more lockboxes established and maintained by a depository bank in the United States of America and with respect to which such depository bank retrieves and process all checks and other evidences of payment so received at such lockbox and deposits the same into one or more deposit accounts located with it in the United States of America) (such deposit accounts being referred to as the “**Collection Deposit Accounts**” and such lockboxes being referred to as the “**Collection Lockboxes**”), (ii) cause all proceeds of the disposition of any ABL Priority Collateral to be deposited directly into a Collection Deposit Account, (iii) cause all amounts received in the Collection Lockboxes to be remitted on a daily basis to the Collection Deposit Accounts, and (iv) deposit or cause to be deposited promptly, and in any event no later than the second Business Day after the date of its receipt thereof, all Cash, checks, drafts or other similar items of payment received by it relating to or constituting payments or remittances with respect to any Accounts of any Loan Party into one or more Collection Deposit Accounts or Collection Lockboxes in precisely the form in which they are received (but with any endorsements of such Loan Party necessary for deposit or collection), and until they are so deposited to hold such payments in trust for the benefit of the Collateral Agent.

(2) The Loan Parties shall use commercially reasonable efforts to ensure that as promptly as practicable after the Closing Date (but in any event within 120 days after the Closing Date, or such longer period as the Administrative Agent may agree to) and at all times thereafter each depository bank where a Collection Deposit Account is maintained, and each depository bank that maintains a Collection Lockbox, shall have entered into a Control Agreement with respect to each such deposit account or lockbox. Upon the commencement and during the continuance of any Cash Dominion Period, all funds deposited into any Collection Deposit Account shall be directed by wire transfer on a daily basis to the Administrative Agent Account.

(3) Any Loan Party may replace any Collection Deposit Account or Collection Lockbox, or establish any new Collection Deposit Account or Collection Lockbox; provided that, in each case, that each such replacement or new Collection Deposit Account or Collection Lockbox shall be subject to a Control Agreement in favor of the Collateral Agent and shall otherwise meet the requirements of this Section 6.18.

(4) All amounts deposited in the Administrative Agent Account shall be deemed received by the Administrative Agent in accordance with Section 2.13 and during any Cash Dominion Period shall be applied (and allocated) by the Administrative Agent in accordance with Section 2.05(3)(b). In no event shall any amount be so applied unless and until such amount shall have been credited in immediately available funds to the Administrative Agent Account. Any amount so received in a currency other than Dollars may be converted to Dollars in accordance with the Administrative Agent’s customary practices.

(5) The Collateral Agent shall promptly (but in any event within one Business Day) furnish written notice to each depositary bank subject to a Control Agreement of any termination of a Cash Dominion Period.

(6) Without the prior written consent of the Administrative Agent, no Loan Party shall modify or amend the instructions pursuant to any of the Control Agreements. So long as no Cash Dominion Period is continuing, each Loan Party shall, and the Collateral Agent hereby authorizes each Loan Party to, enforce and collect all amounts owing on the Inventory and Accounts and each Loan Party shall have sole control over the manner of disposition of funds in the Collection Deposit Accounts subject to the Deposit Agreement; provided that such authorization may, at the direction of the Collateral Agent, be terminated during any Cash Dominion Period.

## Article VII

### Negative Covenants

So long as the Termination Conditions are not satisfied:

SECTION 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) that secures obligations under any Indebtedness or any related guarantee of Indebtedness on any asset or property of the Borrower or any Restricted Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

For purposes of determining compliance with this Section 7.01, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in the definition thereof, but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, the Borrower will, in its sole discretion, be entitled to divide, classify or reclassify (other than the reclassification of the Liens securing obligations under this Agreement, the Term Facility and the Senior Secured Notes), in whole or in part, any such Lien (or any portion thereof) among one or more of such categories or clauses in any manner.

SECTION 7.02 [Reserved].

SECTION 7.03 Fundamental Changes. The Borrower will not (i) consolidate or merge with or into any other Person or (ii) sell, lease or otherwise transfer, directly or indirectly, all or substantially all of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, to any other Person; *provided* that the Borrower may permit any entity to be merged into the Borrower or may consolidate with or merge into or sell or otherwise

(except by lease) dispose of its assets as an entirety or substantially as an entirety to any solvent entity organized under the laws of the United States, any state thereof or the District of Columbia, which expressly assumes in writing reasonably satisfactory to the Administrative Agent the due and punctual payment and performance of the Obligations hereunder and under the Loan Documents delivered pursuant to this Agreement, if (x) after giving effect to such consolidation, merger or other disposition, no Default shall have occurred and be continuing and (y) any such disposition shall not release the limited liability company that originally executed this Agreement as the “Borrower” from its liability as obligor hereunder or under any Loan Documents delivered pursuant to this Agreement.

SECTION 7.04      Sale of Accounts. The Borrower will not, and will not permit any Loan Party to, sell, transfer, or otherwise dispose of any Accounts owned by the Borrower or any Loan Party in connection with any financing or factoring transaction other than (x) in connection with a Permitted Supply Chain Financing and (y) a sale of Accounts that are not Eligible Accounts in the ordinary course of business in connection with the collection thereof.

SECTION 7.05      [Reserved].

SECTION 7.06      [Reserved].

SECTION 7.07      [Reserved].

SECTION 7.08      [Reserved].

SECTION 7.09      [Reserved].

SECTION 7.10      [Reserved].

SECTION 7.11      [Reserved].

SECTION 7.12      Financial Covenant. During any period (each, a “**Covenant Period**”) (a) commencing on any date on which Excess Availability is less than the greater of (i) 10% of the Line Cap and (ii) \$13,000,000 at any time and (b) ending on the date on which Excess Availability shall have been greater than the greater of (i) 10% of the Line Cap and (ii) \$13,000,000 for 20 consecutive calendar days (measured from, with respect to the Borrowing Base, the first Borrowing Base Reporting Date with respect to which Excess Availability exceeded the greater of 10.0% of the Line Cap and \$13,000,000), the Borrower shall not permit the Fixed Charge Coverage Ratio to be less than 1.00 to 1.00 (such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent pursuant to Section 6.01(1) and Section 6.01(2) for such Test Period) (the “**Financial Covenant**”).

## Article VIII

### Events of Default and Remedies

SECTION 8.01 Events of Default. Each of the events referred to in clauses (1) through (11) of this Section 8.01 shall constitute an “**Event of Default**”:

(1) Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or any amount payable to an Issuing Bank in reimbursement of any drawing under a Letter of Credit or any Cash Collateralization required pursuant to Section 2.03 or (b) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(2) Specific Covenants. The Borrower, any Subsidiary Guarantor fails to perform or observe any term, covenant or agreement contained in any of Section 6.01(6) (subject to a grace period of three (3) days), 6.03(1), 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03), 6.07, 6.16, 6.17, 6.18 or Article VII; *provided* that the Borrower’s failure to comply with the Financial Covenant is subject to cure pursuant to Section 8.04; or

(3) Other Defaults. The Borrower or any Subsidiary Guarantor fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above and other than any failure to observe or perform any provision of Section 6.02(10)) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; *provided* that, solely with respect to any default that (x) was not the result of any action or inaction by the Borrower or any Subsidiary Guarantor that is intended to avoid compliance with the Loan Documents while knowing that such action or inaction would result in a default and (y) is capable of cure, such thirty (30) day period shall be extended for up to an additional thirty (30) days so long as the Borrower and any applicable Subsidiary Guarantor are diligently pursuing a cure for such default; or

(4) Representations and Warranties. Any representation, warranty, certification made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made and, if the circumstances giving rise to such untrue representation, warranty or certification are susceptible to being cured in all material respects, such untrue representation, warranty or certification shall not be cured in all material respects for five (5) days after the earlier to occur of (a) the date on which an officer of the Borrower shall obtain knowledge thereof or (b) the date on which written notice thereof shall have been given to the Borrower by the Administrative Agent; or

(5) Cross-Default. The Borrower or any Restricted Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount of not less than

the Threshold Amount, or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default thereunder by the Borrower or any Restricted Subsidiary), in each case of the foregoing clauses (a) and (b), the effect of which failure, default or other event (i) results in acceleration of the maturity of any such Indebtedness or (ii) is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem all of such Indebtedness to be made, prior to its stated maturity; *provided* that (A) in the case of the foregoing clause (ii), only after the lapse of a cure period, equal to the greater of five Business Days or the cure period specified in the instrument governing such Indebtedness and (B) clause (b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(6) Insolvency Proceedings, etc. The Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(7) Judgments. There is entered against the Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, a final non-appealable judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not paid or covered by insurance or indemnities as to which the insurer or indemnity has been notified of such judgment or order and the applicable insurance company or indemnity has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(8) ERISA. An ERISA Event occurs that, when taken together with all other ERISA Events that have occurred, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(9) Invalidity of Subsidiary Guarantees. Any Guarantee of the Obligations of any Subsidiary Guarantor shall cease for any reason to be in full force and effect, unless such Guarantee is released pursuant to the release provisions hereof or of the Guaranty; or

(10) Invalidity of Liens. Any Lien purported to be created under any Collateral Document with respect to a material portion of the Collateral shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected lien on all or a substantial part of the Collateral, with the priority required by this Agreement or the applicable Collateral Document, except as a result of (i) a sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or (ii) a permitted release of the applicable Collateral in accordance with the terms of the Loan Documents.

Notwithstanding anything to the contrary herein, it is understood and agreed that any failure to observe or perform any provision of Section 6.02(10) shall not constitute a Default or Event of Default hereunder and any such failure shall, to the extent applicable, only cause the applicable ESG KPI Pricing Adjustment or ESG KPI Commitment Fee Adjustment, as the case may be.

SECTION 8.02 Remedies upon Event of Default. Subject to Section 8.04, if any Event of Default occurs and is continuing, the Administrative Agent may with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

(1) declare the Commitments of each Lender to be terminated, whereupon such Commitments and obligation will be terminated;

(2) declare the obligation of the Issuing Bank to issue any Letter of Credit to be terminated, whereupon such obligations will be terminated;

(3) declare the unpaid principal amount of all outstanding Loans and the amount of the unreimbursed drawings under Letters of Credit, all interest accrued and unpaid thereon, and all other amounts owing or payable under any Loan Document to be due and payable, whereupon such amounts shall be due and payable;

(4) declare that an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit) to be due and payable, whereupon such amount shall be due and payable;

(5) direct Borrower to Cash Collateralize (and Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Section 8.01(6) to Cash Collateralize) Letters of Credit in an amount not less than the Minimum Collateral Amount; and

(6) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;



*provided* that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto (the “**Bankruptcy Code**”), the Commitments of each Lender will automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid will automatically become due and payable, in each case without further act of the Administrative Agent or any Lender; *provided* further that the foregoing shall not effect in any way the obligations of Lenders under Section 2.02(2)(v) or Section 2.03(5).

SECTION 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), subject to the ABL Intercreditor Agreement, any amounts received on account of the Obligations will be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

*Third*, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans, all Obligations in respect of Letters of Credit (including reimbursements for draws and Cash Collateralization of the remaining Letters of Credit), the Designated Pari Hedge Obligations (up to the amount of the Designated Pari Hedge Reserves then in effect with respect thereto), the Designated Pari Cash Management Services Obligations (up to the amount of the Designated Pari Cash Management Services Reserve then in effect with respect thereto) and the Secured Bi-Lateral Letter of Credit Obligations (to the extent deducted from the calculation of the Borrowing Base), ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

*Fifth*, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and



*Last*, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party, but appropriate adjustments shall be made with respect to payments from the other Loan Parties on account of their assets to preserve the allocation to the Obligations set forth above.

#### SECTION 8.04 Right to Cure.

(1) Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02, but subject to Sections 8.04(2) and (3), for the purpose of determining whether an Event of Default under the Financial Covenant has occurred, the Borrower may on one or more occasions designate any portion of the Net Proceeds from any Permitted Equity Issuance or of any contribution to the common equity capital of the Borrower (or from any other contribution to capital or sale or issuance of any other Equity Interests on terms reasonably satisfactory to the Administrative Agent), but excluding any proceeds of CapEx Equity and any proceeds of Qualified Capital Contributions that are used to make cash payments of interest and principal in respect of the Specified Pari Passu Debt Documents (the “**Cure Amount**”) as an increase to Consolidated EBITDA of the Borrower for the applicable fiscal quarter; *provided that*

(a) such amounts to be designated are actually received by the Borrower (i) on and after the first Business Day following the most recently ended fiscal quarter and (ii) on and prior to the tenth (10th) Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the “**Cure Expiration Date**”),

(b) such amounts to be designated do not exceed the maximum aggregate amount necessary to cure any Event of Default under the Financial Covenant as of such date and

(c) the Borrower will have provided notice to the Administrative Agent on the date such amounts are designated as a “Cure Amount” (it being understood that to the extent such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such Net Proceeds that is designated as the Cure Amount may be lower than specified in such notice to the extent that the amount necessary to cure any Event of Default under the Financial Covenant is less than the full amount of such originally designated amount).

The Cure Amount used to calculate Consolidated EBITDA for one fiscal quarter will be used and included when calculating Consolidated EBITDA for each Test Period that includes such fiscal quarter. The parties hereby acknowledge that this Section 8.04(1) may not be relied on for purposes of calculating any financial ratios other than as applicable to the Financial Covenant (and may not be included for purposes of determining pricing, mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article VII) and may not result in any adjustment to any amounts (including the amount of Indebtedness) or increase in cash with respect to the fiscal quarter with respect to which such Cure Amount was received other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence. Notwithstanding anything to the contrary contained in Section 8.01 and Section 8.02, (A) upon designation of the Cure Amount by the Borrower in an amount necessary

to cure any Event of Default under the Financial Covenant, the Financial Covenant will be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with the Financial Covenant and any Event of Default under the Financial Covenant (and any other Default as a result thereof) will be deemed not to have occurred for purposes of the Loan Documents and (B) from and after the date that the Borrower delivers a written notice to the Administrative Agent that it intends to exercise its cure right under this Section 8.04 (a “**Notice of Intent to Cure**”) neither the Administrative Agent nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under the Financial Covenant (and any other Default as a result thereof) until and unless the Cure Expiration Date has occurred without the Cure Amount having been designated; *provided*, that no Lenders or Issuing Banks shall be required to honor any proposed Credit Extension until and unless there has occurred a designation of the Cure Amount by the Borrower in an amount necessary to cure any Event of Default under the Financial Covenant.

(2) In each period of four consecutive fiscal quarters, there shall be no more than two (2) fiscal quarters in which the cure right set forth in Section 8.04(1) is exercised.

(3) There shall be no more than five (5) fiscal quarters in which the cure rights set forth in Section 8.04(1) are exercised during the term of the Facility.

## **Article IX**

### **Administrative Agent and Other Agents**

SECTION 9.01 Appointment and Authorization of the Administrative Agent and Collateral Agent. Each Lender hereby irrevocably appoints Goldman Sachs Bank USA, to act on its behalf as the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.07, 9.11, 9.12, 9.15 and 9.16) are solely for the benefit of the Agents and the Lenders, and the Borrower shall not have rights as a third-party beneficiary of any such provision.

SECTION 9.02 Rights as a Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its Loans and participations in the Letters of Credit, Swing Line Loans and Protective Advances, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term “Lender” shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Holdings or any of its Subsidiaries or Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services

in connection herewith and otherwise without having to account for the same to Lenders.

SECTION 9.03 Exculpatory Provisions. No Agent (which term shall for the purposes of this Section 9.03 include Issuing Bank) shall have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, each Agent (including the Administrative Agent):

(1) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent or Arrangers is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(2) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(3) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Persons shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate (including any Borrowing Base Certificate), report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any

other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or the Collateral Agent, as applicable. The duties of the Administrative Agent and Collateral Agent shall be mechanical and administrative in nature; the Administrative Agent and Collateral Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender or the holder of any Note; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent or the Collateral Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.

Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the Letter of Credit Usage or the component amounts thereof, the Borrowing Base or the component amounts thereof, or calculation of Quarterly Average Excess Availability or Quarterly Average Facility Utilization or the terms and conditions of the ABL Intercreditor Agreement, or any amendment, supplement or other modification thereof, or qualification of (or lapse of qualification of) any Account or Inventory under the eligibility criteria set forth herein or the calculations of the outstanding amount of any Designated Cash Management Services Obligations, Designated Pari Cash Management Services Obligations, Designated Hedge Obligations and Designated Pari Hedge Obligations and, in the case of any Designated Pari Cash Management Services Obligations, Designated Pari Hedge Obligations or Secured Bi-Lateral Letter of Credit Obligations, whether the amount thereof is greater or less than the amount of any related Designated Pari Cash Management Services Reserve or Designated Pari Hedge Reserve (it being further agreed that, in determining the amount of any Designated Pari Cash Management Services Reserve, any Designated Pari Hedge Reserve or any other Reserve or the face amount of all Bi-Lateral Letters of Credit, the Administrative Agent shall be entitled to rely, and shall be fully protected in relying, on the calculation of Designated Cash Management Services Obligations, Designated Pari Cash Management Services Obligations, Designated Hedge Obligations, Designated Pari Hedge Obligations or the face amount of all Bi-Lateral Letters of Credit as set forth in any Borrowing Base Certificate or as otherwise provided to the Administrative Agent by or on behalf of the Borrower or any other Loan Party).

Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, each Arrangers is named as such for recognition purposes only, and in its capacity as such shall have no powers, duties, responsibilities or liabilities with respect to this Agreement or the other Loan Documents or the transactions contemplated hereby and thereby; it being understood and agreed that each Arrangers shall be entitled to all indemnification and reimbursement rights in favor of the Arrangers as, and to the extent, provided for under Section 10.05. Without limitation of the foregoing, each Arrangers shall not, solely by reason of this Agreement or any other Loan Documents, have any fiduciary relationship in respect of any Lender or any other Person.

SECTION 9.04      Lack of Reliance on the Administrative Agent.  
Independently and without reliance upon the Administrative Agent or the Issuing Bank, as

applicable, each Lender and the holder of each Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of Holdings, the Borrower and the Restricted Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of Holdings, the Borrower and the Restricted Subsidiaries and, except as expressly provided in this Agreement, neither the Administrative Agent nor the Issuing Bank shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note with any credit or other information with respect thereto, whether coming into its possession before the making of any Loan or the issuance of any Letter of Credit at any time or times thereafter. The Administrative Agent shall not be responsible to any Lender or the holder of any Note for any recitals, statements, information, representations or warranties herein or in any document, certificate (including any Borrowing Base Certificate) or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or the existence or possible existence of any Default or Event of Default.

SECTION 9.05 Certain Rights of the Agents. If any Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, such Agent shall be entitled to refrain from such act or taking such action unless and until such Agent shall have received instructions from the Required Lenders; and such Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against such Agent as a result of such Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders.

SECTION 9.06 Reliance by the Agents. Each Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that such Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 9.07 Delegation of Duties. Each Agent may perform any and all



of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub agent and to the Agent-Related Persons of such Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent. Notwithstanding anything to the contrary in this Section 9.07 or Section 9.15, the Administrative Agent shall not delegate to any Supplemental Administrative Agent responsibility for receiving any payments under any Loan Document for the account of any Lender, which payments shall be received directly by the Administrative Agent, without prior written consent of the Borrower (not to unreasonably withheld or delayed).

SECTION 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent or the Collateral Agent) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent or the Collateral Agent) in proportion to their respective Pro Rata Shares for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent, the Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent or the Collateral Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; *provided* that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's, the Collateral Agent's or any other Agent-Related Person's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent or the Collateral Agent, as applicable, upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent or the Collateral Agent, as applicable, in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent or the Collateral Agent is not reimbursed for such expenses by or on behalf of the Borrower, *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto, *provided further* that the failure of any Lender to indemnify or reimburse the Administrative Agent or the Collateral Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive termination of the Aggregate

Commitments, the payment of all other Obligations and the resignation of the Administrative Agent or the Collateral Agent, as applicable.

SECTION 9.09      The Administrative Agent in Its Individual Capacity. With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a “Lender” and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term “Lender,” “Required Lenders” or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

SECTION 9.10      [Reserved].

SECTION 9.11      Successor Administrative Agent, Collateral Agent and Swing Line Lender.

(1) Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders, Issuing Bank and Borrower. Administrative Agent shall have the right to appoint a financial institution to act as Administrative Agent and/or Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower and Required Lenders, and Administrative Agent’s resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by Borrower and Required Lenders or (iii) such other date, if any, agreed to by Required Lenders. Upon any such notice of resignation or any such removal, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Required Lenders shall have the right, upon five Business Days’ notice to Borrower and Issuing Bank, to appoint a successor Administrative Agent. If neither Required Lenders nor Administrative Agent have appointed a successor Administrative Agent, Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that, until a successor Administrative Agent is so appointed by Required Lenders or Administrative Agent, any collateral security held by Administrative Agent in its role as Collateral Agent on behalf of the Lenders or Issuing Bank under any of the Loan Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor



Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. Except as provided above, any resignation or removal of Goldman Sachs or its successor as Administrative Agent pursuant to this Section 9.11 shall also constitute the resignation or removal of Goldman Sachs or its successor as Collateral Agent. After any retiring or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any successor Administrative Agent appointed pursuant to this Section 9.11 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder.

(2) In addition to the foregoing, Collateral Agent may resign at any time by giving prior written notice thereof to Lenders, Issuing Bank and the Grantors. Administrative Agent shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower and the Required Lenders and Collateral Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by Borrower and the Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders. Upon any such notice of resignation or any such removal, Required Lenders shall have the right, upon five Business Days' notice to Administrative Agent, to appoint a successor Collateral Agent. Until a successor Collateral Agent is so appointed by Required Lenders or Administrative Agent, any collateral security held by Collateral Agent on behalf of the Lenders or Issuing Bank under any of the Loan Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent under this Agreement and the Collateral Documents, and the retiring or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any retiring or removed Collateral Agent's resignation or removal hereunder as the Collateral Agent,

the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was the Collateral Agent hereunder.

(3) Any resignation of Goldman Sachs or its successor as Administrative Agent pursuant to this Section 9.11 shall also constitute the resignation or removal of Goldman Sachs or its successor as Swing Line Lender and Issuing Bank, and any successor Administrative Agent appointed pursuant to this Section 9.11 shall, upon its acceptance of such appointment, become the successor Swing Line Lender and Issuing Bank for all purposes hereunder. In such event (a) Borrower shall prepay any outstanding Swing Line Loans made, and Cash Collateralize any Letters of Credit issued in an amount not less than the Minimum Collateral Amount, by the resigning or removed Administrative Agent in its capacity as Swing Line Lender and Issuing Bank, as applicable, (b) upon such prepayment, the resigning or removed Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to Borrower for cancellation, and (c) Borrower shall issue, if so requested by successor Administrative Agent and Swing Line Lender, a new Swing Line Note to the successor Administrative Agent and Swing Line Lender, in the principal amount of the Swing Line Sublimit then in effect and with other appropriate insertions.

#### SECTION 9.12 Collateral Matters.

(1) Agents under Collateral Documents and Guaranty. Each Secured Party hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Intercreditor Agreements, the Collateral and the Collateral Documents; provided that neither Administrative Agent nor Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Designated Hedge Agreements or any Designated Cash Management Services Agreement. Subject to Section 10.01, without further written consent or authorization from any Secured Party, Administrative Agent or Collateral Agent, as applicable may execute any documents or instruments necessary to (i) in connection with a disposition of assets permitted by this Agreement or Lien permitted under Section 7.01, release and/or subordinate any Lien encumbering any item of Collateral that is the subject of such disposition of assets and/or permitted Lien, as set forth in Section 9.16 or to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to any transaction permitted hereunder, as set forth in Section 9.16 or otherwise with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented.

(2) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Loan Documents to the contrary notwithstanding, Borrower, Administrative Agent, Collateral Agent and each Secured Party hereby agree that no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by Administrative Agent or Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers,

rights and remedies under the Security Documents may be exercised solely by Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof.

(3) Rights under Hedge Agreements. No Designated Hedge Agreement or Designated Cash Management Services Agreement or any agreement or instrument executed pursuant thereto, or of any other guarantee or security for the Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Designated Hedge Agreement, such Designated Cash Management Services Agreement or any agreement relating to such other guarantee or security, will create (or be deemed to create) in favor of any Lender Counterparty that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Loan Documents except as expressly provided in Section 10.01(2)(ix) of this Agreement. By accepting the benefits of the Collateral, such Lender Counterparty shall be deemed to have appointed Collateral Agent as its agent and agreed to be bound by the Loan Documents as a Secured Party, subject to the limitations set forth in this clause (3).

(4) Release of Collateral and Guarantees, Termination of Loan Documents. Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than obligations in respect of any Designated Hedge Agreements, any Designated Cash Management Services Agreement) have been paid in full, all Commitments have terminated or expired, no Letter of Credit shall be outstanding (or, if outstanding, has been Cash Collateralized in the Minimum Collateral Amount or otherwise backstopped by a letter of credit to the satisfaction of the Issuing Bank) and all Designated Hedge Obligations have been terminated and paid in full in cash (or collateralized on term satisfactory to the applicable Lender Counterparty) (such conditions, the “**Termination Conditions**”), upon request of Borrower, Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender that is a party to any Designated Hedge Agreement or any Designated Cash Management Services Agreement or any agreement or instrument executed pursuant thereto, or of any other guarantee or security for the Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Designated Hedge Agreement, such Designated Cash Management Services Agreement or any agreement relating to such other guarantee or security) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Loan Document, whether or not on the date of such release there may be outstanding Designated Hedge Obligations or Designated Cash Management Services Obligations. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(5) The Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent’s Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the

Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 9.13      [Reserved].

SECTION 9.14      Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation under a Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1)      to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(2)      to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether

by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (i) of the first proviso to Section 10.01(1) of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

#### SECTION 9.15      Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a “**Supplemental Administrative Agent**” and collectively as “**Supplemental Administrative Agents**”).



(2) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent or such Supplemental Administrative Agent, as the context may require.

(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

SECTION 9.16 Intercreditor Agreements. The Administrative Agent and Collateral Agent are hereby authorized to enter into each Intercreditor Agreement, and the parties hereto acknowledge that each such Intercreditor Agreement is binding upon them. Each Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreements, (b) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Intercreditor Agreements and to subject the Liens on the Collateral securing the Obligations to the provisions thereof and (c) without any further consent of the Lenders, hereby authorizes and instructs the Administrative Agent and the Collateral Agent to negotiate, execute and deliver on behalf of the Secured Parties any amendment (or amendment and restatement) to the Collateral Documents or any Intercreditor Agreement contemplated hereunder. In addition, each Secured Party hereby authorizes the Administrative Agent and the Collateral Agent to (A) enter into (i) any amendments to any Intercreditor Agreements, and (ii) any other intercreditor arrangements, in the case of clauses (i) and (ii) to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required or permitted by this Agreement and (B) upon the termination of each of the Collateral Trust Agreement, the ABL Intercreditor Agreement and the Grant Clawback Agreement (in each case, in accordance with the respective terms thereof), upon the written request of the Borrower, release (x) any Lien on Term Priority Collateral securing the Obligations and/or (y) any Subsidiary Guarantor the assets of which are not included in the Borrowing Base from the Guaranty (and, in each case, enter into such amendments to any

Collateral Documents and/or the Guaranty as the Borrower may reasonably request in connection with such release (it being understood that no further consent of any Lender or any other Secured Party shall be required in connection with any such amendments)); provided, that the Secured Parties receive collateral access rights consistent with those set forth in Section 3.3 of the ABL Intercreditor Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

SECTION 9.17 Designated Pari Hedge Agreements and Designated Pari Cash Management Services Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Lender Counterparty that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Designated Pari Hedge Agreements or Designated Pari Cash Management Services Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Lender Counterparty.

SECTION 9.18 Withholding Tax. To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.



SECTION 9.19 Acknowledgements of Lenders and Issuing Banks.

(a) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “**Payment**”) were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 9.19 shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “**Payment Notice**”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

(d) Each party’s obligations under this Section 9.19 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the

replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document. As used in this Section 9.19, the term “Lender” shall include the Issuing Banks.

SECTION 9.20 Sustainability Matters. Each party hereto hereby agrees that neither the Administrative Agent nor any Sustainability Structuring Agent shall have any responsibility for (or liability in respect of) reviewing, auditing or otherwise evaluating any calculation by the Borrower of any ESG KPI Pricing Adjustment or any ESG KPI Commitment Fee Adjustment (or any of the data or computations that are part of or related to any such calculation) set forth in any certificate delivered pursuant to Section 6.02(10) (and the Administrative Agent and each Sustainability Structuring Agent may rely conclusively on any such certificate, without further inquiry).

## Article X

### Miscellaneous

#### SECTION 10.01 Amendments, etc.

(1) Required Lenders’ Consent. Subject to the additional requirements of Sections 10.01(2) and 10.01(3) and subject to Section 2.15 in respect of New Revolving Loan Commitments and subject to Section 3.03, no amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall in any event be effective without the written concurrence of Required Lenders.

(2) Affected Lenders’ Consent. Without the written consent of each Lender that would be directly affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the scheduled final maturity of any Loan or Note;
- (ii) waive, reduce or postpone any scheduled repayment (but not prepayment);
- (iii) reduce the rate of interest on any Loan or any fee payable hereunder (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.08 or any change in the definition, or in any components of, the terms “Quarterly Average Facility Utilization” or “Quarterly Average Excess Availability”), or waive or postpone the time for payment of any such interest or fee;
- (iv) extend the time for payment of any such interest or fees;
- (v) reduce the principal amount of any Loan or any reimbursement obligation in respect of any Letter of Credit;
- (vi) amend, modify, terminate or waive any provision of this Section 10.01(2), Section 10.01(3) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(vii) amend the definition of “Required Lenders”, “Supermajority Lenders” or “Pro Rata Share”; provided, with the consent of Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of “Required Lenders”, “Supermajority Lenders” or “Pro Rata Share” on substantially the same basis as Revolving Commitments and the Revolving Loans are included on the Closing Date;

(viii) discharge any Loan Party from its respective payment Obligations under the Loan Documents, or release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Loan Documents and except in connection with a “credit bid” undertaken by the Collateral Agent at the direction of the Required Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other disposition of assets in connection with an enforcement action with respect to the Collateral permitted pursuant to the Loan Documents (in which case only the consent of the Required Lenders will be needed for such release);

(ix) waive, amend or otherwise modify this Agreement or any provision of the Security Agreement so as to alter the ratable treatment of Obligations arising under the Loan Documents, on the one hand, and the Designated Pari Hedge Obligations, the Designated Pari Cash Management Services Obligations or the Secured Bi-Lateral Letter of Credit Obligations, on the other, or amend or otherwise modify the definition of the term “Obligations”, “Designated Hedge Obligations”, “Designated Cash Management Services Obligations”, “Designated Pari Hedge Obligations”, “Designated Pari Cash Management Services Obligations”, “Secured Bi-Lateral Letter of Credit Obligations” or “Secured Parties” (or any comparable term used in any Collateral Document), in each case in a manner adverse to any Secured Party holding Designated Hedge Obligations, Designated Cash Management Services Obligations, Designated Pari Hedge Obligations, Designated Pari Cash Management Services Obligations or Secured Bi-Lateral Letter of Credit Obligations then outstanding without the written consent of such Secured Party (it being understood that an amendment or other modification of the type of obligations secured by the Collateral Documents or Guaranteed hereunder or thereunder, so long as such amendment or other modification by its express terms does not alter the Designated Hedge Obligations, Designated Cash Management Services Obligations, Designated Pari Hedge Obligations, Designated Pari Cash Management Services Obligations or Secured Bi-Lateral Letter of Credit Obligations being so secured or Guaranteed, shall not be deemed to be adverse to any Secured Party holding Designated Hedge Obligations, Designated Cash Management Services Obligations, Designated Pari Hedge Obligations, Designated Pari Cash Management Services Obligations or Secured Bi-Lateral Letter of Credit Obligations, as the case may be);

(x) subordinate the Collateral Agent’s Liens under the Collateral Documents (other than as set forth in the Intercreditor Agreements or as permitted by Section 9.12);

(xi) amend, waive, terminate or otherwise modify Section 8.03 of this Agreement;

(xii) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under any Loan Document except as permitted by this Agreement;

provided that, for the avoidance of doubt, all Lenders shall be deemed directly affected thereby with respect to any amendment described in clauses (vii), (viii), (x), (xi) and (xii).

(3) Other Consents. No amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall:

(i) increase any Revolving Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default, and no making of a Protective Advance as contemplated hereby, shall constitute an increase in any Revolving Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to (A) the Swing Line Sublimit or the Swing Line Loans without the consent of Swing Line Lender, (B) the Letter of Credit Sublimit without the consent of Issuing Bank, (C) the Issuing Bank Sublimit of any Issuing Bank without the consent of such Issuing Bank or (D) or any Letter of Credit without the consent of the applicable Issuing Bank;

(iii) amend, modify, terminate or waive any obligation of Lenders relating to (A) the purchase of participations in Letters of Credit as provided in Section 2.03(5), (B) the purchase of participations in Protective Advances as provided in Section 2.10(2) or (C) the making of any Revolving Loan as provided in Section 2.03(4), in each case without the written consent of Administrative Agent and of Issuing Bank;

(iv) waive, amend or otherwise modify this Agreement to modify the definition of the term “Borrowing Base” or any component definition thereof in a manner that has the effect of increasing borrowing availability (other than modifications to Reserves implemented by the Administrative Agent in the manner and to the extent expressly provided herein), without the prior written consent of the Supermajority Lenders;

(v) amend, modify, terminate or waive any provision of any fee letter among the Loan Parties and Agents without the consent of the parties thereto; or

(vi) amend, modify, terminate or waive any provision of the Loan Documents as the same applies to any Agent, Arrangers, or Issuing Bank, or any other provision hereof as the same applies to the rights or obligations of any Agent, Arrangers or Issuing Bank, in each case without the consent of such Agent, Arrangers or Issuing Bank, as applicable.

(4) Execution of Amendments, Etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand

on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.01 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Loan Party, on such Loan Party.

*provided* that notwithstanding the foregoing:

(A) no Defaulting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders);

(B) no Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement (i) that is for the purpose of adding Indebtedness secured by a Permitted Lien (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Intercreditor Agreement, as applicable (it being understood that any such amendment, modification or supplement may make such other changes to the applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any Intercreditor Agreement in connection with joinders and supplements; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable;

(C) amendments in accordance with Section 3.03 may be effected only with the parties required under Section 3.03;

(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time;

(E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent (or the Collateral Agent, as applicable) to cure any ambiguity, omission, defect or inconsistency (including amendments, supplements or waivers to any of the Collateral Documents, guarantees, intercreditor agreements or related documents executed by any Loan Party or any other Subsidiary in connection with this Agreement if such amendment, supplement or waiver is

delivered in order to cause such Collateral Documents, guarantees, intercreditor agreements or related documents to be consistent with this Agreement and the other Loan Documents) so long as, in each case, the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; *provided* that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of New Revolving Loans and otherwise to effect the provisions of Section 2.14, 2.15 or 2.16 or the immediately succeeding paragraph of this Section 10.01, respectively.

(5) In addition, notwithstanding anything to the contrary in this Section 10.01, the Guaranty, the Collateral Documents and related documents executed by Loan Parties in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein).

#### SECTION 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).



(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent, any Sustainability Structuring Agent or any of their respective Agent-Related Persons or the Arrangers (collectively, the "**Agent Parties**") have any liability to Holdings, the Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(5) Change of Address. Each Loan Party and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its

address, facsimile or telephone number for notices and other communications hereunder by written notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private-Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(6) Reliance by the Administrative Agent. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Funding Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor

Relief Law; and *provided further* that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 10.04 Costs and Expenses. The Borrower agrees (a) if the Closing Date occurs and to the extent not paid or reimbursed on or prior to the Closing Date, to pay or reimburse the Administrative Agent and Goldman Sachs Bank USA (in its capacity as an Arranger) for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and such Arrangers incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of a single counsel and, if necessary, a single local counsel in each relevant material jurisdiction, (b) upon presentation of a summary statement, to pay or reimburse the Administrative Agent and the Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Lenders similarly situated taken as a whole)) and (c) to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses for field exams, appraisals and inspections performed in connection with the Closing Date and at any time after the Closing Date if permitted by this Agreement. The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

SECTION 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agents, each other Lender, the Arrangers and their respective Related Persons (collectively, the “**Indemnitees**”) from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated taken as a

whole (in each case, which counsel shall be selected (I) by mutual agreement of the Administrative Agent and the Borrower or (II) if no such agreement has been reached following the Administrative Agent's good faith consultation with the Borrower with respect thereto, by the Administrative Agent in its sole discretion) any actual or threatened claim, litigation, investigation or proceeding relating to the Transactions or to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents or the Loans or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "**Indemnified Liabilities**"); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or Arrangers or any similar role under any Loan Document and other than any claims arising out of any act or omission of Holdings or any of its Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). Each Indemnitee shall give the Borrower (A) prompt written notice of any such action brought against such Indemnitee in connection with any purported Indemnified Liabilities and (y) an opportunity to consult from time to time with such Indemnitee regarding defensive measures and potential settlement. The Borrower shall not be obligated to pay the amount of any settlement entered into without its written consent (which consent shall not be unreasonably withheld or delayed). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnitee), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this

Section 10.05 shall be paid within thirty (30) days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by any Loan Party or any of its Affiliates under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof as determined by a final, non-appealable judgment of a court of competent jurisdiction.

SECTION 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect.

SECTION 10.07 Successors and Assigns; Participations.

(1) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders and Issuing Bank. No Loan Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Loan Party without the prior written consent of all Lenders except as permitted by Section 7.03. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents, Issuing Bank and Lenders and other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(2) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment and Assumption effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in



Section 10.07(4). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment and Assumption and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower and a copy of such Assignment and Assumption shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the “**Assignment Effective Date.**” Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(3) Right to Assign. Each Lender shall have the right, subject to Section 10.07(9), at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (a) of the definition of the term “Eligible Assignee” upon the giving of notice to Borrower and Administrative Agent; and

(ii) to any Person meeting the criteria of clause (b) of the definition of the term “Eligible Assignee” upon giving of notice to Borrower and Administrative Agent and the prior written consent of Issuing Bank, Swing Line Lender, Borrower and Administrative Agent (such consent not to be (x) unreasonably withheld or delayed or, (y) in the case of Borrower, required at any time an Event of Default under Section 8.01(1), (6) or (7) shall have occurred and then be continuing); provided further that (A) Borrower shall be deemed to have consented to any such assignment of Revolving Loans or Revolving Commitments unless it shall object thereto by written notice to Administrative Agent within 10 Business Days after having received notice thereof and (B) each such assignment pursuant to this Section 10.07(3) shall be in an aggregate amount of not less than (w) \$5,000,000 with respect to the assignment of the Revolving Commitments and the Revolving Loans, (x) such lesser amount as agreed to by Borrower and Administrative Agent, (y) the aggregate amount of the Loans of the assigning Lender with respect to the Class being assigned or (z) the amount assigned by an assigning Lender to an Affiliate or Approved Fund of such Lender.

(4) Mechanics.

(i) Assignments and assumptions of Loans and Commitments by Lenders shall be effected by manual execution and delivery to Administrative Agent of an Assignment and Assumption. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment and Assumption may be required to deliver pursuant to Section 3.01(3), together with payment to Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable (y) in connection with an assignment by or to Goldman Sachs or any



Affiliate thereof or (z) in the case of an assignee which is already a Lender or is an affiliate or Approved Fund of a Lender).

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent, Issuing Bank, Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swing Line Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(5) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.07, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control); and (iv) it is not a Disqualified Institution.

(6) Effect of Assignment. Subject to the terms and conditions of this Section 10.07, as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.14) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Loan Documents to the contrary notwithstanding, (y) Issuing Bank shall continue to have all rights and obligations thereof with respect to each Letter of Credit until the cancellation or expiration of (without any pending drawing on) such Letter of Credit and the reimbursement of any amounts drawn

thereunder and (z) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any Revolving Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(7) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings, any of its Subsidiaries or any of its Affiliates, any Disqualified Institution or any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person)) in all or any part of its Commitments, Loans or in any other Obligation. Each Lender that sells a participation pursuant to this Section 10.07(7) shall, acting solely for United States federal income tax purposes as a non-fiduciary agent of Borrower, maintain a register on which it records the name and address of each participant and the principal amounts of each participant's participation interest with respect to the Revolving Loan (each, a "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of a participation with respect to the Revolving Loan for all purposes under this Agreement, notwithstanding any notice to the contrary.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and

that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Loan Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Borrower agrees that each participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (x) a participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from any change described in Section 3.01 that occurs after the participant acquired the applicable participation, and (y) a participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.04 unless Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower, to comply with Section 3.04 as though it were a Lender; provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to Borrower or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.01 as though it were a Lender, provided such participant agrees to be subject to Section 3.01 as though it were a Lender.

(8) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.07 any Lender may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Lender, as among Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

(9) Disqualified Institution Provisions. Notwithstanding the foregoing, no assignment or participation shall be made to a Disqualified Institution without Borrower's consent in writing (which consent may be withheld in its sole discretion); provided that upon the request of any Lender to Administrative Agent, the list of Disqualified Institutions shall be made available by Administrative Agent to such Lender. Administrative Agent shall not be responsible for, nor have any liability in connection with maintaining, updating, monitoring or enforcing the list of Disqualified Institutions.

SECTION 10.08      [Reserved].

SECTION 10.09 Confidentiality. Each of the Agents, the Arrangers and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided, however*, that such Agent, Arrangers or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided, however*, that each Agent, each Arrangers and each Lender agrees to notify the Borrower promptly thereof to the extent it is legally permitted to do so, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a governmental authority; *provided* that such Agent, such Arrangers or such Lender, as applicable, agrees that it will (x) notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of a regulation examination) unless such notification is prohibited by law, rule or regulation and (y) seek confidential treatment with respect to any such disclosure, (d) to any other party hereto, (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) invited to be a Lender or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower, the Agents and the Arrangers, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents and the Arrangers or market standards for dissemination of such type of information which shall in any event require "click through" or other affirmative action on the part of the recipient to access such confidential information, (f) for purposes of establishing a "due diligence" defense, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (iii) service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Arrangers, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is

not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate thereof or (z) is independently developed by the Agents, the Lenders, the Arrangers or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09.

For purposes of this Section 10.09, “**Information**” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that no information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the Closing Date shall be deemed nonconfidential on account of such information not being clearly identified at the time of delivery as being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent, each Arrangers and each Lender acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including United States Federal and state securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents, the Arrangers and the Lenders under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent.

**SECTION 10.10**     Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.14 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each



Lender under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 10.11 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.12 Counterparts; Integration; Effectiveness. This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.13 Electronic Execution of Assignments and Certain Other Documents. The words “delivery,” “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Funding Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 10.14 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other



document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.16 GOVERNING LAW.

(1) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(2) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(3) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT

IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

SECTION 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

SECTION 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, each Lender, each other party hereto and their respective successors and assigns.

SECTION 10.19 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents or the Designated Cash Management Services Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provisions of this Section 10.19 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

SECTION 10.20 Use of Name, Logo, etc. Each Loan Party consents to the publication in the ordinary course by Administrative Agent or the Arrangers of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark; *provided* that any such material shall be provided to the Borrower for its review a reasonable period of time in advance of publication. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and the Arrangers.

SECTION 10.21 USA PATRIOT Act; Beneficial Ownership Regulation.

Each Lender that is subject to the USA PATRIOT Act and the Beneficial Ownership Regulation and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

SECTION 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Arrangers and the Lenders are arm’s-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent, Arrangers and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents, the Arrangers nor any Lender has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and none of the Agents, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.24 [Reserved].

SECTION 10.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties hereto, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(2) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

SECTION 10.26 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Employee Benefit Plans in connection with the Loans or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable, and the conditions of such exemption have been satisfied, with

respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Administrative Agent or any of its Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any other Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, arrangement fees, agency fees, amendment fees, processing fees, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

#### SECTION 10.27 Recognition of U.S. Special Resolution Regimes.

(a) To the extent that this Agreement provides support, through a guarantee or otherwise, for swap agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit

Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”), in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that this Agreement and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the U.S. or any other state of the U.S.).

(b) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, default rights under this Agreement that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and this Agreement were governed by the laws of the U.S. or a state of the U.S.. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(c) As used in this Section 10.27, the following terms have the following meanings:

(i) “BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such part.

(ii) “Covered Entity” means any of the following:

(A) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b);

(B) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or

(C) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

(iii) “Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

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CHIEF EXECUTIVE OFFICER CERTIFICATION

I, David B. Burritt, certify that:

1. I have reviewed this quarterly report on Form 10-Q of United States Steel Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

July 28, 2023

/s/ David B. Burritt

David B. Burritt

President and Chief Executive Officer

CHIEF FINANCIAL OFFICER CERTIFICATION

I, Jessica T. Graziano, certify that:

1. I have reviewed this quarterly report on Form 10-Q of United States Steel Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

July 28, 2023

/s/ Jessica T. Graziano

Jessica T. Graziano

Senior Vice President and Chief Financial Officer

CHIEF EXECUTIVE OFFICER  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350

I, David B. Burritt, President and Chief Executive Officer of United States Steel Corporation, certify that:

- (1) The Quarterly Report on Form 10-Q of United States Steel Corporation for the period ending June 30, 2023, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the foregoing report fairly presents, in all material respects, the financial condition and results of operations of United States Steel Corporation.

/s/ David B. Burritt

David B. Burritt

President and Chief Executive Officer

July 28, 2023

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to United States Steel Corporation and will be retained by United States Steel Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

CHIEF FINANCIAL OFFICER  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350

I, Jessica T. Graziano, Senior Vice President and Chief Financial Officer of United States Steel Corporation, certify that:

- (1) The Quarterly Report on Form 10-Q of United States Steel Corporation for the period ending June 30, 2023, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the foregoing report fairly presents, in all material respects, the financial condition and results of operations of United States Steel Corporation.

/s/ Jessica T. Graziano

Jessica T. Graziano  
Senior Vice President and Chief Financial Officer

July 28, 2023

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to United States Steel Corporation and will be retained by United States Steel Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

**United States Steel Corporation**  
**Mine Safety Disclosure**  
**(Unaudited)**

For the quarter ended June 30, 2023 follows:

Mine (Federal Mine Safety and Health Administration (MSHA) ID)	Total # of Significant & Substantial violations under §104(a) <sup>(a)</sup>	Total # of orders under §104(b) <sup>(a)</sup>	Total # of unwarrantable failure citations and orders under §104(d) <sup>(a)</sup>	Total # of violations under §110(b)(2) <sup>(a)</sup>	Total # of orders under §107(a) <sup>(a)</sup>	Total dollar value of proposed assessments from MSHA	Total # of mining related fatalities	Received Notice of Pattern of Violations under §104(e) <sup>(a)</sup> (yes/no)?	Received Notice of Potential to have Pattern under §104(e) <sup>(a)</sup> (yes/no)?	Total # of Legal Actions Pending with the Mine Safety and Health Review Commission as of Last Day of Period <sup>(b)</sup>	Legal Actions Initiated During Period	Legal Actions Resolved During Period
Mt. Iron (2100820, 2100282)	40	—	—	—	—	\$237,585	—	no	no	44	70	52
Keewatin (2103352)	1	—	—	—	—	\$55,591	—	no	no	3	8	11

<sup>(a)</sup> References to Section numbers are to sections of the Federal Mine Safety and Health Act of 1977.

<sup>(b)</sup> Includes includes all legal actions pending before the Federal Mine Safety and Health Review Commission, together with the Administrative Law Judges thereof, for each of our iron ore operations. These actions may have been initiated in prior quarters. All but one of the legal actions were initiated by us to contest citations, orders or proposed assessments issued by the Federal Mine Safety and Health administrations. One legal action was initiated by an employee under Section 105(c) of the Mine Act. As of the last day of the period, all 47 legal actions were to contest citations and proposed assessments.